

**JOINT REGIONAL PLANNING PANEL  
(Region)**

<b>JRPP No</b>	<b>2013SYE031</b>
<b>DA Number</b>	<b>DA2013/0412</b>
<b>Local Government Area</b>	<b>Sydney East Region</b>
<b>Proposed Development</b>	<b>Stage One Redevelopment of the Harbord Diggers Club Site for seniors housing, new club facility, child care centre, gymnasium, community centre and respite care centre.</b>
<b>Street Address</b>	<b>80 Evans Street and 4 A Lumsdaine Drive, Freshwater</b>
<b>Applicant/Owner</b>	<b>Urbis Pty Ltd</b>
<b>Recommendation</b>	<b>Refusal</b>
<b>Report by</b>	<b>Malcolm Ryan, Deputy General Manager, Environment</b>

**Executive Summary**

**Purpose**

The application is referred to the Joint Regional Planning Panel for determination pursuant to State Environmental Planning Policy (State and Regional Development) 2011 and Schedule 4A of the Environmental Planning and Assessment Act 1979 as the development has a capital investment value in excess of \$20 million.

**The Proposal**

The Stage 1 DA is for the re-development of the Harbord Diggers Club site for the purposes of seniors housing, new club facilities and associated members services area, child care centre, gymnasium, community centre, and respite centre. The proposal includes:

- The adaptive re-use of the existing club buildings as seniors housing and associated land uses;
- building envelopes for new buildings fronting Carrington Parade and Lumsdaine Drive; and
- to levels of basement car parking.

**Site Context**

The site is located on a visually prominent headland between South Curl Curl Beach and Freshwater Beach. The site has three (3) street frontages; being Evans Street to the south-west, Carrington Parade to the west/north-west and Lumsdaine Drive to the north-east. The site adjoins McKillop Park to the north east. McKillop Park is a Crown Reserve.

The site is located within an established residential suburb and is approximately 700m from the local shopping facilities and services in Freshwater Village, which is centred on Lawrence Street and Moore Road. The site is serviced by public transport in terms of buses that travel around the site via Evans Street and Carrington Parade which connects to Freshwater village, Warringah Mall and Manly.

## **Summary of the key issues**

An assessment of the proposal against the relevant planning controls has found the following fundamental issues with regards to this application:

- The bulk, scale, built form and character sought by the proposal exceeds that is envisaged for the site, particularly having regard to the visual impact and streetscape appearance of the proposed building forms and the lack of landscaping provided for a development of this location, scale and configuration.
- The maintenance of the existing club building to take advantage of its height in association with changing its use, and in doing so receiving a significant uplift in the site's commercial value does not strike the right balance and urban design outcomes having regard to the significant nature of the redevelopment of the site.
- The proposal development exceeds most of the built form controls that apply to the site under the provisions of SEPP (HSPD) 2004, WLEP 2011 and WDCP. The proposal is also found to be inconsistent with core principles as contained in SEPP 65.
- The proposed development in terms of built form is found not to be sympathetic to the scenic and visually sensitive character of the location and its interface with low density residential development to the west and north of the site.

## **Conclusion**

Having regard to the design and character requirements embodied in the applicable planning controls and considering the site's prominent headland location, the proposal is not considered to be an appropriate or suitable response. The current R2 – Low Density Residential zoning under WLEP 2011, and character tests applicable under the SEPP, encourages a form of development which is more compatible and consistent with the prominent built form surrounding the site.

The site is relatively unconstrained and there are no significant impediments to creating a form of development which positively responds to the context of the site and locality. In this regard, it is considered that the built form should be broken down more substantially to produce buildings which contextually fit within the established character of the locality to provide for a "detached" building form.

Therefore, taking into consideration the urban design advice from GUM and Council's Senior Urban Planner, it is recommended that substantial amendments be carried out to the building form to address the concerns raised in this report.

Accordingly, the assessment concludes that proposal cannot be supported in its current form and therefore the refusal of the application is recommended.

## Assessment Report and Recommendation

<b>Assessment Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 100 DP 1136132 , 80 Evans Street and Lot 2 DP 579837 , 4 A Lumsdaine Drive, Freshwater
<b>Zoning:</b>	LEP - Land zoned R2 Low Density Residential LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Joint Regional Planning Panel (JRPP)
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Mount Pritchard & District Community Club Ltd
<b>Applicant:</b>	Urbis Pty Ltd
<b>Application lodged:</b>	8 April 2013
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	19/04/2013 to 24/05/2013
<b>Advertised:</b>	20/04/2013
<b>Submissions:</b>	<p>A total of 635 individual submissions have been received, which includes:</p> <ul style="list-style-type: none"> <li>• 604 letters of support; and</li> <li>• 28 letters of objections.</li> </ul> <p>In addition to the above, Council has received a total of 7,503 template letters generated by the club supporting the proposal.</p>
<b>Estimated Cost of Works:</b>	\$ 106,045,584
<b>Attachments:</b>	<p><b>Attachment 1</b> – Pre-Lodgement Meeting Notes (7 February 2013).</p> <p><b>Attachment 2</b> – GM Urban Design Report.</p>

### 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.

## **SUMMARY OF ASSESSMENT ISSUES**

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development  
State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004  
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential  
Warringah Local Environmental Plan 2011 - 13 Use of certain land at Lumsdaine Drive, Freshwater  
Warringah Development Control Plan – B3 Side Boundary Envelope  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan – B7 Front Boundary Setbacks  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - D3 Noise  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D9 Building Bulk  
Warringah Development Control Plan - E7 Development on land adjoining public open space  
Other Assessment Matters

## **SITE DESCRIPTION**

The site comprises the following parcels of land:

- Lot 125, DP 1102154, No. 80 Evans Street, Freshwater; and
- Lot 2 DP 579837, No. 4A Lumsdaine Drive, Freshwater.

The combined site has an area of 15,599 square metres and is irregular in shape. The site is located on a visually prominent headland between South Curl Curl Beach and Freshwater Beach.

The site has three street frontages; being Evans Street to the south-west, Carrington Parade to the west/north-west and Lumsdaine Drive to the north-east.

The topography of the site is characterised by a moderate fall to the north-east from the north eastern side of the existing Harbord Diggers Club building and car park and a gradual fall to the west on the south-west side of the existing Harbord Diggers Club building and car park.

The Lot known as No.80 Evans Street is currently occupied by the part four and part five storey Harbord Diggers Club building and a two storey car park. Three bowling greens are provided on the roof of the car park structure.

The existing Harbord Diggers Club building incorporates a nil setback to Evans Street for a length of approximately 48m. The existing adjoining car park is setback 6.5m from the boundary adjoining Evans Street. Three vehicular crossings, a service block and other structures are located within the 6.5m setback. The setback of the existing car park to Carrington Parade varies from 2.3 metres (midway along Carrington Parade) to approximately 20 metres (at the corner of Carrington Parade and Evans Street).

Vehicular and pedestrian access to the Harbord Diggers Club building is currently provided from Evans Street. Three vehicular crossings have been provided. One vehicular crossing is the entry to the Club's car park, the second is the exit from the car park and the third provides access for members and provides access to the loading dock.

Due to the visual prominence of the site, the existing Harbord Diggers Club building and surrounding land can be viewed from a number of distant vantage points.

The Lot known as No.4A Lumsdaine Drive is an irregular shaped allotment and is currently occupied by a two storey dwelling with a detached garage.

The site adjoins McKillop Park to the north east. McKillop Park is a Crown Reserve.

Development on the south-west side of Evans Street is characterised by apartment style dwellings. The development to the west is generally characterised by detached style dwelling houses. The topography of the land to the west of the site has resulted in many of the dwellings to the west being elevated above the subject site.

The site is in the vicinity of the coastal cliffs located along the northern side of Lumsdaine Drive. The coastal cliffs are identified as a heritage 'Conservation Area' in Warringah Local Environmental Plan 2011.

## Locality Map



## SITE HISTORY

### Previous Development Application

Part of the current site (80 Evans Street) was the subject of a previous development application (DA2008/1163) for the redevelopment of the site. The proposal involved the retention of the existing registered club and the construction of residential development consisting of 10 buildings containing a maximum of 31 dwellings with underground car parking for 65 vehicles.

The application was assessed and reported to the Warringah Development Assessment Panel (WDAP) on a number of occasions. Following the reporting and the submission of several amended schemes, the WDAP ultimately decided at its meeting held on 18 February 2010 to refuse the application for the following reasons:

- Lack of car parking
- Lack of information relating to *compliance* with requirement SEPP55 – Remediation of Land; and
- Insufficient information regarding the ownership, use and management of the Village Green;
- The use of Crown Land for exclusive purposes of the Club to meet the car parking demand.

## **Section 82A - Review of Development Application (DA2008/1163)**

A section 82A (REV2010/0033) review of Development Application (DA2008/1163) was lodged with Council on 10 August 2010. The Application was assessed and reported to the Warringah Development Review Panel (WDRP) on 11 November 2010 with a recommendation for approval.

The Panel at its meeting held on 11 November 2011 decided to refuse the application on the basis that:

- The proposal did not maintain the visual pattern and scale of detached style dwellings; and
- The proposal detracted from the visual quality of the headland.

### **Pre-Lodgement Meetings**

The proposed development was the subject of two (2) separate pre-lodgement meetings with Council. The meeting dates and details of the proposal at the time of these meetings were as follows:

<b>Meeting Dates</b>	<b>Details of the proposal at the time of the Pre-DA meeting</b>
15 June 2011	A general discussion with regards to a conceptual proposal for the redevelopment of the Harbord Diggers Club site. No plans were submitted to Council as part of this Pre-DA meeting.
7 February 2013	A Stage 1 DA for the re-development of the site for the purposes of seniors housing, new club facilities and associated members services area, child care centre, gymnasium, community centre, and respite centre.

The plans submitted as part of the pre-lodgement meeting held on 7 February 2013 are very similar to the plans submitted as part of this application and therefore the pre-lodgement advice is relevant in the assessment of this application. A copy of the notes provided by Council in relation to the pre-lodgement meeting held on 7 February 2013 is attached to this report (refer to Attachment 1). It should be noted that in response to the pre-DA notes, the applicant has made some amendments the plans, which are as follows:

- Building A was broken into two (2) separate buildings
- Buildings B and C were also broken into two (2) separate buildings.
- Part of Building D was recessed at the front of Evans Street to provide a 6.5m setback.

### **The Subject Application**

The subject Development Application was lodged with Council on 8 April 2013.

The Development Application was subsequently advertised/notified for a period of not less than 30 calendar days terminating on 21 May 2013.

Following the completion of the advertising/notification period and following a preliminary assessment of the application, a letter was sent to the applicant on 17 June 2013 which identified a number of concerns with the proposal. The applicant was offered an opportunity to withdraw the application and re-lodge when the issues raised by Council had been resolved.

The applicant advised by letter dated 24 June 2013 that they wish Council to proceed with the assessment of the application.

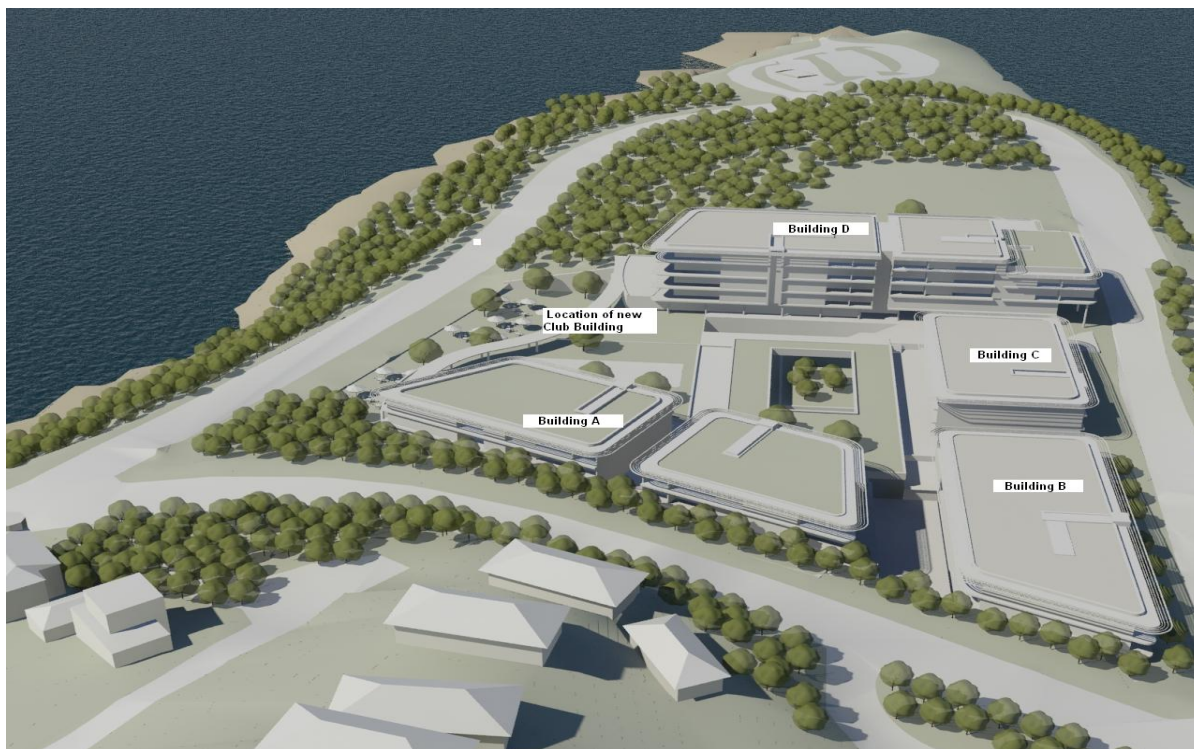


## PROPOSED DEVELOPMENT IN DETAIL

The application is a “Staged” Development Application submitted pursuant to section 83B of the Environmental Planning and Assessment Act 1979 (EP&A Act). The Stage 1 Development Application seeks consent for the following:

- Building envelopes to be used for Seniors Housing, new Club Facility, child care, gymnasium, community centre and respite care; and
- Consolidation of the two lots (being the existing club site at 80 Evans Street & Lot known as 4A Lumsdaine Drive) into a single Lot.

Figure 1 below is provided to assist in the identification of the proposed buildings within the site.



(Figure 1 – Aerial view of the site as viewed from the west - Source: Photo montage, prepared by Architectus)

The Statement of Environmental Effects (SEE) prepared by Urbis, dated April 2013 and submitted with the Stage 1 DA states that approval is sought for the following:

### Proposed Building Envelopes

The building envelopes proposed for this Stage 1 DA will provide the “Master Plan” for detailed design work to be undertaken as part of future Stage 2 DAs.

### New Senior Living Buildings

Four (4) seniors living buildings are proposed on the site: two (2) new buildings fronting Evans Street frontage (Building B and C), and two (2) fronting Carrington Parade frontage (Building A).

The proposal also includes the adaptive reuse of part of the existing club building for use as primarily seniors housing on the floors above the ground floor (Building D).

## **Adaptive Re-Use of Existing Club Building**

The overall envelope of the existing Club building is to be retained but reduced and heavily modified and adapted for seniors housing, community care/respice day care centre, community facility and ancillary uses for the new Club building including gym and members services.

Adaptation will result in the building ranging in height up to five storeys (RL38.50) above the existing natural ground level.

## **Basement Level Car parking**

An underground building envelope is proposed to contain two levels of car parking for the proposed uses. The arrangement of the car parking levels shows that it will accommodate up to 778 spaces.

## **New Club**

The new Club will front Lumsdaine Drive and be located towards the northern side of the site and include internal spaces and a major outdoor dining and entertainment area to take advantage of the significant vistas north towards Curl Curl Beach and the headland beyond.

## **Other uses (below ground)**

Gym and community facilities will be located beneath the existing club building.

## **Approval for Land Uses**

The Stage 1 DA also seeks consent for the following land uses that will be included as part of the redevelopment of the site:

- Seniors Independent Living Units (12,700m<sup>2</sup> of GFA)
- New Harbord Diggers Club (registered Club) and ancillary members services similar to those that currently exist on the site including gymnasium, travel services, food and beverage, and other ancillary uses that complement the club use (7,270m<sup>2</sup> of GFA).
- Long day child care centre including indoor and outdoor spaces to meet the operational requirements (700m<sup>2</sup> of GFA)
- Community centre and Respite care facility (400m<sup>2</sup> of GFA)
- Community Facility (830m<sup>2</sup> of GFA)

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account.

## **Staged Development Applications**

Section 83B of the *Environmental Planning and Assessment Act, 1979* deals with staged development applications as follows:

### ***"83B Staged development applications***

- (1) *For the purposes of this Act, a "staged development application" is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development.*



- (2) *A development application is not to be treated as a staged development application unless the applicant requests it to be treated as a staged development application.*
- (3) *If consent is granted on the determination of a staged development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:*
- consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
  - the staged development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*
- (4) *The terms of a consent granted on the determination of a staged development application are to reflect the operation of subsection (3)."*

In order to clarify the limitations of Staged Applications, the Land and Environment Court has provided some guidance in the form of a Planning Principle, handed down as part of the court hearing in relation to *Anglican Church Property Trust v Sydney City Council* NSWLEC 353. The judgement states that:

*"Multi-stage applications are useful for large or controversial projects as they provide the applicant with certainty about the major parameters of a proposal before it embarks on the expensive exercise of preparing detailed drawings and specifications for a development application. The critical issue is: how much detail should be provided in the Stage 1 application as against the Stage 2 application?"*

*The principle we have adopted is that in multi-stage applications the information provided in Stage 1 should respond to all those matters that are critical to the assessment of the proposal. Where traffic generation is the critical issue, Stage 1 should include information on the precise number of cars accommodated on a site. Where the floor space is critical, Stage 1 should include the precise FSR. Where the major issue is the protection of vegetation, the footprints of the proposed buildings may be sufficient."*

### **Current Application**

This application includes the land uses proposed, the approximate gross floor areas, building heights and envelopes, setbacks, basement levels, landscaped area and vehicular access/egress.

The built forms depicted on the plans may not necessarily be the same as the final form of the buildings as such details would normally be considered in a Stage 2 Development Application. Rather, the plans subject to this application generally indicate the shapes within which the future buildings will be contained. The actual shapes of the buildings, including the number of floors, the number and size of apartments, the layout of the apartments, the number of car parking spaces, the elevations (including the presence or absence of balconies), the external finishes and the colours are to be shown in the Stage 2 application, if the Stage 1 consent is granted.

The critical matters to be assessed and determined as part of this application are:

- The visual consistency of the development to surrounding development;*
- The impact of the development on the availability of views from the public domain;*
- The streetscape and urban design issues relating to the building heights, footprints and separations, traffic accessibility and safety;*
- The shadow impacts of the development on the public domain and private properties;*
- The traffic impacts of the development; and*
- The impact of the development upon the environment relating to bushland and the retention of unique site features.*

Having reviewed the submitted documentation, it is considered that the level of supporting information adequately responds to those matters that are regarded as being critical to the assessment of the proposal.

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

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None Applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan is applicable to this application and the relevant provisions are considered in this report.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None Applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Clause 50(1A) of the EPA Regulations 2000 requires the submission of a design verification certificate from the building designer at lodgement of the Stage 2 development application.</p> <p>Clause 70B of the EPA Regulations 2000 relates specifically to staged applications for residential flat development and states that Clause 50(1A) applies in relation to a staged development application only if the application sets out detailed proposals for the development or part of the development.</p> <p>The Development Application is for the Stage 1 “concept proposal” which seeks approval for building envelopes, footprints and traffic access/egress. In this regard, a Design Verification Statement addressing the 10 Design Quality Principles of the SEPP has been submitted with the application. If the proposal further progressed to a Stage 2 Development Application, a Design Verification Statement will be required for a detailed Stage 2 Development Application.</p> <p>Clause 98 of the EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. As the application is only for a Stage 1 development application, no works are approved if the application is approved. A condition of consent could however be included to require the development to be proposed in the Stage 2 application to be consistent with the provisions of the Building Code of Australia.</p>
Section 79C (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><b>Environmental Impact</b> - The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan in this report. In summary, the proposed development is capable of being constructed so as to not result in any adverse environmental impacts on the natural environment. However, the proposed development in its current form will have an adverse impact on the visual and scenic quality of the site and locality, the streetscape, and surrounding views and outlooks. Therefore, the impacts of the proposal are unsatisfactory in its current form.</p> <p><b>Social Impact</b> - The proposed development will not have a detrimental social impact in the locality considering the mixed use character of the proposal, by providing a new</p>

Section 79C 'Matters for Consideration'	Comments
	<p>and improved registered club on site which is positive social impact in terms of recreational and leisure opportunities for the locality. Furthermore, the proposal will also result in positive social outcomes in terms of providing housing and care facilities on site to accommodate the needs of seniors and people with disability.</p> <p><b>Economic Impact</b> – The proposal will result in a positive economic impact on the locality as the mixed uses of the development will assist to strengthen economic vitality in this area by maintaining the registered club on the site, and providing additional housing opportunities and commercial activity on site.</p>
Section 79C (1) (c) – the suitability of the site for the development	<p>The site is suitable for the proposed development as it has good levels of vehicular access, public transport access, is relatively unconstrained in terms of topography, trees and other natural features. Activities associated with the club can be contained largely within the building and not be detrimental to surrounding residential properties.</p> <p>The fact that the site is surrounded by roads is elevated with ample opportunities for views and sunlight access leads itself to a development of this type. However, the three street frontages and the configuration of the available land due to the retention of the existing Club building present design challenges. Subject to the resolution of these design issues, the site is suitable for the proposed development and proposed land uses.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report. It is worth noting that the proposal has received a significant number of number letters and petitions in support of the proposal.
Section 79C (1) (e) – the public interest	<p>The zoning objectives as contained in WLEP 2011 provide the community with a level of certainty as to the scale and intensity of future development and the form and character of development that is in keeping with the zoning of the site.</p> <p>It is acknowledged and as evident by the number of support letters received from the community that the development of seniors housing and other uses that are proposed could provide a much needed boost to the locality and streetscapes in comparison to the current situation. However, the land use merits of the development do not outweigh the fact that the proposal represents an overdevelopment of the site in terms of the non-compliances and inconsistency found with relevant planning control.</p> <p>This assessment has found the development to be inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site.</p> <p>On balance, this assessment finds that the public benefit do not outweigh the need for the proposal to appropriately respond to the Planning controls and the context and character of the locality.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the JRPP (Sydney East Region) Business Paper – Item 1 – 8 August 2013 – JRPP Reference Page 11

Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process, Council is in receipt of 635 individual submissions, which includes:

- 604 letters in support of the proposal;
- 28 letters objecting to the proposal.

In addition to the above, Council has received a total of 7,503 template letters generated by the club supporting the proposal..

## **Assessment of Residents Issues**

### **1. Inconsistency with R2 Low Density Residential zone objectives**

Concerns have been raised that the proposed development is inconsistent with the zone objectives and future form of development envisaged for the zone.

**Comment:** The proposal's consistency with the objectives of the R2 Low Density Residential zone is considered under the 'Warringah Local Environmental Plan 2011' section of this report. In summary, the proposed development has been found to be inconsistent with the objectives of the R2 Low Density Residential zone and this issue has been included as a reason for refusal.

### **2. Excessive Height, bulk and scale**

Concerns have been raised that the proposed development, which includes 125 seniors living units is an overdevelopment of the site and not in keeping with the character with surrounding development. The following specific concerns have been raised:

- The development is excessive by way of its height, bulk and scale and contributes to unsatisfactory visual and amenity impacts.
- The development's height creates view loss from the public domain.
- The development is excessively bulky and intensive in its use of the site.
- The development does not comply with the height controls for the site.
- The envelopes sought are of a bulk and scale that is incompatible with the surrounding area.
- The development is inconsistent with the streetscape.

**Comment:** This issue has been discussed in detail throughout this report. In summary, the assessment has found that the design of the proposed development is not consistent with the character of the area and the development in its current form is excessive in terms of height, bulk and scale. The concerns raised in this regards are concurred with and are included as reasons for refusal.

### **3. Inconsistency with the requirements of SEPP (HSPD) 2004**

Concern has been raised that the proposed development is inconsistent with the requirement of the Seniors Housing SEPP. The following specific concerns have been raised:

- Non-compliance with the building height controls under the SEPP.
- The proposal's inconsistency with Clause 33 of the SEPP.
- The application does not comply with the Height of Buildings control of the WLEP 2011.

**Comment:** The proposal's consistency with the objectives and standards of the SEPP (HSPD) 2004 is considered under the 'State Environmental Planning Policy (Housing for Seniors and Persons with a Disability) 2004' section of this report. The non-compliance with the height of buildings control is addressed under this section also.

In summary, the proposed development has been found to be inconsistent with a number of the standards and requirements of this policy and these inconsistencies have been included as reasons for refusal.

#### **4. SEPP 1 Objection**

Concern has been raised that the applicant's written request does not address all areas of non-compliance, in particular the non-compliance created by the existing club building.

**Comment:** The issue of SEPP 1 has been assessed under the SEPP (HSPD) 2004 section of this report. In summary, the applicants SEPP 1 objection has not addressed or justified the non-compliance in relation to Building D (being the existing club building) and therefore this issue has been included as a reason for refusal.

#### **5. Non-compliance with built form controls as contained in WDCP**

Concerns have been raised that the proposed development does not achieve compliance with the number of built form controls as contained in WDCP.

**Comment:** This issue has been addressed in detail under 'Built Form Control' within the 'Warringah Development Control Plan 2011' section of this report. In summary, the non-compliances with the built form controls are considered to be inconsistent with the objectives of the controls and therefore are not supported.

#### **7. View Loss**

The concern raised with the regards to loss of views is from the adjoining property owners at No. 22 - The Drive, Freshwater.

**Comment:** This issue has been addressed under Clause D7 - View of the WDCP section of the report. In summary, the view loss on private properties cannot be accurately determined without height poles and this was not requested as the application was being recommended for refusal.

#### **7. Visual Impact**

Concerns have been raised that the proposed development will result in an unreasonable visual impact on the scenic quality of the locality. One submission notes that the buildings will have an unreasonable visual impact when viewed from public spaces such as McKillop Park and the Coastal Cliff board walk.

**Comment:** This issue is addressed in detail throughout this assessment report. In summary, the development is considered to result in an unsatisfactory visual impact and this is included as a reason for refusal.

#### **8. Traffic Impacts**

A number of submissions raised concerns regarding the additional traffic generated by the proposed development given the surrounding roads are already busy. Concern was also raised that the additional traffic generated will jeopardise pedestrian safety.

**Comment:** Council's Traffic Engineer has reviewed the proposed development and raised no objections to the proposed development on traffic grounds. Based on Council's Traffic Engineer's assessment, this issue does not warrant the refusal of the application.

## **9. Social Impact.**

A concern has been raised that there will be a decline in the mental health of residents in the area as result of the proposed development.

**Comment:** No evidence has been presented to sustain such a concern. Nevertheless, the mental health of residents in the area is not a relevant consideration having regard to the Environmental Planning and Assessment Act 1979 and therefore no comment is provided in relation to this issue.

## **10. State Environmental Planning Policy No. 71 – Coastal Protection**

A submission stated that State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) applies to the subject site. The submission noted that the policy aims to ensure that the visual amenity of the coast is protected but that the residential development, particularly on the prominent headland to the north of the Harbord Diggers Club would spoil the scenic amenity of the headland site.

**Comment:** SEPP 71 applies to land within the 'Coastal Zone'. The subject site is not located within the coastal zone as defined in the Coastal Protection Act 1979 and therefore the provisions of SEPP 71 do not apply to the proposed development.

## **11. Impact on adjoining public open space (McKillop Park)**

Concerns have been raised that the side setback of "Building D" from McKillop Park is inadequate to protect the coastal vegetation from direct and indirect impacts.

**Comment:** The Assessment has found that the setback of Building D is inadequate given the scale of the building and the length of the building which will be able to be viewed from the reserve. This issue has been included as a reason for refusal.

## **12. Environmental Impacts**

Concern has been raised that the proposed development will result in adverse impact on the natural environment. The following specific concerns have been raised:

- Impact of the development on the existing vegetation on the site (removal of vegetation) and the adjoining public open space areas.
- An assessment of the impact on the vegetation and ecological communities on the adjoining sites is required.
- The development is inconsistent with the 'E2 – Prescribed Vegetation 'E4 – Wildlife Corridors', 'E6 – Retaining Unique Environmental Features', 'E7 – Development adjoining a public open space'.

**Comment:** This issue is addressed in the relevant section dealing with WDCP in this report. In summary, the proposal and the supporting Flora, Fauna and Ecological Report prepared by Ecological and dated 26 September 2012 have been reviewed by Council's Natural Environment Unit, who raises no objections to the proposal subject to conditions endorsing the mitigation measures contained within the Flora, Fauna and Ecological Report submitted with the application. This issue does not warrant the refusal of the application



### 13. Site Compatibility Certificate

A submission received has noted that the assessment of the SCC by the Department of Planning and Infrastructure lacked the appropriate level of detail and accuracy and has raised concerns over the determination process of the SCC.

**Comment:** The assessment and the issuing of SCC is not matter for Council to consider as part of the assessment of this application and therefore no further comments are made in this regard.

### 14. Heritage

Concern was raised that the proposed development does not complement the nearby heritage conservation area.

**Comment:** The application was referred to Council's Heritage Officer as the proposed development is located in the vicinity of the Duke Kahanamoku statue and Memorial Park, which is identified as an item of regional heritage significance in WLEP 2011. The Heritage Officer indicated that the proposed development would result in little, if any, impact on the nearby heritage item or conservation area. Accordingly, this issue does not warrant the refusal of the application.

### 15. Public Interest

Concern is raised that the proposed development is not in the public interest as the building should be used as a community facility and not for commercial gain.

**Comment:** The public interest has been considered under 'Section 79C (1) (e) – The public interest' in the 'Section 79C Matters for Consideration' table in this report. In summary, the proposed development has not been found to be in the public interest due to the inconsistencies of the proposal with the requirements of the relevant planning controls, however the assessment of the site for club and seniors housing and associated uses is permissible with consent. Issue as it relates to planning matters has been included as a reason for refusal.

### 16. Zoning of the Harbord Diggers Club Site

A submission was received from Woodward Legal raising issues concerning the current zoning (under WLEP 2011) of the Harbord Diggers land. The submission states that the translation embodied in WLEP 2011 is flawed for the Harbord Diggers land and that the land should be zoned RE2 Private Recreation rather than R2 Low Density Residential.

**Comment:** This submission has been referred to Council's Strategic Department, where the following comments were provided:

*The Letter prepared by Woodward Legal offering an opinion about the current zoning (under WLEP 2011) of the Harbord Diggers land.*

*In brief, the opinion is based on the premise that in preparing WLEP 2011 Council undertook to translate WLEP 2000 into the Standard Instrument format. It is the opinion of the author of Appendix 6 that the translation embodied in WLEP 2011 is flawed for the Harbord Diggers land and that the land should be zoned RE2 Private Recreation rather than R2 Low Density Residential.*

*Throughout the opinion, when referring to the Harbord Diggers Club, the author takes the view that the DFC for the H1 Locality (under WLEP 2000), when referring to the Harbord Diggers Club means the whole of the land owned by the Club in vicinity of Carrington Parade, Lumsdaine Drive and Evans Street. The author's opinion implies that the DFC for the H1 Locality is intended to mean that the Club, and only the Club, shall be the land use located on the Club owned land.*

*Prior to the commencement of WLEP 2011, Council had cause to give consideration to the meaning of the DFC when the Club lodged development application(s) proposing housing on the site, in addition to retaining a registered club on the site. Council formed the view that whilst the DFC seeks to retain the Harbord Diggers Club on the site, it does not preclude either:*

- alterations, additions or rebuilding of the club (whether or not such results in a larger or smaller club operation), or*
- the addition of other (permitted) land uses on the site.*

*Further, the DFC identifies that the Locality is one that is to be characterised by (detached style) housing.*

*The author also seeks to draw support for his opinion on the basis that planning instruments over the life of the Club recognise that the Club land is for recreation and not housing purposes. The opinion does not document the zoning of the site under previous planning instruments which is as follows:*

- County of Cumberland Planning Scheme (commenced 1951) – Living Area*
- Warringah Shire Planning Scheme (commenced 1963)– Residential 2(a)*
- Warringah LEP 1985 (commenced 1985) – Residential 2(a)*

*I have not researched the date of commencement of the Club use, nor the specific controls within the above planning instruments that allowed the establishment of the Club and any subsequent alterations/ additions. However, at no time did a previous planning instrument apply a zone that was based on an underlying presumption that the site shall be used only for recreational purposes. Rather, the site has always been zoned consistently with adjacent and nearby residential development and a mechanism of some form has been included in the planning regime to facilitate (and in the case of WLEP 2000, seek to retain) the Club use on the site.*

*Neither the current zone, nor the previous provisions of WLEP 2000 can assure that the Harbord Diggers Club remains on the site. However, both instruments seek (by different means) to facilitate this outcome.*

Further to the above, the issue raised with regards to the zoning of the site is matters outside the scope of the assessment of this application and it is reasonable for the DA to be considered on its merits and accordance with the gazetted zoning of the site as R2- Low density residential.

### **Change of use and increase intensity**

Concern has been raised that the extensive excavation of the site and change in the permissible use of the site are being used to increase the density of the site well beyond the controls. The proposed development will reduce the area available to members and the community

**Comment** The permissibility of the development is discussed under WLEP 2011 section of this report. In summary, all of the proposed uses as permissible on site and can be constructed in a manner that is consistent with the applicable planning controls. Furthermore, the site is zoned R2 Low Density Residential which permits a range of low density uses. The registered club which currently occupies the site is listed as an additional and permitted use on the site under the Warringah Local Environmental Plan 2011. The proposed development will provide an improved registered club on site which will continue to serve the communities needs. Accordingly, the concern raised does not warrant the refusal of the application.

## **Submissions in Support**

- The existing club is in need of repair and maintenance and the re-development should be supported.
- The design and appearance of the buildings is a vast and much needed improvement to the existing club building.
- The facility will be a much needed and anticipated venue that provides a range of services and benefits to all members of the community.
- The childcare centre is much needed and will provide a modern centre for families on the northern beaches.
- Harbord Diggers have undertaken a significant community consultation and have prepared a master plan based on feedback received – the result of contributions from thousands of local people.
- The re-development plans will meet the modern needs of the community and provide modern facilities.
- The iconic position of the Harbord Diggers should be re-designed to take better advantage of the spectacular coastline views and provide leading-edge dining options for local residents’.
- The re-development of the club and fitness centre will make the most of the amazing views available as well as providing a range of contemporary dining, drinking and function spaces.
- The re-development will provide state of the art fitness facilities, swimming pool and equipment.
- The club will provide much needed seniors living in the northern beaches – something that the area is in desperate need of.
- The re-development will provide services such as physiotherapy, exercise physiology, respite care and other services which are vitally important will directly benefit the local community.
- The proposed development is appropriate and suitable to the location and of acceptable bulk and scale.

**Comment:** The redevelopment of the site to provide seniors housing and additional facilities for community use is generally supported by Council. The existing building is in need of repair and currently creates a visual barrier across the site when viewed from most vantage points.

The redevelopment of the site provides the opportunity to improve the visual appearance of the existing buildings and enhance visual quality of the site and locality by providing urban renewal, improved aesthetics. Whilst the redevelopment of the site is supported, it is required to be designed having regard to the existing local character of the area and to minimise the impact on the streetscape and surrounding development. This must be done by providing buildings that are of a consistent height, bulk and scale to that of surrounding development.

Council does recognise and acknowledged the benefits of this development to the local community, however unfortunately the design of the development as presented in this application does not go far enough in reducing the bulk and scale of the development that can be considered to be consistent with the local character of the area. The development breaches a number of planning controls that apply to the site and therefore the development cannot be supported in its current form.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections to the proposed development subject to the inclusion of a condition.
Development Engineers	No objection subject to conditions.
Environmental Health and Protection (Contaminated Lands)	No objection subject to conditions.
Environmental Health and Protection (Food Premises)	This proposal has been reviewed by Environmental Health and Protection Team and no objections subject to conditions.
Environmental Health and Protection (Industrial)	No objection subject to conditions.
Heritage Advisor	<p>This application is a Stage 1 Development Application for redevelopment of the Harbord Diggers site. It seeks approval for:</p> <ul style="list-style-type: none"> <li>• Stage 1 building envelope and adaptive reuse of part of the existing club building envelope;</li> <li>• Land uses which include senior's independent living units, new Club building and ancillary uses, long day child care centre, gymnasium, community centre and respite centre.</li> <li>• Consolidation of the existing Club site with land known as 4A Lumsdaine Drive.</li> </ul> <p>The proposal incorporates underground car parking for all proposed uses. Four seniors living buildings are proposed – 2 facing Evans Street and 2 facing Carrington Pde. Part of the existing club building is to be retained and adapted for use for community/respite care etc. The land currently leased and used as a ground car parking, is proposed to be handed back to Department of Lands.</p> <p>The Statement of Environmental Effects dated April 2013, prepared by Urbis for Mt Prichard &amp; District Community Club, and has been reviewed. This document addresses heritage issues in Section 7.3. It correctly identifies the three (3) heritage items in the vicinity. The following comments are provided by Urbis, in relation to heritage.</p> <p><i>"In relation to the Duke Kahanamoku statue, as it is proposed that the Crown land car park area will be incorporated into site landscaping (handed back to Department of Lands), this would provide a larger buffer for the statue and park, between it and the Diggers development. The proposal will not impact upon the statute or park.</i></p> <p><i>In relation to Freshwater Rock Pool, they state that the pool is visually separate from the existing club and that there is no direct relationship between the two places. It is considered that the proposal will not impact upon the significance of the pool. Proposed development will not be visible from the pool.</i></p> <p><i>In relation to the Coastal Cliffs Heritage Conservation Area, it is stated that the conservation area will be enhanced by the proposal as it does not encroach any further into the visual catchment of the conservation area and proposes extending the landscaping towards the memorial park. Also a larger area of vegetation will be located closer to the cliffs".</i></p> <p>The applicants also submitted a View Assessment report, Of relevance from a heritage views are:-</p> <p><i>"The views from Carrington Pde (roadway), there is a moderate change to skyline, but it is considered that it is of higher architectural quality, therefore the overall visual impact is positive. There is no view from cliffs.</i></p> <p><i>With the view across the beaches to cliffs there is also a moderate change to skyline, but no greater bulk and therefore no greater visual impact. Views from</i></p>

Internal Referral Body	Comments
	<p><i>Freshwater beach towards cliffs – new development is predominately screened by existing residential flat buildings – so no impact upon heritage significance of cliffs or setting of Freshwater Rockpool, when viewed from Freshwater Beach. The site is also visible from Freshwater View Reserve (which is also a listed heritage item). The visual assessment determined that visual impact was low and the proposed development would even open up some new views of the ocean beyond the development, due to a reduction in building bulk in the south-east part of the site”.</i></p> <p><b>Assessment of Heritage Impact</b>  This proposal is for redevelopment of the existing buildings on the Harbord Diggers site and the introduction of additional buildings and uses, including aged housing.</p> <p>The site is not a listed heritage item, however the site is in the vicinity of three (3) listed local heritage items. In addition, the site is visible from a number of other listed heritage items, namely Freshwater View Reserve at Queenscliff and from the items on Freshwater Beach (Freshwater Surf Club and Freshwater Restaurant (Pilu) building.</p> <p>From a heritage point of view, the proposed additional uses are not an issue. The bulk and scale of the proposed new buildings, and the view of these new buildings from nearby heritage items, does need assessment. As mentioned, the applicants addressed heritage and visual impact issues in their submission. The building bulk appears to be similar on the western and southern boundaries, with a far better architectural outcome than the existing buildings. The new buildings proposed on the northern boundary, are located closer to Lumsdaine Drive and Carrington Pde, however while the building form is different to the existing, the overall visual impact is not considered to be greatly different. The site introduces central open space courtyard areas and gardens, which breaks up the site and opens up some views to within the site.</p> <p><b>Conclusions</b>  The fabric of all existing listed heritage items in the vicinity will not be affected by this proposal.</p> <p><b>Item I65 - Duke Kahanamoku Statute and Memorial Park.</b> The handing back of the crown land (currently used as a car park), to the west of this heritage item, for incorporation into McKillop Park, will result in a better outcome for this heritage item. Due to the change in level between the car park and the paved park area, the buildings will not be visible from the memorial park and the proposed buildings will not be any closer to the statue than the existing buildings. On this basis, it is considered that the proposal will not have an adverse impact upon the heritage significance of Item I65 - Duke Kahanamoku Statute and Memorial Park.</p> <p><b>Item I67 – Freshwater Rock Pool.</b> As the pool is located at sea level, at the bottom of the coastal cliffs on the southern side of the headland, the Harbord Diggers site is not visible from this heritage item. Given this visual separation, it is considered that the proposed development will not impact upon the existing heritage significance of Item I67 – Freshwater Rock Pool.</p> <p><b>Item C14 – South Curl Curl Coastal Cliffs.</b> This heritage conservation area covers the coastal cliffs from the northern side of Freshwater Beach around to the southern side of South Curl Curl Beach. While the cliffs are not physically affected by this proposed development, the cliffs tops have an association with recreational use. There is a boardwalk along the midslope of the cliffs, in the vicinity of Lumsdaine Drive. The proposed development will not affect this recreational use associated with the coastal cliffs and the main views from this walkway are towards the ocean. Even though the proposed built form will be considerably different to that existing on the southern side of Lumsdaine Drive, it is not considered that this will affect the heritage significance of the coastal cliffs.</p> <p><b>View from other heritage items.</b> As mentioned, a number of heritage items to the south of the site, have views towards it. These include Freshwater Surf Club, Freshwater Restaurant and Freshwater View Reserve. As was explored by the visual assessment report submitted by the applicant, the proposed development is largely screened from the south by the existing residential flat</p>

Internal Referral Body	Comments
	<p>buildings along Evans Street. Even from the elevated position of Freshwater View Reserve, it is considered the proposed development will not be any greater in bulk than the existing development and may in fact open up some view corridors through the site with the changed design of the south-east part of the site.</p> <p><b>In conclusion, no objections are raised to this application on heritage grounds and no heritage related conditions required.</b></p>
Landscape Officer	<p>It is noted that the proposal is for Stage 1 approval only.</p> <p>As such, the comments provided relate to the concepts presented with the application. Matters such as character and impact of built form within this sensitive landscape have been addressed. The points raised below encapsulate the main impacts from a landscape setting and character point of view. The proposed layout presented by the application is not considered to respond to the features of the site and surrounds and is not supported based on the issues raised below.</p> <ol style="list-style-type: none"> <li>1. The proposal pushes the built form to the edges of site.</li> <li>2. This results in a loss of landscape setting when viewed from outside the site.</li> <li>3. The proposed massing and use indicates a lack of response to the headland setting.</li> <li>4. Loss of image of 'The Diggers'. 'The Diggers' Icon becomes unit development on the headland, with the club component pushed under the residential component.</li> <li>5. The proposal indicates an extension of the built form down to road level on Lumsdaine Ave. Currently the building is setback from Lumsdaine Ave on top of a landscaped slope. This distance set back from the roadway provides relief from the bulk of the building and enables it to sit within a landscaped setting. The proposal will remove the landscape slope to Lumsdaine Ave and provide built form down to road level. The visual effect is to extend the building bulk a further 6 metres down to road level when viewed from locations to the north of the site.</li> <li>6. Landscape setback should be at least at ground level around the site. Carrington Dr landscape is below ground level.</li> <li>7. Heath vegetation should surround the site at ground level and above, integrating the development with the natural landscape and features of the headland. This may require setback of built form further into the site.</li> <li>9. Building bulk to Carrington St is increased. The proposed buildings push further to the north and higher than the existing car park. At the southern end, the built form pushed further to the west and south than the current car park building.</li> <li>10. Loss of view cones north and south along Carrington. The southern view cone along Carrington Ave is currently enhanced by a splayed setback to the car park in its present location. This enables open view to Heritage Items of Tea Rooms (Pilu), Surf Club and Harbord Beach Hotel and some of the Soldiers Avenue street trees.</li> </ol> <p>All of these are iconic Freshwater elements, as is the Diggers itself, significant to the Freshwater character. The proposal narrows this important view down by pushing development to the western and southern boundaries. The splay at the south western corner should be retained to maintain this important visual connection.</p> <p>The North travelling view cone along Carrington Ave will be dominated by proposed built form in height and extension of built elements to the north. Currently the car park disappears into the land form and is screened by vegetation to the north with the view of the Tasman Sea opening out as one reaches the top of the rise. Stepping back of the built form in the north western corner would provide a less intrusive impact upon this visual highlight from the public domain.</p>
Natural Environment (Biodiversity)	Councils Natural Environment - Biodiversity raises no objections to the proposal subject to conditions.
Natural Environment (Coastal)	No objection and no conditions.
Natural Environment (Drainage Assets)	Please see the Development Engineering comments for any relevant stormwater drainage asset comments and conditions.



Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	Parks Reserves and Foreshores generally consider the proposal acceptable. It is noted however that a pedestrian access path indicated on landscape plans linking the development to Lumsdaine Drive traverses the adjacent Crown reserve. Any pathways linking the facility to Lumsdaine Drive should only be constructed on the proponent's property.
Strategic Planning - Urban Design	<p>This assessment summarises comments on broad urban design issues identified with the development.</p> <p><b>Urban Design Comments</b></p> <p><b>Positive aspects:</b></p> <ol style="list-style-type: none"> <li>1. Consolidated vehicular access points to allow continuous footpath providing safe pedestrian routes.</li> <li>2. Provision of a central landscaped common area which is facing north.</li> </ol> <p><b>Negative Aspects:</b></p> <ol style="list-style-type: none"> <li>1. The site is located in a low density residential R2 zone with 8.5m building height. The presentation of the proposed residential flat development as perceived from external areas in the locality is considered to be a major change to the existing character. There are existing residential flat buildings along Evans Street however Carrington Parade has mostly freestanding residential houses. It is recommended that the proposal be sympathetic to the existing character of the streetscape to minimise the impact of the development especially when the site is located on a prominent headland in a highly used recreation area.</li> <li>2. Loss of views from surrounding areas to be mitigated with view-sharing by creating view corridors at higher levels. The top floor massing should have adequate gaps created with setback from the main facades for articulations and view sharing purposes sympathetic to a low density residential R2 zone.</li> <li>3. There are no deep-soil areas greater than 1 metre depth proposed at certain boundaries around the site for an appropriate landscape buffer.</li> <li>4. Adaptive reuse of existing multistorey building structure has to be demonstrated to be possible and feasible. It should also be completely setback 6.5m from the street and landscape buffer provided to lessen development impact. Partial setback at lower levels as proposed is inadequate.</li> </ol> <p><b>Conclusion</b></p> <p>This submission has not adequately addressed the issues highlighted previously in the pre-lodgement scheme. The proposed development does not comply with the current WLEP 2011 controls. Therefore the development cannot be supported in its current form. As this is a stage one DA proposal, no detail unit design has been shown so SEPP 65 requirements for residential flat development cannot be assessed.</p>
Traffic Engineer	<p><u>Staged Development</u></p> <p>This assessment is for stage 1 of the proposed redevelopment. A detailed design has not been provided as part of this development application and it for the purposes of determining the proposed traffic generation from the land use.</p> <p><u>Traffic Generation</u></p> <p>The traffic generation from this development has been formed by applying the rates for each proposed individual use as identified in the RTA guide to traffic generating developments and surveys of the existing club.</p> <p>It is noted that the existing club has a larger floor space than the proposed club, however, the traffic generation is increased to represent increased use of facilities.</p> <p>Although the peak generation times vary by use they are considered in a single</p>

Internal Referral Body	Comments
	<p>total to represent the worst case scenario. The peak generation is likely to be less than the figure identified in the GTA traffic report. The traffic generation rates identified in the GTA traffic report should be considered as a worst case scenario.</p> <p>The traffic report identifies an increase in traffic generation from the site of 190-197 am movements and 184-188 pm movements as a result of this proposal.</p> <p><u>Effect on existing Road Network</u> As the nearest intersection to the development Evans Street and Carrington Parade is the most affected intersection. This has increase the average delay for vehicles at this intersection from 2.3 seconds to 3.5 seconds. This level of delay at a stop controlled intersection is not considered excessive.</p> <p>The traffic generated by this development has been tracked through the existing road network as far as the intersection of Oliver Street and Lawrence Street. It has been demonstrated that the additional traffic will not have any significant adverse affects in terms of vehicle delays or queue lengths.</p> <p><u>Access and Service Vehicles</u> Information regarding service vehicle access will need to be assessed in future stages of this development. Access for Council's 10.2m long waste collection vehicles must be provided.</p> <p>Access to the site is via a single entry/exit point on Evans Street near the existing club entry. This is the preferred access configuration for this site. The design of the entrance must be designed in accordance with AS2890.1:2004 and demonstrate that no vehicle queues will occur on Evans Street.</p> <p><u>Parking</u> This development proposes to provide 780 car parking spaces. A parking structure of this capacity is unlikely to reach full capacity under normal operational conditions when the various land uses are considered.</p> <p>The addition of the parking requirements for each separate use of the site identifies a maximum parking demand of 707 - 711 parking spaces. This does not consider peak parking demand for various uses occurring at different times which may reduce the overall parking demand.</p> <p>Consideration should be given to reducing the overall parking supply to meets the maximum parking occupancy expected at this site.</p> <p>Parking for different uses, particularly residential uses, may have to be cordoned off from the general parking areas. The location of parking in proximity to various uses will need to be assessed as part of a future development application.</p> <p><u>Conclusion</u> I generally agree with the traffic implications identified in the Halcrow and GTA traffic reports that accompanies this development.</p> <p>The traffic generated from this site will not have a significant adverse impact on the existing road network.</p>
Waste Officer	The proposal is a commercial development. As such, Council is not required to provide a domestic waste service. The applicant has satisfactorily demonstrated that the waste generated on-site will be serviced off street.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The application was also referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. In accordance with Clause 45(2) (b) the consent authority is to take into consideration any comments received within 21 days of the date the notice was given to Ausgrid. A response to this referral has not yet been received and the required 21 days has expired.
NSW Roads and Maritime	The application was referred to the NSW Roads and Maritime Services (RMS) in

External Referral Body	Comments
Services - (SEPP Infra. Traffic generating dev)	accordance with Clause 104 of State Environmental Planning Policy (Infrastructure) 2007. RMS by letter dated 1 May 2013 advice that no objection is raised to the proposed stage 1 DA for the redevelopment of the Harbord Diggers Club.
NSW Police - Local Command (CPTED)	The application was referred to the NSW Police for comment. The reason for referral was to carry out an informal crime risk assessment of the development. No responses has been received at time of writing this report, accordingly it is assumed that no objection is raised.

## Urban Design Issues

In addition to Council's in house Urban Design comments, Council has also engaged the services of an external urban design consultant, GM Urban Design and Architecture, to peer review the proposed development. A copy of the GMU report is attached to this report (Attachment 1).

The GMU report makes a number of important observations relating to the site and concurs with the assessment of Council in that proposed built form has not demonstrated a reasonable compatibility with the character of the area due to the extent and scale of the proposal and the visual and amenity contrasts that would result from the proposed development. The GMU report concludes that:

- The proposal has the potential to revitalize an aged and poor quality development that does not contribute to the area or streetscape. Overall the intent of the proposal is supported and it has the potential to greatly improve the amenity of the streetscape and the architectural quality of the area.*
- However there are some areas of concern that should be addressed to achieve an improved outcome. The existing club building is a poor quality built form and presents a massing that has a myriad of adverse impacts. This development provides the only opportunity to address and improve those outcomes by relocating massing in less onerous positions within the site.*
- It is understood that seeking to relocate massing away from the existing building location within a lower height zone could be problematic for Council given the extent of departure from the current controls. However this is a development under the Seniors SEPP so there is some flexibility to consider scale and massing relative to the existing context that would be consistent with the intent of the guidelines.*

The GMU report also makes a number of recommendations \ to achieve a better urban design outcome.

## 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 to be acceptable against.

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

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP 55 - Remediation of Land

Clause 7(1) (a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of the SEPP, the applicant has submitted a Preliminary Environmental Site Investigation dated October 2012 and prepared by Environmental Investigation Services (EIS). In its conclusion, the investigation states:

*"The site can be made suitable for the proposed development provided that some additional works and sampling is undertaken at the later stages of the development, particularly during earthworks stages of the project".*

Therefore, as the Investigation indicates that there is a potential for contaminants to exist on the site, Clauses 7(1) (b) and 7(1) (c) of the SEPP must be considered.

Clause 7(1) (b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

In this regard, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out and the recommendations included in the investigation can be included as conditions, if the application was recommended for approval.

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

State Environmental Planning Policy No. 65 – Design Quality for Residential Flat Development (SEPP 65) applies to new residential flat buildings, the substantial redevelopment/refurbishment of existing residential flat buildings and conversion of an existing building to a residential flat building.

Clause 3 of SEPP 65 defines a residential flat building as follows:

“Residential flat building means a building that comprises or includes:

- a) *3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- b) *4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops), but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.”*

‘Storey’ is not defined in SEPP 65 or WLEP 2011. As such, for the purposes of determining whether the buildings within the development comply with Clause 3(a) of SEPP 65, the number of storeys within each building has been determined in accordance with the guidelines contained in State Environmental Planning Policy No. 6 – Number of Storeys. In accordance with Clause 6 of SEPP 6 a storey is measured as follows;

*‘Where the application of a provision of an environmental planning instrument requires a determination of the number of storeys, floors or levels which a building contains, that number shall, for the purposes of applying the provision, be deemed to be the maximum number of storeys, floors or levels, as the case may be, of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.’*

The plans submitted with the application indicate that Buildings A, B, and C will be (3) three storeys and Building D will be (5) five storeys in height.

The documentation submitted with the application does not state how many dwellings will be provided in each building. Whilst the number of dwellings within the buildings is not evident from the plans submitted, all of the buildings are three or more storeys in height and therefore are defined as a ‘residential flat building’ in accordance with Clause 3 of SEPP 65.

As per the definition of a 'Residential Flat Building' and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

SEPP 65 requires any development application for residential flat development to be assessed against the 10 Design Quality Principles contained in Clauses 9-18 of SEPP 65 and the matters contained in the Residential Flat Design Code (RFDC).

The 10 principles are outlined as follows:

### **Design Quality Principle 1: Context**

*"Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area".*

*Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area."*

**Comment:** The subject site occupies a large and prominent area of land bounded by Carrington Parade, Lumsdaine Drive and Evans Street. Development to the south along Evans Street is characterised by apartment style development and development to the west and north-west is generally characterised by detached style dwellings interspersed with older townhouse developments. To the north of the site, the development on the western side of Carrington Parade is generally characterised by large detached style dwellings. As the topography of the land on the western side of Carrington Parade is quite steep, the dwellings step up the slope and generally appear as either two or three storey dwellings from the street.

Whilst some townhouse and apartment style housing is located in the vicinity of the site, the objective of the R2 zoning and the applicable built form controls do not provide for or encourage additional apartment buildings on the subject site. The zoning of the site clearly indicates that development should be similar in scale and appearance to that envisaged in the R2 zoning, which is largely low density in scale.

Building A, which consists of two buildings (facing Carrington Parade) within the proposed development is three storeys in height and has length of 82.5m with an approximate break of 3 metres in the middle of the building. Building's B and C (facing Evans Street) are also three storeys in height and have a combined length of 95 metres. Minimal separation (approximately 4 metres) has been provided in the middle of the two buildings. These buildings have the form of a residential flat building.

The three storey blocks (being Buildings A, B, and C) forms and proposed setbacks to the three street frontages demonstrates a lack of consideration of context, scale, built form, and landscape character of the surrounding properties. In general, the repetition of near identical three storey building forms which display a modular and rectilinear character does not reflect the prominent built form which is characteristic of the surrounding area.

Building D has a length of over 73.4m and will have the appearance of a five storey residential flat building. The scale of the building far exceeds that of a low density development and the likely built form and character will be that of a residential flat building that is well articulated.

It is considered that the development is not appropriate given the scale and form of the existing and desired development in the locality. Accordingly, the proposal does not satisfactorily address the design objectives of this principle. This issue has been included as a reason for refusal.

## Design Quality Principle 2: Scale

*“Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.*

*Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.”*

**Comment:** The proposed development has been conceived on the basis that the subject site is a unique site, being large parcel of land located in the interface of low density residential development and some older style high rise developments along the Evans Street frontage.

This site should be developed to some extent in a special manner with strong corner definition and built form that emphasizes its unique status, but this should be carried out in a manner which is generally consistent with the applicable planning controls under. In this regard, the relaxation of the built form (particularly height) is appropriate in some portion of the site, where it is less visible.

However, when it comes to the overall building height limit in metres, the proposal (particularly Building D) exceeds the maximum allowable height for no discernable reason apart from incorporating additional floor space and residential apartments which will obtain majestic views to the ocean. Therefore, the non-compliance with the development standards in relation Building D, which ultimately determines the scale of the building, cannot be supported. The building should substantially be reduced in height and scale and mass to be consistent with this Principle.

Buildings A, B, and C are 3 storey residential flat buildings consisting of a height of generally 8.5m which is considered, in terms of metres, to be consistent with the heights of surrounding development and compliant with the overall Building Height in the R2 zone. However, the horizontal built form (massing) of the development consists of a continual 3 storey street wall structure along the three street frontages, which offers very little building separation and encloses the streetscapes. This aspect of the design is significant departure from the single dwelling character of the area through the introduction of the bulk and height of medium density residential flat buildings, particularly when viewed from street.

In this regard, the development is not regarded as a considered and sensitive response to the scale of existing development, particularly when viewed from the public domains.

For these reasons, the development does not meet the objectives of Design Quality Principle 2. This issue has been included as a reason for refusal.

## Design Quality Principle 3: Built Form

*“Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.*

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”.

**Comment:** The applicant proposes the construction of four (4) x 3 storey and one x 5 storey residential flat buildings for the purposes of seniors housing. The site consists of two (2) allotments which are proposed to be consolidated to form one allotment of 15,500m<sup>2</sup>.

The proposed building alignments, proportions, building type and the manipulation of building elements are appropriate for the purpose of providing residential accommodation on a site within a



medium density area. However, the site is located within a low density area consisting of generous front setbacks which are enhanced by sufficient building separation to promote open streetscapes.

As discussed in 'Principle 2 – Scale' above, the street wall proportions of the proposed buildings are consistent with medium density residential flat development but are not consistent with the low density detached single dwelling development which generally characterises the area.

Consequently, the proposed building type (residential flat buildings) is not considered to be an appropriate built form for the site. Figure 2 below show montage of the development as viewed from two street frontages (being Evans Street and Carrington Parade).



(Aerial view of the proposal viewed from the corner of Carrington Parade and Evans Street - Source: Photo montage, prepared by Architectus)

#### **Design Quality Principle 4: Density**

“Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).

*Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.”*

**Comment:** The planning controls under WLEP 2011 and Senior Housing SEPP do not specify a maximum housing density for the site, rather the density for any development is a function of the other built form controls; including building height, landscaped open space and setbacks. The proposed development does not comply with the majority of controls applicable to the site and the result is that the majority of the site will be built upon and this is largely reflected in the significant non-compliance with the landscaped open space control under the SEPP (HSPD) 2004.

The non-compliance with the landscaped open space control indicates that the density and floor space proposed on the site represents an overdevelopment of the site. The non-compliance with the landscaped open space control also contributes to a built form which is not consistent with the zoning of R2 Low Density Residential. For these reasons, the proposed development is not consistent with this design quality principle. This issue has been included as a reason for refusal.

### **Design Quality Principle 5: Resource, energy and water efficiency**

*“Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.*

*Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.”*

**Comment:** This application is for the Stage 1 concept and, as such, does not address this Principle. In this regard, consistency with this Principle (including the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004) would normally be the subject of a comprehensive assessment at Stage 2 of the development.

Accordingly, the proposal is considered to be capable of achieving sufficient sustainability provisions for a development of this type. Therefore, the proposal is considered to be able to satisfy the objectives of this design quality principle.

### **Design Quality Principle 6: Landscape**

*“Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.*

*Landscape design builds on the existing site’s natural and cultural features in responsible and creative ways. It enhances the development’s natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.*

*Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours’ amenity, and provide for practical establishment and long term management.”*

**Comment:** The Landscape open space requirement for the proposed development is captured with SEPP (HSPD) 2004, which requires 30% of the site to be landscape open space, this requirement is in addition to the 15% of the site to be provided for deep soil planting. Although the proposed development provides in excess of 15% of the site area as deep soil planting, the design of the basement levels and location of the existing club building allows for no landscape open space to be provided on the ground level, which will allow for mature landscaping to be provided to compensate for the bulk and scale of the proposed built form.

Council’s Landscape Officer has reviewed the landscape plans and has provided comments (see Internal Referrals in this report) which raise concerns about the minimal amount of soft landscaping between the buildings in relation to the size of the proposed development.

The landscape design is guided by the architectural design of the buildings and associated hard surface areas along the three frontages of the site and, as such, is considered to be minimal and not considered to respect the existing and desired streetscapes. Furthermore, given that the built form of the development does not favourably respond to the key built features of the area (see

Principle 1 – Context), it is considered the landscape design is important aspect for the development to be right as to positively contribute to the locality and be the correct contextual fit through respect for the neighbourhood character.

The development is not consistent with Principle 6 – Landscape.

### **Design Quality Principle 7: Amenity**

*“Good design provides amenity through the physical, spatial and environmental quality of a development.*

*Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.”*

**Comment:** The adequacy of the internal amenity of the residential component of the development will be considered when detailed plans are lodged with the Stage 2 DA.

However, the configuration of the built form is capable of achieving satisfactory levels of amenity with regard to sunlight access and natural ventilation in accordance with the requirements of the Residential Flat Design Code (RFDC). The final number of dwellings permitted will be based on compliance with all relevant planning controls, including the specific requirements of the RFDC and the associated rules of thumb.

The proposal is considered to be capable of complying with the objectives of this design quality principle.

### **Design Quality Principle 8: Safety and security**

*“Good design optimises safety and security, both internal to the development and for the public domain.*

*This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.”*

**Comment:** Safety and security issues will be resolved in the detailed design to be submitted with the Stage 2 application. The arrangement and configuration of buildings is capable of achieving adequate levels of casual surveillance through the appropriate placement of balconies and windows and pedestrian access within the development and to adjoining streets. The proposal is capable of satisfying this design quality principle.

### **Design Quality Principle 9: Social dimensions**

*“Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.*

*New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.”*

**Comment:** The proposed development provides an alternative form of housing to the traditional form of low density housing in the locality. The development is in close proximity to bus stops on Evans Street and gain access to shops in Dee Why, Warringah Mall and in Freshwater. Residents

of the development will be able to easily access recreational areas such as Freshwater and Curl Curl Beaches.

As floor plans have not been submitted, the unit mix cannot be determined. The appropriateness of the unit mix will be considered at Stage 2.

It is considered that the development provides greater housing choice within the locality and therefore responds positively to the housing needs of the local community. The proposed development is therefore considered to be consistent with this design quality principle.

### **Design Quality Principle 10 Aesthetics**

*“Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.”*

**Comment:** An assessment of architectural and landscape design matters, external finishes and how they respond to the site, the context of the beachside setting and the surrounding topography, is appropriately dealt with when detailed plans are lodged with the Stage 2 Development Application. The proposal is capable of achieving consistency with the requirements of this design quality principle.

### **Residential Flat Design Code**

The SEPP requires the assessment of any development application for residential flat development against 10 principles contained in Clauses 9 -18 and Council is required to consider the matters contained in the publication *“Residential Flat Design Code”*.

The Code supports and provides additional guidance for applying the SEPP and the design principles. The SEPP requires that the Code is to be considered when determining a development application for residential flat development. However, on the basis that the current application is for a concept proposal and is thus subject to change, no detailed plans are relevant to the assessment of the proposal. Therefore, details in relation to dwelling designs (including dwelling configurations, floor layouts, private and communal open spaces, storage, entries and accesses, etc), architectural design (external finishes, sun shading, fenestration, articulation, modulation, etc) and landscape design (communal landscaped areas, private courtyards, etc), are to be the subject of assessment under the RFDC in a Stage 2 Development Application.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) applies to the proposed residential development. As detailed plans have not yet been prepared, a BASIX certificate cannot be obtained. The Stage 2 DA which sets out the detailed design of the proposal should be accompanied by a BASIX Certificate

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

The Housing for Seniors SEPP seeks to improve the design, and increase the supply and diversity of residences that meet the needs of seniors or people with a disability. The SEPP achieves this through setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy.

The senior's housing component of the development application has been lodged pursuant to State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004 (HSPD

2004). The seniors housing component of the development is estimated to be approximately 12,700m<sup>2</sup> in Gross Floor Area. The following section of this report provides an assessment of the proposal against the relevant criteria and standards specified in this Policy.

## **Chapter 1 – Preliminary**

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- b) *make efficient use of existing infrastructure and services, and*
- c) *be of good design.*

**Comment:** The proposed development is consistent with the first two aims of the policy, in that the proposed development will increase the supply and diversity of residences that meet the needs of seniors or people with a disability.

The proposed development also makes efficient use of existing infrastructure and services, in that the site is well serviced by existing public transport and is located within 400m of the nearest bus stop. The site is located approximately 700m east of the Freshwater Village which provides a mix of essential retail and commercial services.

When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the SEPP. Whilst it is accepted that the new buildings forming the seniors housing development will be somewhat different to that envisaged for a R2 Low Density Residential area, the aim of the policy is to encourage seniors housing to be of a good design outcome which maintains and minimises the impacts on the amenity and character of the area. The proposed built form does not minimise the impact on the amenity and the character of the area as detailed later in this report.

Accordingly, the proposed development has been found to be inconsistent with aims of this policy and this issue has been included as a reason for refusal.

## **Chapter 2 – Key Concepts**

The proposed development is consistent with the key concepts contained within SEPP HSPD. The proposed development comprises *self-contained dwellings*, which are to be occupied by *seniors or people with a disability*. On this basis, it is considered that the proposed development is consistent with Chapter 2 of SEPP HSPD.

## **Chapter 3 – Development for seniors housing**

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent.

### **Part 1a - Site Compatibility Certificates**

#### **Clause 24 Site Compatibility Certificates required for certain development applications**

Clause 24 (1) specifies that a site compatibility certificate (SCC) is required for a development application, made pursuant to this Chapter in respect of development for the purposes of seniors

housing (other than dual occupancy) if the land is used for the purposes of an existing registered club.

As the subject site is currently occupied by an existing Harbord Diggers Club (being a registered Club). SCC for the site was applied for and issued by the Department of Planning and Infrastructure on 3 December 2012, which has been submitted with the application. The SCC satisfies the requirement of Clause 24 and makes the seniors housing component a permissible land use, despite the fact that it is prohibited under the provision of WLEP 2011.

However, despite the issuing of the SCC, the consent authority is permitted to refuse an application under the provisions of this Clause, if the assessment of the consent authority finds that the development is incompatible with the surrounding environment. As detailed in this report, this assessment finds the proposed development is not compatible with the surrounding environment and is therefore recommended for refusal.

## Part 2 - Site Related Requirements

Development Criteria			
Clause	Requirement	Proposal	Complies
<b>PART 2 - Site Related Requirements</b>			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The subject site has satisfactory access to:  (a) shops, banks and other retail and commercial services that residents may reasonably require, and  (b) community services and recreation facilities, and  (c) the practice of a general medical practitioner	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400 metres away.	The site is not located within 400 metres of essential facilities and services. However, the site is located within 400 metres of a public transport service.  Bus services are located at the kerb side of the existing club. Service No. 139 operates from the kerb side bus stop at the front of the existing club building and operates between Manly and Warringah Mall.  Service No. E65 operates approximately 300m west of the site and links Freshwater and Curl Curl to the Sydney CBD.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The development is not located within bushfire prone land.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.  However, given the existing use of the site and documentation provided with the Stage 1 Development Application, the development is capable of complying.	N/A
29	Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply.	Clause 29 does not apply as Clause 24 applies to the development.	N/A
<b>PART 3 - Design Requirements – Division 1</b>			
30	A site analysis is provided.	A site analysis plan and Statement of Environmental Effects submitted with the application satisfactorily address the requirements of this clause.	Yes

## Clause 31 Design of in-fill self-care housing



Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken below:

Section	Requirements	Comment
1. Responding to context	<p>Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p>The proposed development is sited in a prominent position on land bounded by Carrington Parade, Lumsdaine Drive and Evans Street. The site is located on a visually prominent headland between South Curl Curl Beach and Freshwater Beach.</p> <p>It is considered that the proposal's appearance will not be in harmony with the existing residential neighbourhood, because the urban context of this local area is that of predominately low density and scale associated with detached dwellings. The proposal would introduce a significantly different visual presentation with the entire residential component being in the form of residential flat buildings, with inadequate building separation, articulation and landscaping provided to allow adequate softening of the visual impact and render the outcome compatible with the surrounding built form. The re-use of the existing club building creates a development that reaches a maximum 5 storeys in height and the new buildings create a residential flat building appearance of 3 storeys in height.</p> <p>The existing local character is discussed in detail under Clause 33 in this section of the report. In summary, the proposed development is not considered to be consistent with the existing character of the area and this is included as a reason for refusal.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise the impact of new development on neighbourhood character</li> <li>-Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.</li> </ul>	<p>The design of the proposed development has sought to maximise the potential of the site through the addition of 4 new buildings and the adaptive re-use of the existing club building. As discussed previously, the design of the proposed development is not considered to minimise the impact on the existing neighbourhood character.</p> <p>The objective relating to the provision of car parking, garaging and vehicular circulation would normally be the subject of comprehensive assessment at the time of a Stage 2 Development Application.</p> <p>However, the application has been assessed by Council's Traffic Engineer, who raises no objections to the proposed development, subject to a comprehensive analysis of car parking at the time of a Stage 2 Development Application.</p>
3. Impacts on streetscape	Objectives of this section are to:	The assessment has found that the

Section	Requirements	Comment
	<ul style="list-style-type: none"> <li>-Minimise impacts on the existing streetscape and enhance its desirable characteristics</li> <li>-Minimise dominance of driveways and car park entries in streetscape.</li> </ul>	<p>proposed development will result in an unreasonable impact on the existing streetscape. The proposed development will not enhance the existing streetscape nor does it enhance the desirable characteristics of the streetscape being development of a low density scale. The development will be visually obtrusive in its appearance when viewed from the street and public domain, buildings on all three street frontages provide little substantive articulation and result in an unreasonable visual massing. In particular Building D reaches a height, bulk and scale well in excess of that envisaged for the zone. Whilst the building is existing, the proposal seeks to change the façade and overall appearance of the building through the addition of balconies and openings giving the building the appearance of a 5 storey apartment building which is found to be inconsistent with the first objective relating to desirable characteristics.</p> <p>The objective relating to minimising dominance of driveways and car park entries in streetscape, the proposed development is found to be consistent with the requirement as the proposal seeks to consolidate two allotments which currently provide three separate driveway access points.</p> <p>The proposed development reduces the amount of driveways and car park entries to a single entry point located on Evans Street which will service the club facility and residential apartments.</p>
4. Impacts on neighbours	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>- Minimise impacts on the privacy and amenity of existing neighbourhood dwellings.</li> <li>- Minimise overshadowing of existing dwellings and private open space by new dwellings.</li> <li>- Retain neighbours views and outlook to existing mature planting and tree canopy.</li> <li>- Reduce the apparent bulk of the development and its impact on neighbouring properties.</li> </ul>	<p>Although there is no direct impacts on adjoining properties that can be identified by the details of this Stage 1 Development Application, the bulk and scale of the proposed development is considered to be excessive and inconsistent with the existing local character as discussed under Clause 33 below.</p> <p>Therefore, the development is rendered inconsistent with this requirement.</p>
5. Internal site amenity	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Provide safe and distinct pedestrian routes to all dwellings and communal facilities.</li> </ul>	<p>Compliance with this control is normally the subject of a comprehensive assessment at the time of a Stage 2 Development Application.</p>

## Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	Please refer to detail discussion below	No
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.	<p>The proposed development is located within the vicinity of a number of heritage items listed under WLEP 2011. The heritage items are as follows:</p> <ul style="list-style-type: none"> <li>• I65 Duke Kahanamoku Statute and Memorial Park</li> <li>• I67 Freshwater Rock Pool</li> <li>• C14 South Curl Curl Coastal Cliffs (between Freshwater Beach and South Curl Curl Beach)</li> </ul> <p>These items are listed in Schedule 5 of Warringah Local Environmental Plan 2011.</p> <p>The proposal has been reviewed by Council's Heritage Officer who raises no objections and concludes that the heritage items will not be affected by this proposal.</p>	Yes
	<p>c. Maintain reasonable neighbour amenity and appropriate residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</p>	<p>The proposed setbacks to the side boundary, and the extent of landscaping provided within the setback, are not considered satisfactory to minimise the visual impact of the development and results in development that is over bulky in mass and scale.</p> <p>The development has not been designed to respond to the topography of the land. In general, the scale of the development as a whole far exceeds that of a low density development and the likely built form and character will be that of a residential flat building.</p> <p>The existing club building is located with a nil setback to the adjoining Mary McKillop Park. Although the setback is existing, the impact of such a setback creates a building that is of an unreasonable visual bulk and appearance and dominates the site when viewed from the adjoining public open space.</p> <p>As discussed in previous of this report, the built form of the proposed development will be visually inconsistent with the dominant low density character of the built and natural environment.</p> <p>The development is therefore not consistent with the requirements of the Clause. This has been included as a reason for refusal.</p>	No

Control	Requirement	Proposed	Compliance
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	The proposed setbacks to the front of the development and the extent of landscaping provided within the setback are not considered satisfactory to minimise the visual impact of the development.	No
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.	N/A
	f. retain , wherever reasonable, major existing trees, and	The subject site does not contain any significant major existing trees.	N/A
	g. be designed so that no building is constructed in a riparian zone.	The proposed development is not located within a riparian zone.	N/A

### Clause 33: Neighbourhood Amenity and Streetscape

Clause 33 requires that an assessment of the desirable elements of current character of the area be undertaken. In doing so, the desired elements of the locations current character can be found within the zone objectives of the R2 Low Density Residential zone and through a detailed analysis of the existing streetscape character.

The desirable elements of the location is to provide for the housing needs of the community within a low density residential environment, enable other land uses that provide facilities or services to meet the day to day needs of residents and to ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The following is a detailed analysis of the existing local character:

#### Location

The proposed development is sited in a prominent position on land bounded by Carrington Parade, Lumsdaine Drive and Evans Street. The site is located on a visually prominent headland between South Curl Curl Beach and Freshwater Beach.

#### Evans Street Streetscape

The Evans Street streetscape varies in character as it extends from west to east. As the existing club building occupies the northern side of Evans Street, adjacent development is located on the low side of the street and when viewed from the intersection of Evans Street and Carrington Parade transitions from single and two storey detached dwelling houses to larger 3-5 storey residential flat buildings (when viewed at street level) further east towards the existing club building. The allotments are narrow in width and front setback areas are dominated by either areas of car parking and landscaped elements.

#### **Carrington Parade streetscape**

The Carrington Parade streetscape is predominantly low density residential developments varying from single storey to 3 storeys in height with the exception of a 3 storey residential flat building located on the corner of Evans Street and Carrington Parade. The northern side of the street provides a landscaped setting which allows the residential development to be screened with only filtered views through the existing vegetation obtained. The southern and eastern side of the street is occupied by the existing club building and its car parking which is sunk below the ground level and setback and screened by existing landscaping which provides visual relief of the building when travelling south along Carrington Parade.

The southern most side of Carrington Parade is currently occupied by a single detached dwelling house in a landscaped and coastal setting, this site is proposed to be amalgamated with the existing club site as part of this proposal.

#### Lumsdaine Drive streetscape

The Lumsdaine Drive streetscape character is largely dominated by open space areas and landscaped coastal settings. The street is bounded by the ocean to the east and open space areas and the existing single detached dwelling house to the west.

#### Conclusion on Character

It is therefore considered that the predominant character of the local area is one of low density built form and scale. Whilst there are some existing townhouse and apartment style development located within the vicinity of the site, the zoning of the site clearly envisages that development should be of a similar scale and appearance to that envisaged for the zoning, which is largely low density. The proposed development is not of a scale that is consistent with the location's current character or zoning.

An assessment of the proposed development against the objectives of the R2 Low Density Residential Zone is provided within this report (refer to the Warringah Local Environmental Plan – 2011 R2 Low Density Residential Zone section of this report).

In summary, the design of the proposed development is not considered to respond to the existing character of the area and will not contribute to the quality and identity of the area.

The reasons for this are further detailed in the context of this report, including these contained in Urban Design Report prepared by GMU Urban Design, assessment against the objectives of the R2 Low Density Residential Zone and the assessment under SEPP 65, which relates to the context, built form and scale of the proposed development.

Control	Requirement	Proposed	Compliance
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	<p>The visual privacy of the development will assessed as part of Stage 2 DA. The proposed development is capable of complying with this requirement on the basis that the subject site is adequately separated from the other adjoining residential properties.</p> <p>The acoustic impact of the development on the surrounding developments includes:</p> <ul style="list-style-type: none"> <li>Noise from the operation of child-care centre</li> <li>Noise from day-to-day operation associated with the Stage 1 development (including the use of the loading dock, the operation of the gym, and the outdoor activities associated with the new registered club, such as the beer/dinning garden area)</li> <li>Noise from air conditioning and mechanical services plant associated with the buildings.</li> <li>Noise from traffic movement associated with both the day-</li> </ul>	YES

		<p>to-day operation and performances of the development</p> <ul style="list-style-type: none"> <li>Noise from the construction of the development.</li> </ul> <p>An acoustic report has been prepared in support of the Development Application for Stage 1. The report prepared by Acoustic Logic Consultancy (Dated: 04/04/2013) presents the key findings of the acoustic assessment and recommends that although the proposed development is capable of achieving compliance with acoustic standards, however detailed acoustic report and analysis should be undertaken for the Stage 2 Application.</p> <p>In this regard, the proposed development is considered satisfactory in addressing the acoustic requirement for the purpose of the Stage 1 DA. If the application was to be approved, a condition will be included in the consent requiring a detailed acoustic report addressing the requirement of the acoustic report submitted as part of the Stage 1 DA.</p>	
CL35 Solar access and design for climate	<p>The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p>	<p>Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.</p> <p>It is noted that this application is supported by shadows diagrams based on indicative building envelopes which demonstrate that the development is capable of complying with the requirements of this control.</p>	N/A
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	<p>Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.</p> <p>It is noted that this application is supported by stormwater plans that are based on indicative building envelopes which demonstrate that the development is capable of complying with the requirements of this control. Further, Council's Development Engineer's have reviewed the proposal and do not raise any objections subject to further detail and assessment at the time of a Stage 2 Development Application.</p>	YES
CL 37 Crime prevention	The proposed development	Compliance with the requirements of	YES

	should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	<p>this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.</p> <p>The arrangement and configuration of buildings is capable of achieving adequate casual surveillance through the appropriate placement of balconies and windows and pedestrian access within the development and to adjoining streets. The proposal is capable of satisfying this design quality principle.</p>	
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	<p>Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.</p> <p>It is noted that this application is supported by an Access report prepared by Moris Golding Accessibility Consulting and dated 3 April 2013.</p> <p>The report concludes that based on the endorsement of the recommendations and requirements contained within, the development is capable of complying with this control in the Stage 2 Development Application.</p>	YES
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.	N/A

#### Part 4 - Development standards to be complied with

##### Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	15 999m <sup>2</sup>	Yes
Site frontage	20 metres	In excess of 20m to all three street frontages.	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Building A – 8.3m	No*
		Building B – 8.5m	Yes

Control	Required	Proposed	Compliance
		Building C – 8.4m	No*
		Building D – 15.8m	No*
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	Building A, B and C are all 3 storeys in height.  Building D (existing club building) reaches a maximum 5 storeys in height.	No*
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	Not Applicable.  The site has three street frontages.	N/A

### SEPP 1 - Objection to Development Standard - Building Height

The proposed development does not comply with the building height limit of 8m or the number of storeys requirement of no more than 2 storeys in height.

A SEPP No.1 objection to vary the requirements of Clause 40 – Building Height of SEPP (HPSD) 2004 (prepared by Urbis) has been submitted with the application. As the SEPP does not provide objectives for the building height control, the applicant's primary submission within the SEPP 1 objection relies upon the objectives of the Warringah Local Environmental Plan 2011 – Clause 4.3 – Height of Buildings Control.

The SEPP 1 prepared by the applicant addresses the non-compliance in relation to Buildings A, B and C, however it is silent on the non-compliance created by the adaptive re-use of Building D (existing club). Whilst the building is existing, the proposal seeks to change the entire external appearance and character of the building through the addition of balconies and openings and new external finishes etc. Therefore it is considered that a SEPP 1 to vary the development standard for Building Height relating to Building D should have been submitted with the application and this issue has been included as reason for refusal.

### Assessment of SEPP 1 relating to Buildings A, B, and C

SEPP 1 was introduced in 1980 to allow flexibility in the application of numeric development standards. It enables Councils to vary a statutory development standard where strict compliance with that standard is shown to be unreasonable or unnecessary, as for example, where it would hinder the attainment of the objectives specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act, 1979.

SEPP 1 does apply to Warringah under the provision of WLEP 2011, and this has been confirmed by the Department of Planning and Infrastructure document called 'A Guide to Varying Development Standards' dated August 2011. The Guide stipulates that SEPP 1 does apply to land to which a Standard Instrument LEP (being WLEP 2011) applies as Clause 4.6 provides for exceptions to development standards.

Accordingly, this assessment has used the requirement of Clause 4.6 pursuant to WLEP 2011 to provide an assessment of the variation relating to Building Height standards for development.

The following assessment of the variation of Clause 40 – Building Height and is assessed taking into consideration the question established in *Winten Property Group Limited V North Sydney Council (2001) NSW LEC 46*.



### **Is the planning control in question a development standard?**

The prescribed Height of buildings limitation pursuant to Clause 40 of the SEPP is a development standard.

### **What are the underlying objectives of the development standard?**

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of Buildings’ of the WLEP 2011 are used to determine the suitability of the non-compliance development:

(1) The objectives of this clause are as follows:

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The proposed height and number of storeys proposed for Buildings A, B, C and D of the development is considered excessive and will set an undesirable precedent for the locality that envisages low density residential. Accordingly, the height of the proposed development is not compatible and would be excessive in terms of its scale as compared to other housing developments in the surrounding locality.

Therefore, the development is considered to be inconsistent with this objective and this is included as a reason for refusal.

*b) to minimise visual impact, disruption of loss of privacy and loss of solar access,*

Comment: The non-compliance with the height standard will not result in inconsistencies with this objective as adjoining and nearby development which overlooks the subject site will not experience adverse impacts with regards to views privacy and loss of solar access. However, it is noted that the impacts associated with this proposal have not been “minimised” and a compliant building would achieve greater consistency with this objective. The visual impact of the development is unacceptable in its current form. In particular, the existing club building which reaches a maximum height of 15.8m is the most dominate built form on the site and will be readily viewable from many vantage points. Furthermore, the addition of new and non-compliant buildings (being Buildings A, B and C) will further increase the visual massing on the site in an inappropriate manner which will have a detrimental visual impact from both public and private property.

Therefore the development is considered to be inconsistent with this objective and this is included as a reason for refusal.

*c) to minimise adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*

Comment: The non-compliance with the height standard will result in inconsistencies with this objective as the site is located on a visually prominent and scenically sensitive headland between South Curl Curl Beach and Freshwater Beach and the visual impact analysis demonstrates that the buildings will be noticeable from various vantages points along Evans Street and Carrington Parade. The development can also be viewed from numerous vantage points to the north of the site. It is considered that the development will dominate the headland by way of its height, bulk, scale and mass.

Therefore, the development is considered to be inconsistent with this objective and this is included as a reason for refusal.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment: The non-compliance with the height standard will result in inconsistencies with this objective as it will result in adverse visual impact when viewed from the adjoining public open space area.

The site shares a boundary (eastern) with McKillop Park, which is dominated by low scrub, grassed areas with public walkways. Building D (existing club building) is located partly with a nil setback to this public open space and reaches a maximum height of 15.8m on this elevation. It is therefore considered that the development creates a visual massing and building bulk that will result in an unreasonable impact on the adjoining public open space area.

Therefore, the development is considered to be inconsistent with this objective and this is included as a reason for refusal.

In conclusion, a variation to the Building Height Development Standard under SEPP (HPSD) 2004 cannot be supported for reasons that the proposed height of the development is inconsistent with the objectives relating to compatibility in relation to the height, bulk and scale of the development and the visual impact of the development.

### **What are the underlying objectives of the zone?**

In assessing the development's non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

An assessment of the proposed development against the objectives of the R2 Low Density Residential zone is provided earlier within this report (refer to 'Zone R2 Low Density Residential' under the WLEP 2011 section of this report).

In summary, it is considered that the proposed development is not consistent with the zone objectives.

### **Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?**

(1) The objectives of this clause are as follows:

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment: The proposed variation does not provide an appropriate degree of flexibility. The proposed variation contributes to the inconsistency of the development with the objectives of the R2 Low Density Residential zone, Clause 4.3 of the WLEP 2011 and is inconsistent with the existing local character.

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed variation does not achieve a better outcome for or from the development and is therefore not supported.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: The applicant has submitted with the application a SEPP 1 Objection to the Building Height requirement of SEPP (HPSD) 2004.

Given the non-compliance contributes to the proposed development being rendered inconsistent with the R2 Low Density Residential zone objectives and the existing local character, the variation to the control is not supported.

(4) Development consent must not be granted for development that contravenes a development standard unless:

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: The applicant has provided a SEPP 1 Objection to the Building Height requirement of SEPP (HPSD) 2004 which addresses the non-compliance for Building A, B and C however the SEPP 1 Objection is silent on the non-compliance created by the adaptive re-use of Building D (existing club).

Whilst the building is existing, the proposal seeks to change the façade of the building through the addition of balconies and openings which will change the visual appearance of the building. Therefore, it is required to be assessed under the provisions of this SEPP and against the provisions of SEPP 1 and the WLEP 2011. The applicants SEPP 1 objection does not address this requirement and this is included as a reason for refusal.

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Comment: The proposed development in its current form is considered contrary to the public interest because of its incompatibility with the surrounding environment.

It is considered that it is in the public interest in this case to maintain the standard contained in environmental planning instruments which have been duly prepared with public consultation. It is considered that these documents are also a measure of the public interest. Therefore, it is considered that the proposal is contrary to the public interest.

For reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011.

*(b) the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation with the objectives of JRPP (Sydney East Region) Business Paper – Item 1 – 8 August 2013 – JRPP Reference Page 43

the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard cannot be assumed.

#### **Clause 41 Standards for hostels and self-contained dwellings**

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development.

**Comment:** This part is not applicable to the subject site as the proposal seeks development consent for a Stage 1 development. This part will be assessed in full at the time of a Stage 2 Development Application.

#### **Part 5 Development on land adjoining land zoned primarily for urban purposes**

This part is not applicable to the subject site.

#### **Part 6 Development for vertical villages**

This part is not applicable to the proposed development.

#### **Part 7 Development standards that cannot be used as grounds to refuse consent**

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

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

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

<b>Control</b>	<b>Required</b>	<b>Proposed</b>	<b>Compliance</b>
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Building A- 8.5m  Building B – 8.5m  Building C -8.5m  Building D – 15.8m	No  No  No  No
Density and scale	0.5:1	Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.  However, it is considered the development is capable of complying with this control at Stage 2 of the development.	N/A

Control	Required	Proposed	Compliance
Landscaped area	30% of the site area is to be landscaped	<p>The proposed development provides 0% of landscaped area for the site.</p> <p>Landscaped area under the SEPP is defined as:</p> <p><b>landscaped area</b> means that part of the site area that is not occupied by any building and includes so much of that part as is used or to be used for rainwater tanks, swimming pools or open-air recreation facilities, but does not include so much of that part as is used or to be used for driveways or parking areas.</p> <p>The applicant has indicated in the SEE that compliance with this clause is achieved. However, it is noted that the basement car parking levels of the development extends to all boundaries fronting Evans Street, Lumsdaine Drive and Carrington Parade. Which means the entire site is covered with buildings, including the basement car parking structures.</p> <p>The development therefore does not comply with the requirements of this control. The non-compliance with the control is not supported and is included in the reasons for refusal.</p>	No
Deep soil zone	15% of the site area Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	In excess of 15% of the site is provided in the form of deep soil planting.	Yes
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	<p>Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.</p> <p>However, it is considered the development is capable of complying with this control at Stage 2 of the development.</p>	N/A
Private open space	15sqm of private open space per dwelling not less than 3 metres long and 3 metres wide	Compliance with the requirements of this control would normally be the subject of a comprehensive	N/A

Control	Required	Proposed	Compliance
		assessment at Stage 2 of the development.  However, it is considered the development is capable of complying with this control at Stage 2 of the development.	
Parking	(10 bedrooms proposed – 5 car parking spaces required)	The number of car parking exceeds the required parking for the development.	Yes
Visitor parking	None required if less than 8 dwellings	Compliance with the requirements of this control would normally be the subject of a comprehensive assessment at Stage 2 of the development.  However, as discussed previously it is considered the development is capable of complying with this control at Stage 2 of the development.	Yes

#### **Chapter 4 – Miscellaneous**

The proposed development is consistent with the provisions contained in Chapter 4. The site is not on environmentally sensitive land, is not affected by amendments to other SEPPs, and the special provisions do not apply to the land.

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

##### Clause 45 of SEPP Infrastructure

Clause 45 of the SEPP requires the Consent Authority to consider any development application (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.
- Within 5.0m of an overhead power line.
- Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment: The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. In accordance with Clause 45(2) (b) the consent authority is to take into consideration any comments received within 21 days of the date the notice was given to Ausgrid. A response to this referral has not yet been received and the required 21 days has expired.

##### Clause 106 of SEPP Infrastructure

Pursuant to Clause 106(1) (a) the clause applies to new premises of the relevant size or capacity. (2) In this clause, "relevant size or capacity" means:

*“in relation to development on a site that has direct vehicular or pedestrian access to any road- the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3”*

Clause 106 ‘Traffic generating development’ of the SEPP requires the application be referred to the RTA within 7 days, and take into consideration any comments made within 21 days, if the development is specified in Schedule 3 of the SEPP.

Schedule 3 of the SEPP requires that the following residential flat developments are referred to the RTA as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size or Capacity Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road
Any other purpose	200 or more motor vehicles	Not Applicable

The proposed car parking arrangement accommodates a total of 778 spaces in the basement levels. As such, the development triggers a requirement to refer the application to the RMS under Column 2 of Schedule 3.

As per the above requirement, the application was referred to the Road and Maritime Services (RMS) (previously known as Roads and Traffic Authority – RTA). The RMS by its letter dated 1 May 2013 has raised no objection to the development and has provided no conditions for the Stage 1 DA.

In this regard, the subject application is considered to satisfy the provisions of Clause 106.

### **Warringah Local Environment Plan 2011**

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

### **Aim of the Local Environmental Plan 2011**

The aims of the LEP for residential development is to

- (i) *protect and enhance the residential use and amenity of existing residential environments, and*
- (ii) *promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and*
- (iii) *increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah*

**Comment:** The proposed development will contribute to increasing the supply of housing for the aged population in Warringah, which is considered to be positive, However, the proposed development as contemplated in this concept DA is not considered to be consistent with the aims of the plan as the form of development on the site (as depicted in the envelope plans and in the photomontages and artists illustrations submitted in support of the DA) does not constitute a form and character of development that is compatible with development in the surrounding residential area in terms of bulk, scale and appearance.

Accordingly, the proposed development is found to be inconsistent with the aims of the WLEP 2011 and this has been used as reason for refusal.

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	450m <sup>2</sup>	15,599m <sup>2</sup>	N/A	N/A
Height of Buildings: (overall Height)	8.5m	Building A -up to 8.5m Building B- up to 8.5m Building C -up to 8.5m Building D- up to 15.8m	N/A N/A N/A 77%	Yes Yes Yes No*

### Compliance Assessment

Clause	Compliance with Requirements
<b>Part 1 Preliminary</b>	
Part 2 Permitted or prohibited development	Yes
2.5 Additional permitted uses for particular land	Yes
Land Use Table	Yes
<b>Part 4 Principal development standards</b>	
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
<b>Part 6 Additional Local Provisions</b>	
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
Schedule 1 Additional permitted uses	Yes
13 Use of certain land at Lumsdaine Drive, Freshwater	Yes  Under Schedule 1 of the WLEP 2011, registered Clubs, recreation facilities (i.e. the proposed gym) which is ancillary to the registered club are permissible forms of development on the subject site with development consent.

### Detailed Assessment

#### **Zone R2 Low Density Residential**

Land use definition: WLEP 2011	Permitted or Prohibited
Senior's Housing and associated uses	Permissible via SEPP HSPD 2004
Child care centre	Permissible with consent
Community facility	Permissible with consent
Respite centre	Permissible with consent
Registered Club	Permissible via Schedule 1-Additional permitted
Gymnasium	Permissible via Schedule 1- but only if the facility operates in conjunction with the registered club. If the application is approved, a condition will be included in the consent to ensure the gym operates in conjunction with the registered club.



The underlying objectives of the R2 Low Density Residential zone:

***To provide for the housing needs of the community within a low density residential environment.***

**Comment:** The development will provide housing designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for a broad cross section of the community. However, the design and scale of the development is not considered to constitute 'housing within low density residential environment' based on the size and scale of the buildings adjoining detached dwellings to the west and south-west and the adaptive re-use of the existing building as residential flat building as detailed throughout this report.

It is considered that the development does not satisfy this objective.

***To enable other land uses that provides facilities or services to meet the day to day needs of residents.***

**Comment:** The proposed development provides land uses (such as the registered club, community facility, and child care centre) that will provide facilities to meet the day to day needs of residents and the locality.

It is considered that the development satisfies this objective.

***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

**Comment:** The plans submitted indicate that the proposed development will only provide deep soil planting above the basement car park at the centre of the development. It is considered that the proposed development does not provide adequate landscaping to allow adequate softening of the visual impact of the proposed development, particularly within the front setback areas along the three street frontages.

It is considered that the development does not satisfy this objective.

**Clause 4.6 -Exceptions to development standards**

Clause 4.6 of WLEP 2011 applies to Building D as the overall height of the building exceeds the 8.5m height limit. The Applicant has not submitted a written justification in relation to this non-compliance stating that the Clause 4.6 is not applicable to this component of the development as the building is existing and falls under the provisions of the seniors SEPP which overrides the building height control under WLEP 2011.

The building height control under SEPP stipulates a different measurement to that stipulated under WLEP 2011 for calculating building height. Accordingly, it is considered that Clause 4.6 is applicable to the non-compliance created by Building D and for same reasons stipulated under the building height control under the seniors housing SEPP, the non-compliance is not supported and this has been included as reason for refusal.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B3 Side Boundary Envelope	5m The control is only applicable to Building D.	Building D does not comply with the envelope, when measured from the setback on the McKillop Park elevation	No*
B5 Side Boundary Setbacks	0.9m The control is only applicable to Building D	Nil -4.5m setback from the boundary adjoining McKillop Park Reserve	No*
B7 Front Boundary Setbacks	6.5m	<b>Carrington Parade:</b>  Building A – 6.5m Building B – 6.5m Building C – 6.5m  <b>Evans Street:</b>  Building B – 6.5m Building C – 6.5m Building D – Nil to 6.5m  <b>Evans Street - Carrington Parade – Lumsdaine Drive:</b>  Basement – Nil to all three street frontages	Yes  Yes Yes  Yes Yes No*  No*
B9 Rear Boundary Setbacks	6m	Not Applicable as the site has three street frontages	Not Applicable
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	This requirement is addressed under SEPP (HSPD)	Not Applicable

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
<b>Part B Built Form Controls</b>		
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	No	No
B7 Front Boundary	No	No
<b>Part C Siting Factors</b>		
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking 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
Residential accommodation - 3 or more dwellings	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
<b>Part D Design</b>		
D1 Landscaped Open Space and Bushland Setting	N/A	N/A
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D5 Orientation and Energy Efficiency	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
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
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	No	No
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment of WDCP Built Form Controls

### **B3 Side Boundary Envelope**

#### Description of non-compliance

Building D – the extent of the breach is 10m in height for 23.4m of the length of the building.

#### Merit consideration

The Statement of Environmental Effects submitted with the application a state that the side boundary envelope control is not applicable given the existing club building is existing.

The side boundary envelope control does in fact apply to Building D, given the proposal includes substantial modification to the existing building, which will include new external walls, new balconies, new roof and the like to be able to be used for a residential flat building.

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

**Comment:** The non-compliance with building envelope relates to Building D, which also does not comply with the overall Building Height for the site. The combination of the vertical and horizontal massing of the respective elevations of the building, in conjunction with the proposed front and side setbacks results in a visually dominant building bulk that does not have a sympathetic relationship the bulk of developments which predominantly characterises the surrounding residential development.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

**Comment:** The non-compliant building envelope relating to Building D indicates an excessive scale and massing within close proximity to the eastern side boundary, which adjoins public open space. Although, there is no direct impact upon the amenity of surrounding residential development it is considered that the non-compliance with the building envelope exhibits overbearing bulk and scale and result in a visually restricted outlook, which could significantly be improved if Building D was reduced in height and stepped in its form and so designed to achieve compliance with the building envelope.

- *To ensure that development responds to the topography of the site.*

**Comment:** The retention of the existing building has restricted the ability for the development to be designed to respond to the topography of the site, by stepping the building to reduce the bulk, scale and massing of the development when viewed from the street, public open space and from other vantage points within the headland.

## **B5 Side Boundary Setbacks**

### Description of non-compliance

Building D - Nil -4.5m setback from the boundary adjoining McKillop Park Reserve

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*

**Comment:** The non-compliance in relation to building D will not render this development to be inconsistent with the requirement of this objective as the proposal will allow opportunity deep soil landscape areas within the setback adjoining to McKillop Park.

- *To ensure that development does not become visually dominant.*

Comment: As discussed previously, Building D is considered to be a visually dominant building when viewed from the adjoining reserve and therefore the proposal is found to be inconsistent with the requirement of this objective.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment: The combination of the vertical and horizontal massing of the elevations of Building D in conjunction with the proposed side setback results in a visually dominant building bulk that does not have a sympathetic or relationship to the adjoining reserve.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment: The non-compliance relating to Building D will not render the development to be inconsistent with the requirement of this objective as there is no direct amenity impact on adjoining residential development.

## **B7 Front Boundary Setbacks**

### Description of non-compliance

The development is non-compliant in the following areas:

- Building D – Nil – 6.5m to Evans Street
- Basement Levels – Nil to Evans Street, Carrington Parade and Lumsdaine Drive

### Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To create a sense of openness.***

**Comment:** The existing Harbord Diggers Club building is an overbearing imposing building and a visually dominant feature of the streetscape of Evans Street. The building will continue to have a nil setback to Evans Street for the length of the building, with exception of recess area in the middle of the building which is setback 6.5m from Evans Street.

Given the bulk and scale of the existing Harbord Diggers Club building and the lack of landscaping provided to soften views of the building and enhance the streetscape, the provision of an adequate landscape buffer between the boundary adjoining Evans Street and the proposed development is essential. Accordingly, the retention of the existing club building renders this development to be inconsistent with the requirement of this Clause.

The encroachments relating to the basement levels occurs below the ground and are not visible from the street or surrounding properties, therefore this element of the development does not result in inconsistency with the requirement of this objective.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

**Comment:** The non-compliance with the front setback, particularly the basement levels below the grounds limits the opportunities to provide a suitable landscape buffer around the development to allow for the provision of landscaping which is to commensurate with the height and scale of the development.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

**Comment:** The development proposes considerable massing along the three street frontages, which is a function of proposed front setbacks. This massing is exacerbated due to lack of opportunity to establish adequate landscaping within these setbacks due to the basement encroachments. The development will therefore will not contribute to the visual quality of streetscapes and public spaces.

### **Conclusion on Built Form Controls**

Having regard to the above assessment relating the built form controls pursuant to WDCP, (i.e. side boundary envelope, side setback, and front building setback), it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal cannot be supported.

In consideration of the proposal and the merit consideration would the development maintain the ability for the development to be consistent with the:	
• Objectives of the DCP?	NO
• Zone objectives of the LEP?	NO
• Objectives of the LEP?	NO
• Objects specified in s.5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979?	NO

Based on a merit consideration, the circumstances of this application / site and an assessment of the proposal against the underlying objectives of the clause, is:	
• Compliance with the requirement unreasonable?	NO
• Compliance with the requirement unnecessary?	NO
• Is the proposal acceptable?	NO

### Detailed Assessment of WDCP on Other Matters

#### **D7 Views**

This Clause states that development is to allow for the reasonable sharing of views. However, Insufficient information has been provided to enable an assessment of the proposal against the requirements of this Clause using the four step process for assessing view loss which was established by the Land and Environment Court in *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140. The following is required to be undertaken:

- *Height poles to enable an accurate assessment of the extent of the view loss which will be experienced by the affected properties.*

Given the number and extent of the fundamental departures from the development standards under relevant Planning controls applicable to the proposed development, identified during the assessment of the application, the applicant was not requested to erect height poles. As part of the

resolution of issues identified in this report, the applicant should address view loss with the individual effected properties that have identified view loss as a concern.

## **D9 Building Bulk**

Clause D9 requires buildings to have a visual bulk and an architectural scale that is consistent with structures on adjoining or nearby land. The bulk of the development is addressed in detail by the attached GMU Urban Design report, where there are a number of concerns that are raised in relation to the bulk of the proposed buildings.

In addition, this assessment has found that the vertical and horizontal massing of development when viewed from the public domain at the various vantage points, and from the front and side elevations (in particular Buildings D) results in a visually dominant building bulk that has no sympathetic relationship to the majority of buildings in the surrounding residential area.

Accordingly, the proposed development is found to be inconsistent with the requirement of Clause D9 and this issue has been included as a reason for refusal.

## **E7 Development on land adjoining public open space**

Clause E7 of WDCP requires development on land adjoining public open space to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.

Building D has a nil to 4.5m setback to McKillop Reserve. Although the building is existing, the assessment has found that the setback is fundamentally inadequate given the scale of the building and the length of the building which will be able to be viewed from the reserve. Given the scale of this building, the minimal setbacks proposed do not provide an adequate opportunity to provide landscaping to soften and screen the development from the reserve or minimise the visual impact on the reserve as viewed from McKillop Park. For these reasons, this issue has been included as a reason for refusal.

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

The subject site is located within a mapped Wildlife Corridor identified in the WDCP 2011. The applicant has submitted a Flora, Fauna and Ecological report prepared by Ecological, dated 26 September 2012 for the Stage 1 proposal. The assessment of this report includes a survey of the species of subject site as well the adjoining bushland in McKillop Park and surrounding area. The report concludes that:

- *Stage 1 of the proposal involving the redevelopment of Harbord Diggers Club house and facilities will result in the removal of 0.38 ha of maintained lawn and planted gardens and 1.20 ha of cleared area from within the construction footprint. The vegetation within the construction footprint is composed primarily of introduced flora species and only 0.38 ha of landscape vegetation will be removed under the proposal.*
- *No threatened flora and fauna species, populations or communities listed under the Threatened Species conservation Act 1995 or Environmental Protection and Biodiversity Conservation Act 1999 were observed within the construction footprint (subject site). However, two significant flora species *Rulingia hermanniifolia* and *Eucalyptus scias* subsp (Large – fruited Red Mahogany) are located within the vegetation, downslope of the proposed development.*

The report provides mitigation measures to be implemented prior, during and post construction to mitigate potential risks to these species.

The proposal and the Flora and Fauna report have been reviewed by Council's Natural Environment Unit, who raised no concerns or objections to the proposal subject to conditions endorsing the mitigation measures contained within the Flora, Fauna and Ecological Report. Accordingly, the proposed development is satisfactory with regard to the ecological issues.

## **OTHER ASSESSMENT MATTERS**

### **Views from the Public Domain**

The assessment of view loss from the Public Domain has been established by the Land and Environment Court in *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046. This Planning Principle outlines a two stage process:

1. An identification of views
2. An analysis of how these views would be affected if the development proceeds

The judgement suggests factors to be considered in this analysis, such as whether there is any significance attached to the views or whether the views themselves attracts the public to particular locations.

The Applicants View Study heavily relies on the fact that the existing building club already takes away the views from the public domain and therefore the proposed development will have little impacts on available views.

The issue of view loss from the public domain is addressed in detail in the attached GM Urban Design report, where it is found the development does not provide for improved views from the public domain and the fact that the site is being redeveloped and there is wholesale change to the entire site, the development amongst other things should improve views of public domain.

### **Desirability of Adaptive Re-use of the Existing Club Building**

As stated above, the applicant seeks to justify significant variations to planning controls, particularly the building height, based upon the characterisation of the development as an "*adaptive reuse of the existing Harbord Diggers Club building*".

The Planning Principle of whether adaptive re-use is in the public interest was established in *Michael Hesse v Parramatta City Council* [2007] NSWLEC 313, where it states that to be in the public interest, an adaptive re-use must have an element of public benefit apart from resource conservation. The judgement of Senior Commissioner Roseth states that to be in the public interest one or more of the following must be present:

- *The building is of historical or heritage value.*
- *The building is attractive and fits into its urban design context.*
- *The building is much loved by the community.*
- *The new use serves the public interest better than the existing use.*

The existing building is not of historical or heritage value. It is non-descript and plain and not attractive in appearance. It is not loved by the community for its appearance. It has not been substantiated that the proposed use serves the public interest better than the existing registered club. It is considered that none of the elements identified in the planning principle are present in the subject application. Therefore, according to Planning Principle conclusion, there is no justification for assessing this proposal any differently, or applying the normal performance standards less stringently, from a proposal that does not involve adaptive re-use.

As there is no case for adaptive reuse of the existing building, the substantial non-compliances and inconsistency relating to height, bulk, scale and mass of the proposed development are considered



to be unjustified and are not supported for the reasons discussed throughout this report and the attached GM Urban Design report.

### **Compatibility of the Character of the Development**

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268* and *Project Venture Developments v Pittwater Council (2005) NSWLEC 191* where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of '*GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268*' Senior Commissioner Roseth developed the following Planning Principles:

*The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

**Comment:** The development consists of 4 buildings that reach a maximum storey height of between 3 – 5 storeys. A site inspection and detailed analysis of the Evans Street, Carrington Parade and Lumsdaine Drive streetscape, reveals that the predominant character of the local area is one of low density built form and scale. Buildings are generally one or two storeys in height with the exception of some sporadically located apartment style buildings which reach a height of between 3-5 storeys when viewed at street level.

The site is not located within, or near to, a conservation area which limits building heights to single storey.

In this regard, it is considered that the scale of the development is incompatible with the streetscape and is inconsistent with the first principle.

*The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

**Comment:** The development provides the following building lengths and heights:

- Building A (facing Carrington Parade) is three storeys in height and has a length of 82.5m with an approximate physical break of 3 metres in the middle of the building.
- Buildings B and C (facing Evans Street) are also three storeys in height and have a combined length of 95 metres. Minimal separation (approximately 4 metres) has been provided in between the two buildings.
- Building D an unbroken length of over 73.4m.

As discussed throughout this report, the development is considered to be much greater in size and scale in comparison with other buildings in the surrounding area and does not provide sufficient physical breaks or landscaping that would reduce the visual impact of the proposed buildings forms.

In this regard, the development is considered to be incompatible with the scale of surrounding development and inconsistent with the second principle.

*The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

**Comment:** The site is generally flat and without any notable topographical features which would otherwise reduce the visual bulk and scale of the development.

The vegetation around the site is relatively sparse with the majority of landscaped areas being concentrated in No. 4a Lumsdaine Drive.

*The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

**Comment:** The materials and schedule of finishes would normally be the subject of a comprehensive assessment at the time of a Stage 2 Development Application.

Notwithstanding, it is considered that the development is capable of being consistent with this principle at the time of a Stage 2 Development Application.

The above Principals were further developed in *Project Venture Developments v Pittwater Council (2005) NSWLEC 191* to include the following:

*Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

**Comment:** The physical impact of the development is acceptable as there is no direct impact on the surrounding residential development that would unreasonably constrain the development potential of these sites.

*Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

**Comment:** As discussed throughout this report and within this planning principle, the development is not considered to result in an appearance that is in harmony with the buildings around it and the character of the street.

The development is considered to be inconsistent with this principle.

## **CONCLUSION**

This report provides a comprehensive assessment of the Stage One concept or master plan development application for the redevelopment of the Harbord Diggers Site.

This report assesses the concept proposal on the basis of it being a *Staged Development* submitted pursuant to Section 83B of the Environmental Planning and Assessment Act, 1979, which is not a detailed architectural design and layout of the development. The proposal is assessed against the relevant planning instruments, including the Environmental Planning and Assessment Act, 1979, Environmental Planning and Assessment Regulations 2000, Warringah Local Environmental Plan 2011, State Environmental Planning Policy No. 65 – Design Quality of Residential Flat, State Environmental Planning Policy (Housing for seniors or People with a Disability) 2004, Warringah Development Control Plan and other related statutory planning controls.

The development application seeks approval of the concept mixed use development comprising building envelopes to be used for Seniors housing, new club facility, child care, gymnasium, community centre and respite care; and consolidation of the two lots (being the existing club site at 80 Evans Street & Lot known as 4A Lumsdaine Drive) into a single Lot.

## **Community Consultation**

The public exhibition of the DA resulted in a significant response from the community, including both concerned residents and an overwhelming number who supported the proposal. Those objecting to the proposal raised concerns primarily on the basis of the height and consequent visual, scenic and view impacts of the development, and the amount of additional traffic that would be generated by development. Those supporting the development raised the benefits of the revitalization of the Harbord Diggers Club, the provision of senior housing on the site and the creation of an important gathering place for the community in the form of new and improved club facilities.

## **Assessment of the Development Application**

The proposed land uses are permissible with consent pursuant to the provisions of SEPP (HSPD) 2004 and WLEP 2011 and has been assessed in accordance with the current planning controls applying to the site as well as taking into consideration the Site Compatibility Certificate issued for this site by the Department of Planning and Infrastructure. As discussed throughout this report, there are no objections raised to proposed land uses on the site and redevelopment of the Harbord Diggers Club will be highly beneficial to the site as well as the locality as a whole.

The proposed concept scheme has been developed to retain the existing club building to take advantage of the existing structure and its height and as a result there are obvious inconsistencies and non-compliances that arise with relevant planning controls that are applicable to the site. The report has assessed the merits of the adaptive re-use and the new buildings and has found that the significant departures from the current planning controls in SEPP (HSPD) 2004, WLEP 2011, and WDCP cannot be justified in its current form.

The proposed development as a whole has been assessed in terms of its built form and has found it not to be sympathetic to this scenic and visually sensitive location and not sufficiently compatible as a form of development that will interface with the low density residential development to the west, southwest and north of the site. However, the balance of development over preserving and maintaining the character of the locality has not been achieved. It is recommended that the building form should be broken down more substantially to produce buildings on the site which contextually fit within the established character of the locality to provide for a “detached” building form.

There are a number of possible options for this development to occur on this site, such that it is designed in a manner that is consistent with the applicable planning controls and a development that is a more sympathetic development outcome for the site; one that is responsive to the topography of the land, the streetscape and the visual qualities of its prominent headland location.

In conclusion, for the reasons outlined in this report, it is considered that the proposed Stage 1 development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the proposal is recommended for refusal.

## **RECOMMENDATION**

Pursuant to Section 80 of Environmental Planning and Assessment Act 1979 (As amended)

THAT Joint Regional Planning Panel, as the consent authority Refuse consent to the Stage One Development Application No DA2013/0412 for the redevelopment of the Harbord Diggers Site for seniors housing, new club facility, child care, gymnasium, community centre and respite care. On JRPP (Sydney East Region) Business Paper – Item 1 – 8 August 2013 – JRPP Reference Page 59

land at Lot 100 DP 1136132, 80 Evans Street and Lot 2 DP 579837, 4 A Lumsdaine Drive, Freshwater, for the following reasons:

1. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Aims of Policy (namely Clause 2c), of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
2. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the requirements of Clause 33 Neighbourhood Amenity and Streetscape of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
3. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 40 Development Standards – relating to Building Height of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
4. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of *State Environmental Planning Policy* (Housing for Seniors or People with a Disability) 2004), in that proposed development does not comply with requirement of Clause 50 with regards Landscape Area.
5. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of *State Environmental Planning Policy No 65 – Design Quality for Residential Flat Development*, in particular:
  - Principle 1 – Context
  - Principle 2 – Scale
  - Principle 3 – Built Form
  - Principle 4 – Density
  - Principle 6 – Landscape
6. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2011* in that the development inconsistent with the objectives and requirements of Clause 4.3 – Height of Buildings.
7. Pursuant to Section 79C (1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2011* in that the development inconsistent with the objectives and requirements of Clause 4.6 – Exception to Development Standards in that the applicant's written request to vary Clause 4.3 Height of Buildings (WLEP 2011) and Clause 40 (4a and 4b) of SEPP (HSPD) 2004, does not address the non-compliance created by Building D.
8. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2011* in that the development is inconsistent with the objectives of the R2 Low Density Residential zone.
9. Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2011* in that the development is inconsistent with the aims of the Plan.
10. Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Warringah Development Control Plan in that the development is inconsistent with the following clauses:

- B3 – Side Boundary Envelope
  - B5 – Side Boundary Setbacks
  - B7 – Front Boundary Setbacks
  - D9 – Building Bulk
  - E7 – Development on land adjoining public open space
11. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest as the development results in adverse impacts on the local character and visual and scenic quality of the locality and is an overdevelopment of the site.