

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-117 - DA/642/2020
PROPOSAL	Proposed development as amended seeks approval for demolition of existing structures including existing aged care facility, construction of a 4 storey building for the purposes of seniors housing with ancillary uses comprising 86 beds (77 rooms) and 2 independent units, rooftop terrace, basement car parking for 18 vehicles, lot consolidation, landscaping and associated works (variations to FSR and building height of the RLEP 2012)
ADDRESS	11 – 19 Frenchmans Road, Randwick Lot 10 in DP 845575 (11 – 15 Frenchmans Road) Lot 3 in DP 13779 (17 Frenchmans Road) Lot 4 I DP 13779 (19 Frenchmans Road)
APPLICANT	Higgins Planning
OWNER	Frenchmans Lodge Properties Pty Ltd
DA LODGEMENT DATE	25 November 2020
APPLICATION	Development Application
REGIONALLY SIGNIFICANT CRITERIA	SEPP – (State and Regional Development) 2011 - Schedule 7(2): General Development with cost of work greater than \$30m.
CIV	\$3,474,823.4 (excluding GST)
CLAUSE 4.6 REQUESTS	Randwick Local Environmental Plan 2012 Clause 4.3 Maximum Height Clause 4.4 Maximum FSR
KEY SEPP/LEP	Seniors Housing SEPP, Randwick Local Environmental Plan 2012.
TOTAL & SUBMISSIONS ISSUES SUBMISSIONS UNIQUE KEY IN	23 submissions, including 21 unique submissions. Key issues are as under: Exceedance of height and FSR must not be supported; View loss; Inconsistent with the desired future character; Commercial nature of the proposal is unsympathetic with the residential nature of the surrounding area. In particular the 4th level will detract from the predominately residential character of the area;

	<p>Insufficient setbacks and building separation will impacts on the amenity of adjoining residential properties;</p> <p>Privacy impacts from proposed openings, balconies and rooftop terrace;</p> <p>Traffic and parking issues;</p> <p>Lack of staff amenities on the premises;</p> <p>Light overspill;</p> <p>Impacts on structural stability of adjoining homes;</p> <p>Overshadowing.</p> <p>Fencing in relation to adjoining boundaries.</p> <p>No consultation by the proponent with the local community.</p> <p>Unclear where staff amenities and outdoor smoking areas are located.</p> <p>Asbestos removal.</p> <p>Stormwater and drainage issues. Existing drainage and flooding issues of the subject site.</p> <p>Insufficient landscaping.</p> <p>Proposed colourbond fence will not compliment the local character or protect from acoustic impacts.</p> <p>Elevations provide insufficient details on openings to properly assess the privacy impacts.</p> <p>Dilapidation reports to be prepared for adjoining properties.</p> <p>Insufficient areas provided for landscaping.</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Development Application Assessment Report; • Amended architectural plans, perspectives, streetscape analysis and shadow diagrams; • Survey Sheets x 3 lodged; • Stormwater Plans and Details x 6 sheets; • Updated Clause 4.6 to vary RLEP 2012 FSR development standard; • Clause 4.6 request to vary Clause 26 of Seniors Living SEPP; • Clause 4.6 to vary Clause 48 of Seniors Living SEPP (landscaped area); • Updated Clause 4.6 to vary RLEP 2012 height development standard; • Updated Basix Certificate;
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	2 December 2021
PLAN VERSION	15 July 2021 Version No C

PREPARED BY	Sohail Faridy, Executive Planner Development Assessment
DATE OF REPORT	18 November 2021

EXECUTIVE SUMMARY

Council is in receipt of a development application (as amended) seeking approval for demolition of existing structures including existing aged care facility, construction of a 4 storey building for the purposes of seniors housing with ancillary uses comprising 86 beds (77 rooms) and 2 independent units, rooftop terrace, basement car parking for 18 vehicles, lot consolidation, landscaping and associated works (variations to FSR and building height of the RLEP 2012).

The site is located on the northern side of Frenchmans Road with a secondary frontage on McLennan Avenue. The site comprises of three separate lots and collectively it is known as 11 – 19 Frenchmans Road with a total area of 2709.7m². The site has vehicular access from Both Frenchmans Road and McLennan Avenue.

The site is located within R3 Medium Density Residential zone and the proposed development is permitted with consent.

The principal planning controls relevant to the proposal include State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the Seniors Living SEPP); the Randwick Local Environmental Plan 2012 ('RLEP 2012'), and the Randwick Comprehensive Development Control Plan 2013 ('RDCP'). The proposal is inconsistent with various provisions of the planning controls including:

- The proposal relies on bonus FSR pursuant to Clause 45 of Seniors Living SEPP and as such a Site Compatibility Certificate (SCC) is required pursuant to Clause 24(2)(a) of the Seniors Living SEPP. The SCC is not submitted with the development application. The applicant relies on Clause 4.6 of RLEP 2012 to support the FSR variation, however there are insufficient environmental planning grounds to support the FSR variation.
- It is council's understanding that SECPP on 10 November 2021 resolved that it has no power to issue SCC as the proposed development is permissible with consent under the zoning provisions applying to the land.
- Clause 33 of Seniors Living SEPP requires proposal for seniors housing to be designed in such a way to reduce the impacts on adjoining development. This requirement is supplemented by Clause 31 of Seniors Living SEPP that requires consideration, among other matters, the provisions of *Seniors Living Policy: Urban Design Guideline for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004. The proposal is considered inconsistent with the provisions of Clauses 31 and 33 of the Seniors Living SEPP in view of unreasonable impacts on adjoining development resulting from excessive height, FSR and inadequate setbacks/building separation.
- Pursuant to Clause 45(6) of the Seniors Living SEPP a minimum 10% of the dwellings within the proposed development need to be offered as 'affordable places'. The proposal includes 2 'independent living units' (ILU) and the applicant is offering one of those towards affordable places. This is considered an incorrect interpretation of

Clause 45(6). By way of reference the applicant is seeking a bonus GFA measuring approximately 1020m² and offering approximately 49m² as 'affordable place'.

- Pursuant to Clause 48 of the Seniors Living SEPP a minimum landscaped area of 25m² per residential care facility bed is required. This will require a minimum of 86 x 25 = 2150m² (excluding the two ILUs) of landscaped area. The amended plans indicate a total landscaped area of 1157m² which is grossly inadequate and this shortfall is reflected on the ground floor plan which is largely occupied by building footprint, driveways, access ramps and other paved areas leaving minimum opportunities for required landscaped areas which can offer a buffer from adjoining development and outdoor recreational areas for the facility. The applicant submitted a Clause 4.6 variation request in support of this variation which is not considered supportable.
- RLEP 2012 prescribes a maximum building height of 12m for the subject site. The proposal is seeking a maximum height of 14.29m and provided a Clause 4.6 variation request to support the excessive height. The Clause 4.6 variation request is not considered supportable due to insufficient environmental planning grounds.
- Complementing the overall height standard of RLEP 2012, RDCP has an external wall height control to ensure an acceptable building envelope and interesting roof form can be achieved. The controls of the RDC requires a maximum external wall height of 10.5m for the subject site. While the proposal breaches the RLEP 2012 height standard of 12m and relies on Clause 4.6 variation request; the majority of top floor (4th level) is above the external wall height control which gives the proposed development an excessive bulk that will be inconsistent with the existing and desired future character of the area.
- The proposal is considered to be contrary to various objects of the EP&A Act (orderly and economic development of land) and is contrary to the public interest given it is inconsistent with various planning controls.
- The proposal also fails some of the matters for consideration under Section 4.15(1) of the EP&A Act in relation to potential adverse impacts to surrounding area due to bulk and scale.

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). A referral to Transport for NSW pursuant to *State Environmental Planning Policy (Infrastructure) 2007* ('Infrastructure SEPP') were sent and raised no objections.

The application was placed on public exhibition from 30 November 2020 to 21 December 2020, with twenty three (23) submissions being received. These submissions which raised issues relating to building height, streetscape, site context, views, overdevelopment, potential acoustic, privacy, overshadowing, traffic congestion and geotechnical issues. These issues are considered further in this report.

The application is referred to the Sydney East Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Clause 2 of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal is development for *general development* with a CIV over \$30 million.

A briefing was held with the Panel on 8 July 2021 where key issues were discussed, including SCC, the exceedance of the LEP development standards of height and FSR, and provisions of Seniors Living SEPP.

The key issues associated with the proposal included:

1. The proposal is inconsistent with the provisions of Clauses 31 and 33 of Seniors Living SEPP, in that the proposed bulk will adversely impact on the amenity of adjoining residents and will be inconsistent with the desired future character of the area.
2. The proposal is inconsistent with the provisions of Clause 34 as it will have adverse acoustic and visual privacy impacts on the adjoining properties.
3. The proposal is inconsistent with the provisions of Clause 45(6) as it fails to offer 10% of accommodation as 'affordable places'.
4. The proposal is inconsistent with the provisions of Clause 48 of Seniors Living SEPP as inadequate landscaped area is provided.
5. In the absence of SCC, the proposal is not entitled to any bonus FSR. The excessive FSR is inconsistent with the FSR standard of RLEP 2012 and not considered supportable.
6. The proposal exceeds the maximum height standard of RLEP 2012 and the breach is not considered supportable.
7. The proposal does not comply with RDCP controls for maximum external wall height of 10.5. The resulting built form will impact on the desired future character of the area.
8. The proposal does not comply with RDCP controls for minimum side setback of 4.0m and the development will offer inadequate visual relief.
9. The proposed built form does not achieve a sympathetic response to the existing and desired future context and built character. Side setbacks are insufficient and the height exceedance together with excessive external wall height presents a poor interface with adjoining properties, resulting in adverse impacts to surrounding properties and the streetscape.
10. The bulk and scale of the proposal is incompatible with the existing prevailing character and desired future character of the surrounding residential area.

Following consideration of the matters under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, in particular Seniors Living SEPP, RLEP 2012 and the RDCP, the proposal cannot be supported.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA/642/2020 is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The site is located on the northern side of Frenchmans Road with a secondary frontage on McLennan Avenue. The existing nursing home is located on 11 – 15 Frenchmans Road and legally described as Lot 10 in DP 845575. It has a frontage of 50.23m to Frenchmans Road and a secondary frontage of 21.09m to McLennan Avenue. It has a total area of 2053m². No 17 Frenchmans Road is known as Lot 3 in DP 13779 and it is located to the west of existing nursing home. No. 19 Frenchmans Road is known as Lot 4 in DP 13779 and it is located

further west of the existing nursing home. The amalgamated site will have a frontage of 76.21m to Frenchmans Road, a secondary frontage of 21.09m to McLennan Avenue and a total area of 2,709.7m².

Currently existing on the site is the three storey main nursing home and detached cottages used for administrative purposes.

The site shares its boundaries with multiple sites fronting Frenchmans Road, McLennan Avenue and Astolat Street. The sites adjoining the subject site accommodate single and two storey dwelling houses. The site offers perimeter landscaping including some trees. The existing eucalyptus tree along the Frenchmans Road frontage is of significance and proposed to be retained.



Figure 1: Aerial and cadastral view of subject site showing location of existing nursing home and adjoining sites to be amalgamated for the proposed new nursing home.



Photo 1: Existing nursing home as seen from Frenchmans Road



Photo 2: View of subject site as seen from McLennan Avenue

1.2 The Locality

The improvements in the vicinity of the subject site are predominately single and two storey dwelling houses. A 4 storey residential flat building is located at 1 – 5 Frenchmans Road, west of the subject site and a 3 storey residential flat building at 25 – 27 Frenchmans Road, east of the subject site.

The adjoining properties to the north east of the subject site at Nos. 23 and 25 McLennan Avenue, accommodate items of local heritage significance noted as Items I408 and I409 respectively under RLEP 2012. Further north across McLennan Ave another item of local heritage significance I407 is located at No. 12 McLennan Ave Randwick. All these items are noted in Schedule 5 of RLEP 2012 as ‘Californian Bungalow’ and are shown in Figure 3 below.

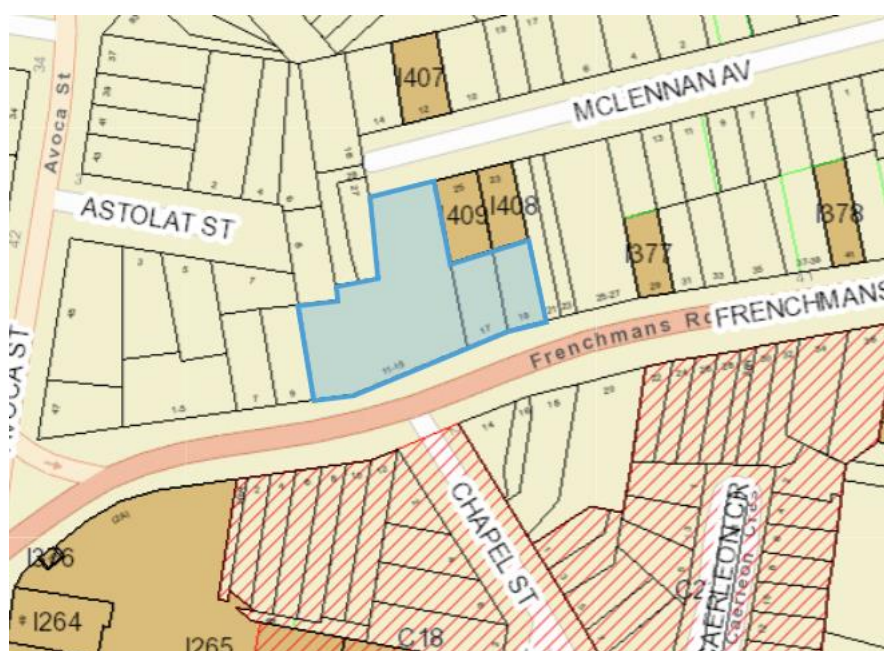


Figure 2 – Heritage Items and Conservation Areas in the vicinity of the site.

The site is also located within close proximity to the northern portion of the St Marks Heritage Conservation Area (C18) and Caerleon Crescent Conservation Area (C20) listed as C18 and C20 respectively under Schedule 5 of RLEP 2012 and located immediately opposite the site on the southern side of Frenchmans Road.

The area in general is predominately residential in character with an eclectic mix of single and two storey dwelling houses and residential flat buildings ranging 2 to 3 storeys in height. Further east along Frenchmans Road, commercial and retail services are available within neighbourhood business centre.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The amended proposal seeks approval for demolition of existing structures including existing aged care facility, construction of a 4 storey building for the purposes of seniors housing with ancillary uses comprising 86 beds (77 rooms) and 2 independent units, rooftop terrace, basement car parking for 18 vehicles, lot consolidation, landscaping and associated works (variations to FSR and building height standards of the RLEP 2012).

A summarised version of applicant's description of the proposed development is as under:

- Demolition of existing structures, site preparation and bulk earthworks.
- Construction of 1 electrical substation.
- Construction and operation of a building for the purposes of seniors housing, under Clause 45 of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004.
- Basement level parking for a total of 18 car spaces inclusive of disabled parking, with access from Frenchmans Road, ambulance bay, loading dock and several ancillary services.
- Ground floor level 16 x 1 bed residential care facility rooms with en-suites (no cooking in any room). An in-house café with indoor and outdoor seating for residents and their visitors.
- First floor level 24 x 1 bed and 4 x 2 bed residential care facility rooms with en-suites (no cooking in any room).
- Second floor level 21 x 1 bed and 3 x 2 bed residential care facility rooms with en-suites (no cooking in any room).
- Third level 11 x 1 bed residential care facility rooms with en-suites (no cooking in any room). Two independent living units to accommodate 2 x 1-bedroom units with individual private open space.
- Roof terrace open space with pergola and planter boxes for landscaping, accessible to all residents of the seniors housing building.

Table 1: Development Data

Control	Proposal
Site area	2,709.7m ²
GFA	2,438.7m ² based on RLEP 2012 3,458.4m ² based Senior's Living SEPP
FSR	0.9:1 based on RLEP 2012 1.4:1 based on Senior's Living SEPP 1.276:1 proposed by the applicant
Clause 4.6 Requests	Clause 4.6 to vary RLEP 2012 height standard of 12m Clause 4.6 to vary RLEP 2012 FSR standard of 0.9:1
Accommodation details	77 rooms offering 86 beds + 2 x single beds ILUs Total 79 room offering 88 beds.
Max Height	14.2m to lift overrun Permitted 12.0m under RLEP 2012
Landscaped area	1157m ² proposed 2150m ² required under Senior's Living SEPP 1355m ² under RDCP
Car Parking spaces	19 car parking + 1 ambulance bay = 20 spaces
Setbacks	No specific requirements under Senior's Living SEPP. Applying residential flat building or multi dwelling

	housing controls of RDCP; the proposal is largely non compliant.
--	--

2.2 Background

A pre-lodgement meeting was held with Council Officers on 10 July 2020 (PL/12/2020) which proposed demolition of existing buildings, lot consolidation, and construction of a 3 storey seniors housing development with 2 basement levels and rooftop terrace. Issues raised included:

- Excessive FSR and height;
- Bulk and scale, and consistency with the surrounding built character;
- Amenity impacts for the adjoining residents;
- Heritage impacts, in particular separation from adjoining heritage items along McLennan Avenue and overall bulk and scale;
- Concerns from the Design Excellence Panel regarding bulk and scale to the north and south elevations, setbacks and retention of a large eucalyptus tree within the front setback.

The proposal in its current form is not considered to have adequately addressed the above issues.

The development application was lodged on **25 November 2020**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
25 November 2020	DA lodged
30 November 2020	Exhibition of the application
26 November 2020	DA referred to external agencies
26 April 2021	Request for Information from Council to applicant
8 July 2021	Panel briefing
1 July 2021	Amended plans lodged dated 1 July 2021 accepted by Council under CI 55 of the Regulation on 2 July 2021.

Council sent the Design Excellence Review Panel's comments on 19 March 2021. A formal request for information was sent on 26 April 2021, however this was without engineering comments. A final email was sent to the applicant on 21 May 2021 confirming no engineering issues.

The main difference between the original and amended proposal are listed in the following table:

Table 2A – Comparison of Original and Amended Proposal

Item	Original Proposal	Amended Proposal	Comments
GFA	3,785m ²	3,458m ²	
FSR	1.4:1	1.276:1	
Height	14.31m	14.2m	Due to survey error
Total number of rooms	86 beds/78 rooms	86 beds/77 rooms	

2.3 Site History

The information submitted with the development application indicates the subject site was used as a private hospital and some 50 years ago the hospital building was approved to be use as a 'nursing home' known as 'Summitcare' Randwick. Several approvals were granted for alterations and additions to the nursing home.

DA/182/2007

A development consent was granted for upgrade existing residential care facility & reduce number of beds from 98 to 81 on 7 May 2007. This consent was not acted upon and it has since lapsed.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is not considered to be Integrated Development (s4.46) or Designated Development (s4.10). It required a referral and concurrence from Transport for NSW (s4.13).

3.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *Roads Act 1993;*
- *State Environmental Planning Policy No. 55 – Remediation of Land;*

- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; and*
- *Randwick Local Environmental Plan 2012.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable State Environmental Planning Policies
(Preconditions in **bold**)

EPI	Matters for Consideration	Comply (Y/N)
Roads Act 1993	<ul style="list-style-type: none"> • Section 138 of the Roads Act for works on Frenchmans Road frontage. Satisfactory subject to conditions. 	Y
SRD SEPP	<ul style="list-style-type: none"> • Clause 20(1) declares the proposal as regionally significant development pursuant to Clause 2 of Schedule 7. 	Y
SEPP 55	<ul style="list-style-type: none"> • Clause 7 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Y
Infrastructure SEPP	<ul style="list-style-type: none"> • Clause 45 (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. • Clause 101 Development with frontage to classified road. 	Y
Seniors Living SEPP	Clauses 31 and 33 – unreasonable impacts on the adjoining properties; Clause 45 – no bonus FSR in the absence of SCC; Clause 48 – insufficient landscape area;	N N N
RLEP 2012	Clause 4.3 – Maximum height Clause 4.4 – Maximum FSR	N N

Roads Act 1993

The proposal involves works along Frenchmans Road frontage which is a classified road. Transport for NSW has granted concurrence under Section 138 of the Roads Act subject to conditions.

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 ('SRD SEPP') applies to the proposal as it identifies if development is regionally significant development. In this case, pursuant to Clause 20(1) of SRD SEPP, the proposal is a regionally significant development as it satisfies the criteria in Clause 2 of Schedule 7 of the SRD SEPP as the proposal is development with a CIV over \$30 million. Accordingly, the Sydney East Central Assessment Report: Four Storey Seniors Housing

Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of *State Environmental Planning Policy 55 - Remediation of Land* ('SEPP 55') have been considered in the assessment of the development application. Clause 7(1) of SEPP 55 requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Preliminary Site Investigation ('PSI') has been prepared for the site.

Following a review of PSI, Council raised concerns. The applicant has in response submitted a detailed Remedial Action Plan (RAP) that has been reviewed by Council's Environmental Health section and found acceptable subject to conditions.

The proposal is considered to be consistent with SEPP 55, subject to imposition of relevant conditions of consent in relation to remediation works during construction if an approval is forthcoming.

State Environmental Planning Policy (Infrastructure) 2007

the proposed development requires an assessment under Clause 45 and a concurrence under Clause 101 of the Infrastructure SEPP. Compliance with Clause 45 can be achieved through a condition if a development consent is forthcoming. Transport for NSW has granted their concurrence under Clause 101 subject to conditions. The proposal is considered to comply with the provisions of Infrastructure SEPP.

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

The proposed development is lodged pursuant to Clause 45 of the Seniors Living SEPP. The proposal is found to be inconsistent with several provisions of the Seniors Living SEPP as discussed in the following section:

Site Compatibility Certificate (SCC)

The proposal is seeking bonus FSR pursuant to Clause 45 and therefore a SCC is required pursuant to Clause 24.

It is Council's understanding that SECPP on 10 November 2021 resolved that it has no power to issue SCC as the proposed development is permissible with consent under the zoning provisions applying to the land. As such no bonus FSR is applicable to the proposed development.

Seniors Living Policy: Urban Design Guideline for Infill Development

Clause 31 of Seniors Living SEPP requires consideration, among other matters, the provisions of *Seniors Living Policy: Urban Design Guideline for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004. In view of excessive height, inadequate setbacks and excessive FSR; the proposed development is not considered to be consistent with the provisions of Seniors Living Policy: Urban Design Guideline for Infill Development.

Design of Residential Development (Clause 32)

Clause 32 requires consideration of design principles of Division 2 of the Seniors Living SEPP. The proposal is considered grossly inconsistent with the following two design principles:

Neighbourhood Amenity and Streetscape (Clause 33)

This clause inter alia requires consideration of the following:

The proposed development should-

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and*
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and*
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by-*
 - (i) providing building setbacks to reduce bulk and overshadowing, and*
 - (ii) using building form and siting that relates to the site's land form, and*
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and*

The site is zoned R3 Medium Density Residential where maximum built environment envisioned by RLEP 2012 is 3 storey residential flat buildings with 0.9:1 FSR and 12m maximum height. Further RDCP requires a maximum external wall height of 10.5m. The proposal is grossly inconsistent with these building envelope standards.

It is acknowledged that amalgamated size of the subject land is large compared to standard lots sizes in the area and the proposed development by virtue of its typology is not expected to be comparable with the general residential character of the area. However the proposed development, due to excessive bulk, inadequate setbacks and lack of landscaping, is considered inconsistent and unsympathetic with the existing and desired future character of the area.

Visual and Acoustic Privacy (Clause 34)

The proposed development is considered to impact on the acoustic and visual privacy of adjoining residential properties.

Vertical Village (Clause 45)

As mentioned the proposed development would need SCC to gain the bonus FSR. The SCC is not submitted with the development application and the proposed development is not considered to benefit from bonus FSR.

Clause 45(6) requires that 10% of the 'dwellings' in the proposed development to be 'affordable places'. The applicant is only offering 1 of the two proposed independent living units (ILU) as affordable dwellings. The issue was raised with the applicant who provided a legal argument that the proposal seeks approval for 2 dwellings and 77 rooms therefore the 10% of affordable dwellings only apply to the 2 ILUs and not on the rest of the development.

Council interprets this clause as applicable to the entire development and that it must offer 10% of those as affordable places. If this is not relevant then bonus FSR should only be applicable to the ILUs that has a total area of 135.46m² or 3.9% of GFA. It is also noted that the proposal seeks a bonus GFA of 1020m² and offering 49m² towards affordable places. As discussed, the proposal is not considered to benefit from bonus FSR.

In view of the above assessment, the proposal is not considered consistent with the Seniors Living SEPP.

Randwick Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Randwick Local Environmental Plan 2012* ('the RLEP 2012'). The aims of the RLEP 2012 include:

- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) *to foster a liveable city that is accessible, safe and healthy with quality public spaces and attractive neighbourhoods and centres,*
- (b) *to support a diverse local economy and business and employment opportunities for the community,*
- (c) *to support efficient use of land, vibrant centres, integration of land use and transport, and an appropriate mix of uses,*
- (d) *to achieve a high standard of design in the private and public domain that enhances the quality of life of the community,*
- (e) *to promote sustainable transport, public transport use, walking and cycling,*
- (f) *to facilitate sustainable population and housing growth,*
- (g) *to encourage the provision of housing mix and tenure choice, including affordable and adaptable housing, that meets the needs of people of different ages and abilities in Randwick,*
- (h) *to promote the importance of ecological sustainability in the planning and development process,*
- (i) *to protect, enhance and promote the environmental qualities of Randwick,*
- (j) *to ensure the conservation of the environmental heritage, aesthetic and coastal character of Randwick,*
- (k) *to acknowledge and recognise the connection of Aboriginal people to the area and to protect, promote and facilitate the Aboriginal culture and heritage of Randwick,*
- (l) *to promote an equitable and inclusive social environment,*
- (m) *to promote opportunities for social, cultural and community activities.*

The proposal is inconsistent with these aims as the proposal:

- Does not offer a high quality design that will positively impact on the quality of life for the local community;
- the proposal is seeking excessive FSR which is not considered supportable;
- The proposal does not offer any opportunity for social inclusiveness; and

- Any opportunities for social, cultural and community activities are not identified.

Zoning and Permissibility (Part 2)

The site is located within the R3 Medium Density Residential Zone pursuant to Clause 2.2 of the LEP.

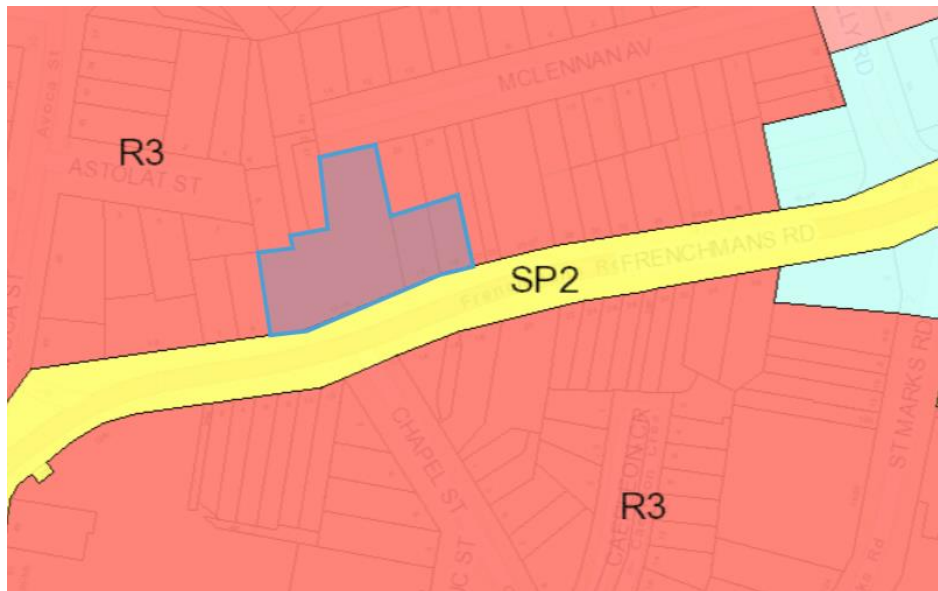


Figure 3: Zoning map of the subject site and surrounds

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of 'Seniors Living; which is a permissible use with consent in the Land Use Table in Clause 2.3. The proposed development is also permissible under the provisions of Seniors Living SEPP.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*
- *To protect the amenity of residents.*
- *To encourage housing affordability.*
- *To enable small-scale business uses in existing commercial buildings.*

As discussed throughout this report, the proposal is inconsistent with above objectives 4, 5 and 6.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below. The proposal does not comply with the development standards in Part 4 of RLEP 2012, being

Clauses 4.3, 4.4 and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum height and FSR development standards. The applicant has also submitted Clause 4.6 statements to vary Clauses 26 and 48 of the Seniors Living SEPP relating to the access gradient and minimum landscaped area.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	12.0m	14.2m (as amended)	No
FSR (CI 4.4(2))	0.9:1 (2438.73m ²)	1.276:1 (3458m ²)	No
Heritage (CI 5.10)	Consideration of adjoining heritage items and nearby conservation area.	HIS provided with the application.	Yes
Design Excellence (CI 6.11)	Referred to Council's Design Excellence Panel (DEP) for comments.	The applicant responded to DEP comments. However, the proposal is not considered compliant.	No

The proposal is considered to be generally inconsistent with the LEP.

Clause 4.6 Request to Vary Clause 4.3 Height Standard

Pursuant to Clause 4.3 of RLEP 2012, a maximum height of 12.0m is applicable to the subject site. The proposal as amended, seeks a height of 14.2m to the lift overrun. The following elevations shows the height exceedance through the red dotted line.

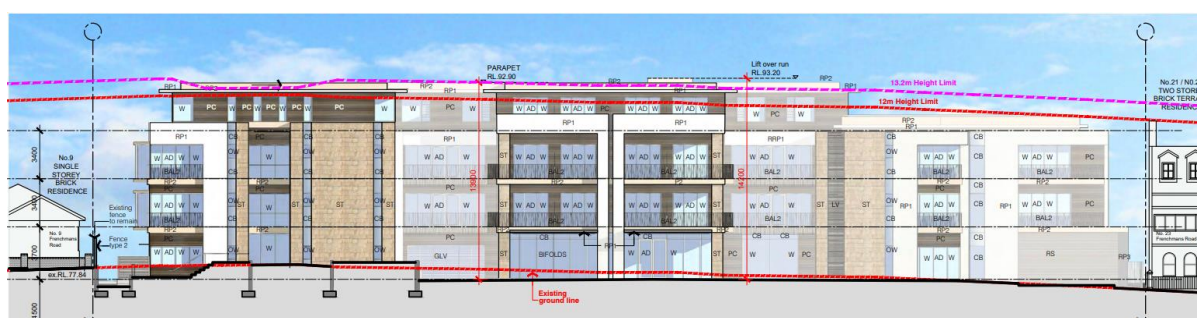


Figure 4 - South Elevation (Frenchmans Road frontage) Dwg No. DA13, Rev C dated 15 July 2021.

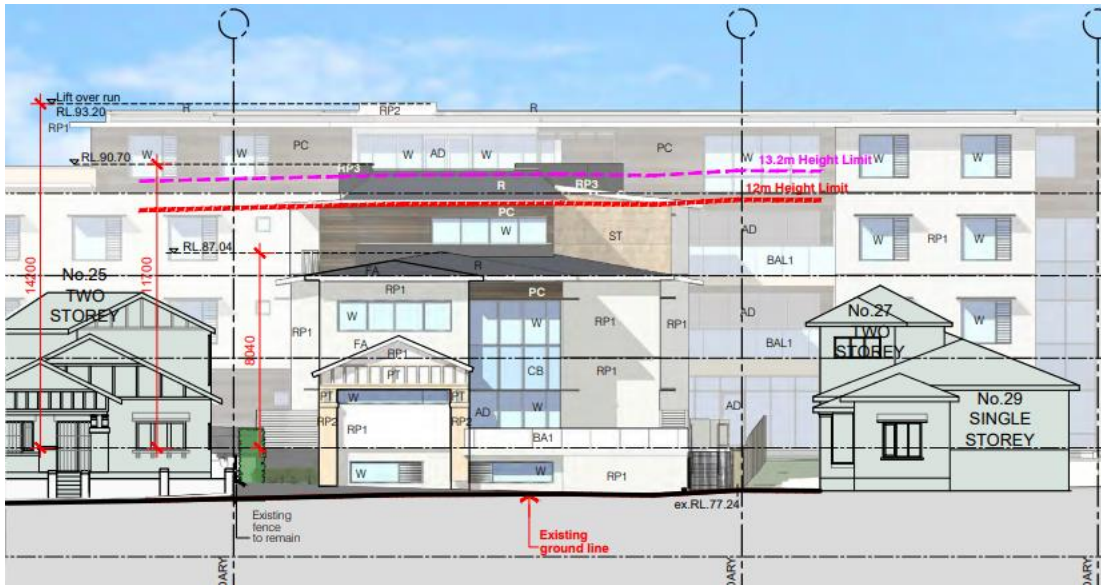


Figure 5 - North Elevation (McLennan Avenue frontage) Dwg No. DA13, Rev C dated 15 July 2021.

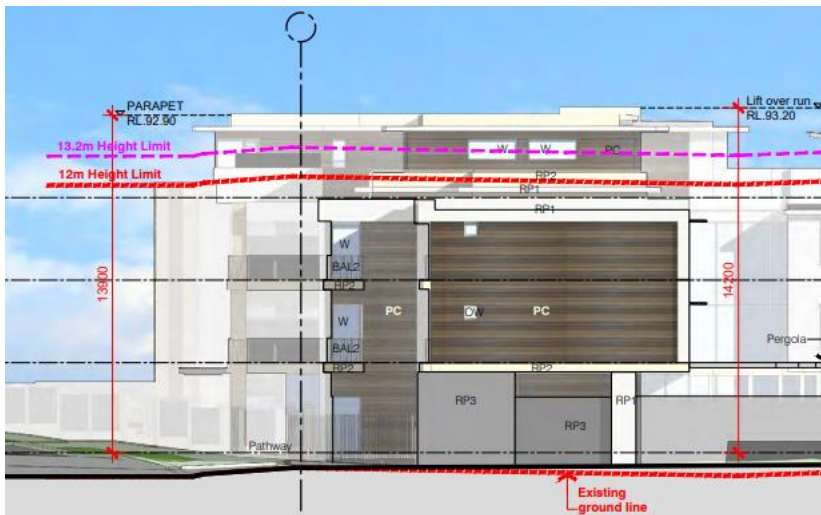


Figure 6 - East Elevation Dwg No. DA13, Rev C dated 15 July 2021.

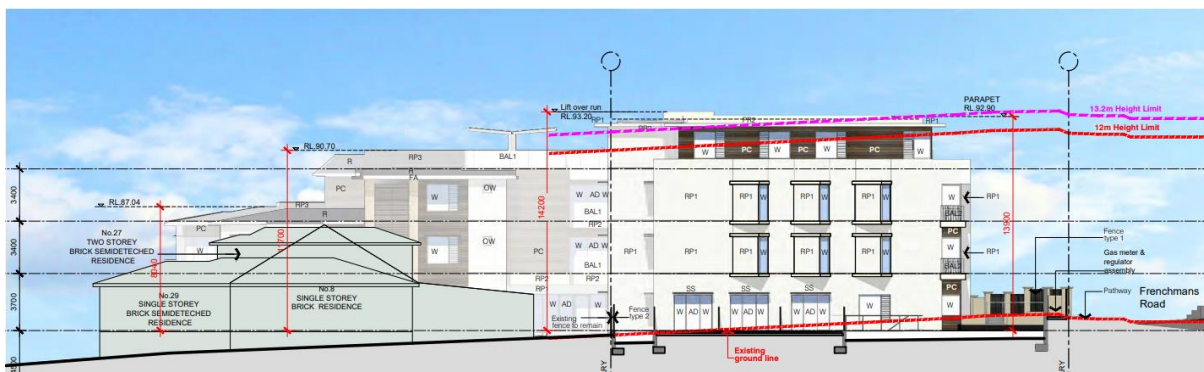


Figure 7 - West Elevation Dwg No. DA13, Rev C dated 15 July 2021.

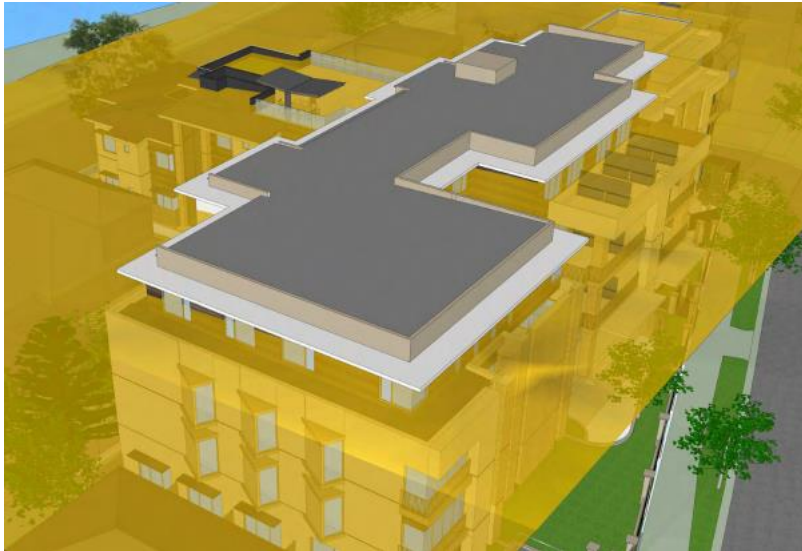


Figure 8 - The yellow layer shows the 12m height limit Dwg DA18f, Rev B, dated 1 June 2021.

Preconditions to be satisfied

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request for height and FSR standards.

- (i) *Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

The applicant inter alia provided the following justification in response to the above clause:

A development that strictly complies with the 12m height standard is unreasonable or unnecessary in the circumstance for the following reasons:

- *The non-compliance with the height limit does not result in a building that will be out of scale with existing built forms and future development.*
- *Removing the non-compliance would not significantly alter the perceived height of the building as viewed from the public domain or from other surrounding development.*
- *There is no discernible difference in the environmental impacts between a building that strictly complies with the height control in terms of:*

– Visual and acoustic privacy impacts

The non-compliant levels of the building do not generate any privacy impacts over or above those that exist with a fully compliant building height. This is the same for acoustic privacy;

– Visual impacts

There is a nominal difference in visual impacts between the proposed building and a complying building, when viewed from Frenchmans Road as demonstrated in the perspective views; and

- *Strict compliance with the development standard is unnecessary as the Amended DA will still achieve the environmental and planning objectives of Clause 4.3, as discussed above.*
- *Strict compliance is unreasonable as no environmental or planning purpose would be served by enforcing the development standard and would not bring about a good planning outcome, on the following grounds:*
 - I. *An assessment of the proposal demonstrates it is consistent with the desired future character of the R3 zone;*
 - II. *The design is considered to be compatible with the streetscape along Frenchmans Road and McLennan Avenue;*
 - III. *The design will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscape or the environment given the areas of non-compliance is in a portion of the site which does not dominate the streetscape; and*
 - IV. *The scale of the desired future surrounding development has been considered carefully and the design is considered to be compatible.*

Planner's Comments

The above arguments are not considered well founded as the proposed height breach together with excessive FSR, non complying external wall height and inadequate setbacks would result in an excessively bulky built form which is not consistent with the desired future character of

the area. The proposal is also inconsistent with the existing built character of the area with the exception of a 4 storey building at 1 – 5 Frenchmans Road that was built at a time when current building envelope controls were non existent.

- (ii) *Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant inter alia provided the following environmental planning grounds to justify the height breach:

The exceedance of the development standard is a very minor part of the proposed built form, as the design seeks the inclusion of affordable housing ILU and lift access to the roof terrace allowing accessibility throughout the seniors housing development and land. The minor non-compliance with the development standard is far outweighed by the design achieving the aims in Clause 4.3 in promoting the principles outlined in the Greater Sydney Region Plan – A Metropolis of Three Cities. For example, the development promotes a use in an urban area which supports:

- a mix of uses with a focus on the nearby Randwick health and education precinct; and*
- Increasing jobs and better utilising land already zoned R3 Medium Density residential which envisages higher density residential development.*

Planner's Comments

The proposed breach is not minor as stated by the applicant. It is approximately 18.3% exceedance. The other argument for the height breach relating to the provision of affordable ILU and access to the roof top terraces are not considered well founded either. The proposal is only offering 1 x ILU measuring 49m² of floor area and the need for roof top terraces simply arises due to excessive footprint of the building that leaves limited option for such uses to be provided at ground level.

- (iii) *Clause 4.6(4)(a)(ii) that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

As discussed earlier in the report, the proposed development is inconsistent with the relevant objectives of R3 zoning as it fails to recognise the existing and desired future character of the area and it will have significant impacts on the amenity of adjoining residents due to its bulky built form. The proposal is not considered in the public interest.

- (iv) *Clause 4.6(4)(b) the concurrence of the Planning Secretary has been obtained*

At the time of writing this report, Council maintains concurrence of the Planning Secretary. The Panel will have to validity of this concurrence.

Planner's Conclusion

The proposed height variation is not considered supportable and the submitted Clause 4.6 is not considered well founded. It is noted that the applicant used the same Clause 4.6 arguments to justify a breach of Clause 48(a) requiring maximum 2 storeys and 8 meters. The SEPP clauses are not considered relevant as the proposal is permitted under RLEP 2012 that allows for 12m height standards.

Clause 4.6 Request to Vary Clause 4.4 FSR Standard

Pursuant to Clause 4.4 a maximum FSR of 0.9:1 applies to the subject site. The proposal is seeking a FSR of 1.276:1. It should be noted that applicant concurrently relied on bonus FSR pursuant to Clause 45 of Senior's Living SEPP and accordingly lodged a SCC application. As of 10 November 2021, the SECPP declined to issue SCC and therefore the proposed development does not benefit from bonus FSR.

Preconditions to be satisfied

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Clause 4.6 request for height and FSR standards.

- (i) *Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

The applicant inter alia provided the following justification in response to the above clause:

A development that strictly complies with the FSR standard is unreasonable or unnecessary in the circumstance for the following reasons:

- *The non-compliance with the FSR does not result in a building that will be out of scale with surrounding future development. Removing the non-compliance would not significantly alter the perceived FSR of the building as viewed from the public domain or from other surrounding development.*
- *The FSR of the proposed development is consistent with surrounding desired future character in the R3 zone;*
- *The proposed development is considered to be compatible with the streetscape along Kurrajong Road and from Randwick Close {SIC these appears to be incorrect references};*
- *The proposed development will provide a direct public benefit in the provision of 20% concessional places for the RCF residents and 1 affordable ILU as part of the "Clause 45 vertical village" and improved public domain access connections;*

- *The proposed development will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscape, or the environment given the area of non-compliance is in a portion of the site which does not dominate the streetscape; and*
- *The scale of the desired future surrounding development has been considered carefully and the proposed development is considered to be compatible.*
- *There is no discernible difference in the environmental impacts between a seniors housing development that strictly complies with the RLEP FSR control in terms of:*

– Visual and acoustic privacy impacts

The non-compliant FSR does not generate any privacy impacts over or above those that exist with a fully compliant FSR. This is the same for acoustic privacy;

– Visual impacts

There is a nominal difference in visual impacts between the proposed building and a complying building. When viewed from Frenchmans Road and McLennan Avenue as demonstrated in the elevation drawing in Appendices C & D of the Addendum SEE; and

- *Strict compliance with the development standard is unnecessary as the Amended DA will still achieve the environmental and planning objectives of Clause 4.4, as discussed above.*
- *Strict compliance is unreasonable as no environmental or planning purpose would be served by enforcing the development standard and would not bring about a good planning outcome, on the following grounds:*
 - *An assessment of the proposal demonstrates it is consistent with the desired future character of the R3 zone;*
 - *The design is considered to be compatible with the streetscape along Frenchmans Road and McLennan Avenue;*
 - *The design will not create any unreasonable overshadowing, result in loss of privacy or create an adverse visual impact upon the streetscape, or the environment given the areas of non-compliance is in a portion of the site which does not dominate the streetscape; and*
 - *The scale of the desired future surrounding development has been considered carefully and the design is considered to be compatible.*

Planner's Comments

The above arguments are not considered well founded as the proposal is seeking an additional FSR of 0.376:1 or an additional GFA of approximately 1020m². This variation is approximately 42% above the maximum FSR standards. The applicants argument in support of this variation circle around accessibility to the premises, parameter landscaping and provision of 1 x ILU are

not considered valid planning arguments to justify such large breach. The proposal is grossly inconsistent with the desired future character of the area.

- (ii) *Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant inter alia provided the following environmental planning grounds to justify the height breach:

The exceedance of the development standard is minor as the design seeks the inclusion of the seniors housing development within its direct public benefits on the land. The minor noncompliance with the development standard is far outweighed by the design achieving the aims in Clause 4.4 in promoting the principles outlined in the Greater Sydney Region Plan – A Metropolis of Three Cities. For example, the development promotes a use in an urban area which supports:

- a mix of uses with a focus on the nearby Randwick health and education precinct; and*
- Increasing jobs and better utilising land already zoned R3 High Density residential which envisages higher density residential development.*

Planner's Comments

The proposed breach is not minor as stated by the applicant. The above arguments are not considered valid environmental planning grounds to justify such large breach.

- (iii) *Clause 4.6(4)(a)(ii) that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

As discussed earlier in the report, the proposed development is inconsistent with the relevant objectives of R3 zoning as it fails to recognise the existing and desired future character of the area and it will have significant impacts on the amenity of adjoining residents due to its bulky built form. The proposal is not considered in the public interest.

- (iv) *Clause 4.6(4)(b) the concurrence of the Planning Secretary has been obtained*

At the time of writing this report, Council maintains concurrence of the Planning Secretary. The Panel will have to confirm validity of this concurrence.

Planner's Conclusion

The proposed FSR variation is not considered supportable and the submitted Clause 4.6 is not considered well founded.

Other Clause 4.6 variations of Clauses 26, 33 and 48 of Seniors Living SEPP.

Clause 26 of Seniors Living SEPP relates to gradient of the ramped access. This is considered well founded and supportable.

Clause 33 of the Senior Living SEPP calls for compliance with the provisions of Seniors Living Policy: Urban Design Guideline for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004 regarding maximum 2 storeys and 8m height limit. This is not considered relevant as the proposed development is permissible under the zoning provisions of RLEP 2012 and a maximum height of 12m is permitted.

Clause 48 of the Seniors Living SEPP relates to minimum landscaped area. This objection is not considered well founded for the reasons outlined within the body of this report.

A detailed review of these 4.6 variations to the Seniors Living SEPP are not considered necessary as the proposal is expected to be amended due to unavailability of bonus FSR.

3.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act. However none of these are considered directly relevant to the proposed development in its current form.

3.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Randwick Comprehensive Development Control Plan 2013* ('the RDCP')

This DCP provides guidance for development applications (DAs) to supplement the provisions of the Randwick Comprehensive Local Environmental Plan (RLEP). Whilst RDCP does not have specific controls applicable to Seniors Living, general controls as applicable to multi dwelling housing development are applied as a guide to assess the suitability of the proposed development. The proposal is generally considered inconsistent with the main controls as discussed below:

Landscaped Open Space

Section 2.2.1 of Part C2 of the RDCP provides relevant controls for landscaped area requirements. Control 2.2.1 (ii) requires a minimum 50% of the site area as landscaped area with minimum width of 2m.

The proposal with a site area of 2709.7m² would require a minimum landscaped area of 1355m². The proposal offers a maximum landscaped area (including all dimensions) measuring 1157.2m, which is non compliant and equates to 43% of the site area.

Side Setback

Control 3.4.2 (i) requires a minimum side setback of 4m for sites with a frontage in excess of 20m. The subject site has a frontage in excess of 20m on both street frontages. The front section of the building complies with the minimum side setback controls. The rear section that has an interface with properties fronting on McLennan Avenue, including a heritage item at No. 25 McLennan Avenue; offers a side setback ranging between 2.5m and 3.6m which is not considered acceptable.

These inadequate setbacks are considered to impact on the amenity of adjoining properties due to visual dominance and lack of buffer with adjoining properties. By way of reference a residential flat building of this size will require a minimum building separation of 12m from

The red hatched area shows the extent of building which is beyond the 10.5m external wall height control. As can be seen, mostly the entire top floor is above the external wall height control. This together with the height breach, gives an excessively large and unacceptable building bulk. The proposed variation to the external wall height control is not considered supportable.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *S7.11 Development Contributions Plan (Randwick Section 94A Development Contributions Plan 2015)*

This Contributions Plan has been considered but a contribution levy is not relevant as the proposal is recommended for refusal.

3.4 Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

3.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. The relevant provisions can be addressed through conditions of consent if an approval is forthcoming.

Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The proposal relates to a site which already accommodates an existing aged care facility and considering the age of the facility, it is in need of upgrading or rebuilding. The subject site is considered suitable for this development in view of the connection of the proposed used with the local area and availability of services and utilities.

It is however the scale of the proposed development that is excessive and breaches all major building envelope controls resulting in a built form that will be inconsistent with the existing and desired future character of the area. The excessive bulk and inadequate side setbacks will impact on the acoustic and visual privacy of adjoining properties.

Accordingly, it is considered that the proposal will result in significant adverse impacts in the locality as outlined above.

3.6 Section 4.15(1)(c) - Suitability of the site

In view of significant breaches as discussed in this report, the proposed development in its current form is not considered suitable for the subject site.

3.7 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4 of this report.

3.8 Section 4.15(1)(e) - Public interest

The proposal due to inconsistency with the building envelope controls, likely impacts on the amenity of adjoining residents, inconsistency with the desired future character of the area and potential to set an undesirable precedent is not considered in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to transport for NSW for comment as required by the EP&A Act and outlined below in Table 5.

Table 5: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	The proposal is likely to significantly affect threatened species and accordingly, the proposal has provided a biodiversity development assessment report. This report concluded.....	N/A
Rail authority for the rail corridor	CI 86(3) - <i>State Environmental Planning Policy (Infrastructure) 2007</i>	The proposal involves the excavation of ground to a depth of at least 2m below ground level (existing) on land within, below or above a rail corridor.	N/A
Transport for NSW	Section 138 of the Roads Act	Concurrence granted subject to conditions.	Y
Referral/Consultation Agencies			
RFS	S4.14 – EP&A Act Development on bushfire prone land	N/A	N/A
Electricity supply authority	CI 45 – Infrastructure SEPP Development near electrical infrastructure	Generally addressed through condition of consent.	N/A
Rail authority	CI 85 – Infrastructure SEPP Development land that is in or adjacent to a rail corridor.	N/A	N/A

Transport for NSW	CI 101 – Infrastructure SEPP Development on classified roads	Concurrence granted subject to conditions.	Y
Transport for NSW	CI 18 - SEPP 64 Advertisement within 250m of classified road any part of which is visible from the classified road and subject to CI 17.	N/A	N/A
Design Review Panel	Clause 6.11 of RLEP 2012. The proposal was reviewed to Randwick Design Excellence Panel	Comments received. The proposal is not considered consistent with the recommendations of the	N
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	N/A	N/A
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	N/A	N/A

4.2 Council Referrals (internal)

The development application has been referred to various Council officers for technical review as outlined **Table # 6**.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Y
Traffic	Council's Engineering Officer reviewed the proposal and raised no concerns subject to conditions.	Y
Building	N/A	N/A
Health	Council's Environmental Health Officer reviewed the proposal and raised no objections subject to conditions.	Y

Waste	Council's Engineering Officer reviewed the proposal and raised no concerns subject to conditions.	Y
Public Domain/ Assets	N/A	N/A
Heritage	<p>Council's Heritage Officer reviewed the submitted Heritage Impact Statement ('HIS') prepared for the applicant and concurred with the conclusion of the HIS that there would not be any adverse impacts on heritage values arising from the proposal. It was also recommended that conditions are to be imposed on any consent issued regarding the photographic archival recording, a salvage plan for retention of materials including fireplaces, architraves, skirtings, windows, doors and remnant components of significant heritage fabric are carefully removed and stored, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.</p> <p><u>Outcome:</u> Satisfactory subject to standard conditions being imposed on any consent if an approval is forthcoming.</p>	Yes, subject to conditions

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 30 November 2020 until 21 December 2020. The notification included the following:

- A sign placed on the site;
- Notification on a website;
- Notification letters sent to adjoining and adjacent properties;
- Notification on the Council's website.

The Council received a total of 23 submissions including 21 unique submissions, comprising 20 objections and 1 submission in favour of the proposal. The issues raised in these submissions are considered in **Table 7**.

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Exceedance of height and FSR must not be supported	21	This issue is discussed in the body of the report. Proposed height and FSR is not considered supportable.
View loss		While the proposed footprint of the building will block some of the existing views, none of those are considered significant to warrant retention.

		The proposed development is considered acceptable from a view loss perspective.
Inconsistent with the desired future character		This issue is discussed in the body of the report. Proposal is considered inconsistent with the desired future character of the area.
Commercial nature of the proposal is unsympathetic with the residential nature of the surrounding area. In particular the 4th level will detract from the predominately residential character of the area		The proposed development is not considered commercial in nature. It is acknowledged that overall bulk of the proposed development is inconsistent with the existing or desired future built character of the area.

Insufficient setbacks and building separation will impacts on the amenity of adjoining residential properties

This issue is discussed in the body of the report. Proposal offers inadequate side setbacks which is not considered acceptable.

Privacy impacts from proposed openings, balconies and rooftop terrace

This issue is discussed in the body of the report. Proposal is considered to impact on the acoustic and visual privacy of adjoining neighbours.

Traffic and parking issues

Council's development engineer has reviewed the proposal and raised no objections to the proposed development.

Lack of staff amenities on the premises

Insufficient details are provided for staff breakout areas on the premises. However, this could be resolved through condition of consent if an approval was to be recommended.

Light overspill

This issue can be resolved through a condition of consent if an approval was to be recommended.

Impacts on structural stability of adjoining homes

This issue can be resolved through a condition of consent if an approval was to be recommended.

Overshadowing

Due to north south orientation majority of the shadows will be falling on Frenchmans Road. Any additional overshadowing on the adjoining properties will be marginal.

Fencing in relation to adjoining boundaries	This issue can be resolved through a condition of consent if an approval was to be recommended.
No consultation by the proponent with the local community	This is not a matter for consideration under this assessment. Council has notified the adjoining neighbours in accordance with its notification policy.
Asbestos removal	This issue can be resolved through a condition of consent if an approval was to be recommended.
Stormwater and drainage issues. Existing drainage and flooding issues of the subject site	Council's development engineer has reviewed the proposal and raised no objections to the proposed development.
Insufficient landscaping	This issue is discussed in the body of the report. Proposal is considered to offer insufficient landscaped areas which is not considered acceptable.
Proposed colourbond fence will not compliment the local character or protect from acoustic impacts	This issue can be resolved through a condition of consent if an approval was to be recommended.
Elevations provide insufficient details on openings to properly assess the privacy impacts	This issue is noted. It is acknowledged that proposal has the potential to impact on the acoustic and visual privacy of adjoining neighbours.
Dilapidation reports to be prepared for adjoining properties	This issue can be resolved through a condition of consent if an approval was to be recommended.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

1. The proposal is inconsistent with the provisions of Clauses 31 and 33 of Seniors Living SEPP, in that the proposed bulk will adversely impact on the amenity of adjoining residents and will be inconsistent with the desired future character of the area.
2. The proposal is inconsistent with the provisions of Clause 34 as it will have adverse acoustic and visual privacy impacts on the adjoining properties.

3. The proposal is inconsistent with the provisions of Clause 45(6) as it fails to offer 10% of accommodation as 'affordable places'.
4. The proposal is inconsistent with the provisions of Clause 48 of Seniors Living SEPP as inadequate landscaped area is provided.
5. In the absence of SCC, the proposal is not entitled to any bonus FSR. The excessive FSR is inconsistent with the FSR standard of RLEP 2012 and not considered supportable.
6. The proposal exceeds the maximum height standard of RLEP 2012 and the breach is not considered supportable.
7. The proposal does not comply with RDCP controls for maximum external wall height of 10.5. The resulting built form will impact on the desired future character of the area.
8. The proposal does not comply with the minimum landscaped area requirement of 50% of site area under the provisions of RDCP.
9. The proposal does not comply with RDCP controls for minimum side setback of 4.0m and the development will offer inadequate visual relief.
10. The proposed built form does not achieve a sympathetic response to the existing and desired future context and built character. Side setbacks are insufficient and the height exceedance together with excessive external wall height presents a poor interface with adjoining properties, resulting in adverse impacts to surrounding properties and the streetscape.
11. The bulk and scale of the proposal is incompatible with the existing prevailing character and desired future character of the surrounding residential area.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

It is acknowledged that the existing nursing home on the subject site is in need of upgrading works and a brand-new aged care facility is much needed for the local area. However, the proposed development is seeking a facility which will be exceeding the applicable development standards and building envelope controls beyond reasonable planning expectations and will result in a built form which will be inconsistent with the existing and desired future character of the area, will impact on the amenity of adjoining residents and will set an undesirable precedent for the local area. A scaled down version of the proposal will be an appropriate vehicle to achieve a much needed aged care facility for the local area.

7. RECOMMENDATION

That the Development Application DA No 642/2020] for demolition of existing structures including existing aged care facility, construction of a 4 storey building for the purposes of seniors housing with ancillary uses comprising 86 beds (77 rooms) and 2 independent units, rooftop terrace, basement car parking for 18 vehicles, lot consolidation, landscaping and associated works (variations to FSR and building height of the RLEP 2012) at 11 – 19 Frenchmans Road be REFUSED pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 subject to reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent/reasons for refusal
- Attachment B: Architectural Plans
- Attachment C: Clause 4.6 to vary RLEP 2012 height development standard
- Attachment D: Clause 4.6 to vary RLEP 2012 FSR development standard
- Attachment E: Survey Sheets
- Attachment F: Clause 4.6 request to vary Clause 26 of Seniors Living SEPP
- Attachment G: Clause 4.6 to vary Clause 48 of Seniors Living SEPP
- Attachment H: Updated Basix Certificate
- Attachment I: Comments from Design Excellence Panel