

**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>Report by</b>	<b>Malcolm Ryan, Deputy General Manager, Environment</b>

**Supplementary Assessment Report**

<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>	None Pending
<b>Owner:</b>	Mount Pritchard & District Community Club Ltd
<b>Applicant:</b>	Urbis Pty Ltd
<b>Application lodged:</b>	8 April 2013
<b>Amended Plans lodged:</b>	23 August 2013
<b>Estimated Cost of Works:</b>	\$ 106,045,584
<b>Attachments:</b>	Attachment 1: Amended Plans submitted to Council 23 August 2013. Attachment 2: SEPP 1 objection submitted by the Applicant Attachment 3: Draft Conditions of Consent

## PURPOSE OF THIS REPORT

At its meeting of 8 August 2013, the Sydney East Region Joint Regional Planning Panel (JRPP) considered the application and resolved to defer the determination to enable the submission of amended plans and a written SEPP 1 Objection. The JRPP provided a list of a number of matters the applicant was to address. Amended plans and the SEPP 1 Objection were submitted by the applicant within the nominated timeframe.

This report provides a brief summary of the plans against each matter identified by the JRPP and provides an assessment of the SEPP 1 objection received in relation to the non-compliance with the height control under SEPP HSPD for the existing club building (i.e. Building D).

This report does not revisit any matter raised in the previous Assessment Officer's report prepared by Council and considered by the JRPP at its meeting of 8 August 2013, which was not specifically referred to in the minutes of the JRPP meeting.

## RELEVANT BACKGROUND

The Development Application was referred to the meeting of the Joint Regional Planning Panel on 8 August 2013 with a Council recommendation for refusal.

At that meeting, the Panel resolved the following:

1. *The Panel resolves unanimously that it would approve an amended application that:*
  - a) *Provides a setback of 6.5m to Evans Street for Building D (the existing building) for its entire height;*
  - b) *Sets back the third floor by 3m from the street face of all new buildings; and*
  - c) *Implements all the suggestions for landscaping on Drawing No SK-111 Issue A.*

**Comment:** The scope of the amendments made by the applicant, and how they respond to the requirements of Point 1, are addressed under the 'Amended Plans' section in this report.

- 2 *The Panel requests the applicant to submit amended drawings by 23 August 2013. For ample caution, the amended application should be accompanied by a SEPP 1 Objection to the height of Building D.*

**Comment:** The applicant submitted amended plans and a SEPP 1 objection in relation to Building D in response to Point 2 on 23 August 2013.

3. *The Panel requests the Council's Planning Assessment Officer to provide it, by 6 September 2013, with a supplementary report that assesses whether the plans have responded to the Panel's requirements in paragraph 1 above. That report should be accompanied by draft Conditions and an assessment of the SEPP 1 Objection.*

**Comment:** In accordance with Point No. 3, this supplementary report addresses the extent to which the amended plans have responded to the requirement in Paragraph No. 1 and provides an assessment of the SEPP 1 Objection.

Also, as requested by the Panel, draft conditions have been prepared and are attached to this report (Refer to Attachment 3).

4. *Following the receipt of the supplementary report, the Panel will determine the application by Communicating by electronic means, unless it considers that a further public meeting is necessary.*

**Comment:** Noted.

## **AMENDED PLANS**

### **Changes made in response to the requirements of the Resolution**

The amended plans submitted to Council on 23 August 2013 sought to respond to the following changes required in Point No. 1 of the JRPP's resolution:

- (a) provides a setback of 6.5m to Evans Street for Building D (the existing building) for its entire height**

**Comment:** The amended plans indicate that Building D has provided a minimum setback of 6.5m to Evans Street for its entire height.

In this regard, the amended plans have satisfied this requirement.

- (b) Setback the third floor by 3m from the street face of all new buildings.**

**Comment:** The amended plans indicate that the third (3<sup>rd</sup>) floor of all new buildings (i.e. Buildings A, B, and C) has been setback by 3m.

In this regard, the amended plans have satisfied this requirement.

- (c) Implements all the suggestions for landscaping on Drawing No SK-111 Issue A.**

**Comment:** With regards to the above requirement, the applicant has submitted an amended Landscape Plan, which shows the implementations of all suggested landscaping as indicated on the previous Drawing No SK-111 Issue A.

In this regard, the amended plans have satisfied this requirement.

### **Assessment of SEPP 1 Objection**

The SEPP 1 Objection has been prepared and submitted in relation to the non-compliance related to Building D (the existing club building).

This SEPP 1 Objection has been prepared in accordance with the provisions of State Environmental Planning Policy No. 1 – Development Standards to vary the requirements of Clause 40 – Building Height of SEPP (HSPD) 2004 by Urbis Pty Ltd. 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 Standard being objected to:**

#### Building Height

The development standards being objected to are the height standards in Clause 40 (4) of State Environmental Planning Policy (*Housing for Seniors or People with a Disability*) 2004 (SEPP (HSPD)), which requires:

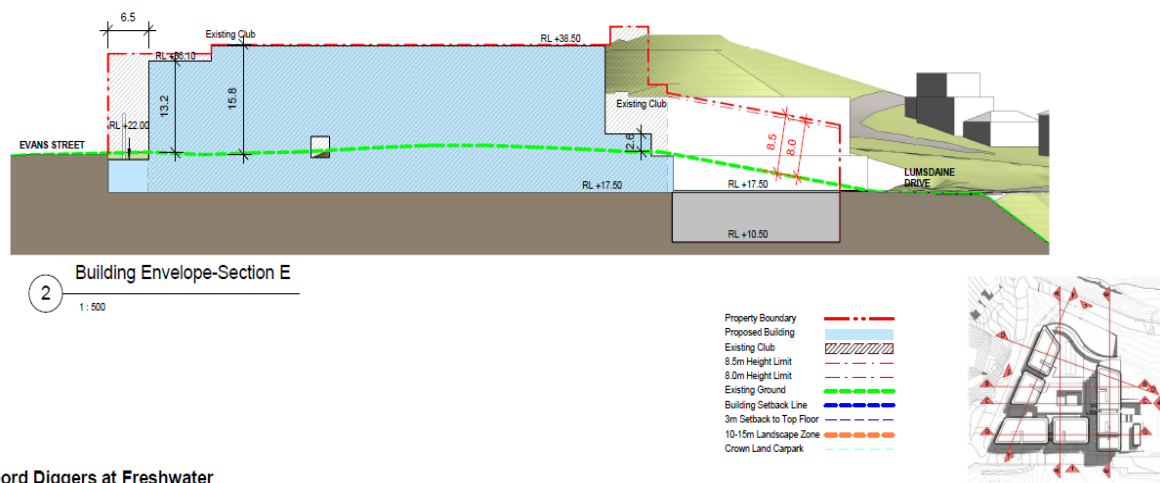
If the development is proposed in a residential zone where residential flat buildings are not permitted:

- (a) the height of all buildings in the proposed development must be 8m or less; and
- (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this policy applies) must be not more than 2 storeys in height.

The proposed development seeks to adaptively reuse the existing Harbord Diggers Club building (known as Building D), which seeks a variation to the 8m height development standard and the 2 storey height development standard for a building adjacent the boundary of the site. The proposed Building D seeks to vary the height limit as follows:

- The proposed envelope of Building D has a height of up to 15.8m; and
- The proposed envelope has a height up to 5 storeys adjacent the eastern boundary of the site.

Figure 1 below shows the extent of non-compliance with regards to Building D.



(Figure 1 – identifies the non-compliance with building height - Source: SEPP 1 objection, prepared by Urbis)

### Assessment of SEPP 1 Objection

The following assessment of the variation to the height standard under 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?

There are no underlying objectives of the standard within Clause 40 of SEPP (HSPD),

therefore it is appropriate for the purpose of this assessment to use the underlying objectives as prescribed within Clause 4.3 – ‘Height of Buildings’ of the Warringah Local Environment Plan 2011 (WLEP 2011) to relevantly determine the suitability of the non-compliance of the development in this case.

The objectives of Clause 4.3 are as follows:

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

**Comment:** For the same reasons stated in the original assessment report, prepared by Council, the proposed height and number of storeys relating to building D is considered excessive and will set an undesirable precedent for the locality that envisages low density residential development. 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.

**(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 Building D adjoins a public reserve to the east. However, it is noted that a compliant building would achieve greater consistency with this objective. The visual impact of the development is unacceptable in its current form. In particular, Building D reaches a maximum height of 15.8m and is the most dominate built form on the site and will be readily viewable from many vantage points.

Therefore, the development is considered to be inconsistent with this objective.

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

**Comment:** As indicated in the original assessment report, 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 the Building D will continue to be highly prominent from various vantages points along Evans Street and Carrington Parade. Building D can also be viewed from numerous vantage points to the north of the site. It is considered that the development will visually dominate the headland by way of its height, bulk, scale and mass.

Therefore, the development is considered to be inconsistent with this objective.

**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 areas.

The site shares a boundary (eastern) with McKillop Park, which is dominated by low scrub, grassed areas with public walkways. Building D 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 maintains 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.

#### **Conclusions in relation to the Objectives of the Standard:**

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 developments 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 in the original assessment report, where it was found 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: Whilst it is agreed that the clause seeks to provide flexibility in the application of the height standard, it is considered that this is not appropriate in this case as the proposed variation contributes to the inconsistency of the development with the objectives of the R2 Low Density Residential zone, the objectives of 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 to the height standard 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 the SEPP 1 Objection to the Building Height requirement of SEPP (HPSD) 2004 relating to Building D and argues that the proposed adaptive reuse of the existing club building results in alterations that will minimise the overall bulk and scale of the building and therefore compliance with height development standards are unreasonable and unnecessary for the following reasons:

- *The approval of a Site Compatibility Certificate by the NSW Department of Planning and Infrastructure recognised 'that the site of the proposed development is suitable for more intensive development and that development for the purposes of seniors housing'.*
- *As critical mass is required for operational and service efficiencies for seniors living occupancy, it is not uncommon for seniors housing developments to be different in character, form or scale to the types of development generally envisaged in R2 Low Density Residential Zones.*
- *Compliance with the 8m maximum height control and two storey height control in SEPP (HSPD) is unnecessary to meet the underlying objectives of the standards.*
- *The height and bulk of the existing club building (Building D) will be considerably reduced resulting in an improved visual appearance to the building. The breaking down of the building bulk of the club building will in some instances open up views into the site which do not currently exist and contribute to an improved development outcome for the overall site.*
- *Compliance with the standards is unnecessary to preserve the amenity of the adjoining properties.*
- *The proposed variation to height standards results in reduction in the overall scale and bulk of Building D and therefore the proposal would not look out of character with the surrounding residential development to the south of the site and would not detract from the visual appearance and character of the site.*
- *The proposal will not create increased impacts on the amenity of adjoining and surrounding development as it maintains an appropriate level of privacy and solar access to the adjoining and surrounding developments.*

As outlined in the original assessment report, 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 unjustifiable and cannot not be supported in its current form.

Therefore, seeking compliance with the height development standard is not unreasonable and considered necessary given the redevelopment of a site, which is sensitive in terms of its location. Furthermore, the non-compliance also contributes to the proposed development being rendered inconsistent with the R2 Low Density Residential zone objectives and the existing local character.

(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 D.

*(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 the development is in the public interest in this case to maintain the development standard contained in environment planning instrument which has been duly prepared with public consultation. It is considered that these documents are also a measure of the public interest and community expectation. 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 the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard cannot be assumed.

In conclusion, the SEPP 1 objection is not well founded and therefore Council reaffirms its original assessment in relation to building height and recommends that the application be refused.

## **PUBLIC EXHIBITION**

The amended application was not publicly exhibited as this was not required by the Joint Regional Planning Panel.

## **CONCLUSION**

The amended application has been assessed against the required amendments detailed in Point 1 of the Resolution of the Joint Regional Planning Panel. This report is supplementary to the original assessment report.

As a direct result of the application and the consideration of the matters detailed within this supplementary report the application is referred back to the Joint Regional Planning Panel (JRPP) for the Sydney East Region, as the consent authority, for determination.

The amended plans submitted by the applicant satisfy all of the requirements as set out by the JRPP's resolution.



The Applicant has also submitted a SEPP 1 Objection in relation to the non-compliance with the Building Height relating to Building D. However, Council's assessment of the SEPP 1 Objection has concluded that the SEPP 1 is not well founded for the following reasons:

- The bulk, scale, built form and character sought by Building D exceeds that envisaged for the site, particularly having regard to the visual impact and streetscape appearance of the proposed building and the lack of landscaping provided for the development in this location, and with this scale and massing.
- 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 wholesale manner in which this site is to be redeveloped.

However, if the panel is satisfied that the SEPP 1 Objection for Building D, dated August 2013 is well founded and is going to uphold the SEPP 1 objections relating to all buildings, then draft conditions of consent have been prepared for the Panel in order to facilitate the granting of Development consent.

**Recommendation:**

- A) That the amended plans which satisfy the Panels requirements be noted.
- B) That the SEPP 1 Objection not be supported for the reasons outlined in this report.
- C) That, if Part B is not supported by the Panel, that the application be approved in accordance with the draft conditions of consent attached to this report.