

23 August 2013

Dr John Roseth  
Chair, Sydney East  
Joint Regional Planning Panels  
Panel Secretariat  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir,

**Development Application No. 2013/412 – Stage 1 Redevelopment of Harbord Diggers  
Property: 80 Evans Street and 4A Lumsdaine Drive, Freshwater**

Further to the Panel's meeting on 8 August 2013 we enclose a copy of the following:

1. amended drawings DA-00 D, DA-01 D, DA-02 D, DA-03 D, DA-04 D, DA-05 D, DA-06 D, DA-07 D addressing:
  - (a) a set back of 6.5m to Evans Street for Building D for its entire height;
  - (b) setting back the third storey by 3m from the street face of all new buildings; and
  - (c) implementing all the suggestions for landscaping on Drawing No. SK-111 Issue A; and
2. objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) in relation to Building D, dated August 2013 prepared by Urbis (SEPP 1 Objection Building D).

We request that the Panel review and consider these documents and:

1. if the Panel:
  - (a) is satisfied that the SEPP 1 Objection Building D dated August 2013 and the SEPP 1 objection relating to Buildings A, B and C dated April 2013 prepared by Urbis (SEPP 1 Objection Buildings A, B and C) are well founded;
  - (b) is of the opinion that granting consent to the development application is consistent with the aims of SEPP 1 as set out in clause 3 of SEPP 1; and
  - (c) has considered:
    - (i) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and
    - (ii) the public benefit of maintaining the planning controls adopted by the environmental planning instrument;

uphold the SEPP 1 Objection Buildings A, B and C and the SEPP 1 Objection Building D; then

2. consider the merits of the development application under section 79C of the Environmental Planning and Assessment Act 1979 before determining whether or not to grant development

consent to the development application.

We understand that the Council is to provide a supplementary report to the Panel and draft conditions of consent by 6 September 2013. We request an opportunity to review those documents and provide comments to the Panel in relation to them before the Panel's determination of the development application.

We also bring to your attention a miscalculation in relation to Image 2 in our submission letter to the JRPP of 7 August 2013 that indicated the proposed volume of Building D was 18,115m<sup>3</sup>. The actual proposed volume is 26,817 m<sup>3</sup>, inclusive of the proposed amendments to Building D included in this submission. The volume of the existing building as presented has not changed, rather it was a miscalculation of the proposed building.

It is requested that council provides the applicant with proposed draft conditions of consent prior to their finalisation.

Please also let us know if the Panel requires any further information from the applicant before making its determination. Urbis maintains its position that this development application is worthy of approval.

Yours faithfully,



Matthew O'Donnell  
Associate Director - Planning



## **SEPP1 OBJECTION - BUILDING D**

### **Stage 1 Development Application Harbord Diggers Club**

Prepared for Mt Pritchard & District Community Club

**AUGUST 2013**



**urbis**

**URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:**

|                    |                                          |
|--------------------|------------------------------------------|
| Director           | David Hoy                                |
| Associate Director | Matthew O'Donnell                        |
| Job Code           | SA4531                                   |
| Report Number      | SA4531_SEPP 1 Objection Building D_Final |

© Urbis Pty Ltd  
ABN 50 105 256 228

All Rights Reserved. No material may be reproduced without prior permission. While we have tried to ensure the accuracy of the information in this publication, the Publisher accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

**URBIS**  
**Australia Asia Middle East**  
[urbis.com.au](http://urbis.com.au)

## TABLE OF CONTENTS

|          |                                                                                                                                                                                                                                           |           |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>1</b> | <b>Introduction .....</b>                                                                                                                                                                                                                 | <b>2</b>  |
| <b>2</b> | <b>The Standards Being Objected to .....</b>                                                                                                                                                                                              | <b>4</b>  |
| 2.1      | Building Height.....                                                                                                                                                                                                                      | 4         |
| 2.2      | The Objectives/Underlying Purpose of the Clause .....                                                                                                                                                                                     | 4         |
| 2.3      | Proposed Variation to Standards.....                                                                                                                                                                                                      | 5         |
| <b>3</b> | <b>SEPP 1 Objection.....</b>                                                                                                                                                                                                              | <b>6</b>  |
| 3.1      | Test 1: Are Each of the planning controls development standards? .....                                                                                                                                                                    | 6         |
| 3.2      | Test 2: What is the underlying purpose of the standards? .....                                                                                                                                                                            | 7         |
| 3.2.1    | Objectives of the Standard .....                                                                                                                                                                                                          | 7         |
| 3.2.2    | Objectives of the zone .....                                                                                                                                                                                                              | 12        |
| 3.3      | Test 3: Is compliance with the standards consistent with the aims of the policy and in particular does compliance with the development standards tend to hinder the objects specified in Sections 5(A)(i) and (ii) of the EP&A Act? ..... | 14        |
| 3.4      | Test 4: Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? .....                                                                                                                   | 15        |
| 3.5      | Test 5: Is the objection well founded? .....                                                                                                                                                                                              | 17        |
| <b>4</b> | <b>Consideration of Clause 8 of the SEPP 1.....</b>                                                                                                                                                                                       | <b>18</b> |
| <b>5</b> | <b>Clause 4.6 of Warringah LEP 2011.....</b>                                                                                                                                                                                              | <b>19</b> |
| <b>6</b> | <b>Conclusion .....</b>                                                                                                                                                                                                                   | <b>20</b> |

### FIGURES:

|                                                                |    |
|----------------------------------------------------------------|----|
| Figure 1 – SEPP 1 Non-Compliances with Height Control .....    | 5  |
| Figure 2 – The Proposed Reduction in Scale to Building D. .... | 8  |
| Figure 3 – Existing Character of Locality.....                 | 13 |

### PICTURES:

|                              |   |
|------------------------------|---|
| Picture 1 – Building D ..... | 5 |
|------------------------------|---|

# 1 Introduction

This SEPP 1 objection has been prepared in support of the Stage 1 development application for the Harbord Diggers Club Site, Freshwater and relates only to Building D, at the request of the Joint Regional Planning Panel (JRPP) on 8 August 2013. In the circumstances it may be that a SEPP 1 objection is not required because Building D is an existing building but for abundant caution and the way in which the matter has progressed, the applicant has prepared this SEPP 1 objection in relation to Building D and requests the Panel to deal with the development application on the basis of this SEPP 1 objection.

A SEPP 1 objection was submitted by the applicant within the Statement of Environmental Effects (SEE) that assessed the proposed non-compliance with the building height standard for Building A, B and C. The SEPP 1 objection has been prepared in accordance with the requirements of State Environmental Planning Policy No.1 – Development Standards (SEPP 1) which has the following aims and objectives:

## **Clause 3 – Aims, objectives etc**

*This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.*

Clause 6 provides the mechanism for making a SEPP 1 Objection and states:

## **Clause 6 – Making of applications**

*Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.*

## **Clause 7 – Consent may be granted**

*Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.*

In accordance with clause 7 of SEPP 1 it is considered that the SEPP 1 objection is well founded and the Panel can be satisfied that the granting of consent to the development application is consistent with the aims of the Policy in clause 3, referred to above.

## **Clause 8 – Concurrence**

*The matters which shall be taken into consideration in deciding whether concurrence should be granted are:*

- (a) whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

In accordance with clause 8 of SEPP 1 the Panel is required to consider whether non-compliance with the height development standards raise any matter of State or regional significance for environmental planning, and the public benefits of maintaining the planning controls adopted by the applicable environmental planning instrument, there is no public benefit in maintaining the standard.

This SEPP 1 objection has been prepared in accordance with the aims and objectives contained within cl.3 and the provisions of clauses 6 and 8 of SEPP 1. The SEPP 1 satisfies these provisions and therefore development consent may be granted in accordance with the power conferred by cl.7 of SEPP 1.

## 2 The Standards Being Objected to

### 2.1 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 provides as follows.

*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 8 metres 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, and*

Pursuant to SEPP 1, the proposed Stage 1 DA seeks exception to the 8 metre height development standard, and the development standard for buildings adjacent to a boundary not to be more than 2 storeys in height under the provisions of the SEPP (HSPD) (CI 40(4)).

The site is zoned R2 Low Density Residential under *Warringah Local Environmental Plan 2011* (**WLEP 2011**). The site is also identified in Schedule 1 – Additional Permitted Uses under WLEP 2011 and development for the purposes of recreation facilities (indoor), recreation facilities (outdoor) but only if the facility, whether indoor or outdoor operates in conjunction with a registered club, and registered clubs are permitted with development consent.

Residential flat buildings are prohibited on land zoned R2 Low Density Residential under WLEP 2011. Accordingly, clause 40(4) of SEPP (HSPD) applies.

There are no objectives stated for the height standards in SEPP (HSPD).

This Stage 1 DA has therefore relied upon what is reasonably concluded to be the underlying objectives of the height standards, which are to ensure that heights are not inconsistent with the objectives of the R2 zone and the building height objectives in WLEP 2011 and that of surrounding properties.

The Warringah LEP development standard of 8.5m maximum height also applies to the site.

### 2.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE

A key determinant of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore while there is a specified numerical control for height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Section 3.1 of the SEPP 1 objection outlines the proposed variation to the development standards and Section 3.2 considers the underlying objectives of the development standards.

## 2.3 PROPOSED VARIATION TO STANDARDS

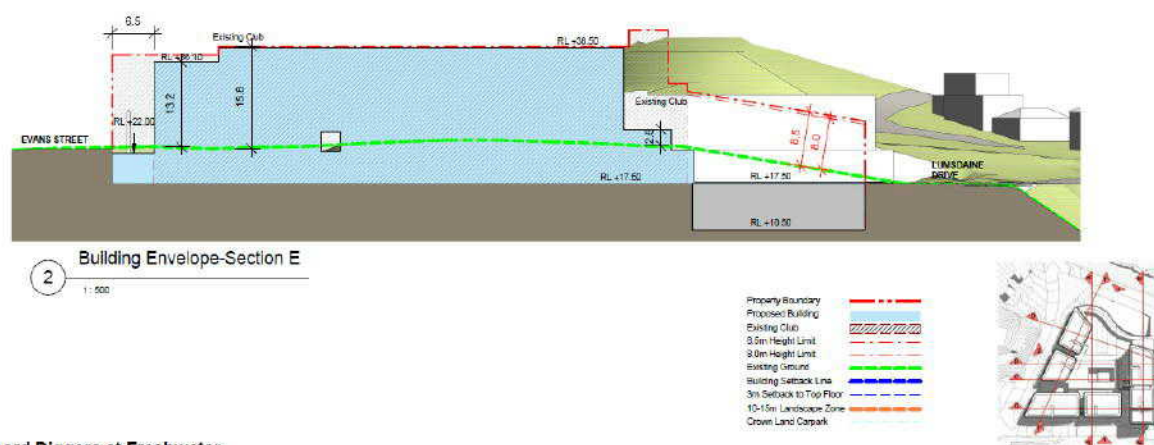
The proposed development seeks to adaptively reuse existing Building D, and make reductions to the building's existing overall scale bulk and height. Whilst Building D already exceeds the height limit, the proposal to adaptively reuse and alter the existing envelope will result in Building D requiring to seek a variation to the 8m height development standard and the 2 storey height development standard for a building adjacent the boundary of the site, as set out in Clause 40(4) of the SEPP (HSPD).

The proposal varies the height control through the following non compliances:

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

The areas of the proposed development where non-compliance with SEPP (HSPD) height controls is at its greatest is identified in Figure 1.

Figure 1 – SEPP 1 Non-Compliances with Height Control



Harbord Diggers at Freshwater

Picture 1 – Building D

### 3 SEPP 1 Objection

This SEPP 1 objection has been prepared in accordance with the provisions of the State Environmental Planning Policy No.1 – Development Standards.

The objection has been prepared taking into account the considerations in the five-part test set-out by Lloyd J in *Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79 at [26]*:

1. *Is the planning control in question a development standard?*
2. *If so, what is the underlying objective or purpose of the standard?*
3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in s.5(a)(i) and (ii) of the Environmental Protection and Assessment Act 1979 (EP&A Act)?*
4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? This must look at whether a development which complies with the development standard is unreasonable and unnecessary.*
5. *Is the objection well founded?*

The proposed development is considered against this five-part test below.

#### 3.1 TEST 1: ARE EACH OF THE PLANNING CONTROLS DEVELOPMENT STANDARDS?

Section 4(1) of the EP&A Act defines a 'development standard' to include the following:

**development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...

(c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work, (our emphasis added)

...

Clause 40(4) of the SEPP (HSPD) relevantly provides:

*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 8 metres 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, and*

Clauses 40(a) and (b) of the SEPP (HSPD) are each a development standard because they each include a numeric control for the height of buildings being in metres and storeys respectively. An 8m maximum height and 2 storey height control apply to the site and Building D.

The above planning controls are each a development standard to which the provisions of SEPP 1 may be applied.

### 3.2 TEST 2: WHAT IS THE UNDERLYING PURPOSE OF THE STANDARDS?

There are no objectives stated for the height standards in SEPP (HSPD). This Stage 1 DA has therefore relied upon what is reasonably considered to be the underlying objectives of the standards, which are to ensure that heights are not inconsistent with the objectives of the R2 zone in WLEP 2011 and the building height objectives in clause 4.3 of WLEP 2011.

It is noted that the Council in its report to the Joint Regional Planning Panel, assessing the development application, referred to these objectives when assessing the SEPP 1 objection relating to Buildings A, B and C.

#### 3.2.1 OBJECTIVES OF THE STANDARD

The underlying objectives of the height standard in clause 4.3 of WLEP 2011 are:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development;*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access;*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments; and*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

These are discussed in turn below.

Notwithstanding the proposed variation to the standards, the proposed development is nevertheless consistent with the objectives of the standards:

*To ensure that buildings are compatible with the height and scale of surrounding and nearby development*

- The character of the surrounding residential area is mixed in terms of bulk, scale and density, ranging from single detached dwellings to residential flat buildings of up to eight storeys high being scattered throughout the locality between the Club site and Freshwater village centre.
- Immediately south of the site on Evans Street are two medium to high density apartment buildings (up to 8 storeys in height), all of which exceed the current built form controls for the zone and are amongst the highest in the locality.
- Building D is an existing element of the locality. Whilst the proposed modifications maintain its existing height, they will result in a significantly reduced scale and bulk than the existing building envelope.
- The proposed reduction in Building D's bulk results in its existing volume of 49,004m<sup>3</sup> being reduced to a volume of 26,817 m<sup>3</sup> or by 45%. This reduction in scale is illustrated in Figure 2 below.

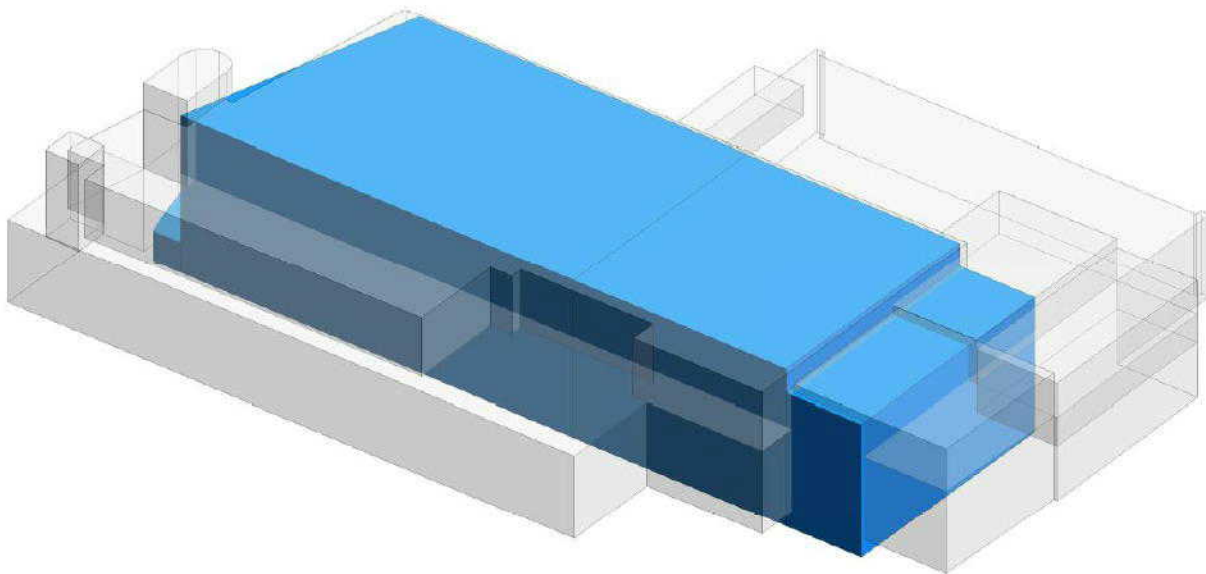


FIGURE 2 – THE PROPOSED REDUCTION IN SCALE TO BUILDING D.

- The new building envelope illustrated in blue above will result in a building scale and height that is more compatible with the adjacent buildings on the southern side of Evans, and a building that does not exceed the existing height of Building D.
- The new building envelope results in a general improvement on building shadow and activation of street frontages, particularly the 6.5m setback from Evans Street which contributes to reducing the building's perceived height and bulk, and its presence in the streetscape.
- The proposed variation to the height standard along the Evans Street frontage is compatible with the existing building envelopes height, although at a more reduced bulk and scale. It is therefore considered that the proposal along the Evans Street frontage is not out of character with the existing

building envelope of Building D and is not inconsistent with the scale of other buildings within the surrounding area and zone. The proposed minimum 6.5m setback also maintains the established proportions of the street.

- 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. The nature of the neighbourhood's historical development is already inconsistent with the general built form principles of the R2 zoning of the area, and therefore strict compliance with an 8m height standard, or 2 storey height standard is considered unreasonable.
- The proposed building separation between Building D and Building C and articulation of Building D reduces the extent of overall building bulk and scale as currently exists.
- The proposed building envelope responds well to the existing built form on site and the surrounding area and is of a lesser bulk and scale than the current built form on the site.

*To minimise visual impact, disruption of views, loss of privacy and loss of solar access*

- A comprehensive Visual Impact Assessment has been prepared by Architectus and is included at **Appendix I** of the SEE. The assessment concludes that no significant loss of views or visual impacts will occur as a result of the reduced Building D envelope.
- The proposed adaptive reuse of the existing club building results in alterations that will minimise the overall bulk and scale of the building. The reuse of this building ensures that existing views are not compromised and the alterations will enhance the views for some residents to the south in Evans Street through significant reductions to the building's bulk.
- Presently it is not considered that a view corridor exists through the site. In particular this is most noticeable at street level where the existing car park and club buildings create significant obstacles to any perceived view corridors.
- The existing club building does not increase as a result of the proposal, and the overall scale and bulk of Building D will be reduced by 45% as identified in Figure 2. The reuse of this building ensures that existing views are not compromised and the proposed minor alterations will enhance the views for some residents to the south in Evans Street.
- The Visual Impact Assessment also considers the potential loss of views or visual impacts that will occur to the Freshwater headland's coastal and bushland environments as a result of the proposed building envelopes, and demonstrates that no significant loss of views will occur.
- This Visual Impact Assessment addressed views from a wide variety of viewpoints in the public domain and several views from private properties nominated by their owners. The Visual Impact Assessment was undertaken using a comprehensive method that is typically used in Environmental Impact Statements and accepted in the Land and Environment Court. The methodology included the

planning principles set by the Court in the case of *Tenacity Consulting v Warringah Council* (2004) 134 LGERA23 and *Rose Bay Marina Pty Ltd v Woollahra Municipal Council* (2013) NSWLEC 1046. The assessment concludes that proposed development is likely to have a negligible or low visual impact from all viewpoints in the public domain.

- The Visual Impact Assessment concluded the following:

*The proposed development is likely to have a negligible or low visual impact from all viewpoints in the public domain except for some immediate and local viewpoints.*

- *Of the four representative immediate viewpoints, two are rated low visual impact and two are rated moderate visual impact.*
- *Of the four representative local viewpoints, three are rated low visual impact and one is rated moderate visual impact*

*The moderate visual impact would be mitigated by high quality architectural design and better presentation of the proposed development to the public domain compared to the existing development.*

*For three of the four private properties assessed for view impact, it was considered that either there is no impact or the impact is reasonable. For the remaining property it was considered that while the impact was significant, the indicative development proposal is reasonable.*

- The separation distances between the residential buildings to the south on Evans Street and proposed building envelope fronting Evans Street is approximately 35m to 39m between potential habitable rooms. This separation distance is considered more than sufficient to ensure no loss of privacy occurs.
- The original submission of the Stage 1 DA demonstrated that the proposed building envelope of Building D would not result in any increased overshadowing or loss of sunlight to the surrounding buildings during mid-winter. In light of the amendments to the overall bulk and scale of Building D, as illustrated in the amended plans it can reasonably be deduced that, there will be less of an impact in terms of overshadowing than occurred in the original Stage 1 DA submission.
- Future Stage 2 DAs will provide further solar analysis on the impacts of the proposed development.

*To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments*

- The Stage 1 proposal maintains the height and reduces the bulk of part of the existing club building as a prominent feature of the site. The area located to the east of the site will be retained as open space, and future Stage 2 DAs will consider landscape improvement works to the Crown Land site.
- The open space area will provide a public benefit to the community and will contribute to providing an improved outlook to the headland site.

- The proposed location, scale and bulk of the building envelope of Building D and other proposed buildings allows for the provision of 6,211m<sup>2</sup> (40%) (as per the DCP 2011 development control) of the site for surrounding landscaped areas which are also capable of being utilised as deep soil areas.
- The Stage 1 proposal is capable of achieving 40% of the site as open space provision which coupled with the height and bulk, levels of articulation and separation distances between the proposed building envelope maintains view corridors and the scenic views across the site to the surrounding heathland and coastal environment.
- The residential dwellings to the south of the site are up to 8 storeys in height, and their existing views will not be generally impacted upon. The proposed building envelope of Building D (up to 15.8m) would not significantly impede existing views to the coast or heathland for existing residents to the south any more than the existing club building does. In fact the proposed development will result in an improvement to views on the headland through reduced scale and bulk, and as a consequence of the detailed architectural design proposed for the future Stage 2 DA.
- The reduction in scale and building height to Building D will also improve some views to the east for residents of the single dwellings to the west of the site located on the elevated topography on Carrington Parade.
- A Visual Impact Assessment has been prepared by Architectus and is included at **Appendix I** of the SEE. The Assessment gives consideration to the potential loss of views or visual impacts that will occur to the Freshwater headland's coastal and bushland environments as a result of the proposed building envelopes. It can be concluded that the level of impacts are negligible.
- The proposed building envelope consisting of a considerably reduced scale, and future detailed design and articulation will result in an improved outlook for the headland.

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

- The proposed height of Building D is less than the existing club building on site and provides a significantly improved design resolution for the boundary of the site. 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.
- The area of greatest height is directly adjacent to McKillop Reserve to the north east of the site (up to 15.8m – existing club building). The views from the east to the west are currently not significant, and the proposal seeks to reduce the bulk of the existing club building and improve the overall visual appearance of the building through the design detail of future Stage 2 DAs.
- The site is a prominent headland site, and visible from many public places in the surrounding area. The proposed bulk and height of the Stage 1 proposal is considered sympathetic to the locality, and will improve the visual impact of the site.

- The Stage 1 proposal when viewed from the public places surrounding the site will provide an improved outlook through design features including improved articulation, and site layout. Stage 2 DAs will further refine the visual presence of the proposed building.
- The new 6.5m setback for the full height of Building D from the Evans Street frontage will provide opportunity for additional soft landscaping to be planted to help soften the visual appearance of this frontage. Detailed landscaping for this setback will be resolved in the future Stage 2 DA landscape plan for the site. This setback will be capable of providing deep soil planting.

### 3.2.2 OBJECTIVES OF THE ZONE

The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *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 an assessment of the proposed non-compliance with the height standard against the underlying objectives of the R2 zone.

- The Stage 1 proposal will involve the diversification of uses on the site, broadening the current private recreation focus of the site to include seniors living units and a new registered club facility. The proposal also includes a wider variety of community facilities, including long day care centre and community care/respite day care centre, and indoor recreation in the form of a gymnasium as an associated use of the Club.
- Whilst the Stage 1 proposal meets the objectives of the R2 zone, the surrounding development and the existing built form on the site does not wholly reflect the underlying intentions of the zone. Therefore it is considered unreasonable to expect new development on the site to wholly reflect the underlying objectives of the R2 zone.
- Our analysis of building forms in the locality (as shown in Figure 3 below) demonstrates the diverse mix of development in the locality. Of the total area shown in Figure 3, only 59.1% is low density residential land use, with 40.9% consisting of medium and high density residential and commercial development.

Figure 3 – Existing Character of Locality



- In respect of the Stage 1 proposal, the scale, bulk and character of development more accurately reflects the existing built form on site (in an improved format) and the scale and character of medium to high density development adjacent the site to the south in Evans Street (up to 8 storeys when viewed from Evans Street), and the wider locality.
- In light of the diverse mix of uses and scales of existing development within the R2 Zone in the locality, it is considered that the objectives of the R2 zoning of the site, and the surrounding locality do not accurately reflect the overall existing character of the area, and nor is it ever likely to.
- The Site Compatibility Certificate (SCC) issued for the site acknowledges that the site is capable of more intensive development accommodating up to 125 seniors living apartments.
- 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 and scale to the types of development generally envisaged in R2 Low Density Zones. Accordingly, having regard to the existing scale of development of Building D and development on neighbouring sites, the proposed built form and relationship to the streetscape of the seniors housing building envelope of Building D is

considered to be appropriate to the context and locality of the site, and an acceptable urban design outcome.

- The Stage 1 proposal is to be built to relatively low levels (especially in comparison to adjacent development to the south) and responds to the site's elevation and topography, and will be compatible with the character and uses of the immediate surrounding area.
- The proposed development contributes to providing housing within on a site that is suitable for and capable of a more dense development. The proposed building envelope of Building D is not out of character with the surrounding environment, or the immediate locality.
- The provision of 40% landscaping across the site will contribute to softening the appearance of the proposed built form and is in character with the surrounding headland environment. The existing landscaped area (soil > 1m deep) on site consisting of 37% is less than the proposed 40% coverage, and as such, the proposal provides for additional landscaped areas consistent with the surrounding headland locality.
- The headland site consists primarily of heathland vegetation. The applicant considers that the future landscaping of this site should include the provision of heathland planting to contribute to the existing character of the headland environment. Heathland planting does not generally require generous depth of soil, and when consideration is given to the sandstone subsurface of the site, heathland planting is appropriate for the site. The provision of heathland planting and other types of vegetation will contribute to softening the visual appearance of the proposed development.

### 3.3 TEST 3: IS COMPLIANCE WITH THE STANDARDS CONSISTENT WITH THE AIMS OF THE POLICY AND IN PARTICULAR DOES COMPLIANCE WITH THE DEVELOPMENT STANDARDS TEND TO HINDER THE OBJECTS SPECIFIED IN SECTIONS 5(A)(I) AND (II) OF THE EP&A ACT?

The Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the EP & A Act.

Section 5(a)(i) & (ii) of the EP&A Act states that the objects of the Act are:

(a) *to encourage:*

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

(ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

Compliance with the objects of the Act specified above will be hindered by strict compliance with the development standard under the SEPP (HSPD) for the following reasons:

- The orderly and economic use of land is hindered by compliance with the height standards in that compliance does not allow for the particular attributes of the site. These attributes include the height and scale of existing development on the site, the varying topography of the site, and the existing mixed density character of the site and its surrounds.
- The proposed development will provide positive social outcomes through the provision of onsite housing and care facilities, and strict compliance with the height standard will impact on the provision of these services that are in demand within the locality. Compliance with the height standards for Building D would reduce the offer of seniors housing and associated care and support, in an area where demand for this type of housing and services exists, as detailed in the SEE.
- The existing height of Building D already exceeds the height standards (being 15.8m and 5 storeys). In addition development to the south of the site fronting Evans Street exceeds the 15.8m height of Building D (5 storeys) by up to 3 more storeys.
- This SEPP 1 objection has been prepared having regard to the aims and objectives contained in clause 3 of SEPP 1. Flexibility in the application of planning controls in relation to this proposal is required, and the strict compliance with the height standards of the SEPP (HSPD) and the Warringah LEP 2011 would be unreasonable and unnecessary. Furthermore in accordance with clause 7 of SEPP 1 it is considered that the objection is well founded and the granting of consent to the application is consistent with the aims of the Policy.

### 3.4 TEST 4: IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

In ***Wehbe v Pittwater Council (2007) 156 LGERA 446*** Preston CJ at [42]-[50] set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of a successful SEPP 1 objection. These are as follows:

*1. Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding noncompliance with the standard.***

*2. Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

*3. Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

*4. Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

*5. Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

We consider that the height development standards contained within SEPP (HSPD) are unreasonable and unnecessary in terms of the first criteria, namely that the development achieves the assumed objectives of the development standards as stated above in Section 3.1.

Furthermore for the following reasons, compliance with the development standards is unreasonable and unnecessary:

- 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.

### 3.5 TEST 5: IS THE OBJECTION WELL FOUNDED?

This objection is considered to be well founded for the following reasons:

- The proposed development is clearly consistent with the objectives of the height standards;
- The character of the surrounding area and the existing built form of the site does not wholly reflect the underlying objectives of the R2 zone.
- The Stage 1 proposal is entirely consistent with the underlying objectives or purposes of the height standards.
- The height and reduced bulk of Building D will not obscure any existing significant views.
- Strict compliance with the standards would hinder the achievement of the objects of the EP&A Act;
- No unreasonable impacts are associated with the proposed variation.
- The existing club building has a height of 15.8m and 5 storeys. Compliance with the 8m maximum height would not allow a reasonable level of scale required to provide seniors housing and the other community uses proposed.
- The SCC issued for the site considers the site is suitable for more intensive development, and the proposed retention of part of the existing bulk and height of the club building will contribute to the provision of seniors housing as supported by the SCC.

## 4 Consideration of Clause 8 of the SEPP 1

The matters which shall be taken into consideration in deciding whether concurrence should be granted are:

- (a) Whether non-compliance with the development standard raises any matter of significance for State or regional environmental planning; and*
- (b) The public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

It is not considered that the non-compliance with the height standards raises any matter of significance for State or regional environmental planning. The proposal provides a diversification of uses on the site, broadening the current private recreation focus of the site to include seniors living units and a new registered club facility. Additionally the proposal provides for new respite healthcare facilities for the future occupiers of the seniors housing, and the wider community.

The non-compliances with the height controls contributes to the proposal being compatible with the scale and height of existing development on site and with the surrounding area and would not be out of character. Aside from the public benefit of provide a diversification of land uses on the site, the proposal will significantly improve the visual appearance of the site, and reduced the overall bulk and appearance of Building D. This will therefore result in improved views across the site from some surrounding properties.

The concurrence of the Director-General is assumed in accordance with Planning Circular PS 08-003 dated 9 May 2008.

## 5 Clause 4.6 of Warringah LEP 2011

- For the reasons outlined above in Section 3, in accordance with the clause 4.6(3)(a) of WLEP 2011, compliance with the development standard in clause 4.3 of WLEP 2011 is unreasonable or unnecessary in the circumstances of the case.
- In relation to WLEP 2011 clause 4.6(3)(b) there are sufficient environmental planning grounds to justify contravening the height standard in WLEP 2011, as follows:
  - The proposal seeks to adaptively reuse the existing building in a reduced scale and form.
  - The proposed scale, bulk and height of Building D is consistent with the character of the surrounding area.
  - The development meets the objectives of the relevant WLEP 2011 building height standard and the objectives of the R2 low density zone.
  - Building D will result in minimal visual impacts, and improves and maintains the existing views of surrounding occupiers.
  - The proposed reduced scale of Building D will improve the level of solar access to the site, and the surrounding locality.
  - There are significant levels of public benefit related to the development of the site, and the retention of height of Building D.
- In accordance with clause 4.6(4)(a) the Panel can be satisfied that this written request adequately addresses the matters required to be demonstrated by clause 4.6(3) of WLEP 2011.
- In accordance with clause 4.6(4)(b) of the WLEP 2011, the Panel can be satisfied that the proposed development will be in the public interest because:
  - It is consistent with the objectives of the height standards in clause 4.3 of WLEP 2011 and the objectives of the R2 low density zone as outlined in Section 3 above.
  - The proposal is compatible with the scale and height of existing development on the site and with the surrounding area and would not be out of character.
  - The diversification of uses on the site, broadening the current private recreation focus of the site to include seniors living units and a new registered club facility is considered positive to the locality.
  - The provision of seniors housing in a locality where demonstrable demand exists.
  - The provision of respite care and other community support facilities to serve the residents of the site, and the surrounding locality.
  - An improved visual appearance and outlook to the site, on a more reduced scale.
- The concurrence of the Director-General required by clause 4.6(5) of WLEP 2011 is assumed in accordance with Planning Circular PS 08-003 dated 9 May 2008.

## 6 Conclusion

It is requested that Council support the variation to Clause 40 (4) of SEPP (HSPD) pursuant to SEPP 1 for the following reasons:

- Strict compliance with the standards would hinder achievement of the objectives contained in section 5(a)(i) and (ii) of the EPA Act 1979.
- The proposed development is consistent with the objectives of the height standards
- No unreasonable environmental impacts are introduced as a result of the proposal

The Panel could be satisfied that the SEPP 1 obligation is well founded and that the granting of consent to the development application is consistent with the aims of SEPP (HSPD) as set out in clause 3.

The Panel could also be satisfied as to the matters in clause 8 of SEPP 1.

**Sydney**

Tower 2, Level 23 Darling Park, 201  
Sussex Street  
Sydney, NSW 2000  
**t** +02 8233 9900  
**f** +02 8233 9966

**Brisbane**

Level 7, 123 Albert Street  
Brisbane, QLD 4000  
**t** +07 3007 3800  
**f** +07 3007 3811

**Melbourne**

Level 12, 120 Collins Street  
Melbourne, VIC 3000  
**t** +03 8663 4888  
**f** +03 8663 4999

**Perth**

Level 1, 55 St Georges  
Terrace  
Perth, WA 6000  
**t** +08 9346 0500  
**f** +08 9221 1779

Australia • Asia • Middle East  
**w** [urbis.com.au](http://urbis.com.au) **e** [info@urbis.com.au](mailto:info@urbis.com.au)