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The General Manager  
Northern Beaches Council  
PO Box 82  
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**Re: Modification Application No: Mod2019/0654 – 5 Skyline Place, Frenchs Forest**

Attention: Steve Findlay. Manager Development Assessment

Dear Mr Findlay

We refer to your letter dated 30 March 2020 regarding our Section 4.55 application relating to the site at 5 Skyline Place, Frenchs Forest (REV2019/014).

We would like to express our disappointment that Council is only now in a position to outline these issues on the basis of their preliminary assessment of the application, more than three months after its lodgement on 19 December 2019.

Regardless, we have considered the issues that you have raised and note Council's opinion that the application cannot be considered under Section 4.55 of the Environmental Planning and Assessment Act, 1979 on the basis that it is not "substantially the same" as development that was approved by the Sydney North Planning Panel in June 2019.

We believe that the proposed development clearly meets the "substantially the same" test under the EP&A Act on the basis that:

- There is no change to the height or built form;
- there are no substantial external changes to the building;
- The mix of landuses proposed is the same as approved; and
- The proposed development will retain a substantial area (1,652m<sup>2</sup>) of commercial floor space resulting in employment.

The approved development was considered and determined by the Sydney North Planning Panel in June 2019. It is noted that for the Panel to have been in a position to approved the development they needed to form the opinion that the development proposed at that time under Section 8.2 of

the EP&A Act (the 8.2 review scheme) was substantially the same as that proposed under the original DA (DA 2019/014). Furthermore, we note that Council's assessment report concluded the revised scheme was substantially the same development as originally proposed. It is our view that the revisions proposed in the current section 4.55 modification application are less than those that were made to the scheme as part of the 8.2 review, and which were considered by the Panel to be substantially the same as the original DA.

Given the concerns raised by Council, we have sought legal counsel on this matter. We will be happy to forward this advice to Council as soon as it is available.

Your letter also raises the issue of inconsistency with Council's strategic objective for the B7 Business Park zone and the strategic objective for the wider Frenchs Forest precinct, potential for land use conflict, loss of employment land. All of these matters were considered by the Sydney North Planning Panel, who had formed the view that the application met the strategic objectives of the B7 zone.

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

On the basis of the above, we consider that all matters relating to consistency with the B7 Business Park zone have been addressed in the approval of the DA and are not valid grounds for refusal of the current modification application.

We have considered the options that Council has suggested, and on the basis of the above, we request that Council undertake its detailed assessment of the application in its current form and that it be forwarded to the Sydney North Planning Panel in its current form for consideration and determination at its May meeting (noting this timeframe advised by Lashta Hidari).

Please do not hesitate to contact me on 0422 813 025 should you wish to discuss this matter further.

Yours sincerely



**Paula Mottek**  
Urban Planning Manager  
Platino Properties