**Supplementary Report for SECPP in Response to Applicant’s Report Dated 23 November 2021**

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| PANEL REFERENCE & DA NUMBER | [PPSSEC-117](https://apps.planningportal.nsw.gov.au/prweb/PRAuth/nNrigeH-_PunJOuDUyy3H1jpQabq9yrY*/!@bb327c84f6fc23142d412972766ed5d8!TABTHREAD0?pyactivitypzZZZ=*" \o "Click here to open the work object) - DA/642/2020 |

**Introduction:**

This report offers comments on applicants addendum report based on Council’s original assessment report. Applicant’s comments are copied in the shaded text box and Council’s comments are offered in the unshaded box next to it.

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| *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;* |
| Comment:  Noted. |
| *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;* |
| Comment:  This issue of compliance with Clauses 31-34 (inclusive) of Senior’s Living SEPP is specifically referred on pages 13 and 14 of Council’s assessment report and in general throughout the report.  Clause 31 of Seniors Living SEPP requires consideration of *Seniors Living Policy: Urban Design Guideline for Infill Development.*  Part 4 of this Guidelines provides Design Principles and Better Practice and inter alia states:    The existing residential character is predominately single and two storey dwelling houses. The proposal with 4 storey built form, non complying side setbacks, non complying external wall height, non complying height, excessive FSR and inadequate landscaping along the side boundaries is offering an incompatible built form.    Proposed terraces and windows of habitable rooms will offer overlooking into adjoining properties. This impact is exacerbated due to inadequate building separation.  Clause 32 of the Seniors Living SEPP states:  *A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.*  Clause 33 under Division 2 inter alia states:  *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*  *(iv)  considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and*  Applicant’s offer to provide privacy screens to the areas that will offer overlooking is not considered a suitable arrangement as these rooms will be occupied by senior citizens who at times may be confined to their rooms for long periods and as such privacy screens will offer poor internal amenity for those residents.  Further, the precinct is not undergoing transition and the proposal is in contrast to the current single and tow storey residential character of the area.  Clause 34 requires consideration of acoustic and visual privacy of the adjoining neighbours. As discussed, the building due to its proximity with adjoining buildings will impact on the acoustic and visual privacy of adjoining neighbours. |
| *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;* |
| Comment:  It is acknowledged that the proposal is lodged as ‘vertical village’ pursuant to Clause 45 of the Seniors Living SEPP. In this regard Clause 24(1)(b) requires Site Compatibility Certificate (SCC) to be obtained for such development if it is seeking bonus FSR under the provisions of Clause 45. A ‘vertical village’ is not a defined land use term under the zoning provisions applying to the land. It is Council’s position that in the absence of a SCC the proposed development is not entitled for a bonus FSR.  It is noted that SECPP has taken a position on SCC, relying on Clause 24(1A) and noted that bonus FSR is applicable to the proposed development without SCC.  Regardless of the SCC, a proposal for seniors housing, with or without bonus FSR needs to be compatible with the local built character as required under Clauses 31 to 34 (discussed above). It is also important to note that Clause 45 of the Seniors Living SEPP, in addition to bonus FSR, excludes ‘several on-site supportive facilities’ to be excluded from the GFA calculations.  Even if a SCC is issued, the proposal in its current form is not considered acceptable due to excessive bulk and adverse impacts on the amenity of adjoining neighbours and an inconsistent built form when compared with the local built character. As mentioned above the proposal is inconsistent with clauses 31 to 34 of the Seniors Living SEPP (discussed above).  The senior housing development (with our without bonus FSR) is subject to a compatible built form as required under Clauses 31 to 34 of the Senior’s Living SEPP. |
| *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.* |
| Comment:  This issue is discussed in Council’s report on pages 14 and 15 and applicant’s arguments are not considered acceptable that 10% affordable places only relate to the two ILUs. The Senior’s Living SEPP uses ‘affordable places’ to refer to affordable dwellings. It is council’s position that this relates to entire development. By way of comparison, Affordable Rental Housing SEPP 2009 also offers ‘bonus FSR’ but it seeks in return ‘affordable housing’ to be provided. It does not mention the word dwelling yet affordable housing is required and offered in dwelling form.  Alternately the bonus FSR should only be available to a development that offers dwellings for the accommodation of a senior resident or to that component of a development only that includes dwellings. Referring to Affordable Rental Housing SEPP 2009, it offers bonus FSR for a ‘shop top housing development’ (mixed use development) but the bonus FSR only applies to residential development and not to the commercial component of the development.  It is Council’s position that either 10% of all rooms/dwellings shall be offered as affordable places or bonus FSR should only be applicable to the two ILUs. |
| *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.* |
| Comment:  Council is not privy to the discussion that took place between the applicant and DPIE regarding the SCC. It is acknowledged that the height is further reduced and reference to height breach of 14.2m in Council’s assessment report was an oversight. The actual height breach, based on the corrected survey, is 13.54m or a 12% variation. However, applicant’s updated Clause 4.6 was considered during the assessment of the application and the updated Clause 4.6 (dated 31 August 2021) was referred for SECPP’s consideration. In conclusion, the height breach is still not considered justifiable due to lack of environmental planning grounds.  The applicant primarily argues that the proposal will not impact on the adjoining neighbours and provide affordable housing therefore the height breach should be supported. Both arguments are week as a) having no impacts or little impacts is not a valid environmental planning ground to support variation of a development standard. Valid environmental planning grounds may include arguments such as a standard is breached so many times that it can be considered as abandoned or breach of the standards would result in a better planning outcome for the local area or such variation will be in the public interest. None applies in this instance.  And b) offer of 1 ILU measuring an area of approximately 49m2 is not a public benefit of such scale that variation of height standard can be considered as outweighed.  Lastly, please be advised that Council’s Environmental Health Section recommended a 2m high acoustic wall around the plant area on the third floor which will further add to the overall bulk of the building. |
| *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.* |
| Comment:  All the details submitted with the development application is available to the consent authority for their review during the determination process. The assessment is carried out in accordance with the provisions of Section 4.15 of the Act. The information not discussed in the report was simply not considered relevant for the report; but it was not to provide inadequate or incomplete information to SECPP.  The DEP of Randwick Council specifically noted the building bulk, its relationship with the existing built character, side setbacks and landscaping. The proposed changes in response were not considered to go far enough to adequately address those concerns. For this reason, the amended plans were not referred to DPE for their 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.* |
| Comment:  Council’s assessment report discusses the overall adverse impacts on the immediate neighbouring properties resulting from an unacceptable bulk, inadequate side setback, inadequate building separation, excessive FSR, non complying height and external wall height and minimal landscaping along the side setbacks. The proposed visual bulk and scale is incompatible with the existing and desired future character of the area. |
| *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.* |
| Comment:  The applicant’s arguments that the operator knows better what type and extent of landscaping is required and will be used by their residents is absurd. Planning needs to look beyond such tunnel views. Landscaping for any development is not only for the users of that building but also to offer a buffer and an enjoyable separation from adjoining land uses in addition to several environmental benefits. Regardless of the hierarchy of landscape controls, the proposal offers inadequate landscaped area particularly where it is most needed i.e., offering a reasonable separation with adjoining properties.  Further, designing and offering landscaping based on the useability of the end users is considered disrespectful towards future residents of the proposed development. |
| *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.* |
| Comment:  This issue is discussed earlier in this addendum report. Council assessment report also acknowledges that the existing facility is in need of upgrading works to offer better facilities for the area. However, what is being proposed is excessive and geared towards maximising the GFA with little care towards local context. More bluntly it appears to be a commercially driven project, with a desire to maximise the GFA.  Council’s report articulates the adverse impacts on the amenity of adjoining residents. |
| *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.* |
| Comment:  In the absence of SCC, the FSR is not considered compliant. This issue is discussed above. |
| *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* |
| Comments:  DCP controls are relevant and applicable to any development in the R3 medium density residential zone. The DCP controls translate the LEP objectives and standard into measurable building envelope controls and their compliance determines an acceptable built form. The proposal does not comply with several of the DCP controls mainly setbacks, landscaping, external wall height and results in an unacceptable built form. |
| *As such, the Applicant considers there are several Council misinterpretations of the Seniors Housing SEPP which warrant the SECPP intervention.* |
| Council’s assessment report is based on the provisions of Section 4.15 of the Act and this comment is not considered well founded. |