

Statement of Environmental Effects & Heritage Assessment

Application Pursuant to s.4.56 of the Environmental Planning & Assessment Act 1979

163 Birrell Street, Waverley NSW 2024

24 July 2020



PREPARED BY

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PROJECT PARTICULARS

Project No.	2014.022
Client	Eastern Suburbs Leagues Club
Site Address	163 Birrell Street, Waverley NSW 2024
Document Name	Statement of Environmental Effects

Prepared by

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In the event that this document is not signed, this is not representative of a final version of the document, suitable for assessment purposes.

RELIANCE ON CONSULTANT INFORMATION

As part of undertaking this project, Hamptons has relied on the professional advice provided by third party consultants. No responsibility is taken for the accuracy of the information relied upon by these consultants assisting the project. It is assumed that each of the consultants has made their own enquiries in relation to technical matters forming part of their expertise.



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1. INTRODUCTION

Hamptons Property Services (Hamptons) has been retained by Eastern Suburbs Leagues Club Limited (ESLCL) in relation to the land known as 163 Birrell Street, Waverley, to prepare a development application (DA) to modify an existing development consent, in accordance with s.4.56 of the Environmental Planning & Assessment Act 1979 (the EP & A Act).

The purpose of this application is to modify Condition 1 and 8, Part B of the development consent issued by the NSW Land & Environment Court (*Eastern Suburbs Leagues Club Limited v Waverley Council [2019] NSWLEC130*) for the land legally described as Lot 1 in Deposited Plan (DP) 966387; Lot 2 in DP 1114418 and Lot 301 in DP 1114421.

Purpose of this Modification Application

The application proposes to modify Conditions 1 and Condition 8, Part B of DA 483/2018.

Condition 8 states that:

The construction certificate drawings must demonstrate 2.7m floor to ceiling heights for all habitable rooms in the residential components of the development.

Building Height

(a) The height of:

- (i) Building A must not exceed RL 111.25 (AHD) to the top of the plant and RL 107.25 (AHD) to the roof of Level 6 the building;*
- (ii) Building B must not exceed RL 101.30 (AHD) to the top of the plant and RL 99.80 (AHD) to the roof of Level 4;*
- (iii) Building C must not exceed RL 98.20 (AHD) to the top of the plant and RL 96.70 (AHD) to the roof of Level 3;*
- (iv) Building D must not exceed RL 98.20 (AHD) to the top of the plant and RL 96.70 (AHD) to the roof of Level 3;*

(b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the buildings accords with (a) above, to the satisfaction of the Principal Certifier.

In order to satisfy the deferred commencement conditions at Part A of the Development Consent (Condition 1 – Acoustic Assessment), there have been alterations to the building heights to accommodate service equipment. The services equipment proposed in accordance with Condition 1 has been designed to ensure



best practice is achieved in relation to acoustic outcomes to ensure that no adverse amenity impact result on neighbouring properties. This has resulted in a minor increase to the approved height of each building.

Therefore, this modification application proposes to extend the height of each of the four buildings (Building A, B, C and D) in order to provide sufficient space for plant and equipment located on the roof of each of the buildings to satisfy the required acoustic outcomes for the development. The proposed extension of buildings provides improved acoustic solutions for the site itself and surrounding developments as was intended by Condition 1. The acoustic solutions have been accepted by the Council and Condition 1 of Part A of the development consent has been satisfied.

In terms of Condition 8, the proposed modification to the building height is as follows:

- (i) Building A to the roof of level 6 is at RL 107.25. This level did not include a hob which is required to the perimeter of the roof slab. The proposed hob RL 107.45 (approved at RL 107.45) has been inset from the roof edge to reduce the visual impact.
- (ii) Building B to the roof of level 4 is at RL 99.80. This level did not include a hob which is required to the perimeter of the roof slab. The proposed hob RL 100.00 (+0.20) has been inset from the roof edge to reduce the visual impact.
- (iii) Building C RL to the top of plant has been increased by 300mm from RL 98.20 to RL 98.50. This is due to the size of plant equipment identified following the services development of the proposal. As a result, the height of the surrounding acoustic screen has been raised from 1.5m to 1.8m to conceal this equipment. This screen has been inset from building edges to reduce the visual impact. Building C, to the roof of level 3, is at RL 96.70. This level did not include a hob which is required to the perimeter of the roof slab. The proposed hob, at RL 96.90, has been inset from the roof edge to reduce the visual impact.
- (iv) Building D RL to the top of plant has been increased by 300mm from RL 98.20 to RL 98.50. This is due to the size of plant equipment identified following the services development of the proposal. As a result, the height of the surrounding acoustic screen has been raised from 1.5m to 1.8m to conceal this equipment. This screen has been inset from building edges to reduce the visual impact. Building D to the roof of Level 3 is at RL 96.70. This level did not include a hob which is required to the perimeter of the roof slab. The proposed hob RL 96.90 has been inset from the roof edge to reduce the visual impact.

Subsequently, modification to Condition 1, Part B is also required as this condition references the approved plans and documentation.



2. THE SITE & ITS LOCALITY

Table 1, below, provides the key information relating to the site.

Table 1: Site Details

Property Address	163 Birrell Street, Waverley 2024	
Legal Description	Lot 1, Deposited Plan 966387 Lot 2, Deposited Plan 1114418 Lot 301, DP 1114421	
Site Area	10,870m ² (1.087 ha)	
Site Boundaries	North (Birrell Street)	121m
	East (Langlee Avenue)	96m
	South	125m
	West (Henrietta Street)	83m
Existing Use	<i>Registered Club</i>	
Critical Habitat	No	
Conservation Area	No	
Coastal Protection	Not specified on certificate	
Heritage Item	Yes - Item 451. Post War Modernist style Waverley Bowling Club. Item of Local significance	
Mine Subsidence	No	
Road Widening or Realignment	No	
Hazard Risk Restriction	No	
Flood Planning	No	
Acquisition	No	
Biodiversity Certified Land	No	
Bushfire Prone Land	No	
Property Vegetation Plan	No	
Native Vegetation Clearing	No	
Contamination	No, (although, SCC outlines potential for land contamination)	
Loose-fill asbestos	No	

Note. Information above retrieved from Section 10.7(2) Certificate No.40565, dated 18 October 2018.

The subject site has ceased its use as a bowling club.

Figure 1: Site Location



Source: <https://maps.six.nsw.gov.au/>

Figure 2: Aerial Location



Source: <https://maps.six.nsw.gov.au/>

Figure 3: Site Survey



Source: Watson Buchan Pty Ltd. Dated 30 May 2011.

3. THE PROPOSED DEVELOPMENT

This application proposes to modify, by increasing the approved height of each of the buildings, sufficient space for plant and equipment located on the roof top of each building and appropriate screening around this to ensure that the amenity of neighbouring properties is achieved in accordance with Condition 1, Part A of the Development Consent, which has been approved by Council. In approving Condition 1 of Part A requires that Condition 8 of Part B be amended, as follows:

Condition 8 states that:

The construction certificate drawings must demonstrate 2.7m floor to ceiling heights for all habitable rooms in the residential components of the development.

Building Height

(c) The height of:

- (v) Building A must not exceed RL 111.25 (AHD) to the top of the plant and RL ~~107.25~~ 107.45(AHD) to the roof of Level 6 the building;*
- (vi) Building B must not exceed RL 101.30 (AHD) to the top of the plant and RL ~~99.80~~ 100.00 (AHD) to the roof of Level 4;*
- (vii) Building C must not exceed RL ~~98.20~~ 98.50 (AHD) to the top of the plant and RL ~~96.70~~ 96.90 (AHD) to the roof of Level 3;*
- (viii) Building D must not exceed RL ~~98.20~~ 98.50 (AHD) to the top of the plant and RL ~~96.70~~ 96.90 (AHD) to the roof of Level 3;*

(d) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the buildings accords with (a) above, to the satisfaction of the Principal Certifier.

Subsequently, modification to Condition 1 based on the new proposed heights of buildings is also required as Condition 1 contains approved plans and documentations. The amendments proposed are detailed in red below.

Table 2: Amendments to Condition 1 relating to approved architectural plans (amendments shown in red)

Drawing No.	Drawing Name	Drawing Revision & Date	Drawing Date (Plot)
DA0000.1	Cover Page	H	16.09.19
DA0001.1	Site Location Plan	F	16.09.19
DA0005.1	Basix Commitments	B	16.09.19
DA1001.1	Existing Site & Demolition Plan	E	16.09.19
DA1002	Existing and Demolition Plan / Elevation	A	18.06.19

DA1100.1	Proposed Basement 2 Plan	F	16.09.19
DA1101.1	Proposed Basement 1 Plan	H	16.09.19
DA1102.1	Proposed Ground Floor Plan	I	16.09.19
DA1103.1	Proposed Level 1 Plan	H	16.09.19
DA1104.1	Proposed Level 2 Plan	G	16.09.19
DA1105.1	Proposed Level 3 Plan	G-L	16.09.19 30.03.2020
DA1106.1	Proposed Level 4 Plan	G	16.09.19
DA1107.1	Proposed Level 5 Plan	F-K	16.09.19 30.03.2020
DA1108.1	Proposed Level 6 Plan – Communal Rooftop	F-J	16.09.19 30.03.2020
DA1109.1	Roof Plan	G-K	16.09.19 30.03.2020
DA2100.1	Overall Street Elevations	G	16.09.19
DA2110.1	Block A Elevations	F-G	16.09.19 30.03.2020
DA2111.1	Block B Elevations	E-F	16.09.19 30.03.2020
DA2112.1	Block C Elevations	G-H	16.09.19 30.03.2020
DA2113.1	Block D Elevations	G-H	16.09.19 30.03.2020
DA2114	Heritage Elevations	D	16.09.19
DA3000.1	General Sections	E-G	16.09.19 30.03.2020
DA3001.1	General Sections	E-G	16.09.19 30.03.2020
DA3002.1	General Sections	E-F	16.09.19 30.03.2020
DA3010.1	Car park ramp sections	D	16.09.19



4. SECTION 4.56 OF THE EP & A ACT

The proposed modification must be considered in accordance with s. 4.56 of the EP & A Act, the requirements of which are set out in the Table below.

Table 3: Assessment pursuant to Section 4.56

Clause No.	Title/Clause	Comment
(1)	Modifications by consent authorities of consents granted by the Court	
	A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court 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 the consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The modification application is of minimal environmental impact, such that it will result in <i>substantially the same development as the development for which the consent was originally granted</i>.</p> <p>The increased building height (0.2-0.3m) provides for improved acoustic solutions for the site itself and neighbouring properties, having regard to conditions imposed by the consent authority on the principal development consent, which seek to protect and enhance the amenity of the adjoining sites.</p> <p>The proposal is compatible in its context and the additional height does not result in any additional overshadowing to neighbouring properties as a result of the minor increase. Further, the view line diagrams demonstrate that there is no visual impact a result of the modified building height, when viewed from neighbouring properties.</p> <p>Most importantly, the modification application does not materially alter the foundations of the development consent, with respect to us, building height, form, scale, nor density. Further, the modifications have no impact on the context, nor setting of the heritage item.</p> <p>The proposed modification, therefore, does not substantially alter the development, as approved, and the changes are of minimal environmental impact.</p>

Clause No.	Title/Clause	Comment
	b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, and (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	It is acknowledged that the Council will notify the application accordingly.
	(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	It is acknowledged that the Council will notify the application accordingly.
	(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.	It is acknowledged that the Council will notify the application accordingly. Should any submissions be received, the Applicant would be willing to respond to these accordingly at the request of Council.



5. SECTION 115 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT REGULATION 2000

Section 115 of the EP & A Regulation is relevant to this application and requires the provision of information as set out in Table 4, below.

Table 4: Section 115 of the Regulation

Legislative Requirement	Response
(a) the name and address of the applicant,	Eastern Suburbs Leagues Club Ltd PO Box 124 Bondi Junction NSW 1355
(b) a description of the development to be carried out under the consent (as previously modified),	Erection of a seniors living development containing 54 independent living units, ancillary resident facilities, a registered club, including two bowling greens, basement car parking and landscape and site works.
(c) the address, and formal particulars of title, of the land on which the development is to be carried out,	Lot 1 in Deposited Plan (DP) 966387; Lot 2 in DP 1114418 and Lot 301 in DP 1114421.
(d) a description of the proposed modification to the development consent,	The proposed modification is set out at Section 3.
(e) a statement that indicates either:	The modification seeks to:
(i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or	
(ii) that the modification is intended to have some other effect, as specified in the statement,	Modify Condition 1 and 8 of Part B of the principal development consent, as specified in this statement.
(f) a description of the expected impacts of the modification,	The expected impacts of the modification are dealt with below.
(g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,	The proposed modification to the conditions will result in the development being substantially the same as that for which development consent was originally granted and the modifications are of minimal environmental impact.
(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),	Owners consent has been provided and is outlined on the Section 4.56 Application Form.
(i) a statement as to whether the application is being made to the Court (under section 4.56) or to the consent authority (under section 4.55), and, if the consent authority so	Not applicable

Legislative Requirement	Response
requires, must be in the form approved by that authority.	



6. SECTION 4.15 EVALUATION

This application is required to consider section 4.15 of the Environmental Planning & Assessment Act 1979 (EP & A Act), the provisions of which are set out and addressed below.

Table 5: Section 4.15 of EP & A Act

Clause No.	Title/Clause	Comment
4.15	Evaluation	
(1)	Matters for consideration—general	
	In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:	
	(a) the provisions of:	
	(i) any environmental planning instrument, and	<ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) ○ State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) ○ State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, and ○ WLEP
	(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	Not applicable.
	(iii) any development control plan, and	Waverley Development Control Plan 2012 (DCP)
	(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	Not applicable.
	(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and	Not applicable.
	(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),	Not applicable.

Clause No.	Title/Clause	Comment
	<p>that apply to the land to which the development application relates,</p> <p>(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,</p>	<p>The proposed modification relates to an increase in the approved building height of each building within the development, to allow sufficient space for plant and equipment that is located on the roof top of each of the buildings. The detailed design of plant and equipment has been undertaken in response to Condition 1 of Part A of the principal Development Consent, which detailed acoustic matters that needed to be satisfied on a deferred commencement basis.</p> <p>These matters were satisfied by the Applicant on 5 June 2020.</p> <p>In satisfying these, and applying best practice acoustic outcomes, has resulted in a minor, but necessary, increase to the top of plant and associated screening measures.</p> <p>The only impacts associated with these would be attributable to bulk and scale; visual impact and overshadowing.</p> <p><u>Bulk & Scale/Visual Impact</u></p> <p>DA 3003 and DA 3004, Revision A, prepared by Altis Architects, provides a view analysis of the proposed building height, versus the approved building height to determine the additional impact attached to this increase. The view analysis is undertaken from the adjoining properties to the south, being 2 Henrietta Street, 10 Henrietta Street and 38 Langlee Avenue which were the properties that were considered to be the most directly affected by the proposal during the NSW LEC proceedings. In the case of each of these properties, the View Analysis demonstrates as follows:</p> <p><u>2 Henrietta Street</u></p> <p>From this property, the increased height will have no visibility from that property. The visual impact of the development will remain as approved.</p> <p><u>10 Henrietta Street</u></p> <p>From this property, the view of the approved form at Level 3 will intercept the visual corridor, before there is any impact of the upper storey</p>



Clause No.	Title/Clause	Comment
		<p>at Level 4, which will contain the increased height. This means that the increased building height will have no visual impact when viewed from this property over and above that of the approved development.</p> <p><u>38 Langlee Avenue</u></p> <p>From this property the visible point of the development at Level 3 will remain as <i>per</i> the principal development consent. The increased building height is set back from the frontage and will have no visibility from the principal living areas of that property.</p> <p>Therefore, the modification will have no impact in terms of additional visual presence over the approved development and thus no additional bulk and scale would be perceived.</p> <p><u>Overshadowing</u></p> <p>In relation to overshadowing, in all cases the increase in building height is set back from the principal building form and will not cause any additional increase in overshadowing as a result of the increased height of the development that would impact on adjoining properties with any additional height absorbed by the building form of the level below.</p> <p>Therefore, there are not considered to be any likely impacts associated with these modifications.</p> <p><u>Acoustic Impacts</u></p> <p>From an acoustic perspective, satisfaction of the deferred commencement conditions ensures that the acoustic environment is satisfactorily protected.</p> <p>The modification application does not result in any adverse social or economic impacts.</p>
	(c) the suitability of the site for the development,	<p>The proposed modification is suitable for the site and in keeping with the overall function, as approved.</p> <p>The proposed extension of building height is required to accommodate plant and equipment on the roof of each building and does not contribute any significant additional bulk to the approved built form. Therefore, the</p>



Clause No.	Title/Clause	Comment
		development remains compatible with the context and character of the area.
	(d) any submissions made in accordance with this Act or the regulations,	The Applicant is willing to respond to any submissions made during exhibition of the application, if that is deemed necessary by the consent authority.
	(e) The public interest.	<p>The proposal does not present any issues that are contrary to the public interest. The proposed increase in building height for each of the buildings aims to improve the overall functionality and environmental performance of each of the buildings, as it relates to acoustic conditions; therefore, enhancing the amenity of the site for both residents and visitors.</p> <p>The modifications do not overshadow adjoining properties, therefore maintaining the amenity to these, as well as within the site itself to the bowling greens, nor the public domain surrounding the site.</p> <p>Therefore, the proposed modifications do not negatively impact neighbouring properties, the public domain surrounding the site, nor the public spaces within the development itself; the modifications are therefore in the public interest.</p>

SEPP 65

The matters pertaining to SEPP 65 are addressed in the Table below.

Table 6: SEPP 65 Schedule 1 Design Quality Principles

Principle	Comment
1 Context and neighbourhood character	
Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.	The minor increase that is proposed to the height of each building does not change the overall appearance of the approved development when viewed within the context of the site.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area	



Principle	Comment
<p>including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	
2 Built form and scale	
<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The proposed increase in building height to each of the approved buildings is minor to accommodate plant and equipment on the roof top, in an acoustically acceptable environment. The modifications do not overshadow adjoining properties or lead to loss of views and vistas. Therefore, the proposal is consistent with the built form and scale of the of the development, as approved, without causing adverse impact.</p>
3 Density	
<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The modifications to building height do not increase the density of the development as approved.</p>
4 Sustainability	
<p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The modifications to building height does not result in negative environmental, social nor economic outcomes.</p>
5 Landscape	



Principle	Comment
<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>The modification does not alter, or in any way, decrease the approved amount of landscaping, nor its character, on the site.</p>
6 Amenity	
<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>Amenity aspects are addressed above and there are no adverse impacts in this regard as a result of the modification application.</p>
7 Safety	
<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>No effect.</p>



Principle	Comment
8 Housing diversity and social interaction <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	No effect.
9 Aesthetic <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	The proposed modification to the approved building height maintains the overall aesthetic of each of the buildings, given the limited visibility of the modifications, as demonstrated in the View Analysis. The plant and equipment is positioned on the roof top such that it is set well back from edges of the roof form, thus causing no impact.

The proposal therefore achieves the design quality principles.

SEPP (Housing for Seniors or People with a Disability)

Table 7: SEPP (Housing for Seniors or People with a Disability) 2004 Assessment

Clause and Content	Comment	Compliance
2 Aims of Policy <p>(a) increase the supply and diversity of dwellings to meet the needs of seniors and those with a disability, and</p> <p>(b) make efficient use of existing infrastructure and services, and</p> <p>(c) be of good design.</p>	The modification does not propose any changes to the composition of dwellings, as approved on the site; thus, the modification remains consistent with the Aim of the policy.	Yes
33 Neighbourhood amenity and streetscape <p>The proposed development should:</p>		
<p>(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in</p>	The modification application does not alter the character of the locality	Yes

Clause and Content	Comment	Compliance
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	The modifications have no impact in this regard.	Yes
(c) maintain reasonable neighbourhood amenity and appropriate residential character by:	Matters of amenity are discussed above and the modification does not cause any adverse amenity impacts on the residential character.	
(i) providing building setbacks to reduce bulk and overshadowing, and	The proposed modifications are setback to ensure that the bulk of these is reduced and there are no adverse overshadowing impacts.	Yes
(ii) using building form and siting that relates to the site's land form, and	There is no aspect of the modification that alters the development having regard to the site's land form.	Not applicable
(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and	The minor modification to building height will not compromise the street frontages to which Building A or C attach to.	Yes
(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and	The modifications are not located on the boundaries such as to cause impact to neighbouring properties. This is demonstrated in the View Analysis.	Yes
50 Standards that cannot be used to refuse development consent for self-contained dwellings		
A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds:		
(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),	The modification application marginally increases the height to respond to best practice in relation to acoustic issues. However, the composition of building height has been thoroughly investigated as part of the principal development consent and deemed appropriate. The modification will not alter the findings of the determination with respect to bulk, scale, visual impact, nor	No

Clause and Content	Comment	Compliance
	overshadowing and will, instead, provide a superior acoustic impact to protect residents of the development and neighbouring sites. Thus, the height of the proposed development is acceptable, despite this standard.	
(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,	The modification application does not alter the approved floor space ratio of the development.	Not applicable

The proposal therefore achieves the requirements of the SEPP.

The LEP

The modification application is consistent with the Aims (Clause 1.2) as it will:

- not later the approved residential densities and range of housing types as approved under the principal consent
- not compromise the cultural, environmental, natural, aesthetic, social and built heritage of Waverley.

The relevant matters applicable to the proposal are addressed in the table below.

The modification is also consistent with the Objectives of the RE2 Private Recreation zone as set out below.

Table 8: Compliance with the RE2 Zone Objectives

Zone Objective	Comment	Compliance
To enable land to be used for private open space or recreational purposes	Whilst the proposal relates to the extension of building height, the use of the site for recreational and club purposes will be retained.	Yes
To provide a range of recreational settings and activities and compatible uses; and	The continued use of the site will allow for a range of recreational settings and activities to be carried out, in addition to providing additional facilities including a seniors housing development	Yes
To protect and enhance the natural environment for recreational purposes	The continued use of the site will enhance the natural environment and maintain use of the land for recreational purposes.	Yes

The remaining provisions contained in the LEP, as relevant to this modification application, are addressed below.

Table 9: LEP Compliance

Development Standard	Control	Comment	Compliance
2.1 Land use zones	RE2 Private Recreation zone	The existing use of the site is permissible with development consent. The proposal does not change the existing use of site.	Yes
4.3 Height of buildings	Maximum building height – 8.5m	The proposed modification to building height is required to accommodate plant and equipment on the roof top of each building as detailed above. The principal development consent allows for building heights in accordance with Condition 8 of Part B, as facilitated through the SCC process. The proposal is above the development standard for height; however, this is not subject to clause 4.6 which requires that a variation request be submitted [<i>North Sydney Council v Michael Standley & Associates Pty Ltd</i>].	No
5.10 Heritage conservation	1) Objectives The objectives of this clause are as follows:		
	a) to conserve the environmental heritage of Waverley,	The subject site is listed as an item of local heritage significance on Schedule 5 as Post War Modernist style Waverley Bowling Club, item 1451. The site is in the vicinity of the following items: <ul style="list-style-type: none"> ○ Waverley College – Landscape (Birrell, Henrietta and Salisbury Street) – Item no. 1518; ○ Federation style classroom building, Waverley College (141-149 Birrell Street) – Item no. 1450; ○ Waverley Park Landscape Conservation Area – Area no. C67; and ○ Wiley Street Landscape Conservation Area – Area no. C68. 	Yes



Development Standard	Control	Comment	Compliance
		<p>The proposed modification does not alter the aspect of the heritage item on the site, nor those within the vicinity thereof.</p> <p>The modification to the approved building height is required to accommodate plant and equipment on the roof of each of the buildings and provides for improved acoustic solutions for the site itself, as well as neighbouring properties. The proposal does not overshadow the relevant heritage items, therefore maintaining their amenity. Additionally, the proposal does result in any loss of views to and from these items as the modifications are sympathetic to the scale and built form of these items. Therefore, the proposed modification is acceptable.</p>	
	b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,	Refer above.	Yes
	c) to conserve archaeological sites,	The proposal does not affect any archaeological sites.	No impact
	d) to conserve Aboriginal objects and Aboriginal places of heritage significance.	The proposal does not affect Aboriginal objects and Aboriginal places of heritage significance.	No impact.
	2) Requirement for consent Development consent is required for any of the following:		
	a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):		

Development Standard	Control	Comment	Compliance
	(i) a heritage item,	Development consent is sought for the proposed works. However, the modification will not occur on the heritage item itself.	Yes
	(ii) an Aboriginal object,		Not applicable
	(iii) a building, work, relic or tree within a heritage conservation area,	The site is not located in a heritage conservation area.	Not applicable
	b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,	The modification works will not occur on the heritage item itself.	Not applicable
	c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,		Not applicable
	d) disturbing or excavating an Aboriginal place of heritage significance,		Not applicable
	e) erecting a building on land:		Not applicable
	(i) on which a heritage item is located or that is within a heritage conservation area, or	As detailed above, the proposed modifications to building height will not compromise the heritage item thereon.	Yes
	(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,		Not applicable



Development Standard	Control	Comment	Compliance
	f) subdividing land:		Not applicable
	(i) on which a heritage item is located or that is within a heritage conservation area, or		Not applicable
	(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.		Not applicable
	4) Effect of proposed development on heritage significance		
	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).	The proposed modification to the approved height of each of the buildings have no effect on the surrounding heritage items, nor on the item on the subject site.	Yes

The proposal therefore achieves the requirements of the LEP.

The DCP

The DCP provides detailed guidelines for development in the Council's area, set out in the form of objectives, performance criteria and controls. As the proposal involves minor modification to the approved height, there are only a limited number of provisions which apply to this modification application. The following parts set out the compliance, or otherwise, of the proposed development with the relevant provisions of the DCP.



Table 10: DCP Compliance

Provisions	Comments	Compliance
Part B – General Provisions		
B9 Heritage		
<i>General Objectives</i>	Refer to previous discussion within this report.	
To provide a framework for heritage and conservation planning in Waverley.		Yes
To provide detailed guidelines to manage change and ensure the preservation of history and heritage in Waverley.		Yes
To ensure that appropriate heritage documentation is provided to inform the assessment of development.		Yes
To ensure that Aboriginal heritage and archaeology are taken into consideration, and respectfully incorporated where appropriate.		Not applicable
To ensure that development enhances the character and significance of any heritage item, conservation area, artefact or place.		Yes
To ensure development reflects and promotes an understanding and appreciation of heritage significance.		Yes
To promote sustainable development through the retention and repurposing of existing building stock.		Yes
Part C – Residential Development		
C4 High Density Residential Development		
<i>Height</i>		
The maximum building height is as set by Clause 4.3 of the WLEP 2012 and the Height of Buildings Map.	Refer above.	No
<i>Views and View Sharing</i>		
Existing significant public views and vistas available from the public domain, including but not limited to ocean, city and parks views are to be maintained where possible by the design of buildings.	The proposed modification of building height is compatible with the overall design of the building and neighbouring developments. Further, the proposal does not lead to a loss of views. These matters are addressed in detail previously.	Yes
<i>Acoustic Privacy</i>		
Objective To effectively manage the interface between non-residential uses and residential accommodation.	The proposed extension of building height provides for improved acoustic solutions for the site itself and adjoining properties.	Yes

The proposal is therefore consistent with the DCP requirements.

7. CONCLUSIONS & RECOMMENDATIONS

Hamptons has been retained by the owner of 163 Birrell Street, Waverley, being Eastern Suburbs Leagues Club Ltd to prepare a development application to modify an existing development consent, in accordance with s.4.56 of the EP & A Act.

The purpose of this application is to modify Condition 1 and 8, Part B of the development consent issued by the NSW Land & Environment Court (*Eastern Suburbs Leagues Club Limited v Waverley Council [2019] NSWLEC130*) for the land legally described as Lot 1 in Deposited Plan (DP) 966387; Lot 2 in DP 1114418 and Lot 301 in DP 1114421.

As demonstrated in this application, the minor extension to the approved building height is in response to achieving compliance with Part A, Condition 1 of the development consent which relates to acoustic matters and has been satisfactorily addressed. To ensure that the best practice acoustic solutions are achieved, the minor increase to the approved building height is required. The position of the works to be modified, in relation to plant and equipment is inset from the roof form to reduce visual impact, such that there will be no adverse, nor additional impact, over that approved under the principal development consent. Further, the increase in building height does not pose negative impacts on adjoining properties in terms of bulk, scale, nor overshadowing. Additionally, the modification ensures the amenity of the subject site as well as neighbouring developments is retained and the public interest is enhanced.

The proposed modifications will not compromise the heritage attributes of the site.

This being the case, it is recommended that the modification application be approved in accordance with the accompanying plans and the modification to the conditions as set out below.

Amendment to Condition 1

Drawing No.	Drawing Name	Drawing Revision & Date	Drawing Date (Plot)
DA0000.1	Cover Page	H	16.09.19
DA0001.1	Site Location Plan	F	16.09.19
DA0005.1	Basix Commitments	B	16.09.19
DA1001.1	Existing Site & Demolition Plan	E	16.09.19
DA1002	Existing and Demolition Plan / Elevation	A	18.06.19
DA1100.1	Proposed Basement 2 Plan	F	16.09.19
DA1101.1	Proposed Basement 1 Plan	H	16.09.19
DA1102.1	Proposed Ground Floor Plan	I	16.09.19
DA1103.1	Proposed Level 1 Plan	H	16.09.19
DA1104.1	Proposed Level 2 Plan	G	16.09.19
DA1105.1	Proposed Level 3 Plan	G-L	16.09.19-30.03.2020
DA1106.1	Proposed Level 4 Plan	G	16.09.19
DA1107.1	Proposed Level 5 Plan	F-K	16.09.19-30.03.2020

DA1108.1	Proposed Level 6 Plan – Communal Rooftop	F J	16.09.19 30.03.2020
DA1109.1	Roof Plan	G K	16.09.19 30.03.2020
DA2100.1	Overall Street Elevations	G	16.09.19
DA2110.1	Block A Elevations	F G	16.09.19 30.03.2020
DA2111.1	Block B Elevations	E F	16.09.19 30.03.2020
DA2112.1	Block C Elevations	G H	16.09.19 30.03.2020
DA2113.1	Block D Elevations	G H	16.09.19 30.03.2020
DA2114	Heritage Elevations	D	16.09.19
DA3000.1	General Sections	E G	16.09.19 30.03.2020
DA3001.1	General Sections	E G	16.09.19 30.03.2020
DA3002.1	General Sections	E F	16.09.19 30.03.2020
DA3010.1	Car park ramp sections	D	16.09.19

Amendment to Condition 8

The construction certificate drawings must demonstrate 2.7m floor to ceiling heights for all habitable rooms in the residential components of the development.

Building Height

(e) The height of:

- (ix) Building A must not exceed RL 111.25 (AHD) to the top of the plant and RL ~~107.25~~ 107.45(AHD) to the roof of Level 6 the building;*
- (x) Building B must not exceed RL 101.30 (AHD) to the top of the plant and RL ~~99.80~~ 100.00 (AHD) to the roof of Level 4;*
- (xi) Building C must not exceed RL ~~98.20~~ 98.50 (AHD) to the top of the plant and RL ~~96.70~~ 96.90 (AHD) to the roof of Level 3;*
- (xii) Building D must not exceed RL ~~98.20~~ 98.50 (AHD) to the top of the plant and RL ~~96.70~~ 96.90 (AHD) to the roof of Level 3;*

(f) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the buildings accords with (a) above, to the satisfaction of the Principal Certifier.

