

20 May 2022

Mr Stuart Withington
Manager, Planning Panels Secretariat
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Mr Withington

REV2021/0045 – Seniors Living and Mixed Use Development, 5 Skyline Place, Frenchs Forest

Introduction

We write on behalf of Platino Properties (the Applicant) in relation to the above section 8.2 Review of Determination. It follows our earlier correspondence of 12 May 2022 and provides a detailed response to the issues raised in Northern Beaches Council's (Council) Assessment Report. We ask that this correspondence be provided to the Sydney North Planning Panel (SNPP) for their consideration prior to its meeting of 26 May 2022.

Reasons for Refusal

It is critical to note that in its determination of the original DA, the SNPP specifically noted in its Statement of Reasons the following:

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

It concurs with Council that the proposed development... is excessive in height, bulk and scale and is out of character with the business park and surrounding area. It will be viewed from the nearby Low Density Residential Area to the north and from areas within and outside the business park.”

These comments clearly indicate that, notwithstanding the refusal of consent to the DA, the SNPP accepts that seniors housing is both permissible and appropriate on the site, subject to acceptable impacts. Furthermore, the comments indicate that the impacts identified as being unacceptable by the Panel related largely to the “height, bulk and scale” of the proposal and its visual impact from within and outside the business park.

As outlined in our Section 8.2 Review of Determination Report (Review Report) dated November 2021, the proposed development has been amended to comprehensively address the SNPP's reasons for refusal of DA2021/0212. Specifically, the height, bulk and scale of the proposal have been substantially reduced such that the proposal is compatible with the

heights of multiple other existing and approved buildings in the locality and will no longer be visible from residential areas to the north or areas of public domain in the surrounding area. Despite these reductions, the proposal retains the provision of disability housing (10 units) and affordable housing (5 units).

A summary of the response to each reason for refusal is contained at Attachment 1. We consider that all reasons for refusal have been appropriately addressed by the proposed amendments that have been made to the development and that the proposal warrants approval.

Council's Assessment Report

We have reviewed Council's Assessment Report in detail and identified a number of issues warranting further response and clarification, as outlined below:

1. **Site suitability:** Council's report argues that the site cannot support seniors housing development of any kind, contrary to the SNPP's conclusion that "*...seniors housing, in some form, can occur on the site, subject to acceptable impacts.*"
2. **Strategic planning justification:** Council's characterisation of the B7 Business Park zone is inconsistent with the North District Plan's provisions relating to industrial and urban services land and the Economic Impact Assessment submitted in support of the application appears to have not been considered in Council's assessment.
3. **Built form impacts:** Council's position that the proposal's bulk and scale remain out of character with the locality despite the considerable reduction in height and scale is not supported by any evidence and is inconsistent with the position it has taken in relation to other recently approved DAs in the locality.
4. **Landscaping:** the proposal includes a substantial landscaped area of 2,830m² (36.2%). Under Clause 50 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP), a minimum of 30% of the site area as landscaped area is a standard that cannot be used to refuse development consent. Given that the proposal exceeds this minimum, inadequate landscaping cannot be used as a reason for refusal in this case.
5. **Land use conflicts:** Council's arguments that the proposal will create land use conflict with other uses in the business park is not supported by any evidence, only general statements around potential and hypothetical conflicts and does not appear to consider the independent specialist reports provided in support of the application.
6. **Public interest:** Council consideration of public interest fails to consider the substantial design, social and economic benefits of the proposal, all of which are outlined in detailed specialist advice submitted in support of the application.
7. **Inaccuracies:** as per our correspondence of 12 May 2022, Council's Assessment Report contains inaccuracies that require clarification prior to the SNPP's consideration and determination.

These issues are outlined in more detail below:

1. Site suitability

- Council's Assessment Report states in its conclusion that: *"The site is considered neither suitable nor appropriate for a senior's housing development, especially one of this character, scale and density."*
- In response, we note the following:
 - Council's position is contrary to the findings of the SNPP in its determination of the DA in which it stated that *"...seniors housing, in some form, can occur on the site, subject to acceptable impacts."*
 - The original DA was lodged under the provisions of the former Seniors SEPP. Under this SEPP, seniors housing was permissible in the B7 zone by virtue of "hospitals" being permissible with consent in the zone.
 - The suitability of B7 zones for the provision of seniors housing has now been confirmed through *State Environmental Planning Policy (Housing) 2021* (Housing SEPP), which specifically permits housing for seniors and people with a disability in the B7 Business Park zone.
 - Accordingly, it is clearly established under State level planning policy that seniors housing is a suitable land use in B7 zones and which is not inconsistent with State level strategies for employment land as set out in the North District Plan (this issue is further discussed below).
 - The Panel's previous concerns about impacts on the surrounding area have been fully addressed through the amendments made to the height, bulk and scale of the proposed development (further discussed below).

2. Strategic planning justification

- Council argues that the proposal would lead to a loss of employment land and is inconsistent with the *North District Plan's* (NDP) provisions relating to industrial and urban services land, which Council states includes B7 zoned lands. However, this reasoning appears to use the NDP provisions out of context given that the NDP:
 - i. **does not identify the Frenchs Forest B7 Business Park as industrial and urban services land**, noting that Frenchs Forest is not mapped as industrial and urban services land in Figure 17 of the NDP (figure reproduced over page).
 - ii. **defines industries and urban services as** *"industries that enable the city to develop and its businesses and residents to operate. Support the activities of local populations and businesses. Include concrete batching, waste recycling and transfer, printing, motor vehicle repairs, construction depots, and utilities (electricity, water, gas supply). The Warringah Local Environmental Plan 2011 (WLEP 2011) prohibits these uses in the B7 zone.*
 - iii. **identifies Frenchs Forest, including the B7, as a Health and Education Precinct**, which the Plan states are to evolve towards more diversified land uses. Health and Education Precincts are described in the *Greater Sydney Region Plan* as *"Transit-accessible precincts centred around health and education assets, surrounded by a network of medical research institutions, a mix of complementary industry tenants, housing, ancillary facilities and services"*
- The application is supported by a detailed Economic Impact Assessment prepared by HillPDa which concludes that by increasing the GFA for employment uses, the revised

proposal reinforces and strengthens the economic benefits of the original development proposal, which include:

- the proposal retains the existing B7 Business Park zoning of the site and will increase the existing employment capacity of the site.
- the proposal is located in a fringe location of the business park, within the Health and Education Precinct, with an interface to existing residential areas, and will not impede the continued operation or future intensification of employment-generating uses in the broader business park
- an increase of job opportunities on the site from 79 to 86, compared to the existing 44 employment opportunities on the site (a 96% increase)
- the space being provided on the site for commercial and health related uses is likely to attract allied health care workers and other health professionals, leading to employment growth across a range of industries including health professionals, which is entirely in line with the strategic positioning of the area as a Health and Education Precinct.
- the proposal is consistent with the evolution of Frenchs Forest to a mixed use innovation precinct, consistent with the relevant objectives of the Greater Sydney Region Plan and the North District Plan as it will broaden the range of employment opportunities within a range of land uses.

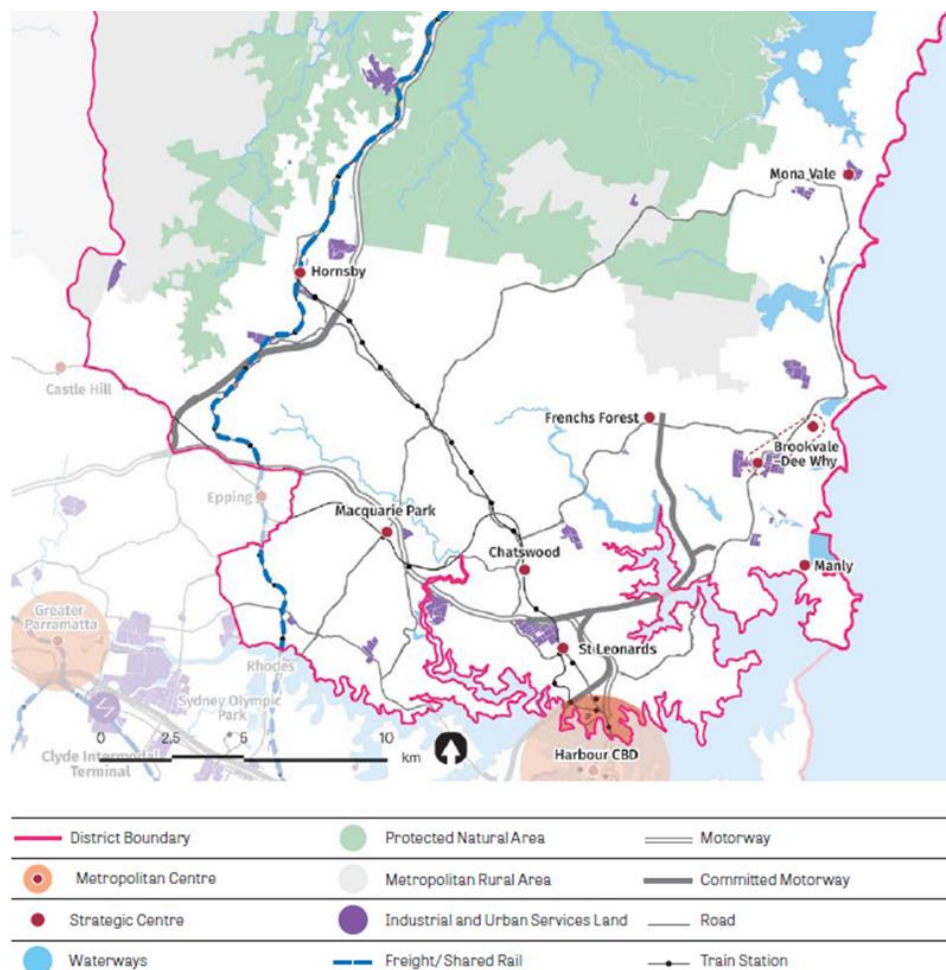


Figure 1 North District Plan Figure 17 (Source: Greater Sydney Commission)

- In addition to the above, the application is supported by a Seniors Housing Demand Analysis prepared by Macroplan which demonstrates that with the rapid growth in the senior demographic in Northern Beaches LGA and the increased demand for more modern, spacious, and integrated ILUs, demand is already strong and projected to increase for the foreseeable future. Further, if immediate action is not taken, then the projected senior housing supply shortage could generate significant stress, at a cost, to future senior residents but also to future young households looking for housing options.
- Council maintains that the proposed development is inconsistent with the objectives of the B7 zone. This issue has been comprehensively addressed previously, supported by legal advice provided to both Council and the SNPP. Council's position fails to consider that whilst it must have regard to the zone objectives, those zone objectives are inconsistent with the Seniors SEPP, which takes precedence over the Warringah LEP. This issue was considered and resolved by the SNPP in its approval the adjacent seniors living development (REV 2019/0014). In its Statement of the Reasons for this approval, the Panel specifically noted that:

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

- We also note that Council continues to cite inconsistency with the Northern Beaches Hospital Precinct Structure Plan (NBHSP) as a reason for not supporting the proposal. This issue was addressed in our Review Report, ie, the NBHSP can be given no more weight than a draft document with no statutory force and which cannot be used to set aside the provisions of the Seniors SEPP. This is supported by legal advice previously provided to Council and the judgement in ACN 603 361 940 Pty Ltd v Northern Beaches Council [2019] NSWLEC 1012. In this judgement, the Commissioner found that the NBHSP should not be given significant weight because the finalisation of the plan, and the controls that would give effect to it, is not imminent or certain.

3. Built form and visual impacts

- The height, bulk and scale of the proposal have been substantially reduced, by up to 5 storeys, to directly address concern raised by the Panel and Council that the development would be out of character with the surrounding area. These reductions include:
 - maximum building height: reduced from 12 storeys (max RL 196.70m) to 7/8 storeys (max RL 184.30)
 - FSR: reduced from 2.42: 1 to 1.93:1
 - site coverage: reduced from 40% to 32.35%
- The proposed buildings now cannot be viewed from the residential areas to the north (as shown in the figures below) or areas of public domain in the surrounding area. They are also consistent, in terms of height and scale, to multiple recently approved buildings in the Frenchs Forest Business Park.
- Council's position that the proposal's bulk and scale remain out of character with the locality is not supported by any evidence and is inconsistent with the position it has taken in relation to other recently approved DAs in the locality.



Original application



Amended proposal (58.2 review)

Figure 2 Photomontages of original and amended application - proposal no longer visible from residential areas to the north (Source: PA Studio Architects)

- There is no applicable FSR or maximum height of building control applying to the B7 Business Park zone, indicating that the planning controls for the site envisage a larger-scale built form character for the locality.
- Furthermore, the reduced height results in a development that is demonstrably consistent with the height of several recently approved developments in the B7 zone, as shown in the figure below:

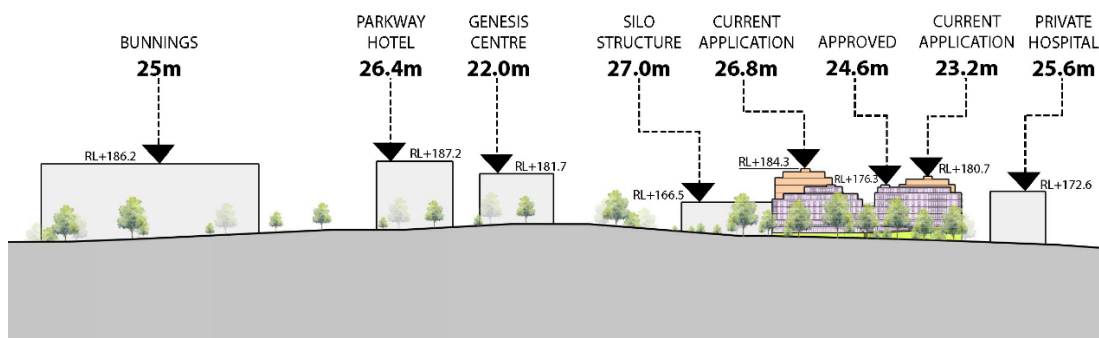


Figure 3 Cross section looking south showing proposal's maximum building height relative to other building heights in the Frenchs Forest B7 Business Park zone (Source: PA Studio Architects)

- Despite the above, Council's position on the height and scale of the subject proposal is directly inconsistent with the position it has taken in its Assessment Reports for other DAs for buildings of similar height in the locality, as shown in the table below:

DA/Site	Approved height	Council Assessment Report Comment
DA 2015/0901 - 5 Frenchs Forest Road East (Parkway Hotel)	RL 187.2/26.4m	<i>"...the scale, bulk, and height of the building proposed to be a hotel is deemed acceptable and assessed as being compatible and consistent with development envisaged for the site (and adjoining and surrounding sites located within the B7 Business Park Zone.)"</i>
DA 2020/0717 - 357-373 Warringah Road (Bunnings Warehouse)	RL 186.3/25m	<i>"The height has been considered in context with the surrounding development in the business park setting and is considered to be consistent in that respect"</i>
DA2017/0711 - 11 Tilley Lane (Health services facility)	RL 172.76/25.6m	<i>"the proposed building height is deemed to be acceptable, given the B7 Business Park zone in this location has no height restriction. The building height and scale of the building is compatible with the objectives of the zone and will not create an unreasonable impact on adjacent development, or the existing streetscape amenity"</i>

- The locality is clearly undergoing transformation in terms of both land use and built form, in accordance with its designation as a Health and Education Precinct. This was recognised by the SNPP in its approval of the adjacent seniors living development, which is of a similar height to the current proposal. Specifically, the SNPP stated:

"The Panel notes also that the Precinct is under transition, and includes the recently completed 8 storey Northern Beaches Hospital. The Panel considers that the amended development application is compatible with the quality and identity of the emerging area."

- We also note that the application is supported by information demonstrating that the proposal meets all relevant requirements under the Apartment Design Guide (ADG). This includes a Peer Reviewed ADG assessment by PTW Architects, which demonstrating that the development as proposed meets all relevant requirements under the ADG and exceeds baseline recommendations.
- In relation to compliance with the Warringah DCP, we have submitted information to Council demonstrating that the proposal fully complies with the site coverage requirement of 33%. However, this is not reflected in Council's assessment. Furthermore, the Review Report comprehensively addresses both the provisions relating to setbacks and building bulk, summarised below:
 - Setbacks: the proposed development provides a setback of between 7.6m and 12.5 (average 9.6m) m along the Skyline Place frontage, which provides a consistent streetscape character along Skyline Place, from Frenchs Forest Road to the end of the cul-de-sac, and is greater than the approved setback of 6 m on the adjacent Stage 1 seniors living development. The proposal clearly meets the objectives of the

setback control and results is a far superior outcome for the Skyline Place frontage than would be achieved through strict compliance with the DCP numerical control

- Building bulk: the amended proposal has been designed to meet the objectives of this control through a substantial reduction in height and bulk such that the proposal is appropriate in its context and will not be visible from residential areas to the north of Frenchs Forest Road East.

4. Landscaping

- Council's report maintains inadequate landscaping as a reason for refusal, contrary to the advice of its Landscape Officer who the report states *"has supported the amended proposal in relation to landscaping and tree removals."*
- Furthermore, Clause 50 of the Seniors SEPP sets a minimum of 30% of the site area as landscaped area as a standard that cannot be used to refuse development consent. Given that the proposal exceeds this minimum (providing a landscaped area of 2,830m² or 36.2% of the site area), "inadequate landscaping" cannot be used as a reason for refusal in this case.
- The amended scheme includes extensive deep soil planting areas located along the external boundaries of the site, as well as the retention of existing native canopy trees that range in height to up to 27m and new large canopy trees that will achieve mature heights up to 25 m.

5. Land use conflicts

- Council's argument that the proposal will create land use conflict with other uses in the business park is not supported by any evidence, only general statements around potential and hypothetical conflicts.
- As requested by the Panel at the briefing session held on 30 March 2022, the Applicant has undertaken additional independent audits of the existing uses within the business park and an acoustic analysis to consider existing and hypothetical potential future uses adjoining the site. These studies were provided to the SNPP on 12 May 2022.
- The contextual land use analysis demonstrates that the Frenchs Forest B7 Business Park is a fundamentally mixed use zone in which "industries" are a prohibited use and which supports a diverse range of existing and approved uses including the approved seniors living development on the adjacent site, office premises, health services facilities, indoor recreation facilities, hotel, and food and drink premises.
- There are also very few 24/7 businesses in the vicinity of the subject site, none of which are noise generating uses (being office, gymnasium, hotel/motel, and medical uses).
- Furthermore, the proposal is supported by a detailed acoustic analysis which demonstrates that noise generation from worst-case scenarios within the surrounding locality of the proposed development can comply with all relevant requirements.
- These studies have concluded that the proposed development would not restrict existing or potential future business operations within the business park.
- In addition, there are inherent restrictions on development of an industrial nature with potentially significant amenity impacts in terms of factors such as noise and traffic, given the proximity of residential areas to the immediate north and the objective of the B7 zone *"To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses."*

6. Public Interest

- Council's consideration of public interest is based solely on its position that the proposal is inconsistent with the North District Plan, WLEP 2011, and draft NBHSP, which we have demonstrated above are not valid reasons for refusal.
- Furthermore, Council fails to consider the substantial design, social and economic benefits of the proposal, all of which are outlined in detailed specialist advice submitted in support of the application. These benefits, which are ignored in Council's assessment, include:
 - the proposal meets a demonstrable growing demand and supply shortfall for seniors housing in the Northern Beaches LGA
 - the provision of seniors housing in a located well located in relation to transport, health, retail and other services, consistent with the aims of the Seniors SEPP
 - the provision of 10 disability housing units and 5 affordable housing units
 - an increase of job opportunities on the site from 79 to 86, compared to the existing 44 employment opportunities on the site
 - high quality design that is demonstrably compatible in height and scale with the emerging built form character of the locality, includes high quality landscaping that is supported by Council's Landscape Officer, and which meets all relevant requirements under the ADG
 - inclusion of a number of sustainability initiatives, in particular 5 Star (Australian Excellence) Green Star Design and 5 Star (Australian Excellence) Green Star Communities rating

7. Inaccuracies

- Our correspondence of 12 May 2022 to the SNPP highlighted two inaccuracies in Council's Assessment Report, ie:
 - Incorrect figures relating to the number of submissions received in response to the application
 - Incorrect statement (and reason for refusal) that the development does not comply with B4 –Site Coverage of Warringah DCP 2011 (WDCP 2011). To confirm, we have previously written to Council advising that site coverage had been recalculated to 32.35% and therefore complies with the relevant site coverage provision (33.3%) under the DCP.

Draft conditions of consent

We have reviewed Council's Draft conditions of consent and make the following comments for the SNPP's consideration should it determine the application by way of approval:

Condition no.	Comment
22	This condition should be deleted in accordance with email advice from Council's Principal Development Engineer on 22/3/22
NA	Council has not included an affordable housing condition as per our correspondence to Council dated 12/4/22:

Condition no.	Comment
	<p>Prior to the issue of an Occupation Certificate</p> <p><i>Prior to the issue of an Occupation Certificate, a positive covenant created via s88E of the Conveyancing Act 1919, benefiting Council, shall be registered on title to the Project Independence apartments, to the effect that the 10 disability housing units and associated common areas, outdoor areas and 1 x 2 bedroom live in co-ordinator's unit located in the South West corner of the site on the ground floor and designated as "Project Independence" on the approved plans and two x studio units and 2 x 1 bedroom units shall be used in perpetuity for the purpose of affordable housing, for woman aged over 55 managed by a registered community housing provider.</i></p> <p><i>For the purpose of this condition, Affordable Housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument that may pertain to the land from time to time.</i></p> <p><i>The Positive covenant can only be released or modified with the permission of Council.</i></p>

Conclusion

In conclusion:

- the issues raised by the SNPP in refusing consent for the original DA have been comprehensively addressed and resolved through an amended proposal which directly responds to the SNPP's concerns about the scale of the development and its relationship to the character of the locality
- the proposal is suitable for the site and locality after consideration of section 4.15 of the EP&A Act
- the proposal does not result in any significant adverse environmental or amenity impacts
- there are a number of inaccurate statements and arguments in Council's Assessment Report, which we have addressed above
- there are strong grounds for the conditional approval of the proposed development.

We trust that the points raised in this submission will be given due consideration by the SNPP.

Please do not hesitate to contact Dan Keary on 8459 7511 or dan@keylan.com.au if you wish to discuss any aspect of this letter.

Yours sincerely



Dan Keary BSc MURP RPIA
 Director

Attachments:

Attachment 1 Summary of Response to Reasons for Refusal in Section 8.2 Review of
Determination Report