

18 February 2022

General Manager
Randwick City Council
30 Frances Street
RANDWICK NSW 2031

Attn: Mr Sohail Faridy, Executive Town Planner

Dear Sir/Madam,

**Re: DEVELOPMENT APPLICATION NO. DA/642/2020 – 11-19 FRENCHMANS ROAD, RANDWICK
ADDENDUM STATEMENT OF ENVIRONMENTAL EFFECTS
AMENDED DEVELOPMENT APPLICATION**

1.0 INTRODUCTION

This letter has been prepared to furnish to Council information to amend Development Application (DA) No. DA/642/2020 for the proposed demolition of existing site structures, construction and operation of a building for seniors housing under the former provisions of *State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004*, at 11-19 Frenchmans Road, Randwick. A briefing was held with the Sydney Eastern City Planning Panel (SECPP) on 3 February 2022, who have issued meeting notes which advise in part:

...

- *The Panel notes that the applicant today has provided sketch plans to show:*
 - *improved setbacks of 3.5m to side boundaries on McLennan Avenue;*
 - *reduction of one level to McLennan Ave;*
 - *increased deep soil landscaping area by moving the OSD below the building footprint;*
 - *the addition of balconies to ILUs;;*
 - *measures to ameliorate impacts associated with the Level 3 terrace;*
 - *a reduction in the height and visual impact of roof plant; and*
 - *additional roof top landscaping*

Briefing outcomes:

- *The applicant is requested to provide a full set of architectural and landscape plans, revised calculations and new cl.4.6. written requests if standards are sought to be varied;*
- *Expert reports for revised plans, including acoustic and landscape details;*
- *Additional window/sight line detail to be provided to demonstrate reduced overlooking of neighbouring properties;*
- *Further consideration of improving the relationship with the terraces on Frenchman's Road; and*
- *Independent design review for revised plans to be sourced from Matthew Pullinger in relation to revised plans, including presentation/treatment/ materials and finishes for the Frenchman's Road elevation.*

The information in this letter and support documentation, responds to the above. The applicant requests Council accept this Amended DA under Clause 55 of the *Environmental Planning and Assessment Regulation 2000* (still relevant at the time this Amended DA was uploaded via the NSW Planning Portal PAN).

This letter should also be read as the applicant's "Addendum SEE" to the original Statement of Environmental Effects (original SEE) report, which is to be read in conjunction with and seeks to amend the originally submitted SEE report.

1.1. APPLICANT'S AMENDED DOCUMENTATION

Table 1 below lists the Amended DA drawings, reports and documentation to respond to the matters outlined by the SECPP.

Table 1: List of Amended Documents and Appendices References

Appendix Reference	Document	Responsible Author
Appendix A	Summary of Design Changes – Comparison Table	Higgins Planning
Appendix B	Amended Architectural Drawings	Boffa Robertson Group
Appendix C	Updated Architectural 3D Perspectives including "Sight-line analysis" between eastern elevation and 25 McLennan Avenue	Boffa Robertson Group
Appendix D	Amended Landscape Architectural Package	Arcadia
Appendix E	Amended Engineering Drawings, Amended Sedimentation & Erosion Control Plan and Bulk Earthworks Plan	Henry & Hymas (Please note these drawings as uploaded to the NSW Planning Portal PAN on 27 January 2022 have not been updated due to time constraints – the size of the OSD tank and its volume capacity have been accommodated under the "north wing").
Appendix F	Urban Design Review Statement	Matthew Pullinger
Appendix G	Amended Acoustic Report	ADP
Appendix H	Arborist Statement	Naturally Trees
Appendix I	Updated BASIX Certificate and Updated Section J Report	Efficient Living & ADP
Appendix J	Clause 4.6 Variation Request – Height final	Higgins Planning
Appendix K	Clause 4.6 Variation Request – FSR final	Higgins Planning
Appendix L	Clause 4.6 Variation Request – Landscaped Area final	Higgins Planning
Appendix M	Clause 4.6 Variation Request – Clause 26 Pram Crossing Gradient Fixes final	Higgins Planning
Appendix N	Vibration Management Plan	Consulting Earth Sciences
Appendix O	Traffic Access Information	Centurion Project Management, TfNSW and Stantec

Appendix Reference	Document	Responsible Author
		(Please note that the access into the site has already been supported by TfNSW via letter dated 30 April 2021, the proposed amended DA has not altered the access into the development and the applicant has accepted left-in and left-out at Frenchmans Road).

1.2. SUMMARY OF CHANGES

The design changes shown in the amended architectural drawings (please see **Appendix A**) include:

1. Lower Basement Level: Architectural Drawing No. DA03 Rev D dated 14 Feb 2022. Reduction in the lower basement excavation footprint (increased setbacks from side boundaries of “north wing” fronting McLennan Avenue) to create a deep soil zone between a minimum of 3m and maximum 4m to the eastern boundary with 25 McLennan Avenue and a minimum 3m wide deep soil zone to the western boundary with 27 McLennan Avenue. These design changes were undertaken in consultation with a geotechnical engineer who has also recommended a construction methodology;
2. Basement Level: Architectural Drawing No. DA04 Rev D dated 14 Feb 2022. Reduction in the basement excavation footprint (increased setbacks from side boundaries of “north wing” fronting McLennan Avenue) to create a deep soil zone between a minimum of 3m and maximum 4m to the eastern boundary with 25 McLennan Avenue and a minimum 3m wide deep soil zone to the western boundary with 27 McLennan Avenue.
3. Basement Level: Architectural Drawing No. DA04 Rev D dated 14 Feb 2022. The redesign of the basement level as detailed above, results in increased widths and percentage of deep soil zones due to the On-site Detention Tank (OSD) being moved to below the building footprint towards the McLennan Avenue frontage. Please note that due to time constraints the engineering drawings prepared by Henry & Hymas are yet to be adjusted to include this change but this change in location of the OSD can be drawn prior to issue of a Construction Certificate.

The architectural design changes in 1, 2 and 3 above were undertaken in consultation with the geotechnical engineers at Consulting Earth Sciences who prepared the geotechnical report included with the original DA (refer to Appendix K of original SEE) and have also issued a Vibration Monitoring Plan (“VMP”), please refer to **Appendix N**. The applicant can implement the monitoring and mitigation measures as detailed in the VMP during the excavation process. It should be noted that the VMP may include more details once a principal builder has been appointed following a tender process after obtaining development consent. A “Detailed VMP” can be achieved via the imposition of suitable conditions on any consent the SECPP considers appropriate prior to the issue of a Construction Certificate;

4. Ground floor level: Architectural Drawing No. DA05 Rev D dated 14 Feb 2022. The Ground floor level “north wing” fronting McLennan Avenue design changes include increased side setbacks to 25 McLennan Avenue, with a minimum of 3.0m and increasing to 4.45m (at the widest point) in the first 8.5m of the eastern elevation towards the frontage to McLennan Avenue. Then the remaining 14.5m of eastern elevation is setback between a minimum 3m and 3.555m.

The windows on the eastern elevation have been adjusted so as not to result in looking directly into 25 McLennan Avenue with the inclusion of “eye-lid” style windows which are elevated above ground, and the inclusion of highlight windows with a minimum sill height of 1.6m above the finished floor level, to allow light into internal spaces without loss of privacy internally or the adjoining property.

As requested by Council, a “sight-line analysis” along the eastern elevation has been prepared. The increased setbacks and design changes associated with the “northern wing” have been included in the applicant’s “Sketch-up model” (please refer to **Appendix C**), and then view lines have been captured:

- a. “Perspective 8 – view from ground floor room 16 looking north” Architectural Drawing No. DA28d. This view is taken from standing height within room 16 on the ground floor level looking towards McLennan Avenue and captures the wall on the left, which is setback 3m from the common boundary, and



Figure 1: Extract from Perspective 8 - View from Room 16 Ground floor level
Source: BRG – Drawing No. DA28d

- b. "Perspective 14 – McLennan view 2" Architectural Drawing No. DA28j. This view is taken from the footpath area in McLennan Avenue looking south along the eastern boundary. The front corner of the proposed "north wing" of the seniors housing building has been adjusted to have a setback of 4.26m from the common boundary and then the view is along the eastern elevation which widens out to 4.45m, and then the corner of room 16 which is setback 3m. The "eye-lid" window to room 16 is then visible which is elevated off the existing ground level. The sight line demonstrates that the building is now articulated along this elevation so as to afford additional deep solid landscaped area to accommodate tree plantings with an open outlook, and



Figure 2: Extract from Perspective 14 – McLennan Avenue View along eastern elevation / boundary

Source: BRG – Drawing No. DA28j

- c. Perspective 15 – McLennan view 3" Architectural Drawing No. DA28k. This view is taken from the roadway area in McLennan Avenue looking south along the eastern boundary. The front corner of the proposed "north wing" of the seniors housing building has been adjusted to have a setback of 4.26m from the common boundary with 25 McLennan Avenue, and then the view along the eastern elevation widens out to 4.45m with the highlight windows visible, the next corner of building is room 16 which is setback a minimum 3m. The "eye-lid" window to room 16 is then visible which is elevated off the existing ground level. The sight line demonstrates that the building is now articulated along this elevation so as to afford additional deep solid landscaped area to accommodate tree plantings with an open outlook.

Source: BRG – Drawing No. DA28k

The site plan for the 'New House' shows a building with a large window and a paved area with seating. The plan includes a large circular garden area with a central tree, a paved area with seating, and a building with a large window. The plan is labeled with various dimensions and elevations.

Source: Arcadia page 11

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This has been achieved by deleting the internal “scissor stairs” and the redesign has also had to have consideration internally of the minimum requirements of the Building Code of Australia for disabled persons with the minimum widths for shared access corridors, the minimum design requirements for each room circulation around a single bed, and the minimum design requirements for the bathroom of each room which must cater for disabled users.

The internal redesign of the ground floor level of the north wing to the McLennan Avenue frontage of the site accommodates 8 rooms with a resident in each room. While a small increase in comparison to the original design of 7 rooms, the amended internal layout seeks to accommodate the loss of level 2 accommodation in the north wing. The ground floor level now proposes 17 rooms and 17 beds.

This redesign seeks to orientate the windows to rooms 13, 14 and 15 towards McLennan Avenue and has removed the terrace / balconies of rooms 16 and 17 along with the introduction of “eye-let” style angled windows to avoid direct overlooking towards 25 McLennan Avenue. In addition, the amended design has introduced highlight windows with a minimum 1.6m high sill height on the eastern façade to avoid overlooking into 25 McLennan Avenue, to afford internal daylight while as the same time mitigating privacy concerns and provide articulation to the elevations;

5. Level 1: Architectural Drawing No. DA06 Rev D dated 14 Feb 2022. Level 1 redesign changes are the same layout as the ground floor level below to accommodate the fire egress stairs and the services for each bathroom above each other. The design changes are for the same reasons and the ground floor level north wing as discussed above. The number of rooms on level 1 is 28, with the number of beds reduced from 32 to 30 because of the redesign of level 1.

As discussed above the proposal has introduced design changes to the eastern elevation of the “north wing” to mitigate overlooking into 25 McLennan Avenue;

6. Level 2: Architectural Drawing No. DA07 Rev D dated 14 Feb 2022. All rooms / beds in the “north wing” on level 2 have been removed and the redesign now includes a roof over the level below. The McLennan Avenue frontage on level 2 of the north wing now proposed a “green roof” with a skylight to the corridor below to level 1 and then a terrace area accessed from the “Frenchmans Road wing” of Level 2 with this terrace area including a tiered landscaped planter bed surround to avoid overlooking.

The design of the Level 2 roof terrace is accessible to all residents within the proposed seniors housing development and includes a perimeter landscape solution as detailed on page 12 “Residents Rooftop Terrace – Level 2” of the Amended Landscape Architectural package.

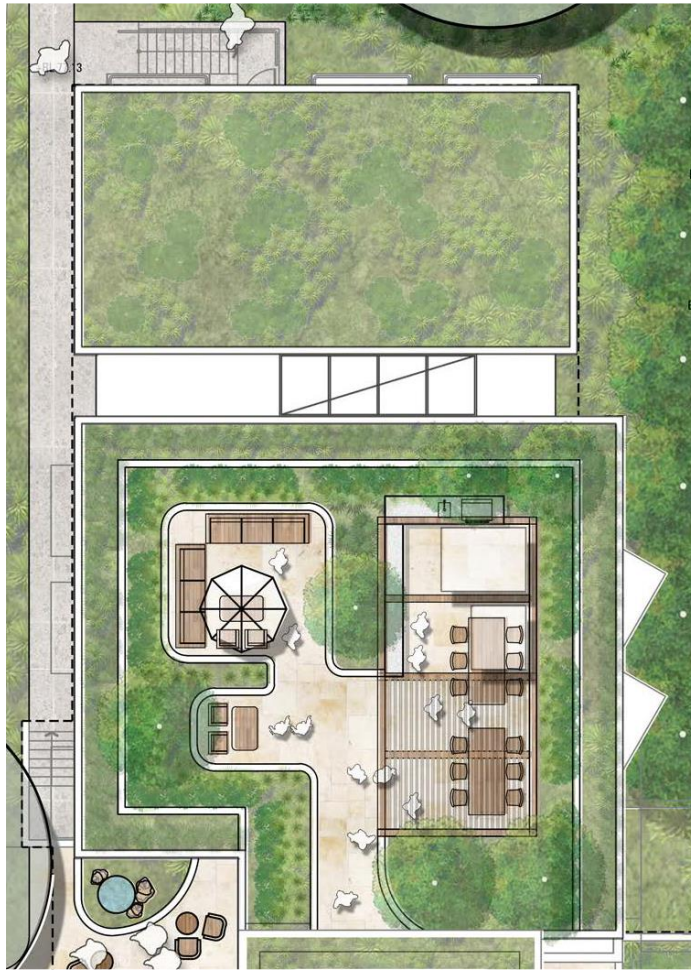


Figure 5: Extract from “Residents Rooftop Terrace – Level 2”
Source: Arcadia page 12

Level 2 has been redesigned to now accommodate 20 rooms with 22 beds, which when compared to the original design was 24 rooms with 27 beds;

7. Level 3. Architectural Drawing No. DA08 Rev D dated 14 Feb 2022. Level 3 has been redesigned to accommodate 2 x 1-bedroom independent living units (ILUs) as was in the original design. This Amended DA proposes both ILUs be offered as affordable housing ILUs. Each ILU includes a private balcony.

To accommodate the private balcony of ILU-1 and avoid a privacy issue arising while at the same time mitigate the wall height at the eastern edge of the Frenchmans Road frontage has been setback between 4 and 4.5m from the common boundary and 2m compared to the level below. The eastern portion of Level 3 also now includes the displaced rooms from levels 1 and 2. These rooms have been accommodated on level 3 over the eastern portion of the Frenchmans Road wing above level 2 below. The number of rooms on Level 3 has been increased from 9 rooms in the original design to 14 room with each room accommodating 1 bed;

8. Roof. Architectural Drawing No. DA09 Rev D dated 14 Feb 2022. The roof level is proposed to include an air conditioning (AC) plant deck with solid acoustic surround with access stairs from level 3 below;
9. Each of the elevations have been adjusted to reflect the changes detailed above. The northern elevation of the Frenchmans Road wing now includes a “green wall” vertically up the building from the trellis over the access driveway to the basement levels. In addition, the windows to the north elevation of the Frenchmans Road wing include fixed louvers. These elevation features are visible in the “Direct Sun Analysis Diagrams 8am to 4m”; and
10. The RCF is now proposed to accommodate 79 rooms with a total number of beds being 83. The overall design maintains 2 x 1-bedroom ILUs.

Table 2 below provides a summary of the amended development compared to the previous designs.

Table 2: Comparison Table of original DA, Amended June 2021 DA and Amended February 2022 DA designs

	Existing Housing 11-17 Frenchmans Road, Randwick	Seniors Frenchmans Road, Randwick	Original Proposed Housing 11-19 Frenchmans Road, Randwick	SEE Seniors	June 2021 Design	February 2022 Redesign
Site Area	2,056 sqm		2,709.7 sqm		2,709.7sqm	2,709.7 sqm
Floor Space Ratio Gross Floor Area (based on GFA definition in Seniors Housing SEPP and exclusions under Clause 45)	0.9:1 (refer to delegated assessment report dated 27 September 2010 for DA838/2010 for existing building FSR)		1.397:1 GFA – 3,785.2 sqm		1.276:1 GFA – 3,458.4 sqm	1.267:1 GFA – 3,433.0 sqm
Building Height	9.3m		14.84m (ridge line RL92.50-RL77.66) 14.31m (lift overrun RL91.97-RL77.66)		12.7m (parapet line RL92.90-RL80.2) 14.29m (lift overrun RL93.95-RL79.66) Note: Veris survey error 2m in relation benchmark	12.95m (parapet line RL 93.15m – RL80.2) (Being top of parapet to ground level immediate below – see red dashed line to represent existing ground, whereas drawing is shown at street edge) 13.59m (lift overrun RL93.25 – RL79.66)

	Existing Housing 11-17 Frenchmans Road, Randwick	Seniors Proposed Housing 11-19 Frenchmans Road, Randwick	SEE Seniors June 2021 Design	February Redesign	2022
				with inclusion of side motor	
Number of storeys	3	4	4	4	
Number of beds / number of rooms	98 beds (refer to delegated assessment report dated 9 November 2006 for DA182/2007 for existing RAF building beds – it should be noted this DA was not acted upon which sought to reduced beds to 81 but not alter existing FSR/GFA)	86 beds / 78 rooms	86 beds / 77 rooms	83 beds / 79 rooms	
Number of lots	3	1	1	1	
Number of dwellings	1	2	2	2	
Affordable housing dwellings	0	1	1	2 – the applicant is prepared to offer both ILUs as affordable dwellings to be managed by the social housing provider SummitCare has partnered. It should be noted by Council that only the ILUs are “dwellings” as defined under the Dictionary of the RLEP.	
Number of aged care rooms / beds Grd				17 rooms / 17 beds	
Number of aged care				28 rooms / 30 beds	

	Existing Housing 11-17 Frenchmans Road, Randwick	Seniors Original Proposed Housing 11-19 Frenchmans Road, Randwick	SEE Seniors	June 2021 Design	February Redesign 2022
rooms / beds L1					
Number of aged care rooms / beds L2					20 rooms / 22 beds
Number of aged care rooms / beds L3					14 rooms / 14 beds
Number of ILUs	0	2 x 1-bedroom		2 x 1-bedroom	2 x 1-bedroom
Total					79 rooms / 83 beds RCF and 2 x 1- bedroom ILUs
Number of driveways at Frenchmans Road frontage	5	1		1	1
Number of driveways at McLennan Avenue frontage	1	0		0	0
Ground floor level setback of RACF building (11- 15) from Frenchmans Road	Between 6m and 11m	Between 2.01m and 7.405m (Level 4 recessed by 2m)		Refer to Table 5 of the packaged issued to Council in June 2021	Refer to the Table in Appendix A.
Setback of admin building (17) from Frenchmans Road	Between 3m and 5m	Between 2.01m and 7.405m (level 4 recessed by 2m)		Refer to Table 5 of the packaged issued to Council in June 2021	Refer to the Table in Appendix A.
Setback of RCF from McLennan Avenue	Between 0.8m and 4.8m	Between 2.65m and 2.75m (level 3 recess by 4.865m and 8.235m)		Refer to Table 5 of the packaged issued to Council in June 2021	Refer to the Table in Appendix A.

	Existing Housing 11-17 Frenchmans Road, Randwick	Seniors 11-19 Frenchmans Road, Randwick	Original Proposed Housing	SEE Seniors	June 2021 Design	February 2022 Redesign
Car parking location	At-grade with access from Frenchmans Road		Basement level with access driveway from Frenchmans Road		Basement level with access driveway from Frenchmans Road	Basement level with access driveway from Frenchmans Road
Loading dock location	At-grade with access from McLennan Avenue		Basement level with access driveway from Frenchmans Road		Basement level with access driveway from Frenchmans Road	Basement level with access driveway from Frenchmans Road
Landscaped area RCF 25 sqm per bed			1,130.3sqm		1,247.5 sqm	965 sqm (based on “landscaped area” definition under Seniors Housing SEPP - 11.6sqm per bed 1,818.9 sqm including all terraces/planter bed balconies – 21.9 sqm per bed 83 beds x 25 sqm = 2,075sqm
Landscaped Area Deep Soil (min. 3m wide)						23.1%

1.3. DESCRIPTION OF DEVELOPMENT

The seniors housing building seeks approval to include both a "Residential Care Facility" (RCF) for 79 rooms to accommodate 83 beds and two x 1-bedroom independent living units on level 3 as a "vertical village" via Clause 45 of the Seniors Housing SEPP.

- Site preparation and bulk earthworks;
- Construction of 1 electrical substation;
- Construction and operation of a seniors housing building for the purposes of seniors housing, under Clause 45 of *State Environmental Planning Policy (Housing for Seniors and People with a Disability)* 2004 and which will contain:
 - Lower basement level:
 - Bulk storage and storage rooms, workshop and plant room;
 - Fire Hydrant and sprinkler pump room;

- Basement level:
 - Left-in and left-out combined entry and exit access driveway at the Frenchmans Road frontage;
 - Parking for a total of 18 car spaces inclusive of disabled parking, with access from Frenchmans Road;
 - Ambulance bay, loading dock, kitchen, staff room, hairdresser / spa, theatre / multipurpose meeting room, gym, laundry, water closets, storage, plant rooms, garbage collection and waste holding area;
- 4 levels above ground with:
 - 79-room residential care facility for high care and dementia care residents, to accommodate 83 beds. The Residential Care Facility (RCF) has been designed to include:
 - Ground level in-house café with indoor and outdoor seating for residents and their visitors (this in-house café will be owned and operated by SummitCare as an ancillary activity to support the seniors housing development)
 - Ground floor level 17 x 1 bed residential care facility rooms with en-suites but no kitchen / kitchenette or any cooking facilities in any room;
 - First floor level 26 x 1 bed and 2 x 2 bed residential care facility rooms with en-suites but no kitchen / kitchenette or any cooking facilities in any room;
 - Second floor level 18 x 1 bed and 2 x 2 bed residential care facility rooms with en-suites but no kitchen / kitchenette or any cooking facilities in any room;
 - Third level 14 x 1 bed residential care facility rooms with en-suites but no kitchen / kitchenette or any cooking facilities in any room;
 - In-house nursing stations for care amenities and facilities on each level;
 - Communal dining and living areas on each level;
 - Multi-function meeting space;
 - Administration rooms;
 - Physiotherapy room;
 - Consulting rooms;
 - Hairdressing salon;
 - Reception and lobby area;
 - Administration, manager and staff rooms;

- Strategically located lounge and dining areas for residents to enjoy outlooks to the landscaped gardens and terraces;
- Nurse stations at each level;
- On-site facilities for provision of catering with full commercial kitchen and refrigeration/storerooms;
- On-site linen services;
- Plant areas;
- Storage areas;
- Staff amenities;
- 2 x Lift access to each level of the building for all occupants and users;
- On third floor level 2 independent living units to accommodate 2 x 1-bedroom units with individual private open space;
- Roof terrace on level 2 open space with pergola and planter boxes for landscaping, accessible to all residents of the seniors housing building;
- Roof terrace on level 3 open space with planter boxes for landscaping, this is a non-trafficable planted area - Please note: there is an error on Level 3 Arcadia Landscape Drawing Issue F dated Feb 2022, which indicates seating on the Level 3 roof terrace, was deleted in the information presented on 3 Feb 2022 and is no longer proposed in the architectural drawings. Due to time constraints this landscape drawing was inadvertently not adjusted, but is intended to include only plantings and can be adjusted prior to any Construction Certificate being issued;
- Level 3 perimeter planter beds to include shallow landscaping;
- Separate roof plant area with screening of the seniors housing building, distanced away from adjoining properties and the proposed RCF rooms and the ILUs to protect both visual and acoustic amenity;
- Perimeter landscaped gardens set at ground level and private communal courtyards on ground floor level to accommodate formal settings, outdoor seating, gardens extending towards the site boundaries while at the same time fencing and retaining walls within the boundaries of the site to provide a secure and safe environment for occupants of the seniors housing building; and
- The proposal will also involve consolidating 3 allotments into 1 allotment of land.

2.0 ENVIRONMENTAL ASSESSMENT OF AMENDED DA

This Addendum SEE has considered the relevant changes resulting from the Amended Architectural design against:

2.1.1 Section 3.28 of the EP&A Act – Inconsistency between instruments

The Amended DA is submitted seeking approval for a form of “seniors housing” in the form of a “vertical village” as described in the provisions of the former *State Environmental Planning Policy (Housing for Seniors or People with a Disability)* 2004 (Seniors Housing SEPP), which are “saved” under clauses 1 and 2 of Schedule 7 “Savings and transitional provisions” of *State Environmental Planning Policy (Housing)* 2021 (Housing SEPP). The Amended DA has been assessed in **Table 3** against the provisions of the Seniors Housing SEPP and **Table 4** against the provisions of the Housing SEPP which relate to “seniors Housing”.

Pursuant to Section 3.28 of the EP&A Act, the provisions of the Seniors Housing SEPP and Housing SEPP prevail over any requirement in any local environmental plan. (Note: the provisions of the Seniors Housing SEPP remain valid and are discussed in detail below).

In addition, it should be noted that the Amended DA proposal does not trigger the provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) given the original and Amended proposal does not involve a residential flat building and does not involve 4 or more dwellings.

In addition, the provisions of *State Environmental Planning Policy (Building Sustainability Index: BASIX)* 2004 (BASIX) applies only to the two x 1-bedroom Independent Living Units (ILUs). Please refer to updated BASIX Certificate in **Appendix I**.

The provisions of *State Environmental Planning Policy (Infrastructure)* 2007 (infrastructure SEPP) are not triggered by the Amended DA, as the location of the access driveway in the amended architectural drawings in **Appendix B** is the exactly the same location as that which was supported by NSW Transport for NSW (TfNSW) in April 2021, please see information included in **Appendix O**. And the location of the proposed substation has already been considered by Ausgrid when Council sent a referral in 2020, the location and size of the proposed substation are unchanged in the amended design.

No new matters for consideration under the existing State Policies arise as a result of the amended design other than as discussed in the following sections.

It is noted that the planning minister on 2 December 2021 introduced new legislation to consolidate 45 existing State Environmental Planning Policies (SEPPs) into 11 consolidated SEPPs referred to as “Planning Principles”, which will take effect on 1 March 2022. In this regard the following new SEPPs will apply, and each involves a transfer of existing SEPP provisions:

- a) *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55) will become Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards)* 2021, which includes Schedule 3 “Transfer of provisions” at clause 3. The applicant has previously submitted a Preliminary Site Investigation and a Detailed Site Investigation as part of a Remedial Action Plan to satisfy the requirements of SEPP 55; and
- b) The Infrastructure SEPP (as discussed above) will become Chapter 2 of *State Environmental Planning Policy (Transport and Infrastructure)* 2021, which includes Schedule 12 “Transfer of provisions” at clause 1. As discussed above the applicant has already submitted information which has been supported by TfNSW and Ausgrid with conditions;

2.1.2 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The provisions of the now repealed *State Environmental Planning Policy (Housing for Seniors or People with a Disability)* 2004 in the Amended DA have been considered in full as detailed in Table 3 below:

Table 3: Summary of controls under Seniors Housing SEPP and Amended DA design responses

Control	Required	Proposed
cl.4 Land to which Policy applies	Where seniors housing is permitted	Please refer to Section 4.2.8.2 of original SEE.
cl.5 aims of plan		Please refer to Section 4.2.8.5 of original SEE.
cl.10 Seniors Housing	Definition of seniors housing	Please refer to Section 4.2.8.1 of original SEE.
cl.11 residential care facilities	Definition of residential care facilities	Please refer to Section 4.2.8.1 of original SEE.
cl.13 self-contained dwellings	Definition of self-contained dwellings	Please refer to Section 4.2.8.1 of original SEE.
cl.14 Objectives of chapter	<i>The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.</i>	Please refer to Section 4.2.8.4 of original SEE.
cl.15 what chapter does	<i>This Chapter allows the following development despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy:</i> <i>(a) development on land zoned primarily for urban purposes for the purpose of any form of seniors housing, and</i>	Land is zone for “urban purposes” being zoned R3 Medium Density Residential under the Randwick Local Environmental Plan 2012.
cl.16 Development	Development consent required	This Amended DA seeks development consent.

Control	Required	Proposed
consent required		
cl.17 Development on land adjoining land zoned primarily for urban purposes	Adjoining land zoned primarily for urban purposes	All adjoining properties are zoned R3 Medium Density Residential under the RLEP.
cl.18 restrictions on occupation of seniors housing allowed under this chapter	<p><i>(1) Development allowed by this Chapter may be carried out for the accommodation of the following only:</i></p> <p><i>(a) seniors or people who have a disability,</i></p> <p><i>(b) people who live within the same household with seniors or people who have a disability,</i></p> <p><i>(c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.</i></p>	The Amended DA remains consistent with this requirement, please refer to Section 4.2.8.4 of original SEE.
cl.19 use of seniors housing in commercial zones	Applicable to ground floor design of seniors housing when proposed on land zoned commercial.	The land is not located in a commercial zone.
cl.20	Repealed	Clause repealed; no response required.
cl.21 Subdivision	Subdivision requires consent	Amended DA does not propose subdivision and as such clause 21 is not applicable.
cl.22 Fire Sprinkler system in residential care facilities for seniors	Installation requirements for fire sprinkler system.	BCA Report included at Appendix F of original SEE advised sprinkler system would be installed.
cl.23 development on land use for the purposes of	Requirements apply to sites where an existing registered club exists.	The site includes an existing residential care facility and no registered club, as such clause 23 is not applicable.

Control	Required	Proposed
an existing registered club		
cl.24 Site Compatibility Certificates	Requirements for Site Compatibility Certificates for certain DAs	Not applicable. The SECPP at its meeting held on 10 November 2021 that a Site Compatibility Certificate cannot be issued.
cl.25 application for site compatibility certificate	Where clause 24 is triggered	The applicant made application to the NSW Department of Planning and Environment on 24 November 2020. The SECPP met on 10 November 2021 that a SCC cannot be issued as “seniors housing” is already permitted in the R3 Medium Density Residential zone of the RLEP.
cl.26 Local and access to facilities	Distance to facilities and gradient of suitable access pathway	<p>Please refer to the assessment included under 4.2.8.4 of the original SEE.</p> <p>As detailed in the original SEE a detailed Clause 26 Report has been prepared and is included at Appendix U and a Social Impact Comment is included in Appendix O. Both of which are not altered by this Amended DA.</p> <p>Please also refer to the survey information included in Appendix A of the original SEE which demonstrates the gradient and distance of the suitable access pathway, which indicates the pram ramps at the intersection of Frenchmans Road with Avoca Street do not comply with gradients described in Clause 26. As detailed in the original SEE the applicant is prepared to accept a condition to amend the pram ramp gradients to comply with Clause 26 of the Seniors Housing SEPP.</p> <p>And the applicant also submitted a Clause 4.3 Variation request to seek the adjustment of the pram ramps which is now updated with this Amended DA at Appendix M.</p>
cl.27 Bush fire prone land	Applies to land affected by bush fire prone land mapping	Not applicable, as the site is not located on land which is shown in the bush fire prone mapping.
cl.28 Water and Sewer	Requires suitable water and sewer connection	The original SEE included an Infrastructure Report at Appendix M, which indicates the existing site is connected to water and sewer

Control	Required	Proposed
		which can be suitably augmented to support the proposed development.
cl.29 when SCC required and when cl.24 does not apply	Criteria in cl.25(5)(b)(i), (iii) and (v) apply.	<p>Please refer to the information supplied to respond to Clause 25 in the original SEE. Please also refer to the detailed assessment completed by the NSW Department Planning and Environment in report dated 17 September 2021 which advised the proposal is consistent with the requirements of clause 25.</p> <p>It should be noted the original SEE included at Appendix J contamination investigations and a Detailed Site Investigation including Remedial Action Plan dated 13 May 2021 provided to Council on 1 July 2021 via the NSW Planning Portal.</p>
cl.30 Site Analysis	List of criteria to address	Please refer to original SEE report under Section 4.2.8.4.
cl.31 Design of infill self-care housing	Urban Design Guidelines	Please refer to the Urban Design Peer Review Statements dated 14 October 2020, 8 June 2021 and 16 February 2022, which each advise the proposed development is consistent with the requirements of the <i>Seniors Living Policy: Urban Design Guideline for Infill Development dated 2004</i> .
cl.33 Neighbourhood amenity and streetscape	Various matters to consider	<p>The streetscape presentation of the proposed development to both its McLennan Avenue and Frenchmans Road frontages have been adjusted in response to feedback received from the SECPP and Council. In addition, the streetscape presentation to both frontages have been refined with the assistance of Matthew Pullinger as the Urban Design Peer reviewer of the project. Please see the Urban Design Peer Review Statement included in Appendix F which has assessed the Amended DA as now submitted.</p> <p>Please also refer to the information under Clause 33 under Section 4.2.8.4 of the original SEE report and supporting appendices (which we have not been updated by this Addendum SEE including Updated Arborist's Statement in Appendix H and Amended Landscape</p>

Control	Required	Proposed
		Architectural Package in Appendix D to ensure the neighbourhood amenity of the site is protected (existing significant tree retained) and integrated with deep soil landscaped areas around perimeter).
cl.34 Visual and acoustic privacy	Development to consider visual and acoustic privacy	<p>The amended DA architectural design includes:</p> <ol style="list-style-type: none"> 1. Screens on windows to mitigate overlooking; 2. Orientation of windows to avoid directly looking into adjoining properties, in particular the treatment of windows on the eastern elevation of the north wing to McLennan Avenue with "high-light window" with sill heights of at least 1.6m, "eye-lid" windows angled away from 25 McLennan Avenue; 3. The inclusion of level 2 terrace with tiered perimeter landscape treatment 2m wide as detailed in Section F on page 18 of the Amended Landscape Architectural package included in Appendix D, to eliminate overlooking and provide for acoustic buffering for users of this terrace; 4. The inclusion on level 3 an upper level off-set compared to the level below to facilitate perimeter roof landscaping; 5. The inclusion of a landscaped terrace on level 3; and 6. The inclusion of a 1.4m high solid wall around the sunken plant deck on the roof. <p>In addition, an Amended Acoustic Assessment Report has been included in Appendix G to assess the location of the plant deck, which has advised the height of the solid acoustic surrounded is adequate to mitigate noise emanating to appropriate levels.</p>
cl.35 Solar Access	Solar and Adequate daylight to main living areas of neighbours and sunlight to private open spaces.	The design and height of the building has been sited so as to minimise its shadow impact on adjoining properties and ensure adequate

Control	Required	Proposed
design climate for		<p>solar access and daylight to the main living areas and private open spaces of neighbours in the vicinity of the development. The shadow diagrams contained with Appendix B demonstrates the shadow impact at 9am, 12pm and 3pm of the shortest day of the year being 21 June and demonstrate adjoining properties will not be unreasonable adversely impacted and adequate solar access is provided throughout the proposal in particular communal gathering areas with an improvement compared to the existing nursing home situation.</p> <p>As demonstrated in updated “sun-eye” views included in the solar access analysis in Appendix B the proposal is consistent with the daylight and sunlight provisions of AMCORD the proposed development will not result in unacceptable loss of solar access to the existing private courtyards and open spaces and windows of adjoining properties consistent with maintaining greater than 2 hours solar access between 9am and 3pm on the winter solstice. The proposal has made allowance for the inclusion of a 1.8m perimeter common boundary fences.</p> <p>a) the provisions of AMCORD state:</p> <p><i>Design Element 5.4 Building Envelope and Siting</i></p> <p><i>Acceptable Solution</i></p> <p><i>Daylight and Sunlight</i></p> <p><i>In temperate and cool-temperate climate zones, sunlight to at least 50% (or 35 m2 with minimum dimension 2.5 m, whichever is the lesser area) of the principal area of ground level private open space of adjacent properties is not reduced to less than two hours between 9 a.m. and 3 p.m. on June 21. Where existing overshadowing by buildings and fences is greater than this, sunlight is not further reduced by more than 20%.</i></p>

Control	Required	Proposed
cl.36 Stormwater	Address stormwater runoff	The proposal includes a concept design for a new stormwater management system which will include OSD where none is currently provided. Refer to Appendix E .
cl.37 Crime Prevention	Encourage and design Crime Prevention Through Environmental Design (CPTED) into the proposed development	A CPTED Report was included at Appendix V of the original SEE, the requirements and principles of which are maintained in the amended architectural drawings.
cl.38 Accessibility	Safe access environment required to be provided	A BCA report and Access Report were included at Appendix F of the original SEE, and the amended design remains consistent with these requirements.
cl.39 Waste Management	Waste management facilities including recycling	The original SEE included at Appendix D and Waste Management Plan and the design maintains the waste bin rooms in the basement which has been designed to accommodate the requirements of the private contractor truck.
cl.40(2) site size	Min. 1,000m ²	Site area of combined lots 2,709.7m ²
cl.40(3)	Minimum site frontage 20m	The subject site has a frontage of more than 62.495 metres to Frenchmans Road and approximately 21.03 metres to McLennan Avenue.
cl.40(4)(a) and (b) Height		It is noted that Clause 40(4)(a), (b) and (c) applies where a residential flat building is not permitted. The site is zoned to permit a residential flat building.
cl.40(4)(c)	Rear 25% 1 storey	The site does not have a "rear" as it has two frontages.
cl.40(5)	Social housing provider or Department of Housing application	Not applicable.
Clauses 41, 42, 43 and 44 do not apply to the proposed form of seniors housing		No applicable

Control	Required	Proposed
cl. 45(2) and (5) vertical Village FSR Including Bonus under clause 45 based on definition in former Seniors Housing SEPP GFA (to outer face of walls and excludes service areas as per cl. 45 vertical village)	0.9:1 RLEP + 0.5:1 = 1.4:1 max. Inclusive of Clause 45 exclusions 3,793.58m2 max. inclusive of Clause 45 exclusions	See assessment of proposal against Clause 45 Vertical Village following this table. 1.267:1 3,433m2
cl.47(7) grounds of which consent cannot be refused	(7) Grounds on which consent cannot be refused A consent authority must not refuse consent as referred to in subclause (2) only because the proposed development does not comply with a standard referred to in clause 40 (4) (a), 48 (a), 49 (a) or 50 (a).	
cl.46 Inter-relationship of Part with design principles in part 3		The site context analysis and design report prepared by the lead architects can be found at Appendix B of the Original SEE adequately demonstrates that the proposed development has been designed to have adequate regard to the principles set out in Division 2 of Part 3 of the Seniors Housing SEPP.
cl.47 Heritage	State Heritage Register	The site is not heritage listed under the RLEP, not located in a heritage conservation area or listed as an item under the State Heritage Register. The site is located adjacent to heritage items and a Statement of Heritage Impact was included in the original SEE at Appendix X.
cl.48(a) building height Residential Care facilities	8m to ceiling of top most floor – for residential care facility component.	The combined RCF and ILUs in a vertical village format relies of Clause 45(7) as detailed above. See updated Clause 4.6 to vary 8m ceiling height in Appendix J .

Control	Required	Proposed
	2 storeys - for residential care facility component.	
cl.48(b) density and scale	1:1 FSR	The combined RCF and ILUs have a FSR 1.267:1, while being greater than cl.48(b), the proposal is compliant with the provisions of Clause 45. See updated Clause 4.6 to vary FSR in Appendix K .
cl.48(c) landscaped area RCF	25m2 per bed The submitted Amended DA includes 83 RCF beds = 2,075m2	See updated Clause 4.6 to vary landscaped area in Appendix L .
cl.48(d) parking for residents and visitors	RACF 1 space per 10 beds for visitors 1 space per 2 staff Ambulance Bay ILUs 0.5 per ILU dwellings 18 spaces + 1 ambulance bay	8.6 spaces + 8 spaces + 1 ambulance bay and 1 loading dock 1 space Total: 18 spaces + 1 ambulance bay designed in proposed basement level
cl.49 Hostels	Controls related to hostels	Not applicable
cl.50(a) building height ILUs	8m or 2 storeys	Clause 45(7) overrides this provision: (7) Grounds on which consent cannot be refused A consent authority must not refuse consent as referred to in subclause (2) only because the proposed development does not comply with a standard referred to in clause 40 (4) (a), 48 (a), 49 (a) or 50 (a).
cl.50(b) density and scale ILUs	0.5:1 FSR	See Clause 45 assessment as follows.
cl.50(c) landscaped area ILUs	35m2 per ILU and 30%	943.9m2 which is 34.8%

Control	Required	Proposed
cl.50(d) deep soil zones	3m wide and 15%	Refer to Architectural drawing No. DA24a for location of 3m wide deep soil zones which are 15.7%
cl.50(e) solar access ILUs	Minimum 70% of dwellings solar access for min 3 hours between 9am and 3pm mid-winter	Both ILUs receive greater than 3 hours solar access between 9am and 3pm mid-winter – refer to sub diagrams in Appendix B .
cl.50(f) private open space ILUs	10sqm balcony not less than 2m wide or length	Both ILUs have been designed to comply.
cl.50(h) parking	See above at cl.48(d)	See above at cl.48(d)

As detailed in Section 4.2.8 of the original SEE the provisions of the former *State Environmental Planning Policy (Housing for Seniors or People with a Disability)* 2004 (Seniors Housing SEPP), each of the applicable clauses were addressed. In addition, as discussed within the original SEE report, the proposal is submitted to Council to seek approval under the Seniors Housing SEPP, and the proposal seeks approval for a “seniors housing” development.

The proposal involves 79 rooms to accommodate 83 beds as part of a “residential care facility” component of the building. None of the proposed rooms in the residential care facility have any cooking facilities and have not been designed as “dwellings” as defined under the RLEP:

***dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.*

None of the bedrooms within the RCF can be occupied or used as a separate domicile.

The proposal includes two x 1-bedroom “self-contained dwellings” as Independent Living Units (ILUs) which have been designed to include full kitchens.

This Addendum SEE does not alter the assessment of the proposal as detailed in the original SEE except as detailed below in relation to the proposed seniors housing development under the Seniors Housing SEPP in **Table 3** above.

Clause 45 of Seniors Housing SEPP

This Amended DA is submitted under the Seniors Housing SEPP for a proposed “senior housing” building which utilises Clause 45 “Vertical villages”. Clause 45 of the Seniors Housing SEPP states:

45 Vertical villages

*(1) **Application of clause** This clause applies to land to which this Policy applies (other than the land referred to in clause 4 (9)) on which development for the purposes of residential flat buildings is permitted.*

The R3 Medium Density Residential zone under the *Randwick Local Environmental Plan* 2012 enables the site to be developed for “residential flat buildings” as a specifically listed permitted form of development. Therefore, Clause 45(1) of the Seniors Housing SEPP applies to the land.

*(2) **Granting of consent with bonus floor space** Subject to subclause (6), a consent authority may consent to a development application made pursuant to this Chapter to carry out development on land to which this clause applies for the purpose of seniors housing involving buildings having a density and scale (when expressed as a floor space ratio) that exceeds the floor space ratio (however expressed) permitted under another environmental planning instrument (other than [State Environmental Planning Policy No 1—Development Standards](#)) by a bonus of 0.5 added to the gross floor area component of that floor space ratio.*

Note.

For example, if the floor space ratio permitted under another environmental planning instrument is 1:1, a consent authority may consent to a development application for the purposes of a building having a density and scale of 1.5:1.

The provisions of Clause 45 apply to the Amended DA as a “seniors housing” building is proposed and seeks to rely on a bonus 0.5 added to the gross floor area of the 0.9:1 floor space ratio which applies to the land under the Randwick Local Environmental plan 2012.

The Amended DA has reduced the Floor Space Ratio from 1.397:1 to 1.267:1. This represents 0.367:1 of the bonus 0.5:1 FSR under Clause 45(2) of the Seniors Housing SEPP and complies with the requirements of Clause 45(2) of the Seniors Housing SEPP. Please see below information about the gross floor area calculation and consideration of subclause 45(6) of the Seniors Housing SEPP.

(3) Subsection (2) applies even if the floor space ratio permitted under another environmental planning instrument is expressed in a development control plan.

To assist Council in the consideration of this Amended DA and its assessment of the proposed FSR, an updated Clause 4.6 variation request is included at **Appendix N**. As detailed previously, the provisions of Seniors Housing SEPP prevail over the *Randwick Local Environmental Plan 2012*.

(4) In calculating the gross floor area for the purposes of subclause (2), the floor space used to deliver on-site support services (other than any floor space used to deliver communal or residents’ living areas) is to be excluded.

To assist Council in the assessment of the Amended DA in the calculation of the Gross Floor Area (GFA) under Clause 45(4), we have sought advice from Mr Pickles SC. Mr Pickles has advised:

“3. Clause 45 provides, relevantly:

{2) Subject to subclause (6), a consent authority may consent to a development application made pursuant to this Chapter to carry out development on land to which this clause applies for the purpose of seniors housing involving buildings having a density and scale (when expressed as a floor space ratio) that exceeds the floor space ratio (however expressed) permitted under another environmental planning instrument (other than State Environmental Planning Policy No 1-Development Standards) by a bonus of 0.5 added to the gross floor area component of that floor space ratio.

(4) In calculating the gross floor area for the purposes of subclause {2}, the floor space used to deliver on-site support services (other than any floor space used to deliver communal or residents' living areas) is to be excluded.

4. On-site support services is defined to mean:

- (a) 3 meals a day provided on a communal basis or to a resident's dwelling, and*
- (b) personal care, and*
- (c) home nursing visits, and*
- {d} assistance with housework.*

5. Project managers for SummitCare, Centurion Project Management, have already identified the following areas for exclusion from the GFA:

- (a) Kitchen and servery areas and communal dining areas;*
- (b) Clean and dirty utility rooms used by staff for linen service;*
- (c) Linen rooms accessed by staff members to service residents;*
- (d) Garbage and cleaner's rooms accessed only by staff to service residents;*
- (e) Back of house service corridors used exclusively by staff members;*
- (f) Nurse's stations and staff rooms including offices associated with managing the facility.*

6. Other areas considered for exclusion include:

- (a) Cafe service areas;*
- (b) Cafe dining areas;*
- (c) Activity rooms used under staff supervision (salon, spa, theatre, exercise, therapy areas and kitchen associated with such areas)*

7. It is well established that the principles of statutory construction apply equally to planning instruments as to statutes (see *Cranbrook School v Woollahra Council* (2006) 66 NSWLR 379). The starting point for statutory construction is to begin with the consideration of the words of the text itself (see *Alcan {NT} Alumina Pty Limited v Commissioner of Territory Revenue* (2009) 239 CLR 27 at [41]). Further, I can find no decisions in the Land and Environment Court where cl 45 has been considered. Accordingly, without guidance from any case law, I can only rely on the ordinary meaning of the expressions used in the provision. It should be observed in this regard that unlike the provision considered in *Cranbrook School*, the definition here is not an inclusive one. Accordingly, the things regarded as support services are a closed class as specified in the definition.

8. First, in respect of the areas already assessed as excluded, in my opinion those areas can legitimately be excluded because they fall within the definition of areas used to deliver on-site services.

9. In particular, kitchen and dining areas used to provide three meals per day can clearly be excluded. The express parenthesised inclusion of "communal living spaces" in sub-clause (4) means that living areas such as the "lounge" area must be included, but the dining areas, in contrast, are integral to the delivery of meals on a communal basis.

10. Similarly, linen and utility rooms that are accessed by staff can be reasonably said to be used for providing assistance with housework. The same can be said of nurse and staff rooms and office areas associated with administering the facility. In my opinion, these are areas that are relevantly directly used to deliver on-site support services.

11. Secondly, in respect of the areas in paragraph [7] above:

- (a) In my opinion, the cafe areas, including the dining areas, can relevantly be excluded if they are areas used to deliver "3 meals a day provided on a communal basis". The cafe and its dining areas may qualify if it fulfils the relevant criteria of facilitating communal provision of meals.
- (b) Further, in my opinion, the areas used for activities under staff supervision may legitimately be excluded where they can be said to be associated with the provision of "personal care". Accordingly, areas such as spa and treatment rooms fall within this category, but I do not think that movie theatres do because they are more akin to communal living areas not areas used to provide personal care to residents.

Conclusion

12. In conclusion, there are some areas that have been included by Centurion Project Management that in my view need not be included as gross floor area under clause 45 of SEPP Seniors. In respect of the other areas suggested, focus is required on the words of the provision to determine whether the definition is fulfilled."

Based on this interpretation the gross floor area (GFA) and the exclusions listed above, the gross floor area (GFA) calculations shown in the amended architectural drawings included in **Appendix B**, demonstrate the floor space used to deliver on-site support services have been excluded.

4A Land to which Policy applies—heritage conservation areas in Greater Sydney Region

(1) This Policy does not apply to land in the Greater Sydney Region if an environmental planning instrument identifies the land as being within a heritage conservation area.

(2) This Policy continues to apply to development on land referred to in subclause (1) if—

- (a) the relevant development application was lodged before the commencement of this clause, or*
- (b) the relevant development application was lodged after the commencement of this clause but the development application relies on a site compatibility certificate and the application for that certificate was lodged before the commencement of this clause.*

(3) A site compatibility certificate may be issued for land referred to in subclause (1) after the commencement of this clause if the application for that certificate was lodged before the commencement of this clause.

(3A) This clause does not apply to land in the North Sydney local government area.

(4) This clause ceases to have effect on 1 July 2021.

The site is not located within a heritage conservation area under the Randwick Local Environmental Plan 2012. Therefore, the Seniors Housing SEPP applies to the site.

(5) However, if the area of the floor space referred to in subclause (4) is greater than 50% of the gross floor area, then the area that may be excluded under subclause (4) is limited to an area that does not exceed 50% of the gross floor area.

The GFA used in subclause (4) above is not greater than 50% of the overall GFA and complies with this subclause.

*(6) **Requirements relating to affordable places and on-site support services** A consent authority may only grant consent to a development application as referred to in subclause (2) if—*

(a) the consent authority is satisfied, on written evidence, that—

(i) the proposed development will deliver on-site support services for its residents, and

The proposed development includes a commercial kitchen and on-site support services as defined in Clause 45 below, for residents of the entire site including: 3 meals a day provided on a communal basis (please note the roof terrace of building has been designed to accommodate communal eating and gathering for the entire site development) or to a resident's dwelling; in addition a number of the floor spaces have been designed on the ground floor level and lower basement level of the building for personal care related services including physiotherapy room, consultation rooms and hairdresser; the Plan of Management details SummitCare's commitment to the provision of home nursing visits for those who request this service; and the Plan of Management details SummitCare's commitment to provide assistance with housework for those residents of the units who request this service. As such, the proposal includes the provision of on-site support services consistent with Clause 45(6)(a)(i) above.

(ii) at least 10% of the dwellings for the accommodation of residents in the proposed development will be affordable places, and

The proposal will allocate at least 10% of the dwellings in the form of the ILUs for accommodation of residents allocated for affordable housing places, which equates to 1 unit. The proposal has now been amended to include both ILUs.

(b) the applicant identifies, to the satisfaction of the consent authority, which of the dwellings for the accommodation of residents in the proposed development will be set aside as affordable places.

The architectural design included in **Appendix B** can demonstrate with the annotation "AH" the designation of at least 10% of the dwellings in the form of the ILUs for accommodation of residents allocated for an affordable housing place.

*(7) **Grounds on which consent cannot be refused** A consent authority must not refuse consent as referred to in subclause (2) only because the proposed development does not comply with a standard referred to in clause 40 (4) (a), 48 (a), 49 (a) or 50 (a).*

This SEE report includes information to assess the proposal against the provisions of Clauses 40(4)(a), 48(a) and 50(a) in the following sections. The provisions of Clause 49(a) are not relevant as the proposal does not involve a “hostel”.

*(8) **Conditions on grants of development consent** A development consent may be granted as referred to in subclause (2) subject to a condition that requires the creation of a restrictive or positive covenant on land to which a development application relates concerning the continued provision of the affordable places identified in the application.*

The applicant has noted the provisions of Clause 45(8) of the Seniors Housing SEPP. It should be noted this application does seek any form of subdivision.

(9) A development consent may be granted as referred to in subclause (2) subject to a condition that requires the affordable places identified in a development application to be owned and managed by an organisation providing community housing that is registered for the time being with the Office of Community Housing.

Please refer to the in-principal preliminary offer issued by Home Ground Real Estate Sydney (Home Ground) as the Social Housing provider nominated by SummitCare for this project contained in Appendix R of the original SEE, which advises they are a “not for profit real estate agency providing property management services to landlords and tenants.” Home Ground are a “social enterprise of Bridge Housing Limited, a registered Tier 1 community housing provider”. This will support both ILUs.

(10) Subclauses (8) and (9) do not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.

The applicant has noted the provisions of Clause 45(10) of the Seniors Housing SEPP.

*(11) **Clause does not apply to certain heritage affected land** Nothing in this clause applies in relation to the granting of consent to a development application made pursuant to this Chapter for the carrying out of development on land to which an interim heritage order or listing on the State Heritage Register under the [Heritage Act 1977](#) applies.*

The land is not identified as being affected by any local or State heritage item and is not located within a heritage conservation area.

*(12) **Definitions** In this clause—*

***affordable place**, in relation to seniors housing, means a dwelling for the accommodation of a resident—*

(a) whose gross household income falls within the following ranges of percentages of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) according to the Australian Bureau of Statistics—

<i>Very low income household</i>	<i>less than 50%</i>
<i>Low income household</i>	<i>50% or more but less than 80%</i>
<i>Moderate income household</i>	<i>80–120%</i>

(b) who is to pay rent that does not exceed a benchmark of 30% of the resident’s actual household income.

on-site support services, in relation to residents of seniors housing, means—

- (a) 3 meals a day provided on a communal basis or to a resident's dwelling, and
- (b) personal care, and
- (c) home nursing visits, and
- (d) assistance with housework.

The above definitions in Clause 45(12) are noted by the applicant.

The applicant prior to refining the design sought assistance from a geotechnical engineer to change the designs of each of the basement levels to address the construction methodology and seek technical inputs, and have issued a Vibration Monitoring Plan at **Appendix N**.

The applicant is also in the process of preparing a new BASIX Certificate for the proposed "Independent Living Units" (ILUs) on level 3, and an associated updated Section J and energy efficiency report which seeks the inclusion of photovoltaic solar cells on the roof area next to the access to the plant area, at **Appendix I**.

2.1.3 State Environmental Planning Policy (Housing) 2021

The following **Table 4** provides an assessment of the proposed development against State Environmental Planning Policy (Housing) 2021:

Table 4: Summary Table of controls under State Environmental Planning Policy (Housing) 2021 (Housing SEPP) – Chapter 3 Diverse Housing – Part 5 Housing for seniors and people with a disability and Amended DA design responses

Relevant Clause	Required	Proposed
cl.79 land to which Part applies	Specified zones listed include R3 Medium Density Residential	<p>Land is zoned R3 Medium Density Residential under the Randwick Local Environmental Plan 2012 (RLEP), which under Item 3 "Permitted with consent" of the Land Use Table includes "seniors housing".</p> <p>"Seniors housing" is defined in the Dictionary of the RLEP:</p> <p>seniors housing means a building or place that is—</p> <ul style="list-style-type: none"> (a) a residential care facility, or (b) a hostel within the meaning of State Environmental Planning Policy (Housing) 2021, Chapter 3, Part 5, or (c) a group of independent living units, or (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c), <p>and that is, or is intended to be, used permanently for—</p> <ul style="list-style-type: none"> (e) seniors or people who have a disability, or

Relevant Clause	Required	Proposed
		<p>(f) people who live in the same household with seniors or people who have a disability, or</p> <p>(g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place, but does not include a hospital.</p> <p>Note—</p> <p>Seniors housing is a type of residential accommodation—see the definition of that term in this Dictionary.</p> <p>The proposal seeks approval to build a replacement building to include an 81 bed “Residential Care Facility” (RCF) and 2 x 1-bedroom “Independent Living Units” (ILUs) which will be permanently used to accommodate persons as listed in (e) and (f), will employ staff as required by (g), and is not a hospital.</p> <p>The BCA classifications detailed at page 7 of the BCA Report included with the original SEE at Appendix F:</p> <p>Class 9c</p> <p>Class 7a</p> <p>The National Construction Code ABCB website advises:</p> <p><i>Class 9c buildings are residential care buildings that may contain residents who have various care level needs. They are a place of residence where 10% or more of persons who reside there need physical assistance in conducting their daily activities and to evacuate the building during an emergency. An aged care building, where residents are provided with personal care services, is a Class 9c building.</i></p> <p>And:</p> <p><i>Class 7a buildings are car parks.</i></p> <p>The applicant will implement all the requirements of the BCA as part of any Construction Certificate.</p>

Relevant Clause	Required	Proposed																					
cl.80 land to which Part does not apply	Specified locations listed	Land not located within lands which are listed																					
cl.81 seniors housing permitted with consent	"Seniors housing" requires consent	This Amended DA seeks consent for "seniors housing" as defined above and is permitted.																					
cl.82 definitions	<p>"gross floor area" – means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the inner face of the external enclosing walls, as measured at a height of 1.4m above each floor level—</p> <p>(a) excluding columns, fin walls, sun control devices and elements, projections or works outside the general lines of the inner face of the external wall, and</p> <p>(b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and</p> <p>(c) excluding—</p> <p>(i) car parking needed to meet the requirements of this Part or the council of the local government area in which the development is located, and</p> <p>(ii) internal access to the car parking, and</p> <p>(d) excluding space for the loading and unloading of goods,</p>	<p>Using the Housing SEPP "gross floor area" (GFA) definition the amended proposal has a GFA of 4,308.42m².</p> <p>The proposal includes:</p> <ul style="list-style-type: none"> • 79 room with 81 bed residential aged care facility • 2 x 1-bedroom independent living units to accommodate 2 beds <p>Each accommodation level of the building includes:</p> <table border="1"> <thead> <tr> <th>Level</th><th>Rooms</th><th>Beds</th></tr> </thead> <tbody> <tr> <td>Ground - RACF</td><td>17</td><td>17</td></tr> <tr> <td>1 – RACF</td><td>26 singles 2 Doubles</td><td>30</td></tr> <tr> <td>2 – RACF</td><td>18 singles 2 Doubles</td><td>22</td></tr> <tr> <td>3 - RACF</td><td>14 singles</td><td>14</td></tr> <tr> <td>3 - ILUs</td><td>2 x 1 bedroom</td><td>2</td></tr> <tr> <td>Total</td><td></td><td>83</td></tr> </tbody> </table> <p>Total number of occupants to be licenced as part of the residential aged care facility 81 people / beds, with a minimum of 20% of beds to be offered as "concessional places" under the Commonwealth Department of Health requirements. All "aged care providers" such as SummitCare, are required to meet the requirements of the Commonwealth legislation as enforced by the Commonwealth Department of Health.</p>	Level	Rooms	Beds	Ground - RACF	17	17	1 – RACF	26 singles 2 Doubles	30	2 – RACF	18 singles 2 Doubles	22	3 - RACF	14 singles	14	3 - ILUs	2 x 1 bedroom	2	Total		83
Level	Rooms	Beds																					
Ground - RACF	17	17																					
1 – RACF	26 singles 2 Doubles	30																					
2 – RACF	18 singles 2 Doubles	22																					
3 - RACF	14 singles	14																					
3 - ILUs	2 x 1 bedroom	2																					
Total		83																					

Relevant Clause	Required	Proposed
	<p>including access to the space, and</p> <p>(e) for in-fill self-care housing—including car parking provided at ground level, other than for visitors, in excess of 1 per dwelling, and</p> <p>(f) for a residential care facility—excluding floor space used for service activities provided by the facility below ground level.</p> <p>(Note: different definition to former Seniors Housing SEPP)</p> <p>“infill self-care housing” - means seniors housing consisting of at least 2 independent living units and at which none of the following services are provided on the site—</p> <p>(a) meals,</p> <p>(b) cleaning services,</p> <p>(c) personal care,</p> <p>(d) nursing care.</p> <p>“serviced self-care housing” - means seniors housing comprising independent living units where the following services are available on the site—</p> <p>(a) meals,</p> <p>(b) cleaning services,</p> <p>(c) personal care,</p> <p>(d) nursing care.</p>	<p>It should be noted by Council that NSW Planning Legislation does not apply to how any beds in a “residential care facility” are to be allocated as “concessional places”, this is because only Commonwealth legislation applies to all “residential care facilities” and the beds within an “residential care facility”.</p> <p>It is not possible or lawful for NSW Planning laws to override Commonwealth laws relating to “providing aged care services”, including how any bed within a “residential care facility” is allocated.</p> <p>Please see below information at the following link:</p> <p>Concessional resident supplement for aged care Australian Government Department of Health</p> <p>It is not possible for a “residential care provider” to allocate “affordable housing” requirements under NSW Planning legislation to a “residential care facility” as this would be contradictory to the Commonwealth legislation.</p> <p>Further, the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 only applies to buildings which the online tool created by the NSW Department of Planning has created. There is no BASIX tool certificate which applies to rooms within a residential care facility. The BASIX tool allows for “multi dwelling” certificates to be issued for which the ILUs fit. As such, the BASIX certificate has been updated to reflect the updated design of the ILUs on Level 3, as included in Appendix I.</p> <p>Each ILU has been redesigned and include access to future occupants for the services as required by the definition of “infill self-care housing”.</p> <p>It is noted that the Housing SEPP Schedule 4 requires each ILU to be designed to include a queen-sized bed which does not automatically mean that the occupancy per ILU is 2 persons.</p>

Relevant Clause	Required	Proposed
		This proposal seeks to offer 1 place in each ILU being a total of 2 persons.
cl.83 amendments to the bush fire evacuation risk map	Triggered if affected by bush fire mapping	Not applicable – land not affected by any bush fire mapping.
cl.84 development standards – general	<p>2(a) site area 1000m²</p> <p>(b) 20m frontage</p> <p>(c) Where residential flat buildings are not permitted height (i) 9.5m or (ii) 2 storeys 3 building height 11.5m if servicing equipment on roof (a) fully integrated and (b) no more than 20% area of roof</p>	<p>The site is 2,709.7m² which is greater than 1,000m² and complies.</p> <p>The site has a frontage of 21.03m to McLennan Avenue and 50.225m to Frenchmans Road.</p> <p>The zoning of the land under the Randwick Local Environmental Plan 2012 is R3 Medium Density Residential which lists under Item 3 Permitted with consent of the Land Use Table "residential flat buildings", as such Clause 84(2)(c) does not apply. The roof area has been designed to include an access stair from Level 3 below to a sunken plant deck with 1.4m high solid acoustic surround and photovoltaic cells arranged on the roof slab to support no greater than 36kW of power.</p>
cl.85 development standards for hostels and independent living unit	See Schedule 4 which relate to disabled access.	Please refer to the Access Report included with the original SEE at Appendix G, which advised the development with its proposed RLs for each level, inclusion of lifts and entry design at Frenchmans Road all comply with the Australian Standard. The recommendations of this report will be implemented in the design as part of a Construction Certificate detailed design.
cl.86 development standards for seniors housing – zones RE2, SP1, SP2, RU5 and R2	Applies to land zoned RE2, SP1, SP2, RU5 and R2	Not applicable.
cl.87 Additional floor space ratios	<p>1(a) land permits residential flat building or shop top housing or</p> <p>1(b) is zoned B3</p>	<p>The R3 Medium Density Residential zone under the RLEP permits "residential flat buildings".</p> <p>The site area exceeds 1500m².</p> <p>The proposal involves both ILUs and an RCF, as such the maximum FSR under Clause 87</p>

Relevant Clause	Required	Proposed
	<p>2(a) site area at least 1500m² and</p> <p>2(b)(i) involves ILUs – additional 15% of max FSR or</p> <p>2(b)(ii) involves RACF – additional 20% of max FSR or</p> <p>2(b)(iii) involves both ILUs and RCF – additional 25% of max FSR</p> <p>2(c) building with height no greater than 3.8m above max permitted building height</p>	<p>(2)(b)(iii) is 0.25:1 plus the base RLEP FSR 0.9:1 = 1.15:1.</p> <p>The proposed GFA under the Housing SEPP is equivalent to 1.59:1.</p> <p>The Housing SEPP GFA definition is different from the former Seniors Housing SEPP definition which under Clause 45 also allowed for several exclusions associated with the provisions of subclause 4 as discussed in Table 3 above.</p> <p>Vertical village – 3.8m above RLEP HOB: 12m (RLEP) + 3.8m = 15.8m. The proposed development complies – refer to dashed blue line in section and elevation drawings included in Appendix B.</p>
cl.88 Restrictions on occupation of seniors housing	<p>The provision of Clause 88 state:</p> <p><i>(1) Development permitted under this Part may be carried out for the accommodation of only the following—</i></p> <p><i>(a) seniors or people who have a disability,</i></p> <p><i>(b) people who live in the same household with seniors or people who have a disability,</i></p> <p><i>(c) staff employed to assist in the administration and provision of services to housing provided under this Part.</i></p> <p><i>(2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people</i></p>	<p>The proposed development has been designed to be consistent with this requirement.</p>

Relevant Clause	Required	Proposed
	<i>referred to in subsection (1) will occupy accommodation to which the development relates.</i>	
cl.89 Use of ground floor of seniors housing in business zones	Requirements for ground floor design if site is land zoned business	Not applicable.
cl.90 Subdivision	Not permitted for this form of development in R2 or B3 zones	Not applicable.
cl.91 Fire Sprinkler systems in residential care facilities	Fire sprinkler system required	Already designed as part of proposed seniors housing building – please refer to BCA Report submitted with the original SEE at Appendix F.
cl.92 Development on land used for the purposes of an existing registered club	Not proposed in this DA	Not applicable.
cl.93 Location and access to facilities and services – independent living units	Transport and support services, distance and access for ILUs	Please refer to Appendix R of original SEE report which addresses the same requirements of suitable access pathway, distance and services – the applicant is prepared to adjust the non-compliant pram ramps. The distances and services comply.
cl.94 Location and access to facilities and services – residential care facilities	On-site services or transport services other than a passenger service	The design includes the provision of on-site services (as detailed in the description in the original SEE at pages 36 and 37.
cl.95 Water and Sewer	The existing site development has access to water and sewer services.	Please refer to the Infrastructure Report included with the original SEE at Appendix K which advises the proposal can be supported by water and sewer services.
cl.96 Bush fire prone land	The site is not located on land which is identified as being bushfire prone on the bushfire mapping.	Not applicable.

Relevant Clause	Required	Proposed
cl.97 Design of in-fill self-care housing	<i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> , March 2004 required to be considered	Refer to the Urban Design Peer Review Statement included at Appendix F.
cl.98 Design of seniors housing	Division 6 Design principles in clauses 99 to 105	See below
cl.99 Neighbourhood amenity and streetscape		Same criteria as that previously address in Table 3 above.
cl.100 visual and acoustic privacy		Same criteria as that previously address in Table 3 above.
cl.101 solar access and design for climate		Same criteria as that previously address in Table 3 above.
cl.102 stormwater		Same criteria as that previously address in Table 3 above.
cl.103 crime prevention		Same criteria as that previously address in Table 3 above.
cl.104 accessibility		Same criteria as that previously address in Table 3 above.
cl.105 waste management		Same criteria as that previously address in Table 3 above.
cl.106 interrelationship between Division and design principles in Division 6		Noted.
cl.107(1) applies to RCF		Noted, the proposal includes a RCF component.
cl.107(2)(a) height	9.5m excluding servicing equipment on roof	Height proposed 13.59m to the top of the lift overrun which is the tallest point of the proposed development relative to the ground level immediately below.

Relevant Clause	Required	Proposed
		<p>The amended proposal includes a “blue-dashed line” on the elevations and sections to represent the bonus height of building control of 3.8m under the new Housing SEPP, which is 12m under the RLEP HOB control plus 3.8m being 15.8m.</p> <p>The proposal seeks to apply the provisions of Clause 87(2)(c) (detailed previously in this table) as the proposal includes both a RCF component and ILU component (see above in this table) being 12m under the RLEP HOB map plus 3.8m = 15.8m and complies.</p>
cl.107(b)(i) height	Equipment fully integrated into the design of the roof or contained and suitably screened from view from public places, and	Plant deck screen from view – setback 3m from front parapet and side parapets of the level below.
cl.107(b)(ii) height	is limited to an area of no more than 20% of the surface area of the roof, and	Plant area not more than 20% of roof area.
cl.107(b)(iii) height	does not result in the building having a height of more than 11.5m	Height proposed 13.59m. The proposal seeks to apply the provisions of Clause 87(2)(c) as it includes both a RCF component and ILU component (see above in this table) being 12m under the RLEP HOB map plus 3.8m = 15.8m and complies.
cl.107(c) density	FSR 1:1	1.59:1 based on GFA definition under Housing SEPP at clause 82 which requires all exclusions under Clause 45 of former Seniors Housing SEPP to now be included.
cl.107(d)(ii) internal and external communal open space	10m ² per bed	11.02m ² per bed – refer to Architectural Drawing DA24a in Appendix B .
cl.107(e) landscaped area for every bed	15m ² per bed	11.6m ² per bed – refer to Architectural Drawing DA24a in Appendix B .

Relevant Clause	Required	Proposed
cl.107(f) deep soil zone	15%, each min. dimension 6m and at least 65% at rear	15.7% deep soil – refer to Architectural Drawing DA24a in Appendix B for locations of deep soil zones.
cl.107(g) hostel parking	N/A	N/A
cl.107(h) RCF parking	1 space per 15 beds	6 spaces.
cl.107(i) parking	1 space for every 2 employees on duty at the same time	8 spaces. The proposal includes 18 car parking spaces and complies with the combined requirements of clause 107(h) and (i).
cl.107(j) ambulance bay	1 ambulance parking bay	18 parking spaces and 1 ambulance bay available in basement design Designed to comply – refer to Appendix B amended architectural drawings.
cl.108(1)	Applies to independent living units	Noted.
cl.108(2)(a) height	9.5m excluding equipment	Height proposed 13.59m. The proposal seeks to apply the provisions of Clause 87(2)(c) as it includes both a RCF component and ILU component (see above in this table) being 12m under the RLEP HOB map plus 3.8m = 15.8m and complies.
cl.108(2)(b)(i) height	Equipment fully integrated and screened from view	Plant deck screen from view – setback 3m from front parapet and side parapets of the level below.
cl.108(2)(b)(ii) height	Equipment no more than 20% of roof surface	Plant area not more than 20% of roof area.
cl.108(2)(b)(iii) height	Building height, no greater than 11.5m	Height proposed 13.59m. The proposal seeks to apply the provisions of Clause 87(2)(c) as it includes both a RCF component and ILU component (see above in this table) being 12m under the RLEP HOB map plus 3.8m = 15.8m and complies.
cl.108(c) Density	0.5:1 FSR	1.59:1 based on GFA definition under Housing SEPP at clause 82 which requires all exclusions under Clause 45 of former Seniors Housing SEPP to now be included.

Relevant Clause	Required	Proposed
cl.108(d) landscaped area	35m ² per dwelling by social housing provider	Not applicable.
cl.108(e) landscaped area	If (d) does not apply – at least 30% of site area	23.1% variation requested, roof terraces and balconies provide alternate communal open spaces for all residents to access which combined with landscaped area at ground floor level is 52%.
cl.108(f) deep soil zone	At least 15% minimum Dimension 3m	15.7% complies.
cl.108(g) solar access	Living rooms and private open spaces received direct solar access for at least 70% for 2 hours between 9am and 3pm mid-winter	Complies, refer to sun diagrams in Appendix B .
cl.108(h)(i) and (ii) private open space ground level	At least 15m ² per dwelling and min. dimension 3m	Not applicable
cl.108(i)(i) private open space not ground level	At lease 10m ² , min. dimension 2m and for each 1-bedroom an area of at least 6m ²	Each ILU balcony is at least 6m ² in area and minimum 2m wide
cl.108(j) parking	1 per 5 dwelling for social housing provider	Not applicable
cl.108(k) parking	0.5 spaces per bedroom	1 space required.

To assist with information in Table 4 above, under the “Housing SEPP” the definition to calculate Gross Floor Area (GFA) has changed from the former “Seniors Housing SEPP” to now include the previous “exclusions” under Clause 45(4) of the former Senior Housing SEPP. The proposal has been calculated as having an FSR of 1.59:1 under the definition for GFA of the Housing SEPP at clause 82 of the Housing SEPP (see above Table 4).

The proposed development demonstrates compliance with the Housing SEPP for the proposed combined RCF and ILU seniors housing building, except with respect to the FSR. This is because the Housing SEPP has altered the “bonus” FSR from 0.5:1 to 0.25:1 and the definition for GFA has changed.

2.1.4 Consideration of *Terrace Tower Holdings v Sutherland Shire Council* [2003] NSWCA 289

As requested by the SECPP during the briefing held on 2 February 2022, the applicant has had consideration of the “weight” which should be given to the provisions of *State Environmental Planning Policy (Housing) 2021* in light of the decision in *Terrace Towers Holdings Pty Ltd v Sutherland Shire Council* [2003] NSWCA 289 (3 October 2003).

The NSW State Government released for public consultation between 29 July 2020 and 9 September 2020, an Explanation of Intended Effect (EIE) for a proposed new “Housing Diversity State Environmental Planning Policy” (Housing Diversity SEPP). The NSW Department of Planning and Environment “Planning Portal” at the following link states:

[A new housing policy | Planning Portal - Department of Planning and Environment \(nsw.gov.au\)](https://www.nsw.gov.au/planning-portal/a-new-housing-policy)

“The EIE proposed that a new SEPP would:

- *introduce new definitions for build-to-rent housing, student housing and co-living;*
- *amend some state-level planning provisions, particularly for boarding house and seniors housing development;*
- *amend some state-level planning provisions to support social housing developments undertaken by the NSW Land and Housing Corporation (LAHC) on government-owned land; and*
- *consolidate three housing-related SEPPs:*
 - *State Environmental Planning Policy (Affordable Rental Housing) 2009*
 - *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*
 - *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes).*

Before the repeal of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (the “Seniors Housing SEPP”), the NSW Department of Planning, Industry and Environment (the “Department”) advised it worked closely with numerous stakeholders throughout the consultation process and as a result of the feedback received many submissions to make changes to the draft clauses inclusive of controls relating to “Seniors Housing” from those detailed in the EIE to the Housing SEPP, which included:

[Housing SEPP - \(nsw.gov.au\)](https://www.nsw.gov.au/planning-portal/housing-sepp)

- *Changes to boarding houses to ensure they are built in the right places; are affordable and provide adequate amenity to residents;*
- *Improvements to the rules for seniors housing to make sure they are delivered close to services and enable people to age in the communities they know and love; and*
- *Updating some rules for boarding houses, co-living and build-to-rent housing such as car parking requirements, local character consideration and locational requirements.*

And, specifically the amendments to “Seniors Housing” as a form of housing involved:

- *Seniors housing developments allowed in the SP2 – Infrastructure and RE2 – Private Recreation zones if it adjoins any prescribed zone under the Housing SEPP.*
- *Seniors independent living developments allowed in R2 – Low Density Residential zone if developed by the Land and Housing Corporation or providers that operate under the Retirement Villages Act 1999.*
- *Removed the term “vertical villages” in the Housing SEPP – instead these provisions are included as bonuses for seniors housing.*
- *These bonus provisions have been extended to land where shop top housing is allowed, and the B3 – Commercial Core zone.*
- *The State Significant Development pathway will apply to seniors housing with a capital investment value of at least \$30 million (or \$20 million outside Greater Sydney), that includes and must include a residential care facility.*

The Department webpage at the following link, specifically advises under the heading for the following question:

[Housing SEPP - \(nsw.gov.au\)](https://www.nsw.gov.au/housing-sepp)

“I’ve already started working through the planning process for development of a housing type covered by the Housing SEPP. How will my development be affected?”

The provisions of a former SEPP will continue to apply to:

- *development applications and concept development applications made, but not determined, on or before the day the Housing SEPP commences, or staged development applications made subsequent to such concept development applications*
- *a development consent granted on or before the day the Housing SEPP commences,*
- *an environmental impact statement prepared in compliance with an environmental assessment requirement that is:*
 - *issued by the Planning Secretary on or before the commencement date, and*
 - *in force when the statement is prepared.*

While the Housing SEPP adopts many of the provisions included in the public consultant draft, the draft was not wholly adopted. One example of a changed provision is the “savings provision”. We note that the public consultation draft contained the following “savings provision”:

“2 General savings provision

The former provisions of a repealed instrument continue to apply to the following—

- (a) a development application made, but not yet determined, on or before the repeal day,*
- (b) a development consent granted on or before the repeal day.”*

The effect of the above provision in the public consultation draft was to enable a development application made after the commencement of the SEPP were to be subject to its application, while existing development applications lodged prior to the commencement were to be “saved”.

This DA was lodged with the knowledge of the public consultation draft savings provisions, and as expressed advised by the NSW Department of Planning and Environment any DA lodged by not determined prior to the commencement of any new SEPP provisions was to be saved and assessed under the Seniors Housing SEPP.

The applicant submitted this DA using the NSW Planning Portal on 24 November 2020 (PAN-50896).

On 26 November 2021, *State Environmental Planning Policy (Housing) 2021* (the “Housing SEPP”) commenced when it was published on the NSW legislative website.

The Housing SEPP as published includes as part of Schedule 7 “Savings and transitional provisions” the following savings provision clauses:

“1 Definitions

In this Schedule—

commencement date means the day on which this Policy commenced.

repealed instrument means an instrument repealed under Chapter 1, section 10.

2 General savings provision

The former provisions of a repealed instrument continue to apply to the following—

- (a) a development application made, but not yet determined, on or before the commencement date,*
- (b) a concept development application made, but not yet determined, on or before the commencement date,*
- (c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,*
- (d) a development consent granted on or before the commencement date,*
- (e) an environmental impact statement prepared in compliance with an environmental assessment requirement that is—*
 - (i) issued by the Planning Secretary on or before the commencement date, and*
 - (ii) in force when the statement is prepared.”*

There is no case which has tested the wording of the current “savings provision” in Schedule 7 **2 General savings provision** *The former provisions of a repealed instrument continue to apply to the following—(a) a development application made, but not yet determined, on or before the commencement date*, however some guidance could be taken from the considerations established by the Land and Environment Court NSW (the Court) decision in *Alamdo Holdings Pty Limited v The Hills Shire Council [2012] NSWLEC 1302*.

Commissioner Dixon of the Land & Environment Court NSW (Court) considered the proper interpretation of the savings provision in clause 1.8A of the *The Hills Local Environmental Plan 2012 (Hills LEP)* in *Alamdo Holdings Pty Limited v The Hills Shire Council [2012] NSWLEC 1302* where the “savings provision” state:

*'If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined **as if this Plan had not commenced**.'*

At the time of the hearing of the above matter, the then in force *Baulkham Hills Local Environmental Plan 2005* provided that the use of bulky goods retail was permissible with development consent. However, the draft Hills Local Environmental Plan 2012 had been exhibited, but not yet commenced, which would have the effect of prohibiting the development.

After the Commissioner presiding over the matter reserved judgment, the Hills Shire Local Environmental Plan 2012 ("the new LEP") came into force. On this basis, the parties came back before the Court to present arguments as to the weight to be applied to the new LEP. After consideration of the wording of the relevant savings provision of the new LEP, the Commissioner found that the new LEP was not a relevant consideration pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979* ("the Act").

The savings provision in the Hills Shire Local Environmental Plan 2012 differed from that which the Court of Appeal considered in *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* (2003) 129LGERA 195, which was to the effect that development applications must be determined as if the plan *had been exhibited but not made*.

The Court in *Alamdo* distinguished *Terrace Tower*. The Court noted that the Council had specifically removed the words '*had been exhibited*' from the savings clause in this case. The Court considered that the removal of those words from the savings provision must have been intended to have some effect.

The same considerations to the wording of the savings provisions under the Housing SEPP can assist the SECPP just as Commissioner Dixon distinguished *Alamdo* from *Terrace Towers* given:

1. The name of the EIE draft consultation SEPP changed from Housing Diversity to Housing, thus the iterations of the naming convention of the future SEPP was not fixed and so too the content associated with the proposed controls for seniors housing;
2. The wording of the "savings provision" under the EIE draft consultation SEPP have been adjusted to take into account the consultation undertaken by the Department of Planning and Environment;
3. While the wording of the published Housing SEPP savings provisions for the Seniors Housing SEPP are different from the wording used in the EIE draft consultation SEPP, it was always intended by the Minister for Planning to include a "savings provision" to enable existing DAs to be determined using the provisions of the Seniors Housing SEPP, as demonstrated by the information included by the Department of Planning and Environment on their webpages at the time of the EIE consultant and consultation to amend the draft wording to the now published instrument. If this wasn't the case the information included on the Department's webpages would not have referenced the savings provisions (see above links); and
4. The words '*had been exhibited*' do not appear in the draft SEPP EIE or the published wording, despite the new Housing SEPP having a timeframe for becoming published the terms and controls in the new Housing SEPP concerning "seniors housing" were not certain.

As such, while the proposed development is consistent with the Housing SEPP, the applicant requests the SECPP grant approval to the proposed "seniors housing" as a vertical village under Clause 45 of the former Seniors Housing SEPP.

We request that Council accept this information as part of the applicant's Amended DA under Clause 55 of the *Environmental Planning and Assessment Regulation 2000*.

We trust the above information will assist Council in assessing the Amended DA favourably when undertaking its assessment report.

Should Council still have a concern regarding the Amended DA, the applicant requests Council's feedback and co-operation to understand the concern in detail prior to an assessment report being completed.

For any queries or require clarification on any matters please do not hesitate to contact the undersigned on (02) 9929 4044.

Yours sincerely,



Marian Higgins
Director
Higgins Planning Pty Ltd

APPENDIX A – SUMMARY OF DESIGN CHANGES

APPENDIX B – AMENDED ARCHITECTURAL DRAWINGS

APPENDIX C UPDATED ARCHITECTURAL 3D PERSPECTIVES

APPENDIX D AMENDED LANDSCAPE ARCHITECTURAL PACKAGE

APPENDIX E AMENDED ENGINEERING DRAWINGS

APPENDIX F URBAN DESIGN REVIEW STATEMENT

APPENDIX G AMENDED ACOUSTIC REPORT

APPENDIX H ARBORIST STATEMENT

APPENDIX I UPDATED BASIX CERTIFICATE AND SECTION J REPORT

APPENDIX J CLAUSE 4.6 VARIATION REQUEST – HEIGHT

APPENDIX K CLAUSE 4.6 VARIATION REQUEST – FSR

APPENDIX L CLAUSE 4.6 VARIATION REQUEST – LANDSCAPED AREA

APPENDIX M CLAUSE 4.6 VARIATION REQUEST – GRADIENT OF PRAM RAMPS

APPENDIX N VIBRATION MONITORING PLAN

APPENDIX O TRAFFIC ACCESS INFORMATION