

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0793
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<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 101 DP 1209504, 5 Skyline Place FRENCHS FOREST NSW 2086
<b>Proposed Development:</b>	Modification of Development Consent REV2019/0014 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
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B7 Business Park
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	The Owners Of Strata Plan 49558 George Andrew Revay Ross Jon Munro Graeme Watman Jardin Frenchs Forest Pty Ltd
<b>Applicant:</b>	Platino Properties

<b>Application Lodged:</b>	29/10/2021
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	10/11/2021 to 01/12/2021
<b>Advertised:</b>	10/11/2021
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Consent No. DA2018/0995 in the following manner:

- increase the overall building height to the top of the lift overruns by 510mm with a commensurate increase of 510mm at roof level and associated changes at each level, resulting in a maximum building height of RL 176.51/25.11m;
- • consolidate several apartments internally to provide apartment sizes reflective of customer requests on Levels 1, 3 and 4, resulting in a net reduction of 3 apartments;

- minor design amendments at ground and lower ground level resulting from refinements to the residential lobbies, garbage rooms and facilities as well as to accommodate external undercover walkways;
- minor amendments to the landscaping scheme to provide better accessibility and retain some existing vegetation initially approved for removal;
- increase non-residential floorspace by 65m<sup>2</sup> from 1,758m<sup>2</sup> to 1,823m<sup>2</sup>; and
- revise the car parking layout at basement level to improve efficiency, resulting in an increase of 9 car parking spaces.

### Determination of Modification Application

The applicant lodged the current modification application under the provision of Section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the EP&A Act). The modification application was not registered with the Sydney North Planning Panel, as the modification can be determined by Council as the proposed modification do not:

- proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
- meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.

Accordingly, under the provision of Clause 123BA of the EPA Regulations, the application can be determined by Council under delegation.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

There are no assessment issues.

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 101 DP 1209504 , 5 Skyline Place FRENCHS FOREST NSW 2086
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) lot which is legally known as Lot CP SP 49558. 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 to Frenchs Forest Road East, 120m to Skyline Place and has a site area of 12,627m<sup>2</sup>.</p> <p>The site is currently occupied by an existing warehouse and commercial buildings located on the southern part of the site. Off-street parking is currently provided for 170 cars in an at-grade car parking area on the northern part of the site.</p> <p>There are a number of large trees that are located along the north and east boundaries of the site. Vehicular access to the site is provided via an existing entry/exit driveway located midway along the Skyline Place frontage.</p> <p>The site adjoins warehouses and commercial/retail buildings to the south, east, and west, which range from one to five storeys. To the north of the site, beyond Frenchs Forest Road East, is the R2 - Low Density Residential zone, which comprises residential dwellings that are generally 1-2 storey in landscaped settings.</p>

Map:



## SITE HISTORY

### **Development Application No. DA2018/0995**

The original Development Application was lodged with Council in 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, consisting of retail and seniors housing with associated car parking and landscaping, comprising 78 residential units, 1,348m<sup>2</sup> 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.*

On 29 March 2019, the applicant lodged an application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 (the Act) for the review of the SNPP's determination of refusal for DA2018/0995. The 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 the 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 level
- Increase in commercial floor space from 1,348m<sup>2</sup> to 2,219m<sup>2</sup> - an increase of by 871m<sup>2</sup>
- Revised built form to provide a central recess within the building

The application was assessed and reported to the SNPP (Review Panel) with a recommendation for refusal.

On 18 June 2019, the SNPP considered the application under Section 8.2 and resolved to approve the application, stipulating that the amendments to the application satisfactorily addressed the concerns raised by the previous decision of the SNPP on the DA. The panel in approving the application, specifically noted in their decision that the issue raised by Council and the original decision of the SNPP in relation to loss of employment within the zone, is offset by the amended application, which includes floorspace designated for commercial use that is estimated to generate 115 jobs.

#### **Modification Application Mod2019/0654**

The development consent has previously been modified. This modification was approved on 27 August 2020 to facilitate:

- the reduction in the amount of commercial/retail floorspace from 2,219m<sup>2</sup> to 1,758m<sup>2</sup>;
- provision of two additional lifts, one in each lift core, for use by residents, commercial tenants and visitors;
- reconfiguration of level 1 to provide for kitchen, dining, common area, bathrooms, and recreational facility rooms and 2 additional seniors living apartments;
- reconfiguration of level 2 to provide for 5 additional seniors living apartments and courtyard areas; and
- provision of additional communal open space through the extension of north facing common space on Level 1 and internal and outdoor space on the rooftop including community gardens.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/0995, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
<p>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:</p>	
<p>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/0995 for the following reasons:</p> <p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The modifications are substantially the same:</p> <ul style="list-style-type: none"> <li>• The modification remains as seniors housing, which retains the approved land uses for senior housing and commercial proposes;</li> </ul>

Section 4.55 (2) - Other Modifications	Comments
	<ul style="list-style-type: none"> <li>• no substantial change to this fundamental element of the development consent;</li> <li>• There are no substantial quantitative changes proposed to the approved building bulk or scale above ground level;</li> <li>• While there is a minor height increase proposed and change to internal layouts, the development as modified would only result in a minor increase of 65m<sup>2</sup> to the approved gross floor area, limited to the non-residential component of the development at lower ground and ground level.</li> <li>• The built forms presentation to the streetscape remains unchanged and the overall appearance of the development also remains largely unchanged from that approved by the Panel.</li> </ul> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p>
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>Development Application DA2018/0995 did not require concurrence from the relevant Minister, public authority or approval body.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Environmental Plan 2011 and Warringah Development Control Plan.</p>
<p>(d) it has considered any submissions</p>	<p>See discussion on "Notification &amp; Submissions"</p>

Section 4.55 (2) - Other Modifications	Comments
made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	Received” in this report.

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The proposal has been reviewed by Council’s Environmental Health Officer – Contaminated Lands and no concerns have been raised
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p>



Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The application was referred to the NSW RFS as Integrated Development.

In their response on 12 January 2022, the NSW RFS has provided amended General Terms of Approval, which are to be incorporated into an amended condition of consent, should the application be worthy of approval.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/11/2021 to 01/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Peter Hill	11 Anoushka Place BELROSE NSW 2085

<b>Name:</b>	<b>Address:</b>
Mrs Jill Elizabeth Chambers	41 A Lady Penrhyn Drive BEACON HILL NSW 2100

Two letters of support was received for proposed development.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<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> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>The proposed modifications will not impact the industrial/residential criteria Environmental Health assess, for example, changes to noise generating activities. No objections.</p>
Landscape Officer	<p><u>Amended Plans Comment 02/02/2022</u></p> <p>Amended Landscape Plans and Architectural Plans are noted. The plans and the accompanying letter from Keylan Consulting indicate that the issues raised previously have now been addressed.</p> <p>No objections are therefore now raised with regard to landscape issues. Existing conditions are considered still relevant and adequate.</p>
NECC (Development Engineering)	<p>The modifications do not change the footprint of the building the only changes to the on site stormwater system are the inclusion of additional service manholes.</p> <p>No objections to the modification , no conditions required.</p>
Strategic and Place Planning	<p>This application (Mod2021/0793) has been submitted to modify the consent issued under REV2019/0014, which has been subject to a previous revision under Mod2019/0654. It is noted that Council's Strategic and Place Planning Unit was unsupportive of both applications. Notwithstanding this, the application was approved on 26 August 2020.</p> <p>The proposed modifications largely relate to internal reconfigurations to accommodate design amendments including consolidating existing apartments (resulting in a reduction in 3 apartments), modifications to basement parking, storage and associated building services layout, landscaping changes, increasing the non-residential floor space by 65sqm (from 1,758sqm to 1,823sqm), an increase in 9 parking spaces (to a total of 142 spaces), an increase in overall building height by 510mm to accommodate refinements to structural design to a</p>

Internal Referral Body	Comments
	<p>maximum building height of RL176.51/25.11m.</p> <p>In consideration of the above matters and application history, Council's Strategic and Place Planning Unit has no further comment on the revisions submitted with Mod2021/0793.</p>
Strategic and Place Planning (Urban Design)	<p><b>NOT FULLY SUPPORTED BY URBAN DESIGNER (see Planners Response)</b></p> <p>Thank you for providing some of the additional information requested; however, some of the information required to demonstrate compliance with the ADG has not been supplied.</p> <p>This application (Mod2021/0793) has been submitted to modify the consent issued under REV2019/0014, which has been subject to a previous revision under Mod2019/0654. The proposed modifications include consolidating existing apartments, resulting in a reduction in 3 apartments, modifications to basement parking, storage and associated building services layout, landscaping changes, increasing the non-residential floor space by 65sqm (from 1,758sqm to 1,823sqm), an increase in 9 parking spaces (to a total of 142 spaces), an increase in overall building height by 510mm to accommodate refinements to structural design to a maximum building height of RL176.51/25.11m. There have been changes to the space-planning and layout of several apartments, and the mix of units has changed. The Apartment Design Guide (ADG) criteria for solar access, natural cross ventilation and other criteria are based on a percentage of the proposed units, and because the number of apartments proposed has changed it is necessary to reassess the proposal against the ADG criteria. To be able to complete assessment of the application the proposal would need to address the following issues, and provide the additional information requested previously.</p> <ol style="list-style-type: none"> <li>1. The applicant has now provided some shadow diagrams that illustrate the increased overshadowing to neighbouring sites because of the increase in height; however, they are not in hourly intervals, and they do not demonstrate compliance with the ADG. Please provide a clear solar access study, preferably view from sun drawings that accord with the requirements of a solar access study in AGD appendix 3, and should include the number of hours of solar access to all units living rooms and private open space at hourly intervals between the hours of 9am and 3pm at mid-winter to demonstrate compliance with the ADG. Diagrams denoting which apartment it is claimed comply with the solar access requirements of the ADG do not demonstrate compliance, nor enable consideration.</li> <li>2. The proposal does not appear to comply with the solar access requirements of the ADG. The number of apartments receiving no direct sunlight between 9am and 3pm at mid-winter does</li> </ol>

Internal Referral Body	Comments
	<p>not appear to comply. It is unclear if some of the apartments claimed to achieve the ADG solar access requirements of 2hrs direct sunlight between 9am and 3pm at mid-winter can achieve the requirements.</p> <ol style="list-style-type: none"> <li>3. The proposal does not comply with the minimum requirements for natural cross ventilation required by the ADG. The number of apartments able to achieve natural cross ventilation appears to be below the minimum percentage required by the ADG, and less than the number claimed in the application. As one example, apartment A1C does not appear to comply.</li> <li>4. The common circulation areas should have access to daylight and natural ventilation.</li> <li>5. There are many areas of concern regarding privacy. In particular, the area between the two apartment blocks. The space-planning of several areas has been amended. Some examples of an areas of concern include apartment A1C on level 2 and the communal balcony to the east, apartments B1A, R1, A1A, and S, on level 4, overlooking of the private open space between the apartment blocks for apartments A1A, B1A, B1C, A2 on level 3. The area between the two apartment blocks could be re-designed to ameliorate many of the privacy issues. One option for consideration may be to re-design the area between the two-apartment block to ameliorate privacy issues, and provide an open, quadruple-high, atrium-like circulation space to provide daylight and natural ventilation to all circulation areas at all levels, and provide a focus for the 1<sup>st</sup> floor communal area of the building.</li> <li>6. Thank you to the applicant for supplying the drawing requested. The area noted as Deep Soil includes area with a minimum dimension of 3m. The site area noted on the drawing is 4760m<sup>2</sup>, which is greater than the 1500m<sup>2</sup> and so a minimum dimension of 6m is required to accord with the ADG and qualify for inclusion in the calculation of deep soil area.</li> </ol> <p><b><u>Planners Response</u></b></p> <p>Council's Urban Designer's comments are noted. However, on balance, it is considered that the applicant has adequately addressed the specific issues that relate to this modification application. It is also considered that sufficient information has been provided in response to the Urban Designers review and comments, to demonstrate that the proposed modifications are satisfactory and will remain generally consistent with the original approval of the development and will not detract or diminish the amenity and design inherent in the approved development. The modified proposal remains consistent with the provisions of SEPP 65 and the ADG.</p> <p>The proposal to consolidate the number of apartments and reduce the total number by 3 units, from 55 to 52, does not trigger a full scale review of the development against SEPP 65 and the ADG, rather the assessment focuses on the specific changes proposed as part of this application and to ensure there is no net reduction in meeting the</p>

Internal Referral Body	Comments
	<p>requirements of SEPP 65 and the ADG. In this regard, the apartments in question all received solar access but were not cross ventilated. Under the proposed modifications, the relevant apartments will be cross ventilated.</p> <p>Therefore, as a result of the proposed changes, 81% of units (42 out of 52 units) will achieve compliance with the solar access provisions of the ADG. This exceeds the target of 70% of all units to receive 2 hours. Similarly, the modifications result in 60% of units (31 out of 52 units) being cross ventilated, which achieves compliance with the ADG target of 60%.</p> <p>Accordingly, it is considered that the matters raised by Council's Urban Designer have been satisfactorily responded to by the Applicant and based on the above explanation, the remaining matters should not result in any further delay to seek additional information or the refusal of the application.</p>
Traffic Engineer	<p>The proposed modification, in terms of its traffic and parking impacts includes provision for the consolidation of apartments on levels 1,3 &amp; 4 resulting in a reduction in the number of apartments from 55 to 52, and reduction in the commercial floor area from 1758 sqm to 1750 sqm and a redesign of the carparking layers to increase the number of parking spaces in the lower ground and basement levels from 131 spaces to 137 spaces, in increase of 6 spaces. The EIS advises that the number of spaces is increased by 9 to a total of 142 however this is not reflected on the plans.</p> <p>The development approved under Mod2019/0654 made allowance for 74 residential spaces, 11 visitor space and 46 commercial spaces. This exceeded the total parking requirement of 116 spaces with parking provided in excess of the requirements for each of the residential, commercial and visitor components. The proposed modifications will also result in the parking requirements being exceeded for each component.</p> <p>The quantum of parking and the revised parking layout have been reviewed and are acceptable in terms of SEPP and Australian Standard requirements.</p> <p>In terms of traffic generation the modifications will not increase the traffic generated by the development</p> <p>The modification is not opposed in terms of its traffic and parking impacts and no new conditions are considered necessary</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is

External Referral Body	Comments
	assumed that no objections are raised and no conditions are recommended.
Integrated Development – NSW Rural Fire Service - Rural Fires Act (s100B Subdivisions and Special Fire Protection Purposes under)	<p>The application was referred to the NSW RFS as Integrated Development.</p> <p>In their response on 12 January 2022, the NSW RFS has provided amended General Terms of Approval, which are to be incorporated into an amended condition of consent, should the application be worthy of approval.</p>
Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 100 Development on proposed classified road)	<p>The application was referred to Transport for NSW (TfNSW) in accordance with clause 101 of State Environmental Planning Policy (Infrastructure) 2007.</p> <p>TfNSW raised no objection to proposed modification.</p>

### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

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

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

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

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

#### **SEPP 55 - Remediation of Land**

State Environmental Planning Policy No. 55 provides that Councils must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and/or requires remediation for the intended land use.

The assessment of the original application concluded that the site was suitable for the proposed development and in addressing the requirement of this SEPP.

#### **SEPP 65 - Design Quality of Residential Apartment Development**

#### **SEPP 65 - Design Quality of Residential Apartment Development**

The SEPP requires an assessment and consideration of any application for residential flat development against the 9 Design Quality Principles and the matters contained within the associated “Apartment Design Guide”.

This application, as modified, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made by the SNPP Review Panel, with the exception of the following departures from the Apartment Design Guide.

### Apartment Design Guide

The following table is a general consideration against the criteria of the Apartment Design Guide' as it relates to the modified development.

ADG Requirements being altered as result of the proposed modification	Approved Development	Modified Development
<p><b>Common Circulation and Spaces</b></p> <p>The maximum number of apartments off a circulation core on a single level is eight.</p>	<p><b>Consistent</b></p> <p>Up to 8 units per corridor</p>	<p><b>Consistent</b></p> <p>Up to 8 units per corridor</p>
<p><b>Solar and Daylight Access</b></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>· Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter;</li> <li>· A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</li> </ul>	<p><b>Not Consistent</b></p> <ul style="list-style-type: none"> <li>• 82% of the units receiving solar access; and</li> <li>• 16% of the units are now south facing units and will receive no solar access between 9am and 3pm in midwinter.</li> </ul>	<p><b>Consistent</b></p> <ul style="list-style-type: none"> <li>• 81% of units (42 out of 52 units).</li> <li>• No change to the approved south facing windows.</li> </ul>
<p><b>Natural Ventilation</b></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p>	<p><b>Not Consistent</b></p> <p>55%</p>	<p><b>Consistent</b></p> <p>60% of units (31 out of 52 units)</p>

- At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed;
- Overall depth of a cross-over or cross through apartment must not exceed 18m, measured glass line to glass line.

### Urban Design

The Applicant has prepared revised plans to respond to Council's Urban Design referral. The revised plans include the following updates:

- solar access drawings demonstrating compliance with the ADG
- natural cross ventilation drawings in accordance with ADG guidelines
- floor to ceiling heights dimensions
- coloured drawings showing any changes to communal open space areas and compliance with Parts 4D and 4E of the ADG

It is noted that the consolidation of apartments results in a new total of 52 apartments, being a reduction from the approved 55 apartments.

The apartments affected by this modification all received solar access but were not cross ventilated. As a result of the modifications, the number of apartments receiving solar access has been reduced by 3, however the number of cross ventilated units has been increased, as follows:

- 81% of units (42 out of 52 units) will have solar access, which complies with the ADG target of 70%.
- 60% of units (31 out of 52 units) having cross ventilation, which still meets the ADG target.

Accordingly, the applicant has satisfactorily addressed the urban design issues raised and any remaining matters do not warrant any further delay to seek additional information and do not warrant the refusal of the application.

### **SEPP (Building Sustainability Index: BASIX) 2004**

An amended BASIX certificate has been submitted with the application (see Certificate No.924670M\_05 < and 01 October 2021 ). The BASIX Certificate is supported by an ABSA Assessor



Certificate (see Certificate No. 006642050 and 1 October 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	25	25

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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

The original DA was lodged pursuant to former State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as part of the development is for 'Seniors Housing'.

A comprehensive assessment of the application against the objectives and requirements of the SEPP was undertaken at the time of assessment of the original DA and the Review.

The application, as modified, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made by the SNPP.

In this regard, an assessment of the modified proposal with regards to the applicable controls of the SEPP is provided as follows:

Control	Required	Approved	Modification	Compliance
Site Size	1,000m <sup>2</sup>	4886m <sup>2</sup>	4759m <sup>2</sup>	Yes
Site coverage	20m	Site area for proposed Lot 2 104m to Frenchs Forest Road East	No change	Yes

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

The following table outlines compliance of the modified development with standards specified in Clause 50 of SEPP (HSPD):

Control	Required	Approved	Modification	Compliance
Building Height	8m or less (measured vertically from ceiling)	24.6m	25.11m	No An increase 510mm, which resulted from the a minor shift

	of topmost floor to ground level immediately below).			in RLs. Specifically, the minor increase in overall building height
Density and scale	0.5:1 or less	1.73:1	No change	N/A
Landscaped area	30% of the site area	32.87% (1565m <sup>2</sup> )	No change	N/A
Deep soil zones	15% of the site area	32.87% (1565m <sup>2</sup> )	No change	Yes
Parking	0.5 car spaces for each bedroom.	64 spaces provided plus 10 visitors for 124 rooms	142 spaces (increase by 9 spaces)	Yes

## SEPP (Infrastructure) 2007

### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

### Comment:

The amended application was referred to Ausgrid and no reply was received. However, it should be noted that the proposed modification is not seeking to alter the conditions as it relates to Ausgrid requirement imposed in the original consent.

### Roads and Maritime Service (RMS)

**Clause 101 - Development with frontage to classified road states:**

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—

(i) the design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or

(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The application was referred to Transport for NSW (TfNSW) and they have raised no objection to the proposed modification.

**Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	No height limit applies to the site	24.6m	25.11m (an overall increase 510mm)	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.2A Minimum subdivision lot size for strata subdivision of residential or tourist and visitor accommodation in certain zones	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

**Warringah Development Control Plan**

Built Form Controls

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Standard	Requirement	Approved	Proposed	Complies
B4 Site Coverage	33.3%	Lot 1 – 43.4% Lot 2 43.57%	No change	N/A
B5 Side Boundary Setbacks	Nil	Western – 6.0m Southern – 6.6m	No change	N/A
B7 Front Boundary Setbacks	10m	Lot 2 - Frenchs Forest Rd East  10.3-17.2m Skyline Place – 6.0m	No change	N/A
B9 Rear Boundary Setbacks	Merit	The site has dual frontage, the rear setback requirement is not applicable to the subject site.	N/A	N/A

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B4 Site Coverage	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

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

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0793 for Modification of Development Consent REV2019/0014 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 on land at Lot 101 DP 1209504,5 Skyline Place, FRENCHS FOREST, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA301 - Basement and Lower Floor Plan (Issue F)	20/08/21	PA Studio
DA302 - Ground Floor Plan I (Issue F)	20/08/21	PA Studio
DA303 - Levels 1 & 2 Floor Plans (Issue F)	20/08/21	PA Studio
DA304 - Levels 3 & 4 Floor Plans (Issue F)	20/08/21	PA Studio
DA305 - Levels 5 & Roof Plans (Issue F)	20/08/21	PA Studio
DA401 - Sections (Issue F)	20/08/21	PA Studio
DA501 - North Elevation (Issue F)	20/08/21	PA Studio
DA502 - West Elevation (Issue F)	20/08/21	PA Studio
DA503 -South Elevation (Issue F)	20/08/21	PA Studio
DA504 - East Elevation (Issue F)	20/08/21	PA Studio

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Traffic and Parking Impact Assessment	13/09/2021	Varga Traffic Planning

- b) Any plans and/or documentation submitted to satisfy the Conditions of this consent.  
c) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing Number</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape Master Plan 1.0 – Issue F	29/09/21	Space Landscape Designs
Landscape Plan West – L-101 Issue F	29/09/21	Space Landscape Designs
Landscape Plan – L-102 External Communal Area Issue F	29/09/21	Space Landscape Designs
Landscape Plan East – L-201 Issue F	29/09/21	Space Landscape Designs
Landscape Plan Rooftop – 1.4 Issue F	29/09/21	Space Landscape Designs
Planting Plan Level 1 – L-100 Issue B	29/09/21	Space Landscape Designs
Landscape Plan Level 2 –L-200 - Issue	29/09/21	Space Landscape Designs

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**B. Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements to read as follows:**

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

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
RFS	D19/1347	15/03/2019
RMS	SYD18/00985/04	26 November 2021
RFS	DA-2018-02401-S4.55-3	12 January 2022

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

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

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Lashta Haidari, Principal Planner**

The application is determined on 17/03/2022, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**