

**JOINT REGIONAL PLANNING PANEL
(Sydney East Region)**

JRPP No	2014SYE093
DA Number	DA2014/0875
Local Government Area	Sydney East Region
Proposed Development	Demolition and Excavation works and Construction of Seniors Housing, a Registered Club, a Childcare Centre and associated car parking and landscaping (Harbord Diggers Club Site)
Street Address	Lot 12 DP 1197725 , 80 Evans Street FRESHWATER NSW 2096
Applicant/Owner	Urbis Pty Ltd
Recommendation	Deferred Commencement Consent
Report by	Malcolm Ryan, Deputy General Manager, Environment

Supplementary Assessment Report and Recommendation

1.0 EXECUTIVE SUMMARY

Reasons for Report

At its meeting on 24 November 2014, the Joint Regional Planning Panel (JRPP) considered a Development Application for the redevelopment of the Harbord Diggers Club Site.

At this Meeting, the JRPP resolved to defer the determination of the applicant pending the applicant lodging a Clause 4.6 Variation Request pursuant to Warringah Local Environmental Plan 2011 (WLEP 2011).

The purpose of this report is to:

- Detail the additional information provided by the applicant to address the resolution of the JRPP;
- Address the relevance of SEPP 19 – Bushland in Urban Areas;
- Provide comments on the consistency of the additional information with the resolution of the JRPP; and
- Detail the changes proposed by applicant in relation to the draft conditions.

Conclusion

The application, in its revised form, satisfies the resolution of the JRPP and should be approved, subject to the recommended conditions detailed in Attachment 1.

2.0 BACKGROUND

The Development Application was referred to the meeting of the JRPP on 24 November 2014 with a recommendation for Deferred Commencement Approval.

At its meeting of 24 November 2014, the JRPP considered the application and resolved the following:

“The Panel voted unanimously to defer the determination of the matter pending the receipt and assessment of a justification of variation of the building height standard under cl 4.6 of the Warringah LEP 2011.

The Panel is aware that the applicant has submitted an Objection under SEPP 1 to the above development standard. However, the Panel believes that the appropriate procedure for varying the standard is under cl4.6 of the WLEP 2012. This is because cl1.9 of the LEP states that SEPP 1 does not apply to the land to which the LEP applies, which is effectively the area of Warringah council.

The Panel therefore requests the applicant to submit a justification under cl 4.6 for variation by COB of 26 November 2014 and the council's Planning Assessment Officer to provide a supplementary report assessing the justification by 28 November 2014.

The Panel requests the Planning Assessment Officer to address the relevance of SEPP 19 to the assessment of the application.

In addition, the Panel requests the assessment officer to respond to the applicant's submission to the draft conditions.”

On 26 November 2014, the applicant provided the following additional information:

- A Clause 4.6 variation request to vary the building height limit set by the Seniors SEPP. The variation request is prepared by Urbis, dated November 2014 and is included in Attachment 2.
- An updated Flora and Fauna Assessment Report prepared by Ecological Australia which specifically addresses the provisions of SEPP 19 – Bushland in Urban Areas.

This report provides an assessment of the above matters which were raised in the JRPP minutes and does not revisit any other matters raised in the original Assessment Report, as they have already been considered by the JRPP in its consideration of the proposal at its meeting of 24 November 2014.

3.0 ASSESSMENT OF CLAUSE 4.6 VARIATION REQUEST

The following assessment of the request to vary the requirements of Clause 40 – Building Height of SEPP (HPSD) 2004 is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46*.

Details of Standard being objected to and proposed variations:

Building Height

The development standard being objected to is the height standard 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 Clause 4.6 request relates to (a) and (b) in the above standard.

The development proposes the following variations to the building height standard:

- Building B - 10.5m (25%)
- Building D - 8.8m (10%)
- Building E - 15.95m (99.375)
- Building F - 14.5m (91.25%)

Is the planning control in question a development standard?

The prescribed Building Height 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 WLEP 2011 to relevantly determine the suitability of the non-compliance associated with the proposed development.

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: Whilst it is accepted that senior's housing developments will be somewhat different from that envisaged for a low density residential area, the proposed built form and breaking-up of the building mass, will ensure the development fits comfortably within its local context. The overall height and scale of the proposed building is not considered excessive and is consistent with envelopes approved under the Stage 1 Consent.

The proposed development is considered, in its design, to be compatible with the height and scale of surrounding and nearby development. The substantial articulation of the built form, in particular the buildings with frontage to Evans Street and Carrington Parade, relates favourably to the scale and height of surrounding and nearby development.

The proposed height and scale of the buildings is considered to be an improved design outcome for the site and is consistent with that envisaged for the site by way of the Site Compatibility Certificate and the Stage 1 Consent.

The development is considered to be consistent with this objective.

(b) To minimise visual impact, disruption of loss of privacy and loss of solar access

Comment: The proposal, including Buildings B, D, E and F, raises no significant external amenity impacts on adjoining developments in terms of loss of views, privacy, solar access or overshadowing, as addressed in the original assessment report. View loss to adjoining properties is considered to be within reasonable limits.

The development is considered to be consistent with this objective.

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

Comment: The development will not have an unreasonable impact on the scenic quality of Warringah's coastal and bush environments. The buildings are broken-up through variation of the building form, provision of landscaped roof tops and use of sympathetic colours and finishes. The outcome will be sympathetic to the surrounding coastal and bush environment and will assist in reducing any impact on these environments.

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

Comment: The substantial articulation of the built form, including the breaking-up of the mass of the buildings, the significant physical separation of the two remaining elements of the existing club building and the use of high quality materials and finishes, will ensure the development will not have an unreasonable visual impact when viewed from the adjoining and nearby public spaces.

What are the underlying objectives of the zone?

In assessing the variations sought, consideration must be given to the consistency of the proposal 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 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 variation provides an appropriate degree of flexibility in applying the building height development standard in this instance.

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

Comment: The development, as proposed, achieves a better and improved overall outcome for the site.

(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: It is considered that compliance with the development standard is unreasonable and unnecessary in this instance having regard to the characteristics of the site and surrounding development and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

- (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 applicants written request (refer to Clause 4.6 Variation SEPP Seniors, Clause 40 (4) dated November 2014 prepared by Urbis) has adequately addressed the matters required by subclause (3).

- (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: For reasons stipulated in the original assessment report, the proposal is considered to be consistent 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 consistency of the variation with the objectives of the zone, the concurrence of the Director-General for the variation to the Building Height Development Standard under Clause 40 of SEPP (HSPD) is assumed.

4.0 STATE ENVIRONMENTAL PLANNING POLICY NO.19 – BUSHLAND IN URBAN AREAS

The aims of the SEPP are to protect the remnants of plant communities which were characteristic of land now within an urban area, in parcels of a size and configuration, which will enable the existing plant and animal communities to survive in the long term. The site

adjoins land to which SEPP 19 applies, being land within the McKillop Reserve which is reserved for open space.

Clause 9(2) applies to land which adjoins zoned or reserved for open space purposes and requires that a public authority shall not grant development consent unless it has taken into account:

- *The need to retain any bushland on the land,*
- *The effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- *Any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

An assessment with regards to the requirement of SEPP 19 has been carried out as part of the extensive ecological investigations undertaken by the applicant to support the Development Application, including the revised report (prepared by Ecological Australia), re-issued date November. All of the information provided and the review of the application by Council's Natural Environment Section concludes that the proposed development will not compromise the values of the adjoining bushland areas with respect to the aims of SEPP 19.

5.0 ASSESSMENT OF APPLICANTS PROPOSED AMENDMENTS TO DRAFT CONDITIONS

1. Amendments proposed by the applicant are address as follows:

Amendments Requested by the Applicant:	Council's Response (Agree/Disagree)
<u>Condition No. 6</u> – increase the construction hours for Saturday until 5pm.	Disagree The site is located in a residential area and therefore the construction hours should be limited to the standard hours to ensure the residential amenity is maintained. Any request to extend construction hours should be via a Section 96 Modification of consent and be supported by an Acoustic Report.
<u>Condition No. 7</u> – to read as: <i>Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim Final Occupation Certificate for the Seniors Living Units</i>	Agree The draft conditions have been amended to reflect the change.
<u>Condition No. 10</u> – to remove the words relating to requiring Dilapidation survey internally for the adjoining properties.	Disagree The proposed development involves significant excavation to accommodate three (3) levels of basement parking, and therefore it is important to ensure all of the adjoining properties are protected both internally and externally.
<u>Condition No. 12</u> - request that the payment of the contribution be staged and paid proportionally.	Disagree Council's Policy relating to S94A Development Contributions does not permit deferred or periodic payments of the s94A levy.

Amendments Requested by the Applicant:	Council's Response (Agree/Disagree)
<u>Condition No. 14.</u> Request to include an indicative staging plan for the Construction Management Plan and to allow access across Mckillop Reserve.	<p>Agree</p> <p>Access to the reserve is only allowed, if the applicant has obtained a permit.</p> <p>The inclusion of staging plan has been added to condition No.14.</p> <p>Draft conditions have been amended to reflect this change.</p>
<u>Condition 17 -</u> Request to change the size of the rainwater tank storage volume to 200kL.	<p>Agree</p> <p>Council's Development Engineers have raised no concerns in relation to this change.</p> <p>Draft conditions have been amended to reflect this change.</p>
<u>Conditions No. 46 & 49</u> Add the words "relevant" interim/ Final Occupation Certificate.	<p>Agree</p> <p>Draft conditions have been amended to reflect this change.</p>
<u>Condition No. 78.</u> Increase commercial waste collection hours to 7am instead of 8am.	<p>Agree</p> <p>This request is consistent with the Acoustic Report.</p> <p>Draft conditions have been amended to reflect this change.</p>

- Additional conditions were requested by the JRP Panel to restrict the height of roof top landscaping to the height of the parapets of each building. In this regard, Condition 11 (f) and Condition No.79 have been added to the draft conditions.

6.0 PUBLIC EXHIBITION

The additional information requested by the JRPP has not been publicly exhibited as this was not required by the Joint Regional Planning Panel and there are no changes proposed to the actual development that would impact on surrounding residential properties.

7.0 CONCLUSION

In accordance with the JRPP's resolution of 24 November 2014, the Applicant has provided the additional information as requested and Council has assessed the information within this supplementary report.

Accordingly, the application is referred back to the Sydney East Joint Regional Planning Panel for its final determination.

8.0 RECOMMENDATION

- The Deferred Commencement Consent be granted by the Sydney East Joint Regional Planning Panel subject to the amended conditions in Attachment 1.
- The applicant and objectors be advised of the Sydney East Joint Regional Planning Panel's decision.