

23 November 2021

General Manager
Randwick City Council
30 Frances Street
RANDWICK NSW 2031

Attn: Mr Sohail Faridy, Executive Town Planner

Dear Sir/Madam,

**Re: PPSSEC-117 – Randwick - DEVELOPMENT APPLICATION NO. DA/642/2020 – 11-19
FRENCHMANS ROAD, RANDWICK**

SUMMARY - APPLICANT'S RESPONSES TO SYDNEY EAST CITY PLANNING PANEL REPORT

1. This letter has been prepared by Higgins Planning as the Applicant for Development Application No. DA/642/2020 at 11-19 Frenchmans Road, Randwick to respond to the report prepared by Council to the Sydney East City Planning Panel (SECPP) due to be considered at the meeting scheduled on 2 December 2021. The purpose of this letter is to respond to matters raised in the Council assessment report and reasons for refusal, and request this information be forwarded to the SECPP prior to the meeting scheduled for 2 December 2021;
2. The Council assessment report advises the proposal does not comply with Clauses 31, 33 and 34 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors Housing SEPP) based on impacts on adjoining properties, however no specific details as to what those impacts are and on which properties have been detailed in the report. The Development Application (DA) is accompanied by Amended Architectural Drawings, Statement of Environmental Effects (SEE), an Addendum SEE, Statement of Heritage Impact, an Updated Acoustic Report and Urban Design Peer Review which demonstrate: the proposal will not result in unacceptable shadow impacts on adjoining properties; will not result in an impact on the heritage significance of adjoining properties; will not result in the loss of views; will not result in unacceptable noise impacts; and if there is a concern with respect to privacy this could be mitigated by the introduction of privacy louvers to locations deemed to be problematic if this were identified to the Applicant;
3. The DA is submitted as a “vertical village” pursuant to the provisions of Clause 45 of the Seniors Housing SEPP, and it has already been determined by the SECPP that a Site Compatibility Certificate (SCC) cannot be issued by the SECPP at their meeting held on 10 November 2021;
4. The Applicant submitted information with the DA to satisfy all the provisions of Clause 45 of the Seniors Housing SEPP. In particular, the Applicant submitted information from Mr Pickles Senior Counsel regarding the Council interpretation of Clause 45(6) of the Seniors Housing SEPP. This information formed part of the Applicant’s Addendum SEE loaded to the NSW Planning Portal PAN on 1 July 2021. This Addendum SEE is attached for information purposes for the SECPP. Mr Pickles clearly demonstrates that the language of Clause 45(6) does not reference 10% of Gross Floor Area (GFA) or beds in the “residential care facility”. Rather, the provisions of Clause 45(6) specifically apply to “dwellings”:
(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

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

If the provisions of Clause 45(6) intended the application of 10% to GFA / beds, it would state the same. As such, the Applicant considers that the Council has interpreted the provisions of Clause 45(6) incorrectly, which has tainted much of the assessment as presented to the SECPP. The Applicant is prepared to allocate one of the two dwellings as affordable accommodation and teamed with Bridge Housing as a registered social housing provider (refer to letter of undertaking submitted with SEE). Mr Pickles would address the SECPP meeting however he advised he is attending Court on 2 December 2021.

5. The Applicant submitted amended design drawings on 31 August 2021. This was a result of discussions with the NSW Department of Planning, Industry and Environment (DPIE) who were assessing the SCC. Where the SCC was amended, for consistency so too the DA was amended, to ensure an open and transparent process with both DPIE and Council. Based on DPIE feedback the design was amended to reduce the overall height to 13.54m, being 1.54m or a 12% variation. This is included an amended Clause 4.6 variation request submitted to Council on 31 August 2021. This information has not been assessed by Council or presented in the information to the SECPP.
6. The Applicant amended the design as requested by the Randwick Design Excellence Panel (DEP) because of a meeting held on 19 March 2021. The Council assessment report does not include information which details all the changes associated with the Amended DA in Table 2A. The Addendum SEE attached includes all the information to demonstrate comparatively the changes. The DEP notes advised:

SUMMARY AND RECOMMENDATIONS

The Panel encourages this development and supports the replacement of substandard seniors housing in the area and acknowledges the response to some of the previous comments. However, there are a number of issues listed above which still need to be addressed, predominantly the south elevation, the extent of landscaping and the further set back from the north of both the second-floor plan and the third-floor plan.

The Applicant responded with amended architectural drawings which were supervised by the Urban Design Peer Reviewer Matthew Pullinger to address each of the matters raised by the DEP (see attached). The Council staff would not forward the amended design to the DEP for reconsideration.

APPLICANT'S ADDITIONAL RESPONSES TO REASONS FOR REFUSAL

7. The Applicant has reviewed the reasons for refusal and states as follows:

A. Reason 1(a) and 1(b):-

Consideration has been given to the amenity impacts of the development on surrounding residential properties and it is noted that no substantive evidence of impacts has been outlined in the Council's report including:

- (a) Overshadowing. In respect of overshadowing, shadow diagrams have been provided which demonstrate the majority of the impacts are onto Frenchmans Road due to South-North orientation of the block. It is demonstrated by the information provided that the impacts on residential property in McLennan Avenue and Astolat Street are minimised by the provision of adequate setbacks and modulation in the building form;

(b) Privacy issues

The Applicant considers that adequate consideration has been given to reducing the potential for overlooking towards adjoining residential properties by reduction in window sizes, offsetting of windows and other design elements. However, if this is still considered a reason for refusal the Applicant would be happy to accept a condition of consent, either requiring windows to be translucently glazed or a deferred commencement condition to amend glazing on all elevations to be treated appropriately to reduce the potential for overlooking.

(c) View Loss

No view loss concerns arise as a result of the development.

(d) Visual bulk and scale

The bulk and scale of the proposal has been reduced. The development overwhelmingly complies with the permissible FSR and the height non-compliance is about 12% through the centre of the site. The proposed development includes substantial setbacks which provide for generous offsets of building form from adjoining residential properties.

As outlined above the bulk and scale does not result in any substantive environmental amenity impacts.

B. Reasons 1(e)

The provisions in clause 48 are a 'do not refuse' provision. The Council does not have a statutory LEP control in respect of landscaping. On this basis consideration of the operation of the landscaping needs to be considered. The proposal has provided for landscaped areas and private open spaces which are operationally useful to the type of use proposed and submits that the extent, type, and location of these areas served a practical benefit to the type of residents who the owner / operator, as an experienced aged care operator, considers will use the facility.

The Applicant states that on the basis that the clause 48 landscape control is not a development standard, consideration has to go further than a basic numerical consideration but rather to the underlying objectives of the landscaped area and in this regard the Applicant puts to the SECPP that the area of landscaping provided is meaningful and have practical purpose.

C. Reason 2(a)

This reason does not account for the entirety of the objectives contained in the Council's LEP. The objectives in the R3 zone are (those irrelevant objectives are struck through):

- 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.~~

The Applicant has outlined that the Council has not articulated in a meaningful way the amenity impacts on adjoining residents in their report but similarly has not noted the other objectives in the R3 zone. The Applicant states that the proposed development is renewing aging aged care stock in a way which services the community and provides for affordable housing for the community.

D. Reasons 2(b) and 2(c)

The Applicant submits that the FSR is compliant noting the comments in Paragraph 4 above.

The Applicant concedes there is a small height breach which is supported by a Clause 4.6 submission which articulates why it is unreasonable and unnecessary to comply with the control. It includes adequate environmental planning ground which supports the position.

E. Reason 3

The Applicant states that the consideration of the application against the provisions of the Randwick DCP are not a relevant consideration but even if they were, the development complies with the objectives of the said clauses

As such, the Applicant considers there are several Council misinterpretations of the Seniors Housing SEPP which warrant the SECPP intervention. For any queries or require clarification on any matters please do not hesitate to contact the undersigned on 0488 221 082.

Yours sincerely,



Marian Higgins
Director
Higgins Planning Pty Ltd

Enclosed: information as submitted to Council