

## NORTHERN BEACHES COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-66
<b>DA Number</b>	MOD2019/0654
<b>LGA</b>	Northern Beaches Council
<b>Proposed Development</b>	Modification of Development Consent DA2018/0995 granted for Subdivision of land into 2 allotments, demolition of existing structures and construction of a mixed use development comprising a Seniors Housing development and commercial space
<b>Street Address</b>	Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, and Lot CP in SP 49558 5 Skyline Place, Frenchs Forest
<b>Applicant/Owner</b>	Platino Properties (Applicant)  The Owners Of Strata Plan 49558 (Owner)
<b>Date of DA lodgement</b>	19 December 2019
<b>Number of Submissions</b>	Two (2) submissions
<b>Recommendation</b>	REFUSAL
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	Section 4.55(2) Modification of the Development Consent granted by the Sydney North Planning Panel (SNPP)
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• Environmental Planning and Assessment Regulation 2000</li> <li>• State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX)</li> <li>• State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</li> <li>• State Environmental Planning Policy - Infrastructure 2011</li> <li>• State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65)</li> <li>• Warringah Local Environmental Plan 2011 (WLEP 2011)</li> <li>• Warringah Development Control Plan 2011 (WDCP)</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment 1 – Architectural Plans (as amended);</li> <li>• Attachment 2 – Applicant's response to Council's issue;</li> <li>• Attachment 3 – SNPP reviews decision and statement of reasons, dated 18 June 2019;</li> <li>• Attachment 4 – Modified Draft Conditions, if Panel decides to approve the application</li> </ul>
<b>Clause 4.6 requests</b>	Not Applicable
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Traffic Impacts</li> <li>• Seniors Housing is not permitted within B7 Business Park zone</li> <li>• Inconsistent with zone objectives</li> <li>• Inconsistent with Councils Strategic objectives for the locality</li> </ul>
<b>Report prepared by</b>	Lashta Haidari –Principal Planner
<b>Report date</b>	27 May 2020

## Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
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## Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
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*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

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## Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
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## Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Not Applicable
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*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

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## Conditions

Have draft conditions been provided to the applicant for comment?	Yes
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*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## Executive Summary

The proposal involves modifications to the Development Consent DA2018/0995, granted by the Sydney North Planning Panel (Review Panel), for Subdivision of land into 2 allotments, demolition of existing structures and construction of a mixed use development comprising a Seniors Housing development and commercial space.

The subject site is zoned B7 Business Park under Warringah Local Environmental Plan 2011 (WLEP 2011). Development for the purposes of seniors housing is permitted with consent pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) by virtue of 'hospitals' being permitted in the B7 Business Park zone.

The original DA was refused by the SNPP on 18 December 2018. The applicant requested a Section 8.2 Review of Determination (REV2019/014), which included amended plans that resulted (amongst other changes) in a significant increase in the commercial floor space of the development by 871m<sup>2</sup> and a reduction in the number seniors housing dwellings by 29 dwellings, from 78 to 49. These changes were to directly address the objectives of the B7 zone in order to *encourage employment opportunities*.

On 18 June 2019, the SNPP (Review Panel) approved the Review of Determination, stipulating that the amendments to the application addressed the concerns raised by the previous decision of the SNPP on the DA. The panel in approving the application, specifically noted in their decision that

reason number 4 of refusal, in relation to loss of employment within the zone, was satisfied by the increase in commercial floor space, which was estimated to generate 115 jobs in total for the site.

The proposed modification seeks to revert back to the pre-Review of Determination proposal, by reducing the amount of commercial/retail floorspace from 2,219m<sup>2</sup> to 1,652m<sup>2</sup> (a reduction of 567m<sup>2</sup> or 64.5%) and increasing the number of seniors dwellings by 7 (from 49 to 56 residential units).

The proposed modification seeks to reduce the approved commercial floor space and increase the number of residential units. In this regard, the essence of the development (as modified) will be substantially altered given the further reduction of employment opportunities generated by this site. Therefore, the proposal is found to be inconsistent with the objective of the zone that seeks to encourage employment opportunities.

The modification also cannot be supported because it fails to satisfy the requirements of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (EPA Act, 1979), in that the proposal is not considered to be substantially the same development for which consent was originally granted by the Panel.

The modified proposal is also inconsistent with solar access and cross ventilation requirements as contained in the Apartment Design Guide under SEPP 65.

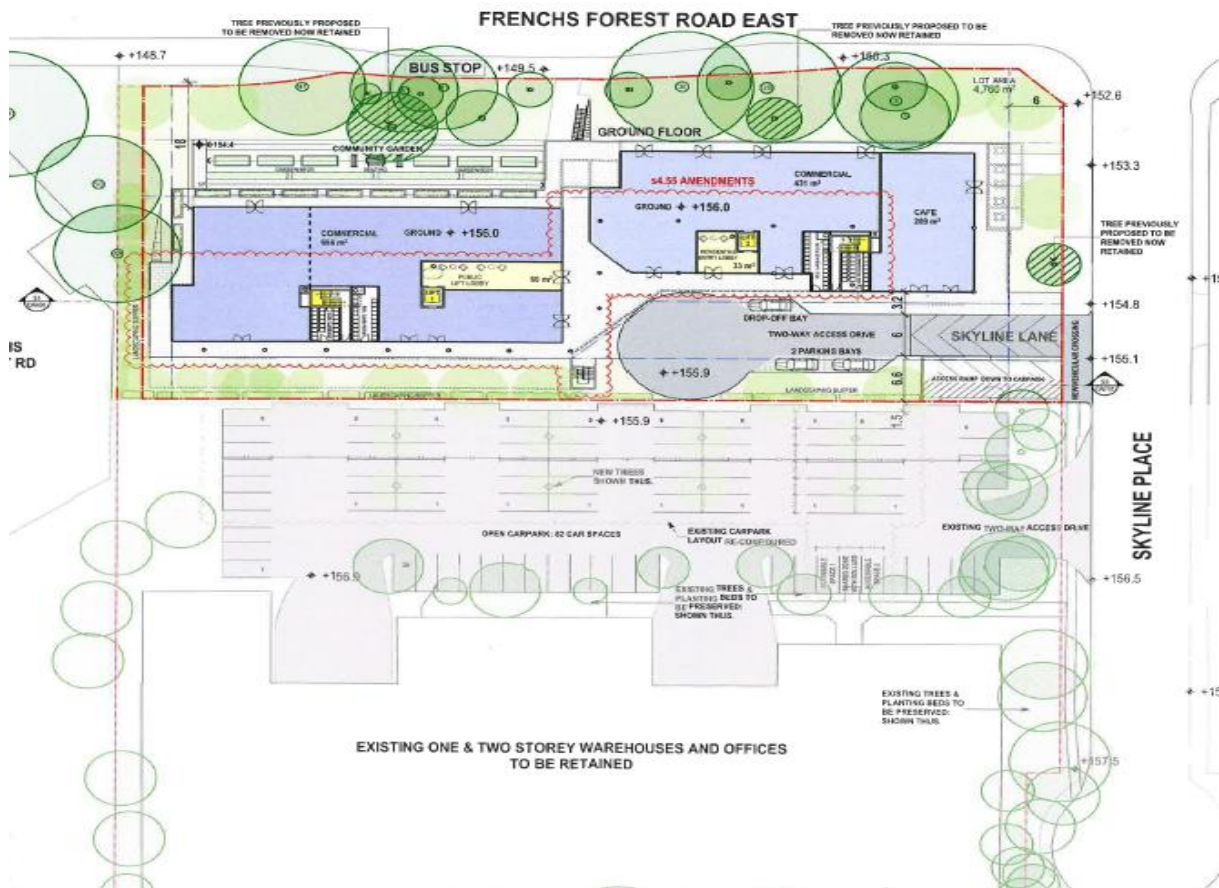
Accordingly, it is recommended that the SNPP refuse the application for the reasons detailed within the 'Recommendation' section of this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks to modify Development Consent No. DA2018/0995 in the following manner:

- Reduction in the amount of commercial/retail floorspace from 2,219m<sup>2</sup> to 1,652m<sup>2</sup> (a reduction of 567m<sup>2</sup>),
- Reconfiguration of Level 1 to provide for kitchen, dining, common area, bathroom, and recreational facility rooms and 2 additional seniors living apartments,
- Reconfiguration of Level 2 to provide for additional 5 seniors living apartments and courtyard areas,
- Extension of the outdoor courtyard area on Level 3,
- Reduction in the size of the approved Lot 2 from 4,886m<sup>2</sup> to 4,759m<sup>2</sup> (a net reduction of 127m<sup>2</sup>); and
- Minor amendments to the façade design that reflect the internal changes.

There are no changes proposed to the overall height, bulk or scale of the approved development.



**Figure 1 – Amended Ground Floor Plan (Source: PA Studio)**

A summary of the originally approved development (REV) and the current proposed modifications is provided in the following table:

Component	Approved	Proposed
Building Height	6 Storeys	6 Storeys
<b>Site Area</b>		
Lot 1	7684m <sup>2</sup>	7811m <sup>2</sup>
Lot 2	4886m <sup>2</sup>	4759m <sup>2</sup>
<b>Total GFA for Lot 2</b>	8991m <sup>2</sup>	8269m <sup>2</sup>
No of Seniors Units on Lot 2:	49	56
1 Bedroom	Nil	2
2 Bedroom	23	24
2 Bedroom + Study	26	26
3 Bedroom	Nil	4
Seniors common area	561m <sup>2</sup>	450m <sup>2</sup>
Commercial/Retail floorspace	2219m <sup>2</sup>	1652m <sup>2</sup>

Carparking Spaces:		
Seniors	62	72
Commercial	55	41
Visitors	10	11
<b>Total:</b>	<b>127</b>	<b>124</b>

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the Associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

## SITE DESCRIPTION

The subject site consists of one (1) lot which is legally known as Lot CP SP 49558. The subject site is located on the south-western corner of the Frenchs Forest Road East and Skyline Place intersection and is known as No.5 Skyline Place. The site has street frontages of 104m to Frenchs Forest Road East, 120m to Skyline Place and has a site area of 12,627m<sup>2</sup>.

The site is currently occupied by an existing warehouse and commercial buildings located on the southern part of the site. Off-street parking is currently provided for 170 cars in an at-grade car parking area on the northern part of the site.





**Site Map Showing Subject Site**

There are a number of large trees that are located along the north and east boundaries of the site. Vehicular access to the site is provided via an existing entry/exit driveway located midway along the Skyline Place frontage.

The site adjoins warehouses and commercial/retail buildings to the south, east, and west, which range from one to five storeys. To the north of the site, beyond Frenchs Forest Road East, is the R2 - Low Density Residential zone, which comprises residential dwellings that are generally 1-2 storey in landscaped settings.

## **RELEVANT BACKGROUND**

### Development Application No. DA2018/0995

The original Development Application was lodged with Council in June 2018. The application sought approval for part demolition works, subdivision of the existing lot into two Torrens Title lots and construction of mixed used development, consisting of retail and seniors housing with associated car parking and landscaping, comprising 78 residential units, 1,348m<sup>2</sup> of commercial premises and basement car parking.

The application was reported to the SNPP on 18 December 2018 with a recommendation for refusal.

The Panel made the following decision on the application:

*The Panel determined to refuse the development application pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979.*

*The decision was unanimous.*

*The Panel notes that the proposed use is permissible with consent under SEPP (HSPD) 2004. However, the Panel considers that the Infill Self-Care development proposed at 26.52m high and an FSR of 2.2:1 would be inconsistent with the existing and desired future character of the area established by Warringah LEP 2011 and the DCP, which is required to be considered by clause 33 of SEPP (HSPD).*

*In addition, the Sydney North District Plan establishes the Precautionary Principle in respect of the retention of employment generating zones and uses. The proposal would be inconsistent with this principle, as, other than for a component of "commercial" uses, limited demonstrable employment is generated by the independent living units.*

*Accordingly, the Panel accepts the advice of the assessment report to refuse the application.*

On 29 March 2019, the applicant lodged an application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 (the Act) for the review of the SNPP's determination of refusal for DA2018/0995. The Section 8.2 Review of Determination application was lodged with amended plans. The main changes to the proposed development are summarised as follows:

- A reduction in building height from 8-9 storeys to 6 storeys
- A reduction in the Floor Space Ratio from 2.2:1 to 1.84:1
- A reduction in the number of seniors units from 78 to 49
- Removal of residential apartments from the ground floor level
- Increase in commercial floor space from 1,348m<sup>2</sup> to 2,219m<sup>2</sup> - an increase of by 871m<sup>2</sup>
- Revised built form to provide a central recess within the building

The application was assessed and reported to the SNPP (Review Panel) with a recommendation for refusal.

On 18 June 2019, the SNPP considered the application under Section 8.2 and decided to approve the application, stipulating that the amendments to the application satisfactorily addressed the concerns raised by the previous decision of the SNPP on the DA. The panel in approving the application, specifically noted in their decision that the issue raised by Council and the original decision of the SNPP in relation to loss of employment within the zone, is offset by the amended application, which includes floorspace designated for commercial use that is estimated to generate 115 jobs.

## **MODIFICATION APPLICATION HISTORY**

The current application was lodged with Council on 19 December 2019.

The assessment of the proposal found that the application could not be supported as the proposal was found to be inconsistent with Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (EPA Act, 1979), in that the proposal is not considered substantially the same development for which consent was originally granted by the Panel.

An opportunity was presented to the applicant to withdraw the application by letter dated 30 March 2019. The applicant advised Council that the application would not be withdrawn and requested that it proceed to determination.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/0995 and REV2019/014, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>Consideration of whether a development to which the consent, as modified, relates is substantially the same development as the development for which consent was originally granted, is dealt with by Justice Bignold in the following test in <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289, where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of</i></p>



Section 4.55 (2) - Other Modifications	Comments
	<p><i>sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>In answering the above threshold question as to whether the proposal represents "substantially the same" development, it is appropriate to consider the Land and Environment Court's (LEC) list of matters who have held the following:</p> <ul style="list-style-type: none"> <li>• <i>It is a question of fact, and not a question of law;</i></li> <li>• <i>The amended development must be essentially the same, as the former;</i></li> <li>• <i>The amended development must be materially the same, as the former;</i></li> <li>• <i>The amended development must be of the same essence, as the former;</i></li> <li>• <i>The amended cannot result in a development that is radically different; and</i></li> <li>• <i>The question is answered by analysing the qualitative and quantitative elements.</i></li> </ul> <p>The original application was approved under the provisions of Section 8.2 Review of Determination Application of the EPA Act, 1979, which was based on amended plans. The amended plans, amongst other changes, resulted in an increase in the commercial floor space by 871m<sup>2</sup> and an associated reduction in the number of seniors housing dwellings.</p> <p>The reason for the amendments of the original application was to address the concerns raised by Council and Sydney North Planning Panel in relating to the retention of employment generating lands.</p> <p>However, the current proposed modification seeks to conversely reduce the amount of commercial/retail floorspace from 2,219m<sup>2</sup> to 1,652m<sup>2</sup> (a reduction of 567m<sup>2</sup> or 64.5%) and increasing the number of seniors dwellings by 7.</p> <p>The amended development cannot be said to be substantially or materially the same as that considered by Panel under Section 8.2 review because it is not of the same essence as the former in the critical area of residential dwelling area versus commercial floor area.</p>
b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed	The application was referred to the NSW RFS as Integrated Development.

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	In their response on 23 March, the NSW RFS has provided amended General Terms of Approval, which will be incorporated into an amended condition of consent, should the application be considered worthy of approval by the Panel.
c) it has notified the application in accordance with: <ul style="list-style-type: none"> <li>i. the regulations, if the regulations so require, or</li> <li>ii. a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</li> </ul>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan.
d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" In this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this Proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	All relevant provisions of the EP&A Regulation 2000 have been taken into consideration during the

Section 4.15 'Matters for Consideration'	Comments
	assessment of the development application and this modification application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><u>Environmental Impact</u> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p><u>Social Impact</u> The proposed development will not have a detrimental social impact in the locality considering the nature and character of the already approved development.</p> <p><u>Economic Impact</u> The proposed development will have a detrimental economic impact on the locality considering the loss of employment generating floorspace. In this regard, the focus of the original consent was that the development would create employment at a certain level, and the proposed modification will significantly diminish the amount of employment generating floorspace, which was a critical element in the approved development</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The proposed modification does not alter the suitability of the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	<p>This assessment has found the proposal to be contrary to the relevant requirements of Section 4.55 (2) of the EPA Act 1979, and will result in a development which will create an undesirable precedent such that it would undermine the zone objectives, is inconsistent with the strategic objectives for the Northern Beaches Hospital Precinct and is contrary to the expectations of the community.</p> <p>In this regard, the development, as proposed, is not considered to be in the public interest.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Community Participation Plan.

As a result of the public exhibition of the application, Council received two (2) submissions to the proposed development, which are summarised as follows:

- **Traffic Impact**

Concerns have been raised that the traffic produced by the development will exacerbate the already congested Frenchs Forest Road East and adjoining local road network.

Comment:

Council's Traffic Engineer has reviewed the development and has found that modification application (which reduces the commercial use and increases the residential use within the site) will not have adverse impact on the surrounding road system or the operating capacities of nearby intersections.

Therefore, this issue should not be given determining weight.

- **Seniors housing is not permitted within the B7 Business Park zone**

Concern is raised that Senior Housing is prohibited within the B7 zone.

Comment:

The site is zoned 'B7 Business Park' and residential development (including seniors housing) is prohibited within the B7 Zone. However, seniors housing is permissible under the SEPP (HSPD) by virtue of 'hospitals' being a permitted use in the B7 Business Park zone.

Accordingly, the proposed development is permissible with consent, and has been approved by the SNPP.

- **Inconsistent with the B7 zone objectives**

Concerns have been raised that the proposed development, particularly the seniors housing component of development, is inconsistent with the B7 Business Park zone objectives and future form of development envisaged for the zone.

Comment:

The proposal's consistency with the objectives of the B7 Business Park zone is considered under the WLEP 2011 section of this report. In summary, the proposed modification reduces the commercial uses on site and increases the residential units, which will result in further loss of employment generation in the area, which is inconsistent with the objectives of the zone and this issue has been included as a reason for refusal.

- **Non- compliance with Councils strategic intent**

Concerns have been raised that the proposed seniors housing will compromise the ability to achieve the vision of Council's adopted Northern Beaches Hospital Precinct Structure Plan, which seeks to implement the directions and objectives of the Greater Sydney Region Plan and North District Plan. The Northern Beaches Hospital Precinct Structure Plan is currently being used as the strategic framework and guideline to inform the NSW Government's Frenchs Forest Planned Precinct preparation.

Comment

This issue is addressed by Council's Strategic referral comments. In summary, the modified development is not consistent with Council's strategic objective for the B7 Business Park zone, the development has the potential for land use conflict, loss of employment land and is not consistent with the strategic objective for the wider Frenchs Forest precinct.

## REFERRALS

Internal Referral Body	Comments Received
<b>Building Assessment - Fire and Disability upgrades</b>	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.
<b>Environmental Health (Industrial)</b>	No objection to the proposed modification and no new conditions required.
<b>Environmental Health (Food Premises, Skin Pen.)</b>	No objection to the proposed modification.
<b>Landscape officer</b>	<p>The proposed modification indicates no additional impacts on existing landscape features with the retention of an additional three trees previously indicated for removal.</p> <p>No objections are raised to approval. Existing landscape conditions are still considered relevant and adequate.</p>
<b>Development Engineering</b>	No objection to the proposed modification.
<b>Strategic and Place Planning</b>	<p>Council's Strategic Planning Department provided comments in regards to previous applications (DA2018/0995 and Mod2019/0654), which was unsupportive of the proposed development.</p> <p>The comments raised previously remain. Of note, concern is raised that the development is not consistent with Council's strategic objective for the B7 Business Park zone, the development has the potential for land use conflict, loss of employment land and is not consistent with the strategic objective for the wider Frenchs Forest precinct.</p>
<b>Strategic and Place Planning (Urban Design)</b>	<p>Council's Urban Design officer provided consistent comments in regards to previous applications which was unsupportive of the Urban Form and detail of the proposed development DA2018/0995) and provided commentary to address what was determined as urban design form, bulk and scale, and articulation, generally.</p> <p>Further revisions to the scheme (REV 2019/0014) were unacceptable in terms of addressing the previous issues. The proposed development scheme was subsequently supported by the SNPP.</p> <p>In consideration of the above matters and deliberations, the Urban Design officer has no further comment on the revisions submitted with MOD2019/0654.</p>
<b>Water Management</b>	No objection to the proposed modification.
<b>Traffic Engineer</b>	<p>The proposed modifications include a slight reduction in Lot 2 site area and converting an area of a provided commercial spaces into seniors living units. The proposed modifications result in an increase in overall FSR, 7 additional apartments and 567m2 less commercial spaces.</p> <p>The findings provided in the traffic report are generally concurred. It is indicated in the report that the proposed modification will result in a reduction in the total traffic generation in compare with the previously approved scheme, which is satisfactory. It has also been</p>

	<p>justified the proposed reduced parking provision (reduced from 127 to 124 spaces) meets the parking requirements of the SEPP and Warringah DCP for the Seniors living and commercial components.</p> <p>Given the above, the proposed modification can be supported on traffic grounds.</p>
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External Referral Body	Comments
<b>Ausgrid</b>	The proposal was referred to Ausgrid. No response has been received within the 21-day period and it is therefore assumed that no objections are raised and no additional conditions are recommended.
<b>NSW Rural Fire Services (NSW RFS)</b>	<p>The application was referred to the NSW RFS as Integrated Development.</p> <p>In their response on 23 March, the NSW RFS has provided amended General Terms of Approval, which are to be incorporated into an amended condition of consent, should the application be worthy of approval.</p>

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

All Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions, which the proposal is considered acceptable against the applicable planning controls.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## **STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)**

### **SEPP (Building Sustainability Index: BASIX) 2004**

BASIX certificate was submitted with the original application. An updated BASIX certificate and NatHERS rating reflecting the changes to proposed development has not been provided. The applicant has provided a letter dated 9 December 2019 indicating that this information will be submitted within 14 days, however to date this information has not submitted.

Accordingly, the application is considered deficient in this regard.

### **SEPP (Infrastructure) 2007**

#### **Clause 45**

Clause 45 of the SEPP Infrastructure requires the consent authority to consider any DA (or an application for modification of consent) for any development carried out



- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation; or*
- *Within 5 metres of an overhead power line.*

The amended application was referred to Ausgrid and no reply was received. However, it should be noted that the proposed modification is not seeking to alter the conditions as it relates to Ausgrid requirement imposed in the original consent.

## **SEPP No. 55 – Remediation of Land**

State Environmental Planning Policy No. 55 provides that Councils must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and/or requires remediation for the intended land use.

The assessment of the original application concluded that the site was suitable for the proposed development and in addressing the requirement of this SEPP.

## **SEPP 65 - Design Quality of Residential Apartment Development**

The SEPP requires an assessment and consideration of any application for residential flat development against the 9 Design Quality Principles and the matters contained within the associated “Apartment Design Guide”.

This application, as modified, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made by the SNPP Review Panel, with the exception of the following departures from the Apartment Design Guide.

### **Apartment Design Guide**

The following table is a general consideration against the criteria of the Apartment Design Guide’ as relates to the modified development.

<b>ADG Requirements being altered as result of the proposed modification</b>	<b>Approved Development</b>	<b>Modified Development</b>
<b>Common Circulation and Spaces</b> The maximum number of apartments off a circulation core on a single level is eight.	<b>Consistent</b>  Up to 5 units per corridor	<b>Consistent</b>  Up to 8 units per corridor
<b>Solar and Daylight Access</b> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:	<b>Consistent</b> <ul style="list-style-type: none"> <li>• 94% of the units receiving solar access;</li> </ul>	<b>Not consistent</b> <ul style="list-style-type: none"> <li>• 82% of the units receiving solar access; and</li> <li>• 16% of the units are now south facing units and will</li> </ul>

<ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter;</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</li> </ul>	<ul style="list-style-type: none"> <li>6% south facing units</li> </ul>	receive no solar access between 9am and 3pm in midwinter.
<p><b>Natural Ventilation</b> The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed;</li> <li>Overall depth of a cross-over or cross through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	<p><b>Consistent</b></p> <p>61%</p>	<p><b>Not consistent</b></p> <p>55%</p>

As shown above, the modified development will result in new non-compliances with the ADG requirements in relation to solar access as relates to increasing the number of solely south facing units and cross ventilation requirements. The modifications result in reduced amenity outcomes for the future occupants of the dwellings.

Given the location of the subject site being within the Business Park that adjoins commercial and industrial uses, the non-compliances with the ADG as it relates to the amenity of the units cannot be supported.

In this regard, the additional south facing units will increase the number of residents who will have compromised amenity in terms of solar access and these units will be exposed to the impacts from

the existing operations of the industrial/warehouse development which could be a source of noise and lighting for the future residents.

### **SEPP (Housing for Seniors or People with a Disability) 2004**

The original DA was lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as part of the development is for 'Seniors Housing'.

A comprehensive assessment of the application against the objectives and requirements of the SEPP was undertaken at the time of assessment of the original DA and the Review.

The application, as modified, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made by the SNPP.

In this regard, an assessment of the modified proposal with regards to the applicable controls of the SEPP is provided as follows:

#### **Clause 40 – Development Standards – Minimum Sizes and Building Height**

The following table outlines compliance of the modified development with the standards specified in Clause 40 of SEPP (HSPD):

<b>Control</b>	<b>Required</b>	<b>Approved</b>	<b>Modification</b>	<b>Compliance</b>
Site Size	1,000m <sup>2</sup>	4886m <sup>2</sup> Site area for proposed Lot 2	4759m <sup>2</sup>	Yes
Site coverage	20m	104m to Frenchs Forest Road East	No change	Yes

The requirement of Clause 40 (4) which relates to Building Height is not applicable to the subject site, as the subject site is not zoned for residential development.

#### **Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings**

The following table outlines compliance of the modified development with standards specified in Clause 50 of SEPP (HSPD):

<b>Control</b>	<b>Required</b>	<b>Approved</b>	<b>Modification</b>	<b>Compliance</b>
Building Height	8m or less (measured vertically from ceiling of topmost floor to ground level immediately below).	18.8m	No changes proposed	N/A
Density and scale	0.5:1 or less	1:84:1	1.73:1	<b>NO</b> (NB : modified proposal reduces the FSR)
Landscaped area	30% of the site area	34.6% (1692m <sup>2</sup> )	32.87% (1565m <sup>2</sup> )	Yes
Deep soil zones	15% of the site area	25.3%	23.25%	Yes

		(1234m <sup>2</sup> )	(1107m <sup>2</sup> )	
Parking	0.5 car spaces for each bedroom.	64 spaces provided plus 10 visitors for 124 rooms	72 spaces 140 rooms requires 70 parking spaces plus 11 visitors	Yes

## STATE REGIONAL ENVIRONMENTAL PLANS

There are no SREPs applicable to the site.

## LOCAL ENVIRONMENTAL PLANS

### WARRINGAH LOCAL ENVIRONMENT PLAN 2011

The Warringah Local Environmental Plan 2011 is applicable to the development.

Is the development permissible with consent?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
Aims of the LEP?	Yes
Zone objectives of the LEP?	No

## Principal Development Standards

Relevant Development Standard	Requirement	Approved	Modification	Compliance
Clause 4.1 Minimum Subdivision Lot Size	4000m <sup>2</sup>	Lot 1- 7684m <sup>2</sup>	Lot 1- 7811m <sup>2</sup>	Yes
		Lot 2 - 4886m <sup>2</sup>	Lot 2 - 4759m <sup>2</sup>	Yes
Clause 4.3 Height of Buildings	No height limit applies to the site	6 Storey  Max height: RL 171.8 (RL to 173.20 including lift overrun)	The development as modified will not alter the building height of the development for which approval has been granted.	N/A

## Compliance Assessment Summary

Relevant Clauses	Compliance with Requirements
<b>Part 1 Preliminary</b>	
1.2 Aims of the Plan	Yes
<b>Part 2 Permitted or prohibited development</b>	
2.1 Land Use Zones	No
2.7 Demolition requires consent	Yes
<b>Part 4 Principal development standards</b>	
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes

Relevant Clauses	Compliance with Requirements
<b>Part 5 Miscellaneous Provisions</b>	
5.9 Preservation of trees or vegetation	Yes
<b>Part 6 Additional Local Provisions</b>	
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

### Zone Objectives

Clause 2.3(2) of the WLEP 2011 requires the consent authority to have regard to the zone objectives when determining an application. The underlying objective of the B7 zone and it how it relates to the proposed development is addressed as follows:

The objectives of the B7 zone are:

- *To provide a range of office and light industrial uses.*
- *To encourage employment opportunities.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of workers in the area.*
- *To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.*

### Comment

The proposed modification seeks to reduce the approved commercial floorspace and increase the number of residential units. In this regard, the essence of the development (as modified) will be substantially altered given the further reduction of employment opportunities generated by this site. Therefore, the proposal is found to be inconsistent with the objective of the zone that seeks to encourage employment opportunities.

The applicant states that because the application has been made under the provisions of SEPP (HSDP) 2004, the zone objectives should not be given any determining weight in the assessment of the application.

Zone objectives are an important consideration because they set out the purpose of the zone and reflect the strategic land use direction for the land within that zone. Clause 2.3 of WLEP 2011 states, “*The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone*”.

In addition to the above, reference is made to the Land and Environment Court decision in *Abret Pty Ltd v Winerraribee Shire Council (2011) NSWCA 107*, where the Court considered the role of objectives in LEP's. In this case, the Court found that the objectives of a zone cannot influence whether or not a development is permissible, but are relevant when determining the proper construction of provisions in the LEP, because they reveal the intended operation and effect of the LEP as a whole.

For the above reasons, the inconsistency of the proposed modification with the zone objective is considered to be relevant and is included as a reason for refusal.

## WARRINGAH DEVELOPMENT CONTROL PLAN 2011

The Warringah Development Control Plan 2011 is applicable to the development.

### Built Form Controls

Principle Numerical Controls	Requirement	Approved	Modification	Complies
B4 Site Coverage	33.3%	Lot 1- 44% Lot 2- 42.4%	Lot 1 – 43.4% Lot 2 43.57%	No
B5 Side Boundary	Nil	Western – 6.0m Southern – 6.6m	No changes	N/A
B7 Front Boundary Setback	10m	Lot 2 - Frenchs Forest Rd East 10.3-17.2m Skyline Place – 6.0m	No change	N/A
B10 Merit Assessment of Rear Setback	Merit	The site has dual frontage, the rear setback requirement is not applicable to the subject site.	N/A	N/A

### Compliance Assessment Summary

Clause	Compliance with Requirements	Consistency Aims/Objectives
<b>Part A Introduction</b>		
A.5 Objectives	Yes	Yes
<b>Part B Built Form Controls</b>		
B4 Site Coverage	N/A	N/A
B5 Side Boundary	N/A	N/A
B7 Front Boundary Setback	N/A	N/A
B10 Merit Assessment of Rear Setback	N/A	N/A
<b>Part C Siting Factors</b>		
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
<b>Part D Design</b>		
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
<b>Part E The Natural Environment</b>		
E1 Private Property Tree Management	Yes	Yes
E10 Landslip Risk	Yes	Yes

### **Clause B4 - Site Coverage**

As result of the proposed amendments to the subdivision configuration, the site coverage has, for both lots, have slightly been modified. Lot 2 has been reduced in size by 127sqm and this has been transferred to Lot 1 via the alignment of the boundary (to create an easement that takes the form of an axe-handle). As such the site coverage within Lot 2 has marginally decreased by this amount (127m2) and the area within Lot 1 has increased.

The site coverage for Lot 2 has increased marginally due to the reduced size of Lot 2. However, this is considered acceptable given the proposal does not alter the approved built form of the development.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal, as amended, will not result in any impact on threatened species, populations or ecological communities or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)**

The proposal, as amended, is consistent with the principles of CPTED.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

The proposal has been assessed in accordance with Section 4.55(2) and the heads of consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 (as amended).

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- All relevant and draft Environmental Planning Instruments
- Warringah Local Environment Plan 2011
- Warringah Development Control Plan 2011
- Codes and Policies of Council

In accordance with Part 3 of Schedule 2 of the EP&A Act, the Application is referred to the Sydney North Planning Panel for determination.

The S4.55(2) application before the Panel seeks to modify Development Consent No. DA2018/0995 as described in this report. The proposed modifications have been assessed as resulting in a development that is not substantially the same development as that originally approved by the SNPP Review Panel.

The original consent granted by the SNPP (Review Panel) was approved on the basis that the amended proposal increased the commercial floor space component of the development, which amounted to an employment generation of approximately 115 jobs, in order that the development would be consistent with the B7 zone objective to encourage employment opportunities. The proposal was also amended to ensure compliance with the ADG requirements and a satisfactory amenity for the residential dwellings.

The current proposal in seeking to reduce the commercial component of the development and increase the number of dwellings, is fundamentally at odds, and reverses the specific requirements for the approval of the Review of Determination by the Panel. The assessment of the modification application has found that the essence of the development is substantially altered. In this regard, the focus of the original consent was that the development would create employment at a certain level, and the proposed modification will significantly diminish the amount of employment generating floorspace, which was a critical element in the approved development. Therefore, the assessment concludes that the modified development does not meet the objectives of the B7 zone.

The assessment of this modification has also found that the proposal is contrary to certain provisions of SEPP 65, specifically in relation to solar access and cross ventilation requirements for dwellings within the proposal required under the ADG.

The proposal will not result in any adverse amenity or other impacts upon nearby and adjoining development.

The application was the subject of two objections and the matters raised in those submissions have been addressed in this report and in part, warrant the refusal of the application.

Accordingly, it is recommended that modification application be refused for the reasons detailed below.

## **RECOMMENDATION (REFUSAL)**

That the Sydney North Planning Panel, as the consent authority, refuse to grant consent to Modification Application No. Mod2019/064 for Modification of Development Consent No.

Mod2019/0654– 5 Skyline Place, Frenchs Forest

DA2018/0995 granted for subdivision of land into 2 allotments, demolition of existing structures and construction of a mixed-use development, containing Seniors Housing units and commercial space on land at Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, and Lot CP in SP 49558, No. 5 Skyline Place, Frenchs Forest, for the following reasons:

1. Pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, the amendments proposed under the Modification Application will result in a development that is not substantially the same as the development for which consent was originally granted.
2. Pursuant to Section 4.15(1) (a) (i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of SEPP (Building and Sustainability Index: BASIX) 2004.
3. Pursuant to Section 4.15(1) (a) (i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the solar access and cross ventilation requirements of the Apartment Design Guide as applies under SEPP 65 – Design Quality of Residential Apartment Development.
4. The proposed modifications are inconsistent with the objective of the B7 Business Park zone under the Warringah Local Environmental Plan 2011 in relation to encouraging employment opportunities within the zone.