

Sydney North Planning Panel

SNPP	2015SYE127
DA Number	DA2015/0901
Local Government Area	Northern Beaches Council
Proposed Development	Demolition Works, Alterations and Additions to Licensed Premises (Pub), Construction of Hotel Accommodation and Retail Shop
Street Address	Lot X DP 4052016, 39 Frenchs Forest Road East Frenchs Forest
Applicant/Owner	ALH Group Property Holdings Pty Ltd
Number of Submissions	5
Regional Development Criteria (Schedule 4A of the Act)	
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • List all of the relevant environmental planning instruments: s79C(1)(a)(i) • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) • List any relevant development control plan: s79C(1)(a)(iii) • List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv) • List any coastal zone management plan: s79C(1)(a)(v) • List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288
List all documents submitted with this report for the panel's consideration	<p>Attachment 1 –Site and Elevation plans</p> <p>Attachment 2 - Zoning Map County of Cumberland Planning Scheme Ordinance</p> <p>Attachment 3 - 1960 consent for hotel</p> <p>Attachment 4 - 1978 consent and plan</p> <p>Attachment 5 - 1982 consent and plan</p> <p>Attachment 6 - 1989 consent and plan</p>
Recommendation	Refusal
Report by	Peter Robinson

Assessment Report and Recommendation

Application Number:	DA2015/0901
Responsible Officer:	Peter Robinson
Land to be developed (Address):	Lot X DP 405206, 39 Frenchs Forest Road East Frenchs Forest
Proposed Development:	Demolition Works, Alterations and Additions to Licensed Premises (Pub), Construction of Hotel Accommodation and Retail Shop.
Zoning:	LEP - Land zoned B7 Business Park LEP - Land identified in Schedule 1 Additional Permitted Uses
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Sydney North Planning Panel
Land and Environment Court Action:	No
Owner:	ALH Group Property Holdings Pty Ltd
Applicant:	ALH Group Property Holdings Pty Ltd
Application lodged:	21/09/2015
Application Type:	Local
State Reporting Category:	Commercial/Retail/Pub
Notified:	6 October 2015 to 21 October 2015 & 15 February 2016 to 1 March 2016
Advertised:	3 October 2015 & 13 February 2016
Submissions:	5
Recommendation:	Refusal
Estimated Cost of Works:	\$ 44,979,000.00
Attachments	Attachment 1 –Site and Elevation plans Attachment 2 - Zoning Map County of Cumberland Planning Scheme Ordinance Attachment 3 - 1960 consent for hotel Attachment 4 - 1978 consent and plan Attachment 5 - 1982 consent and plan Attachment 6 - 1989 consent and plan

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 have 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

Environmental Planning and Assessment Act 1979 - Existing Use Rights

Warringah Local Environmental Plan 2011 - 2.5 Additional permitted uses for particular land

Warringah Local Environmental Plan 2011 - Zone B7 Business Park

Warringah Development Control Plan - B14 Main Roads Setback

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot X DP 405206 , 39 Frenchs Forest Road East FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The site is legally known as Lot X, DP 405206, No. 39 Frenchs Forest Road, Frenchs Forest.</p> <p>The site is generally rectangular in shape having frontage to Frenchs Forest Road East and Warringah Road and has an area of 18,971m².</p> <p>The Parkway Hotel currently occupies the site, having a gross floor area (GFA) calculated at 2001m², comprising two buildings which are used for the following:</p> <ul style="list-style-type: none"> • Pub containing a bistro, gaming lounge, public and lounge bars, beer garden and TAB facilities; • Conference facilities/function room; • Bottle shop, including a drive-through facility (GFA 227m²); • Motel (11 rooms); and • Disused (detached) function room. <p>An open market operates from the southern car parking area each Sunday.</p> <p>The site is situated on the southern side of Frenchs Forest Road East approximately 260m west of the intersection with Allambie Road. Land immediately adjacent to the eastern and western boundaries of the site has been developed for</p>

a range of office, industrial and warehouse uses. The northern side of Frenchs Forest Road East is characterised by one and two storey residential dwellings.

Areas adjacent to the northern, southern and eastern sides of the building have been paved in order to provide off-street car parking and vehicular access ways associated with the current use of the site. Access to the site is presently obtained via two driveways leading from Frenchs Forest Road East, one of which being situated at the north-eastern corner of the site and the second being situated at the northwestern corner.

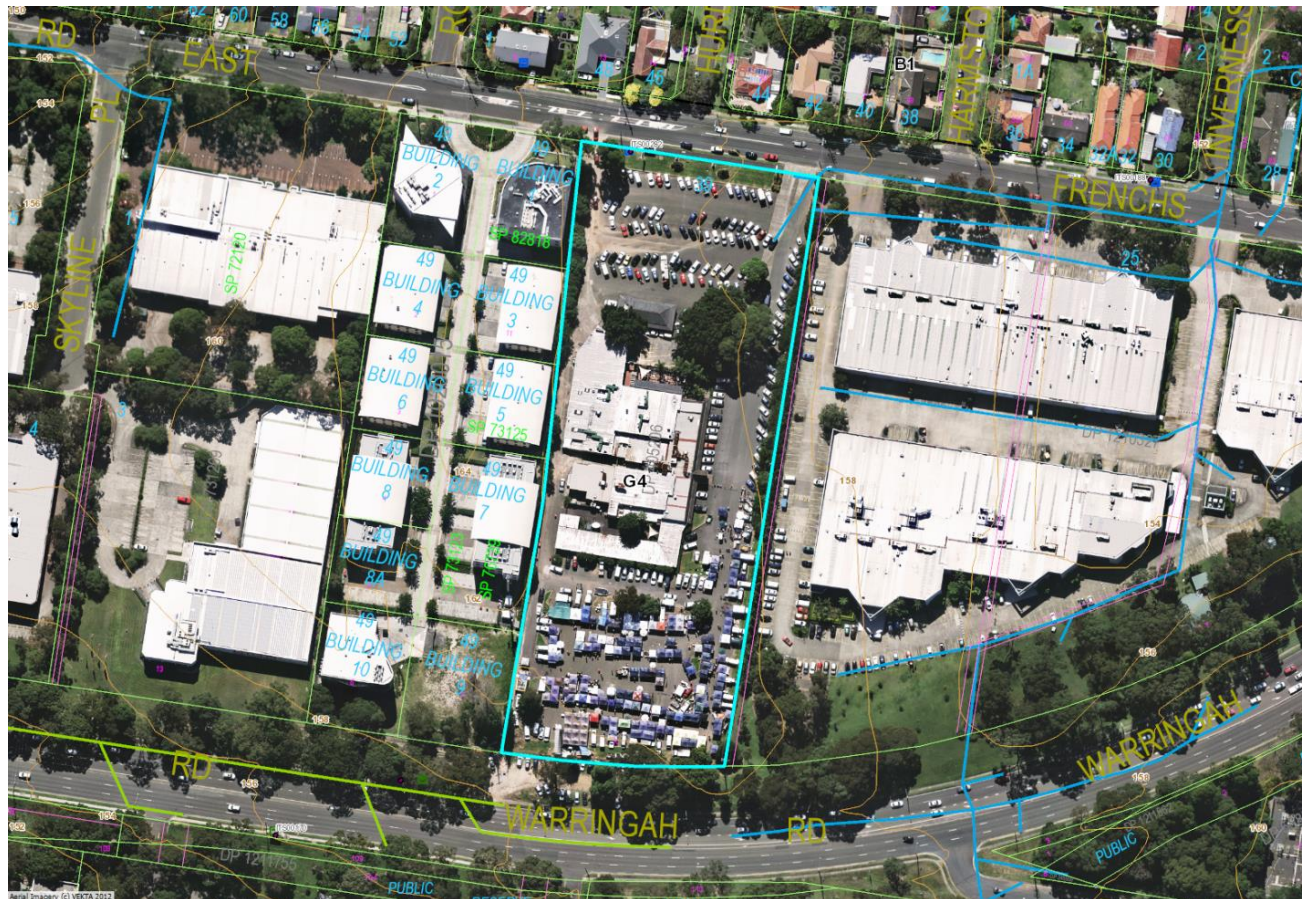
The site is located within the B7 Business Park zone under Warringah Local Environmental Plan 2011 and listed in Schedule 1 – ‘Additional Permitted Uses’ of Warringah Local Environmental Plan 2011 which reads as follows:

“12 Use of certain land at 39 Frenchs Forest Road East, Frenchs Forest:

(1) This clause applies to land at 39 Frenchs Forest Road East, Frenchs Forest, being Lot X, DP 405206, shown as “Area 12” on the Additional Permitted Uses Map.

(2) Development for the purposes of pubs is permitted with consent.”

LOCATION MAP



SITE HISTORY

There are notations on a Zoning map for County of Cumberland Planning Scheme Ordinance that indicates a refusal of a hotel on 24.9.1959 as the land was within the Greenbelt.

A subsequent notation on the map indicates "Suspended 342Y 1.4.60". No other notations on this particular site indicating an alternative zoning. The adjoining site also has notation "Suspended 342Y Light Ind'y Gov Gaz 44 24.4.59"

Development Consent No.60/70 granted for a 'hotel' on the subject site (Consent dated 20 December 1960). Building Approval C1019/62 was issued for the construction of the building.

Development Consent No.78/264 granted for '*alterations and refurbishments to the Antler Parkway Hotel/Motel*' (Consent dated 27 October 1978).

Development Consent No.82/159 granted for the establishment of TAB agency facilities on the hotel premises (Consent dated 8 June 1982).

Development Consent No.82/67 granted for '*additions and alterations to the existing hotel to provide restaurant facilities*' (Consent dated 12 February 1982).

Development Consent No.82/3 granted for a weekly "Flea Market" within the existing car park on Sundays between the hours of 9am and 3pm (Consent dated 22 October 1981).

Development Consent No.83/525 granted for extension of operation hours for the “Flea Market” to include Saturdays and Sundays (Consent dated 23 November 1983).

Development Consent No.89/22 granted for alterations to the Parkway Hotel involving refurbishment of the existing lounge bar, garden bar and public bar (Consent granted 17 January 1989).

Development Consent No.93/265 granted for a liquor cellar and reconfiguration of the car park and landscaping (Consent dated 30 June 1993).

Development Application 2003/0815 proposes the construction of a two storey bulky goods retailing building with basement car park. The application was withdrawn by the applicant following receipt of Council’s concerns in relation to inconsistency with the desired future character statement for the G4 – Rodborough Road locality.

Development Application 2003/0816 granted for demolition works and one (1) lot into two (2) lot Torrens title subdivision (Consent dated 24 March 2006).

Development Application No.2003/0818 for the construction of a new hotel with associated drive through bottle shop, office building, basement carparking area, associated landscaping area and demolition of the existing hotel. The applicant lodged a Class 1 Appeal against Council’s deemed refusal of Development Application No.2003/0818 on 13 January 2005 (Land & Environment Court Proceedings No.10018 of 2005). On the 25th April 2005, Council granted Development Consent No. 2003/0818. The applicant discontinued the Land and Environment Court proceedings due to the application being determined by Council.

APPLICATION HISTORY

Pre-lodgement Meeting

A Pre-lodgement meeting (PLM2015/0084) was held on 4 August 2015 in relation to the proposed development. Council and the Applicant’s representatives attended the meeting. Advice from the meeting requested basement carparking, an increase in landscape open space and further information in relation to existing use rights be provided for the development prior to lodgement of any application. The advice written from the meeting was sent 21 September 2015.

The subject development application was lodged 21 September 2015

JOINT REGIONAL PLANNING PANEL BRIEFING

A Joint Regional Planning Panel (JRPP) briefing was held 10 November 2015. JRPP agreed with the issues raised in the briefing notes, including the following;

- Existing use rights (extent of intensification) in relation to the relevant current planning controls;
- Inconsistencies with Objectives of B7 Business Park zone given poor landscape setting and lack of articulation of hotel facade facing Warringah Road; and
- Non-compliance with relevant controls of Warringah Development Control Plan 2011 (WDCP), including clauses B7 Front Boundary Setbacks; Clause B14 Main Roads Setback; Clause C2 Traffic, Access and Safety; Clause C3 Parking Facilities; and Clause D1 Landscaped Open Space and Bushland Setting.

A meeting was held with the Applicant's representative on the 9 December 2015 to discuss the matters raised in the JRPP Briefing notes. The Applicant was advised that Council would take into consideration the matters raised at the meeting and provide follow up advice in relation to the progression of the application.

Following this meeting, a letter was sent to the Applicant requesting that the application be withdrawn as it could not be supported in its current given the issues raised in the JRPP Briefing notes.

Another meeting was held with the Applicant's representatives on the 6 January 2016 to discuss the matters raised in the letter from Council (detailed above). Following this meeting, advice was sent (email) to the Applicant advising that Council would be willing to accept amended plans and documentation to address the concerns raised at the meeting and in the letter. An Economic Impact Statement was also requested due to the significant increase in floor space that is the subject of existing use rights.

Amended plans and documentation were received by Council 1 February 2016. In summary, amendments to the development included the provision of a basement car park beneath the hotel, a substantial increase in landscape open space and improvements to the hotel to improve its articulation and visual presentation to Warringah Road. Full details of the amendments are provided in the Detailed Description of Development section of the report (below). The Applicant also provided legal advice supporting existing use rights.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks alterations and additions to the existing "Parkway Hotel" (Pub) and the construction of hotel accommodation (Parkway Hotel) and a retail shop (Dan Murphy's liquor store).

Specifically, the proposed development comprises of the following;

Pub - Parkway Tavern (GFA 2313m²)

- Increase GFA of existing Pub from 2001m² to 2313m²
- Demolition of the existing bottle shop and driveway (GFA 227m²);
- Upgrade and improvements to the existing Pub including demolition works, substantial internal alterations and minor additions;
- Provision of 34 carparking spaces located adjacent pub;
- Shared loading dock with the proposed Hotel located off the service road adjacent western boundary;
- Upgraded signage and new external finishes; and
- Change to hours of operation to Sunday – Wednesday: 10am – 12 midnight; Thursday - Friday: 10am - 1am; Saturday: 10am - 3am; and closure of beer garden at 12 midnight and children's play area 10pm.

Retail Shop - Dan Murphy's (GFA 1410m²)

- Existing "retail" bottle shop component of the pub (GFA 227m²) to be demolished;
- Construction of detached single storey building (GFA 1410m²) comprising stock display area, cashier/sales area, cool rooms, staff amenities within the northern portion of the site;
- Loading dock located off service road adjacent western boundary;
- Entrance to store provided off central car park located on eastern side of site;
- Hours of Operation Sunday to Sunday 9am – 10pm (7 days);

- Provision of 71 carparking spaces; and
- Signage (including 6.0m high pylon sign).

Hotel Accommodation - Parkway Hotel (GFA 7252m²)

- Demolition of the existing eleven (11) room hotel (GFA 375m²);
- Construction of a six (6) storey, 100 room hotel within the southern portion of the site (GFA 7252sqm);
- Ground level entry/reception, staff and visitor amenities;
- Provision of 164 carparking spaces, comprising 97 basement level spaces and 67 ground level carparking spaces located adjacent to hotel and pub;
- Access ramp to basement parking level provided off the southeast corner of car park;
- Visitor amenities including meeting including ground floor reception area, restaurant and function area, Level 1 gym and meeting rooms and Level 5 spa treatment rooms;
- 24hr hours of operation;
- Shared loading dock with the Pub located off the service road adjacent western boundary;
- Landscape outdoor lawn areas with seating located to the south of the hotel; and
- Signage.

Access and Parking

- Total of 269 parking spaces provided on site (including basement parking beneath hotel for 97 spaces);
- Service and public vehicle access provided from Frenchs Forest Road East;
- Pedestrian access (including access ramp) provided from Frenchs Forest Road East at mid portion of the site;
- Public vehicle exit/entry to site provided from two-way access driveway located at north-east corner of site; and
- Service vehicles exit/entry to service areas (loading docks, waste etc.) located off the north-west corner of the site.

Landscaping (and site works)

- The landscape plan and planting schedule show that on-site landscaping will include turf areas, understorey shrubs and groundcovers, swale, climbing plants and hedges and small to large size canopy trees (including retained species);
- Provision of electrical sub-station within Frenchs Forest Road East frontage; and
- Retaining and site works to provide level building, parking platforms and landscaped areas;
- Front boundary fencing to Warringah Road and near service vehicle entry/exit areas located off Frenchs Forest Road East; and
- Twenty (20) trees for removal.

Stormwater

- Two stormwater drainage system are proposed, one system draining to Warringah Road and the other system draining to Frenchs Forest Road East;
- Detention tanks/basins underneath car park slabs and within the landscaped areas; and
- Drainage systems utilise media filtration systems and inlet pits fixed with pit baskets.

AMENDMENTS TO THE APPLICATION

Following advice to the Applicant from Council, amended plans and documentation were received by Council.

The primary changes to the development were as follows;

- Widening of the existing service access point located at the northwest end of the Frenchs Forest Road East to provide primary service access point (and removal of 'loop' perimeter service road);
- Moving the hotel to the south towards Warringah Road (by 7.3m) to remove 'loop' perimeter service road;
- Provision of a basement car park (and access ramp) for 97 spaces beneath (and to the east) of the hotel;
- Rationalisation of ground level carparking areas to improve dedication to land uses;
- Provision of balconies and detailing to the southern façade of the proposed hotel building to improve the articulation of the building and improve its visual presentation to Warringah Road;
- Reduction in the height of the pylon sign within the Frenchs Forest Road East frontage from 16.0m to 6.0m;
- The changes detailed above provide an increase in landscape open space from 11% (2086.8m²) to 21.8% (4151.8m²) and increase the number of on-site carparking spaces from 252 to 269 spaces; and
- Provision of an Economic Impact Assessment to address Section 79C (1)(b) - Economic Impact Assessment.
- Additional legal submissions were received from the applicant on Existing Use Rights on 23 June 2016

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 detail provided within Attachment A.

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 the 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 applies to this proposal.
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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the

Section 79C 'Matters for Consideration'	Comments
	<p>submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p>As provided under the <i>Detailed Description of Development</i> section of the report, amended plans and documentation were received by Council in response to concerns raised by Council Officers, particularly in relation to the lack of on-site landscape open space, the absence of basement parking and lack of articulation for the hotel building when viewed from Warringah Road.</p> <p>The amended plans and documentation were re-notified and re-advertised in accordance with the relevant requirements of WDCP - A.7 Notification and Environmental Planning and Assessment Regulation 2000.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development).</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA).</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) In summary, the proposed development will not have a detrimental social impact in the locality considering the character of</p>

Section 79C 'Matters for Consideration'	Comments
	<p>the proposal.</p> <p>The proposed development is not expected to cause unacceptable social impacts on the community from the intensification of the existing land-uses (i.e. pub and retail 'liquor' shop) and increase the density of liquor outlets in the Warringah locality.</p> <p>The immediate and surrounding areas do not comprise a high proportion of disadvantaged areas, including medium to high crime density 'hotspots' for domestic violence, non-domestic violence assaults and illicit drinking (i.e. underage drinking).</p> <p>The pub and associated gaming machines are located in the middle of the site and will be appropriately screened from street frontages by adjoining development, the proposed hotel, and retail 'liquor' shop and intervening landscaping within the front setback areas.</p> <p>In addition, the location and visual proximity of the site to areas for vulnerable, disadvantaged or sensitive people (i.e. emergency accommodation) and entertainment areas for young persons (i.e. skate parks, alcohol-free reserves and the like) is appropriate.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> <p>An Economic Impact Assessment (prepared by Location) was submitted as part of the development application and provides the following:</p> <ul style="list-style-type: none"> • There is a substantial need and demand for the subject re-development of the existing uses of the Parkway Hotel site; • The development will serve a growing resident and worker/visitor market, particularly given the emerging business and residential opportunities through the construction of the nearby Northern Beaches Hospital; • The estimated construction costs are \$30 million, which will result in some 163 direct jobs, as well as 260 jobs in the broader economy; and • The hotel, pub, and retail liquor shop will have an acceptable economic impact on competitive facilities and fill a market and geographic gap in the Frenchs Forest area, particularly given forecast growth. <p>Further details of the <i>Economic Impact Assessment</i> report are provided below.</p>

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See the discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

Section 79C (1) (b) - Economic Impact Assessment

Section 79C (1) (b) of the Environmental Planning and Assessment Act 1979 requires the consent authority to consider the economic impact of the proposed development in the locality. The economic impact of the development has been assessed in terms of the existing "Parkway Hotel" site and the proposal redevelopment of the site to provide a hotel (accommodation), pub and retail shop premises.

Following a preliminary assessment of the application, an Economic Impact Assessment (EIA) was requested by Council. In response to this request, an EIA prepared by Location (dated February 2016) was submitted to Council.

The report provides a detailed assessment of the following;

- Regional and local context;
- Residential and worker trade area analysis ;
- Competitive environment analysis for on-site uses comprising the retail shop premises (Dan Murphy's), pub and hotel (accommodation); and
- Economic impact assessment of the development.

Key Findings in the applicant's EIA

The report has provided a detailed assessment of the economic impact of the development for each use.

1. Pub (Parkway Tavern)

In summary, the report provides the following key points in relation to the pub use;

- The subject site sits within a strategic location with a substantial market comprising immediate resident and worker population;
- The completion of the Northern Beaches Hospital will substantially increase this market;
- A pub is typically provided for every 6,000 to 7,000 residents in a suburban location;
- The pub will serve a primary sector of over 20,000 persons, with no competitive tavern, as well as 12,000 workers;
- There are currently no taverns besides the existing Parkway Hotel Tavern provided within the primary trade sector; and
- The impact on surrounding pubs (and taverns) would be minimal and acceptable, particularly given the minor increase in floor space.

2. Retail Shop (Dan Murphy's)

In summary, the key points of the report in relation to the retail shop use are as follows;

- The closest large format liquor store to the Parkway Hotel site is a First Choice Liquor outlet located at Brookvale;

- The provision of a new retail shop (Dan Murphy's) will improve convenience and choice for local residents; and
- The average impacts on other facilities are expected to range from 6% (larger format liquor stores) to 10% (smaller format stores) which is within the normal competitive range

3. Hotel (Parkway Hotel)

In summary, the report provides the following key points in relation to the hotel use;

- The proposed 100 room hotel would serve a variety of different visitors to the area including future hospital patients, workers and visitors; commercial interests (i.e. conferences); and sporting events;
- Currently, there are no existing hotels within the primary or secondary trade sectors;
- The additional rooms represent less than 10% of the available (hotel) accommodation market throughout the broader region; and
- The impact of the hotel on the continued viability of other facilities would be acceptable.

Summary

The report provides the following summary:

"Overall, the subject development would provide increased choice, convenience, and accessibility for a range of services for workers and residents in the immediate area, as well as future visitors to the hospital. Additional jobs would be created during the construction phase of the project, as well as ongoing jobs to operate the facilities themselves. The proposed development will not impact on anyone facility or precinct to any significant degree, with competitive impacts well within the normal ranges."

Comment: Having regard to the EIA and its assessment and findings, it is considered that the proposed development, including the intensification of uses, will not have a detrimental economic impact on the immediate and surrounding locality.

EXISTING USE RIGHTS

The existing bottle shop and motel accommodation are subject to a claim of Existing Use Rights.

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 106 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. *Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?*

Comment:

	Zone	Hotel/Pub	Motel	Shop
<u>County of Cumberland Planning Scheme Ordinance 1951</u>	Unclear*	Assumed permissible in 1960		
<u>Shire of Warringah Planning Scheme Ordinance 1963</u>	Special Industrial 4C Zone	Prohibited	Prohibited	Prohibited
<u>Warringah Local Environment Plan 1985</u>	Special Industrial 4C Zone	Prohibited	Prohibited	Prohibited
<u>Warringah Local Environment Plan 2000</u>	G4 Rodborough Road Locality	Permissible - Category 3**	Permissible - Category 3**	Permissible - Category 3**
<u>Warringah Local Environment Plan 2011</u>	B7 Business Park	Permissible Schedule 1 - Additional Permitted use	Prohibited	Prohibited

*Council records indicate that the land was originally located in the Greenbelt (map reference - coloured lime green) under the CCCPSO 1951. A notation on a plan indicates "Suspended 342Y 1-4-60" with the subject site coloured pink. No records can be found to explain this reference.

Hotels were permissible in the following zones:

- Living Area (map reference - light scarlet colour),
- Business and Commercial Centre (County) (dark crimson colour with the words 'County Centre'),
- Business and Commercial Centre (District) (dark crimson colour),
- Industrial Area Class 'A' (purple in colour with letter "A"),
- Industrial Area Class 'B' (purple in colour with letter "B")
- Industrial Area Class 'B' Reserved (purple in colour with white hatching with letter "B").

In all of these zones hotels and shops were permissible with consent.

Motels (residential buildings) were also permissible with consent except in the industrial zones.

From the colouring of the map the site was not Industrial as adjoining site was coloured purple (distinctly different to the subject site in colouring) with notations "Suspended 342Y Light Ind'y"

This would leave either Living Areas or Business Centre (District) where all 3 uses were permissible.

** Category 3 development under WLEP2000 was development not considered to be consistent with the locality's Desired Future Character statement. Specific criteria needed to be addressed and an independent public hearing is undertaken to consider whether the use was appropriate. Category 3 activities were translated as prohibited development with the drafting of WLEP 2011 under the standard instrument order.

Development Consent No.60/70

Development Consent No.60/70 for a 'Hotel' was granted 20 December 1960. The Hotel was approved under the County of Cumberland Planning Scheme Ordinance 1951 (CCPSO).

Under this planning scheme, a *Hotel* means

"any premises specified in a publican's license issued under the Liquor Act, 1912, as amended by subsequent Acts."

A search of Council records does not reveal any approved plans for the above consent. However, Condition of Consent "C" makes reference to the applicable carparking rates for "*bedrooms, the public bar and lounge or beer garden area*". Note that the parking condition does not refer to shop/retail area.

Under this planning scheme: *Residential building means*

a building, other than a dwelling-house, designed for use for human habitation together with such outbuildings as are ordinarily used therewith, a residential flat building, a hostel, an hotel designed primarily for residential purposes and a residential club, but does not include any building mentioned, whether by inclusion or exclusion in the definitions of "places of instruction" and "institution",

Shop means

any building or place or portion of a building used or designed for the purpose of exposing or offering goods for sale by retail, repairing boots and shoes, hairdressing, collecting and distributing material for a laundry or cleaning establishment and includes any portion of such building or place used for a purpose ordinarily connected with the retail business conducted thereon but does not include a hotel, a club, a refreshment room or a roadside stall

Summary: Existing use rights have been established for a 'Hotel' by way of a consent, which the definition of hotel includes anything specified in the publicans licence. The reference in conditions to bedrooms lead to an assumption that accommodation on site was considered in the application. This could reference motel style accommodation or caretaker's accommodation. A copy of the original publican's licence has not been provided with the application.

Development Consent No.78/264

Development Consent No.78/264 for '*Alterations and refurbishments to the Antler Parkway Hotel/Motel*', was granted 27 October 1978.

The approval was granted under the Shire of Warringah Planning Scheme Ordinance 1963 under which hotels, motels, and shops were now prohibited.

The approved plans show detailed floor plans for the public bar, games area, lounge bar, garden lounge, club bar and food bar, whilst the area identified as a bottleshop and drive through contains little architectural detail indicating that this area of the building was not undergoing the alterations and refurbishment. The site plan indicates a separate part of the building (not included in the floor plan) labelled 'Motel'. Plans do not indicate any change to the building labelled motel. This application contains the first evidence that a bottleshop existed on the site.

The WPSO contained a definition of:

'Motel means a building or buildings not being a hotel substantially used or designed for use for the overnight accommodation of travellers and the vehicles used by them whether or not the building or buildings are also used or designed for use in the provision of meals to such travellers or the general public'

Summary: Existing use have not been established for a 'shop' as a consent for a shop has not been established. The drive through bottleshop can only be assumed to have been established under the definition of 'hotel' as an ancillary use. The motel identified on the plans could reasonably lead to the conclusion that the bedrooms referenced in the 1960 consent was for motel style accommodation

Development Consent No.82/67

Development Consent No.82/67 for '*Additions and alterations to the existing hotel to provide restaurant facilities*' was granted 12 February 1982.

The approval was granted under the Shire of Warringah Planning Scheme Ordinance 1963.

The approved plans show that the existing hotel included a *public bar, saloon bar, restaurant and drive through bottleshop and existing accommodation wing*

Under WPSO 1963 a restaurant is defined as a refreshment room which means
a restaurant café tea room eating house or the like.

Refreshment rooms were prohibited in the Special Industrial 4 (c) zones

Summary: A restaurant was not a permissible landuse in the Special Industrial 4 (c) zone. The proposal could only have been considered under two assumptions. There was already a restaurant type facility, which is unlikely given the wording of the consent 'to provide'. This indicates a new landuse. The second assumption is that although a prohibited landuse, such an activity was considered ancillary to the operations of a hotel and therefore an acceptable outcome. As it was prohibited a restaurant could not be considered an independent and separate use.

Development Consent No.89/22

Development Consent No.89/22 for '*Alterations to the Parkway Hotel*' involving refurbishment of the existing lounge bar, garden bar, and public bar was granted 17 January 1989.

The approval was granted under Warringah Local Environment Plan 1985.

The approved plans indicate works were proposed to the *public bar, games area, lounge bar* and enclosure of the drive through area of the drive-in bottleshop.

Summary: In determining the application, it is assumed that Council has accepted that the bottleshop forms part of the existing development on site (hotel/pub), even though a shop is not a permissible use. Again reinforcing the ancillary component.

Development Consent No.93/265

Development Consent No.93/265 for Liquor cellar and reconfiguration of the car park and landscaping was granted 30 June 1993.

The approval was granted under Warringah Local Environment Plan 1985. The consent was never activated.

Summary: Not relevant to establishing existing use rights

Development Consent No.2003/0818

Development Consent No.2003/0818 for '*construction of a new hotel with associated drive through bottleshop, office building, basement carpark area, associated landscaping and demolition of existing hotel*' was granted on 28 April 2005. The plans indicated as a part of the hotel, a drive through bottleshop was included.

The approval was granted under Warringah Local Environment Plan 2000 with the hotel and associated bottle shop being permitted as development known as Category 3. Category 3 were uses generally not considered to be consistent with the Desired Future Character statement of the locality and required a more thorough assessment and independent public hearing prior to determination. Category 3 uses have been translated into WLEP 2011, made under the standard instrument order as prohibited uses. The consent was never activated and has lapsed.

Summary: This consent lapsed and does not change the status of established existing use rights.

Summary

The existing Parkway Hotel is accompanied by other uses in the form of motel style accommodation and a drive through bottleshop. The applicant has only provided evidence which can only establish that a hotel was a lawfully commenced activity. As no plans exist and the original publican's license has not been provided, it can be assumed that motel style accommodation and bottleshop were established under the definition of hotel, not as separately defined land uses. No applications or approvals have been documented that amends or changes the motel style accommodation as it currently operates on site.

Warringah Local Environment Plan 2011 prohibits the Motel and Shop land uses on the site within the B7 Business Park zone, whilst the hotel is recognised as an established permissible use permissible under schedule 1 as an *additional permitted use*. If the motel and retail shop were considered separate and independent uses, they should have been listed under Schedule 1 of the WLEP 2011.

Existing use rights cannot exist for a shop or motel as consents to establish lawful commencement of these specific activities have not been established. The primary use as a hotel is the only activity to be supported by an approval (1960) which established new uses on site. The subsequent consents in

1978 and 1989 relate to refurbishments/alterations/additions of the existing buildings and uses on site, not new uses. Whilst the definition of hotel was subject to the publicans' licence, it would not be unreasonable to expect the licence to include ancillary accommodation and take away sales of alcohol.

The applicant cites the recent Court of Appeal case *Jojeni Investments v Mosman Municipal Council* [2015] NSWCA 147 as a basis for asserting existing use rights under the 1960 consent. The argument put forward to make the proposition that the characterisation of an existing use is to be,

“carried out as liberally as the statutory language in its context allows and not from a meticulous analysis of the details of the activities undertaken on the land. For example, it would be incorrect and contrary to the authority in Jojeni to limit the characterisation of the existing use rights arising in connection with the land to only a hotel use because that is what is noted on the front page of the original consent”.

The original consent in Jojeni (circa 1930's) did not approve any particular land uses, the court established the original consent was only for 'works'. The Court ultimately relied on characterisation test to determine lawful use as the consent did not provide such detail. In the consideration of the 1960 consent on the subject site, the consent clearly determined the landuse as a hotel, therefore applying case law from Jojeni is not directly relevant.

Further, the applicants advice makes reference to an earlier Court of Appeal case of *North Sydney Municipal Council v Boyts Radio & Electrical Pty Ltd* [1989] 16 NSWLR 50. Once again, in that case, the facts were different. In that case, development consent was granted under the County of Cumberland Planning Scheme Ordinance (CCPSO) for a “warehouse” in the 1950s. In this case, there was a dispute about what this meant. The distinguishing element between that case and the current situation is that there was no definition of “warehouse” in the CCPSO when that consent was issued in the 1950s. Unlike in this situation, there were specific definitions of “hotel” and “shop” and, to an extent, *motel* as “residential accommodation” in the CCPSO when the hotel consent was issued.

The argument that the subject bottleshop and motel are subservient to the hotel as the only approved use under the 1960 consent. A decision of the Court of Appeal in *Woolworths Limited v Pallas Newco Pty Ltd & Anor* [2004] NSWCA 422 is relevant. In this case, there was an application for a Dan Murphy's shop on the basis that it was a drive-in take away liquor store. The application was framed in this way because “drive in take away establishments” was a permissible use in the zone, whilst a shop was not. Ultimately the Court held that the “drive in” aspect of the proposed development was subordinate to the shop purpose of the Dan Murphy's store which meant that the purpose of the use was for a shop, which was prohibited. This reinforces the position in the current application that the bottle shop and motel are ancillary to the hotel use under the 1960 consent.

2. *Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?*

Comment:

As detailed above the only activity that has been permissible on site which obtained development consent was a hotel. The site is located within the B7 Business Park zone under WLEP 2011. A

'Pub' (previously defined as a Hotel) is listed under Schedule 1 of the WLEP 2011 as an 'Additional Permitted Use' specifically for this site. No approvals have been provided that establish a consent for a 'Shop' or 'Motel Accommodation' for the current activities on this site, as apart from Category 3 uses under WLEP 2000, both activities have never been permissible. The only way in which they could have been established on site is being ancillary and subservient to the original approval as a hotel.

In summary, the use of the site has historically been for the purpose of a 'Hotel' (licenced premises) which is now defined as a 'Pub' under WLEP 2011. The 'Pub' has been supported by ancillary or subservient uses in the form of motel accommodation and a retail drive through bottleshop. As a pub is permissible on the site under Schedule 1 of WLEP 2011, Additional Permitted Uses, existing use rights do not apply to the pub.

The WLEP 2011 definition of a pub

means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

The Liquor Act 2007 describes in section 14 the hotels licence as:

(1) A hotel licence authorises the licensee to sell liquor by retail on the licensed premises for consumption on or away from the licensed premises

Under the Liquor Act a hotel licence can permit retail sales such as in a bottleshop arrangement whilst under the WLEP 2011 definition as a pub the principal purpose must be for consumption on the premises. In the current configuration, the floorspace of the bottle shop is equivalent to 11.3% of the floorspace of the hotel. Under the proposal, that increases to be equivalent to 61% of the floorspace of the pub. Given the position that the only permissible and independent use on site is a pub, this could not reasonably be considered to meet a test of 'principal purpose of which retail sale of liquor for consumption on the premises'.

3. *Has the use of the building and site been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?*

Comment:

It is not contested that the current uses have been abandoned.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2)(b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose of a hotel/pub, including all ancillary uses under the definition of a hotel. As stated above, a pub is permissible landuse and therefore existing use rights do not apply.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgment in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court, in this case, will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio, and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The development comprises a major redevelopment of the site, comprising a six (6) storey hotel building with a basement level car park, a one storey pub and retail shop premises and landscaping works.

No height limit applies to the site under WLEP 2011.

The subject site is located within the WLEP B7 Business Park Zone which adjoins and surrounds the site to the east, west, and south (across Warringah Road). Adjoining and surrounding development generally comprises a mixture of office, warehousing, and light industrial uses, ranging in scale from two (2) to four (4) levels above ground. Some examples of five (5) storey buildings do exist within Rodborough Road (located on southern side of Warringah Road).

To the north of the site (across Frenchs Forest Road East) exists low density residential development containing a mix of one and two storey dwelling houses within landscape settings.

The Northern Beaches Hospital is currently under construction and located approximately 530m to the west of the site. The hospital will be a nine (9) storey high facility, with a multi-storey 1,400 space carpark and helipad and is expected to open in 2018. Also, the site is in the Investigation Area for the Northern Beaches Hospital Precinct Structure Plan (Hospital PSP) currently under preparation.

The proposed buildings comply with the Warringah Development Control Plan (WDCP) cl.B4 Site Coverage, cl.B5 Side Boundary Setbacks and cl.B7 Front Boundary Setback (to Frenchs Forest Road East) controls.

The proposed buildings do not comply with the numerical requirements of the WDCP cl.B14 Main Roads Setback (frontage to Warringah Road) and D1 Landscaped Open Space (LOS) and Bushland Setting controls. As detailed under the relevant sections of the report, these non-compliances are supported on merit as a satisfactory landscape setting will be provided on site, particularly within the Warringah Road setback, and that existing large areas of hard paved carparking areas will be offset with landscaped open space areas.

Also, in accordance with WDCP cl.C3 - Parking Facilities a basement level car park has been provided on-site beneath the hotel. The provision of the basement car park has also assisted to further offset existing large areas of hard paved carparking areas and increase LOS.

Council's Urban Designer has provided referral comments to the effect that the hotel exhibits satisfactory visual quality, facade treatment and articulation.

As such, it is considered that the height, bulk, scale and landscape setting provided by the development, including the six (6) storey hotel, is compatible and consistent with development envisaged for the site (and adjoining and surrounding sites located within the B7 Business Park Zone).

Based on the above, the relationship of new buildings to its existing and likely future context is considered satisfactory.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing building on the site (Parkway Hotel) is generally being retained and upgraded, albeit with demolition and improvement works, as well as the demolition of the existing bottle shop and driveway and the eleven (11) room motel.

The redevelopment of the site will retain the pub use within the upgraded existing building. Gross floor area of the pub building will increase from 2001m² to 2313m². (15.6% increase).

The hotel use (accommodation) is proposed to transition from the existing building to a new detached and separate six (6) storey building. Gross floor area of the hotel will increase from 375m² to 7252m². (1,833% increase).

Similarly, the bottleshop is proposed to transition from the existing building to a new single storey building. Gross floor area of the retail shop premises will increase from 227m² to 1410m². (521% increase).

In summary, as detailed under Principle 1 (above), the proposed new buildings on the site are considered to be consistent with the built form envisaged for the site in terms of height, bulk, scale

and landscape settings. However, it is contended that the scale and relationship to the pub are no longer ancillary or subservient and cannot be considered permissible under the only permissible use on site as a pub.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

Potential impacts on adjoining and surrounding properties include noise, hours of operation, loss of Sunday markets and traffic and parking. These impacts have been assessed throughout the report where it is concluded that the impacts of the development are considered acceptable.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

In summary, the proposed development site will not have a detrimental effect on the internal amenity of the development.

Conclusion

The hotel has been approved under the County of Cumberland Planning Scheme Ordinance, and the activities of motel and bottleshop can only exist as ancillary or subservient to the original approval as a hotel, not as separately defined landuses. Subsequently, these activities can be retained under the current WLEP 2011 but only as ancillary to the hotel/pub. The critical question is at what point does an increase in the size of the bottleshop and motel determine that they can no longer be considered to be ancillary or subservient to the hotel whilst still meeting the definition of a pub, 'principal purpose...consumption on site'. The proposed bottleshop and motel are of such a size and scale that, in total, the activities could not be considered ancillary, subservient to the hotel/pub, or characterised as a pub with a bottleshop and accommodation.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the 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 five (5) submissions.

The following relevant issues were raised in the submissions and each has been addressed below:

1. Noise Impact

Comment:

The concerns are that the noise generated from the use of the pub and loading docks will cause unreasonable acoustic impacts on adjoining commercial and medical properties and surrounding residential development. Specifically, the following concerns are raised;

- The acoustic report is incomplete as it has assessed noise impacts on residential development only and has not assessed adjoining commercial development or the loading dock (i.e. medical Sleep Doctor);
- The hours of operation should be '*no later than 10pm*' given the type of business on the adjoining property (Sleep Clinic);
- Noise impacts from increasing the hours of operation of the pub;
- Noise impacts from 'high noise events' within the pub, including amplified music (i.e. music bands), large sporting events and similar entertainment;
- Difference in the proposed hours of operation in the acoustic report and Statement of Environmental Effects submitted with the application; and
- Uncertain how recommended acoustic treatments within the pub will impact fire safety.

The acoustic report submitted with the application has addressed noise associated with the following areas of the site;

- The operation of the tavern, including sports bar, beer garden, function rooms and children's play area;
- The Hotel function room;
- Cars entering and exiting the parking lot;
- Loading dock operations; and
- Emissions associated with mechanical plant in principle.

Noise impacts in the report were addressed against the requirements of the following;

- Warringah Council Development Control Plan 2011;
- Office of Liquor, Gaming and Racing;
- Environment Protection Authority (EPA) Industrial Noise Policy; and
- Environment Protection Authority (EPA) Road Noise Policy.

Residential development is located on the northern side of Frenchs Forest Road East, approximately 100m from the northern elevation of the pub.

The report concludes that the noise generated from areas within the proposed development (detailed above) would not give rise to offensive noise and can comply with relevant authorities and regulations for the proposed period of operation during the day, evening and night.

Council's Environmental Investigations (Industrial) Officer has assessed the proposal, including the acoustic report and amended proposal, and reviewed the submissions in relation to noise and provided the following comments:

"The Noise impact assessment prepared by Acoustic Logic (Revision 2 dated 9/09/2015) indicated that a noise assessment was undertaken with regards to the levels of noise required from a residential receiver (where the reading is much lower from a commercial site). No objections subject to the implementations of the recommendations outlined in the acoustic

report and the following condition, furthermore, it is recommended a management plan for patrons leaving the property to be implemented to ensure offensive noise is not created to surrounding properties."

In accordance with Council's Environmental Investigations referral comments, conditions could be applied requiring a noise minimisation management plan and for acoustic treatments to be implemented as per the acoustic report. Recommendations within the report include the provision of an acoustic screen in the beer garden, a requirement for the doors of the sports bar to the beer garden to be closed during live music events and no music to be played within the outdoor gaming room.

With respect to noise generated on surrounding residential and commercial development (i.e. Sleep Clinic), conditions advising that noise levels are not to be "offensive" as defined by the Environmental Protection Authority's NSW Industrial Noise Policy.

Other conditions could apply to minimise noise impacts on adjoining and surrounding properties including restrictions on the collection of waste, loading, unloading and deliveries (i.e. outside the hours of 10pm and 6am only).

No justification has been provided to support the proposed increase in the hours of operation proposed for the redeveloped pub. However, as discussed in further detail below (*Pub: Hours of operation*), a condition could be applied for the hours of operation of the pub to close at 12 midnight which is consistent with the current hours of operation of the Parkway Hotel (pub). In this regard, any difference between the proposed hours of operation specified in the acoustic report and Statement of Environmental Effects is of no consequence.

Having regard to the recommended conditions to minimise noise, including acoustic treatments as part of the redevelopment of the existing pub, it is considered noise impacts generated from the pub will be acceptable.

The concern does not warrant the refusal of the application.

2. Pub: Hours of operation

Comment:

The concerns are that proposed hours of operation are excessive, particularly given the location of adjoining residential development, potential anti-social behaviour, the existing hours of operation and the operating hours of other pubs within the surrounding locality.

The existing hours of operation of the pub (Parkway Hotel) are as follows:

- Monday to Saturday 10am to 12 midnight
- Sunday 10am – 10pm

The proposed hours of operation for the redeveloped pub are as follows:

- Sunday to Wednesday: 10am - 12 midnight;
- Thursday and Friday: 10am - 1am;
- Saturday: 10am – 3am;
- Closure of beer garden by 12 midnight and closure of Children's play area by 10pm.

Hours of operation of other pubs within the surrounding locality are as follows:

- Belrose Hotel: Tuesday to Saturday: 9:30am–12am Sunday: 9.30am to 10pm;
- Sands Hotel (Narrabeen): Every day 10am - 12am;

- Brookvale Hotel: Monday: 10am - 11pm; Tuesday to Saturday: 10am - 12 midnight; Sunday: 11am - 10pm.

As detailed above, the proposed hours of operation are not consistent with other pubs and are considered excessive given the location of the pub and driveway in proximity to residential dwellings.

Therefore, the proposed hours of operation cannot be supported. On this basis, it would be appropriate to maintain the operating hours to that of the existing pub as follows:

- Monday to Saturday: 10am – 12 midnight;
- Sunday: 10am - 10pm;

Management of the pub can regulate the closure of beer garden and children's play area (within the opening hours).

Conditions could be applied to assist, to manage and prevent anti-social behaviour including a Plan of Management - Licenced Premises to minimise the potential impact of the operation of the premises on nearby residents, effectively minimise and manage anti-social behaviour and respond to resident complaints and ensure responsible service of alcohol and harm minimisation. The condition could also apply to include the NSW Police referral comments (for Crime Prevention through Environmental Design (CEPTED)) as part of any approval.

Subject to the recommended conditions, the concerns raised in relation to the operating hours of the pub are addressed.

3. Permissibility of development

Comment:

The concerns are that the intensification of the prohibited uses (hotel and retail premises) "*does not seem reasonable on a merit based assessment*" and that it would be more appropriate for this application to be submitted "*once the rezoning of the nearby residential area is addressed*."

As detailed under the Existing Use Rights section of the report, the applicant has not provided evidence of existing use rights for separate retail shop or motel accommodation uses. At best, retail sales of alcohol and accommodation may be established as ancillary or subservient under the primary definition of hotel/pub.

With respect to the rezoning of land, it is noted that the site is located within the Investigation Area for the Northern Beaches Hospital Precinct Structure Plan (Hospital PSP). The Hospital PSP is intended to guide future land use planning decisions which may include the rezoning of land. The site would require re-zoning to permit shops and motels for the current proposal to occur.

4. Deficient landscape open space

Comment:

The concerns are that the development does not provide a satisfactory amount of landscape open space (LOS), particularly within the front setback to Frenchs Forest Road East, and that the loss of on-site trees will not be replaced in accordance with Council's Urban Forest' policy. Also, porous paving solutions should be used to better manage stormwater and improve the landscape setting of the site.

WDCP Clause D1 Landscaped Open Space and Bushland Setting require a minimum of 33.3% LOS for this site. LOS excludes any open landscaped area with a dimension of less than two (2) metres.

Amended plans were received by Council and detail that LOS has been increased from 11% (2086.8m²) to 21.9% (4151.8m²). Further, an additional 3.3% (628.1m²) of soft landscaped areas are provided on site, giving a total of 25.2% landscaped areas on site.

As detailed under WDCP Clause D1 Landscaped Open Space and Bushland Setting section of the report, overall, a satisfactory landscape setting will be provided on-site and therefore the numerical non-compliance has been supported on merit. In this regard, a preference for porous paving is not supported.

The Arborist report submitted with the application notes that 20 trees (out of 40) are proposed to be removed, four (4) of which are trees of high retention value. As detailed by the submitted landscape plans and associated planting schedule, the proposed landscaping will provide a substantially improved on-site landscape setting compared to the existing situation, including the provision of densely landscaped buffer to Warringah Road, the removal of carparking areas from the Frenchs Forest Road East front setback and the planting of 17 native tree varieties on-site.

Council's Urban Forest policy provides a planned, systematic and integrated approach to managing Warringah's urban forest to improve the natural and built environment. In this regard, the additional trees proposed to be planted both on-site and within the Warringah Road reserve will improve the natural environment of the area which is consistent with the policy. Further, Council's Landscape Officer raises no concern to the proposed development, including the landscape treatment of the site and the removal and replacement planting of trees.

Having regard to the above, the concern raised in relation to landscape open space do not warrant further redesign or the refusal of the application.

5. Loss of Sunday markets

Comment:

The concern is that the approval of the development will result in the end of the '*Frenchs Forest - Organic Food Markets*' which has been operating on the site for over 15 years.

Should the application be approved, the market (operators) will need to find an alternative location prior to the commencement of works.

The concern does not warrant the refusal of the application.

6. External finishes of electricity sub-station

Comment:

The concern is that electricity sub-station proposed within the front setback to Frenchs Forest Road East should be artistically decorated to offset potential vandalism (graffiti) of the structure.

The application does not seek to artistically decorate the sub-station. However, a condition is included in the Recommendation for all buildings on site with frontage to Frenchs Forest Road East and Warringah Road, which includes the sub-station, to be finished in Anti-Graffiti Coating.

The preference to artistically decorate the electricity sub-station is not a determining matter and does not warrant the refusal of the application.

7. Inadequate notification

Comment:

The concern is that the development should have been notified to more surrounding properties and for a longer period of time.

The application was notified and advertised in accordance with the relevant requirements of Environmental Planning and Assessment Regulation 2000 and WDCP - A.7 Notification. The application was advertised in the Manly Daily on 3 October 2015 and notified from 6 October 2015 to 21 October 2015. Council records show that the application was notified to 78 adjoining and surrounding occupants.

Amended plans were received by Council on 1 February 2016. The development, as amended, was re-advertised in the Manly Daily on 13 February 2016 and re-notified 15 February 2016 to 1 March 2016 in accordance with the relevant requirements of Environmental Planning and Assessment Regulation 2000 and WDCP - A.7 Notification.

The concern in relation to notification has been addressed.

8. Traffic and parking impacts

Comment:

The concern is that the proposal will cause adverse traffic and parking impacts, including traffic queuing and/or congestion and potential hazards from turning into and out of the site and impacts from the future provision of traffic lights.

As detailed under the Referral section of the report, Council's Traffic Engineer has not raised concern to traffic and parking impacts generated by the development. In summary, Council's Traffic Engineer has provided the following comments;

- Intersection modelling of the Frenchs Forest Road/Romford Road intersection (with traffic signal control and traffic volumes with the Northern Beaches Hospital operating) shows that the traffic queues will not impact on the entry/exit for the development;
- The right turn in and out of the site is permitted (A condition could apply that required a review of this situation twelve (12) months after the completion of the development and commencement of operations of the Northern Beaches Hospital)
- The parking rates provided are considered acceptable; Hotel accommodation parking spaces should be allocated and marked for this use; and
- The access driveways are adequately wide enough to accommodate the proposed size of service vehicles, including semi-trailer trucks.

The concern does not warrant the refusal of the application.

9. Excessive height of hotel

Comment:

The concern is that the height of the hotel, being six (6) storeys is excessive and should not be approved under current "zoning".

No height control applies to the site (Zone B7 Business Park). The hotel facade treatment is considered acceptable in profile and is satisfactorily articulated with facades of various building elements, textures, materials and colour selection.

As detailed under the *Existing Use Rights section of the report*, the scale, bulk, and height of the building proposed to be a hotel is deemed acceptable and assessed as being compatible and consistent with development envisaged for the site (and adjoining and surrounding sites located within the B7 Business Park Zone).

The concern does not warrant the refusal of the application.

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 objection to proposed development (as amended) subject to conditions.
Development Engineers	<p>Council's Development Engineer has assessed the proposal, as amended, and provided the following comments:</p> <p><i>"The submitted stormwater management for the development is acceptable. No development engineering objection is raised to the proposed development subject to conditions."</i></p>
Environmental Investigations (Industrial)	<p>Council's Environmental Investigations (Industrial) Officer has assessed the proposal, as amended, and provided the following comments:</p> <p><i>"The Noise impact assessment prepared by Acoustic Logic (Revision 2 dated 9 /09/2015) indicated that a noise assessment was undertaken with regards to the levels of noise required from a residential receiver (where the reading is much lower from a commercial site). No objections subject to the implementations of the recommendations outlined in the acoustic report and suitable conditions for a management plan for patrons leaving the property to be implemented to ensure offensive noise is not created to surrounding properties."</i></p>
Health and Protection (Food Premises)	Council's Health and Protection (Food Premises) Officer has assessed the proposal and raises no concern to the development subject to conditions.
Landscape Officer	<p>Council's Landscape Officer has reviewed the proposal, as amended, and raises no concern to the development subject to conditions.</p> <p>Specifically, the following comments are provided by Council's Landscape Officer</p> <p><i>"Amended Plans addressing issues previously raised are noted. It is considered that the issues have been satisfactorily addressed and consequently no objections to approval are raised subject to conditions as recommended."</i></p>

Internal Referral Body	Comments
	<p>Note: Council's Landscape Officer raised the following concerns in relation to the original proposal;</p> <ul style="list-style-type: none"> • Inadequate Landscape Open Space (LOS) as the site is dominated by large areas of hard paved parking and vehicular access areas; • The Landscape Plans provide insufficient detail to indicate proposed treatments in relation to the requirements for drainage and integration of the site with the streetscape; • The Warringah Road landscape treatment is similarly unclear in relation to integration of the development in the streetscape; • Inconsistent with WLEP 2011 in relation to the Objectives of the Zone B7 Business Park (poor landscape treatment) • Inconsistent with Objectives WDCP B7 Front Boundary Setbacks; B14 Main Roads Setback; C3 Parking Facilities; D9 Building Bulk; and D1 Landscaped Open Space and Bushland Setting.
Strategic Planning -landuse	<p>Council's Strategic Planning team has assessed the proposal and raises no concern. Specifically, the following comments were provided by the Officer;</p> <p>"Current position</p> <p><i>The site is zoned B7 Business Park and pursuant to WLEP 2011 – Schedule 1 Additional Permitted Uses, pubs are permitted with consent. It is noted that the site has two road frontages, those being to Warringah Road and Frenchs Forest Road East.</i></p> <p>Strategic planning for the future of the precinct</p> <p><i>The site is located within the Investigation Area for the Northern Beaches Hospital Precinct Structure Plan (Hospital PSP). Having regard to the site's location relative to the hospital and to the proposed Roads and Maritime Services (RMS) road upgrades, Strategic Planning advises that the application should be referred to both the RMS and Council's RTW branch.</i></p> <p><i>It should be noted that the site, together with neighbouring sites, will figure strongly in considerations of the most appropriate planning outcomes for future development of the precinct surrounding the hospital. This may include future changes to the planning controls for the current B7 zoned land.</i></p> <p><i>Whilst significant work has been undertaken in relation to the preparation of the Hospital PSP, the process is currently on hold while Council continues to work with the State Government on long term transport and road infrastructure. It is anticipated that a Draft Plan will be ready for public exhibition by mid-2016. Please note that the Hospital PSP will not be a zoning document. Any changes identified by the Hospital PSP to zonings will be made through a separate process.</i></p> <p>Conclusion</p> <p><i>The planning process is not yet sufficiently advanced to provide a clear direction about the future planning regime for the subject site. Accordingly, Strategic</i></p>

Internal Referral Body	Comments
	<p><i>Planning raises no concerns in relation to Development Assessment progressing the development application for the site.</i></p> <p><i>This position is prefaced upon the application meeting current planning controls and the assessment responding to any requirements that may be forthcoming from RMS and/ or RTW to ensure that ensure that traffic generation and parking characteristics of the development will take into account the sites position in proximity to the hospital and upgraded conditions on Frenchs Forest Road, East.</i></p> <p><i>Please note, that in accordance with the protocol established in January 2015, Strategic Planning requests that the following 'Advice to Applicant' be included on any development consent that is granted for the application:</i></p> <p><i>In response to the NSW Government investing significant public infrastructure in Frenchs Forest, Warringah Council, on behalf of NSW Planning & Environment, is preparing a precinct structure plan for the area around the new Northern Beaches Hospital that will guide future development. The subject property lies within the area of influence for the Hospital Precinct Structure Plan.</i></p> <p><i>A precinct structure plan is a study that looks at an area (precinct) and develops a policy framework to guide its future development. It is not a rezoning document. It is a strategic document, which identifies the best way for an area to be developed, how this should be done and what infrastructure would be required. It is intended to form a clear basis to guide future land use planning decisions, including the rezoning of land.</i></p> <p><i>Further information about the Hospital Precinct Structure Plan can be found at www.warringah.nsw.gov.au or by contacting Council's Strategic Planning team at strategicplanning@warringah.nsw.gov.au or phoning 9942 2111."</i></p>
Strategic Planning - Urban Design	<p>Council's Strategic Planning - Urban Design Officer has assessed the proposal and raises no concern to the development, as amended. Specifically, the following comments were provided by the Officer;</p> <p><i>"Amended Plans addressing issues previously raised are noted. It is considered that the issues have been satisfactorily addressed. Consequently, no objection to approval is raised."</i></p> <p>Council's Strategic Planning - Urban Design Officer did not support the original proposal for the following reasons:</p> <ol style="list-style-type: none"> <i>1. The proposal has 11.5% landscape open space provision and does not comply with the requirement of 33.3%.</i> <i>2. As per the Warringah Development Control Plan and being a major development, the car park should be partly underground. That will enable the landscape open space and building setback</i>

Internal Referral Body	Comments
	<p><i>provisions to be complied with.</i></p> <p>3. <i>Objectives for Zone B7 Business Park call for “business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.” The proposed hotel facade treatment is very flat and plain in profile and lacks articulation. High quality facades are a balanced composition of building elements, textures, materials and colour selection. The pattern and repetitions of the facade, the proportions, and articulation of external walls and the detailed design of facade elements are important considerations that have not been addressed well.</i></p>
Traffic Engineer	<p>The application was referred to Council's Traffic Engineer and the following concerns were raised in relation to the submitted development;</p> <ul style="list-style-type: none"> • The traffic report does not provide adequate information for the assessment to be undertaken; • The assessment has not taken into account the traffic volume resulting from the road upgrades approved by Roads and Maritime Services (RMS) for Northern Beaches Hospital; • No supporting information and or survey has been provided on the parking rates applied for each use to enable the parking assessment to be undertaken; • The proposal will at least double up the existing traffic generation and will have significant impact on the road network, particularly having regard to additional traffic flow resulting from the hospital; • Vehicles access to the driveways are restricted to left turn in and left turn out, however, the traffic assignment indicates that the distribution applied in the traffic modelling has not taken into account the restriction; • Given that Frenchs Forest Road is approved to be upgraded to four lanes, the manoeuvres in and out of the driveways are to be restricted to left turn in and left turn out to avoid any queuing and congestion on the road; and • The access driveways are not appeared to be adequately wide to accommodate the proposed size of service vehicles, including semi-trailer trucks. <p>In response to the matters raised by Council's Traffic Engineer (and in conjunction with other planning concerns raised to the development), amended plans and supporting documentation was received by Council.</p> <p>Amended plans and supporting documentation included the following;</p> <ul style="list-style-type: none"> • A supplementary Traffic and Parking report to reflect changes to the traffic and parking arrangement and to provide further information in relation to the matters detailed above; • The Traffic and Parking report has utilised RMS provided traffic flows for the 2028 weekday afternoon peak period for Frenchs Forest Road East in the vicinity of the site, from the 'VISSIM' model prepared for the Northern

Internal Referral Body	Comments
	<p>Beaches Hospital Connectivity and Network Enhancements project. The report has assessed the operation of the site access point on Frenchs Forest Road East with the 2028 traffic flows provided by RMS (which include the additional hospital traffic), plus the additional traffic from the proposed Dan Murphy's development and the upgrade to Frenchs Forest Road East, using 'SIDRA'. The conclusion of the report is that the <i>'site access intersection would operate with average delays for the highest delayed movement of some 42 seconds per vehicle during weekday afternoon peak periods. This represents the level of service C, a satisfactory level of service'</i>. Also, the report concludes that the traffic signals proposed by RMS on Frenchs Forest Road East at Allambie Road and Romford Road, east and west of the site respectively, would create gaps in the traffic stream for vehicles entering and exiting sites along Frenchs Forest Road and that these gaps are not reflected in the SIDRA analysis.</p> <ul style="list-style-type: none"> • Provision of separate car park (eastern driveway) and service vehicle (western driveway) accesses; • Modifications to the western driveway to accommodate truck turning movements; • Increased parking from 250 spaces to 269 spaces, including the provision of a basement level carpark for 97 spaces located beneath the hotel; and • Changes to the car park layout, driveway, and service arrangements to facilitate the above changes. <p>The amended plans and supporting documentation was referred to Council's Traffic Engineer for assessment and no concern was raised to the development subject to conditions which have been included in the Recommendation of the report.</p> <p>In summary, the following comments were provided by Council's Traffic Engineer;</p> <ul style="list-style-type: none"> • Intersection modelling of the Frenchs Forest Road/Romford Road intersection (with traffic signal control and traffic volumes with the Northern Beaches Hospital operating) shows that the traffic queues will not impact on the entry/exit for the development; • The right turn in and out of the site is permitted, however, this turn should be reviewed 12 months after the completion of the development and commencement of operations of the Northern Beaches Hospital; • The review will allow for an assessment of queuing to the Romford Road intersection; • An assessment of the potential parking rates for the development has been provided. The parking rates provided are considered acceptable; Hotel accommodation parking spaces should be allocated and marked for this use; • The access driveways are adequately wide enough to accommodate the proposed size of service vehicles, including semi-trailer trucks. <p>Council's Traffic Engineer has provided suitable conditions.</p>
Waste Officer	Council's Waste Officer has assessed the application and raises no concern to the

Internal Referral Body	Comments
	<p>proposal, as amended, subject to conditions which have been included in the Recommendation of the report.</p> <p>The Officer provided the following comments;</p> <p><i>"Waste has no issues with the proposed commercial development. Future occupants will be required to engage a private waste contractor or apply to Council for a commercial waste service."</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal (and the proposal as amended) was referred to Ausgrid to determine the energy supply requirements for the proposed development and also with regards to Clause 45 (2) of SEPP (Infrastructure) 2007.</p> <p>In summary, no objections were raised to the proposed development subject to recommended conditions, including a requirement to relocate the Dan Murphy's sign and for a plan to be submitted to Ausgrid showing the locations and operating envelopes for all cranes or hoists to be used during construction.</p> <p>The Ausgrid recommendations are included as suitable conditions in the Recommendation of this report.</p>
NSW Roads and Maritime Services - (SEPP Infra. Traffic generating dev)	<p>The application was referred to RMS in accordance with SEPP (Infrastructure) 2007 and SEPP 64 (Advertising and Signage).</p> <p>The comments received from the RMS in relation SEPP Infrastructure has been addressed under the heading "SEPP (Infrastructure) 2007" of this report. In summary, the RMS does not raise concern with the proposed development in relation to the proposed entries from Frenchs Forest Road East.</p> <p>The Recommendations of RMS are included as conditions in the Recommendation of this report.</p> <p>RMS have also provided the following comments in relation to the speed limit on Frenchs Forest Road East (currently 50 km per hour):</p> <p><i>"Frenchs Forest Road East is a local road and Roads and Maritime has no indication that the speed limit will be 80km/h. The Speed Management section within Roads and Maritime were consulted and it was advised that Frenchs Forest Road East will not be 80km/h. The 80km/h speed limit seems to be high for an urban local road."</i></p> <p>It is noted that the RMS comments received do not raise objection to the proposed signage per SEPP 64.</p>

External Referral Body	Comments
	The development as amended was also referred to the RMS and no concern was raised to the amended development subject to the recommendations of the RMS being included as conditions.
NSW Police - Local Command (CPTED)	<p>The application was referred to NSW Police in accordance with Section 79C the Environmental Planning and Assessment Act, 1979 for the assessment of Crime Guidelines, a Safer by Design Crime Risk Evaluation.</p> <p>The NSW Police has reviewed the proposal and conducted an informal crime risk assessment on the premises to provide recommendations to minimise crime risk.</p>

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)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

SEPP 64 - Advertising and Signage

Signage is proposed for all three on-site buildings. Specifically, the following signage is proposed;

- Site entry: 6.0m high pylon sign located within the front setback to Frenchs Forest Road East;
- Pub: Illuminated wall signage located on the northern and eastern elevation;
- Hotel: Five illuminated identification wall signs, comprising one on the lower floor and one sign per elevation above the 6th storey; and
- Retail Shop: Wall signage on eastern, western and northern elevations, including illuminated wall sign on eastern elevation.

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1) (a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	Proposed pylon and illuminated signage on the 6 th storey is not compatible with the existing or future character of the locality. Signage should be at the street level more aligned to a pedestrian scale or landscaped setting, not elevated.	NO
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	Proposed signage is not consistent with adjoining and surrounding development within the B7 Business Park zone which comprises a range of office, industrial and warehouse uses. The signage will detract from the character of residential development located on the northern side of Frenchs Forest Road East.	NO
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The site is located on a ridge line which is surrounded to the north by residential and non urban bushland setting. It will be highly visible to a wide catchment of sensitive areas.	NO
3. Views and vistas Does the proposal obscure or compromise important views?	The signage does not obscure or compromise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	Yes. Elevated illuminated signs a level 6 and pylon sign will dominate the skyline to a wide catchment	NO
Does the proposal respect the viewing rights of other advertisers?	Satisfactory.	YES
4. Streetscape, setting or landscape Is the scale, proportion, and form of the proposal appropriate for the streetscape, setting or landscape?		NO
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?		NO
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	No clutter is generated by the signage.	YES
Does the proposal screen unsightliness?	The signage is for new and refurbished buildings and therefore is not to screen unsightliness.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or	Illuminated identification signage on the sixth storey of the hotel and the 6metre high pylon sign will protrude above the	NO

locality?	tree canopies and other buildings within the immediate and surrounding area.	
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The signage is considered compatible with the scale, proportion and other characteristics of the site and building.	YES
Does the proposal respect important features of the site or building or both?	The signage will not detract from the architectural quality of the buildings on site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building or both?	The signage is not considered to be inappropriate in relation to innovation and imagination in relationship to the building on site.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No. However, it is anticipated that illuminated signage will provide identification and location of buildings and their respective uses on the site.	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other forms of accommodation?	The proposed signage would not cause concern in relation to glare or have a direct amenity impact on residences	YES
Can the intensity of the illumination be adjusted, if necessary?	The illumination is not required to be adjusted as the signage is not flashing and will be subject to recommended condition to limit lighting intensity.	YES
Is the illumination subject to a curfew?	No illumination curfew is provided on the site as the illuminated signage at inappropriate heights would not be supported. Signage could be subject to curfew conditions.	YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	Proposed signage will not reduce the safety for any public road, pedestrians or bicyclists.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	Proposed signage will not reduce sightlines.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality with the exception of the 6 m high pylon sign, which should be no greater than 3 metres and the removal of any form of illumination of signage on the motel above level 1 balustrading, with curfew conditions to limit the hours of illumination. The proposal, subject to conditions could be deemed to be consistent with the provisions of the SEPP and its underlying objectives.

SEPP (Infrastructure) 2007

Ausgrid

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:

In summary, Ausgrid does not raise objection to the proposed development subject to recommended conditions, including a requirement to relocate the Dan Murphy's sign and for a plan to be submitted to Ausgrid showing the locations and operating envelopes for all cranes or hoists to be used during construction.

The Ausgrid recommendations are included as suitable conditions in the Recommendation of this report.

In response to these comments, amended plans were received by Council which showed that the Dan Murphy's sign has been relocated.

Roads and Maritime Service (RMS)

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Comment:

The application was referred to the RMS who did not raise any objection to the proposal, including the proposed entries from Frenchs Forest Road East. The Recommendations of RMS are included as suitable conditions in the Recommendation of this report.

Warringah Local Environment Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
2.5 Additional permitted uses for particular land	Yes

Clause	Compliance with Requirements
5.8 Conversion of fire alarms	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.5 Additional permitted uses for particular land

The site is located within the B7 Business Park and listed in Schedule 1 – ‘Additional Permitted Uses’ of Warringah Local Environmental Plan 2011 (Pub).

A ‘Pub’ is defined under WLEP 2011 as follows:

"means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

Note. Pubs are a type of food and drink premises—see the definition of that term in this Dictionary".

Zone B7 Business Park

Proposed Use	Permitted or Prohibited
Pub	Permitted with consent (Schedule 1 – ‘Additional Permitted Uses’ of Warringah Local Environmental Plan)
Retail Shop (bottle shop)	Prohibited use, however as an ancillary activity to the pub, where the bottle shop by its size or scale does not detract from the principal purpose of consumption on the premises the use may be considered
Hotel or motel Accommodation	Prohibited as an independent landuse

The underlying objectives of the B7 Business Park zone

- ***To provide a range of office and light industrial uses.***

Comment

The development seeks to continue and significantly intensify the uses on site being Pub (Parkway Tavern), Retail Shop premises (Dan Murphy's) and Hotel and Motel Accommodation (Parkway Hotel).

This development does not propose office or light industrial land uses, although the pub is a

permissible use under schedule 1 of WLEP 2011, the independent and separate motel and retail shop clearly do not meet this objective.

- ***To encourage employment opportunities.***

Comment:

An Economic Impact Assessment (prepared by Location) submitted as part of the development application provides that the estimated construction costs are \$30 million which will result in "some 163 direct jobs, as well as 260 jobs in the broader economy." This is a short term employment generation during the construction phase. In addition, the subject facilities on the site will also provide additional employment. The Statement of Environmental Effects submitted with the application estimates the development will provide for 120 jobs which are significantly more than the current situation which employs less than 20 persons, however, the site is considered to be highly under utilised.

- ***To enable other land uses that provides facilities or services to meet the day to day needs of workers in the area.***

Comment:

The pub will continue to cater for workers within the B7 Business Park zone, the nearby commercial development, and the Northern Beaches Hospital. It is questionable that the scale of the bottleshop or the motel will meet the day to day needs of workers in the area. The local area is already serviced by small scale retail alcohol outlets within appropriate zones.

The proposal does not satisfy the Objective.

- ***To create business park employment environments of high visual quality that relate favourably in architectural and landscape treatment to neighbouring land uses and to the natural environment.***

Comment:

The proposed physical works will improve the site through upgrading the existing Parkway Hotel and providing two new buildings and improved landscape treatment of the site.

The proposed buildings, including the hotel facade treatment, is considered acceptable in profile and satisfactorily articulated with facades of various building elements, textures, materials and colour selection.

The landscape setting provided will relate favourably to the built form and surrounding natural environment.

The proposal satisfies the Objective.

- ***To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of adjoining or nearby residential land uses.***

Comment:

The development seeks to continue and significantly intensify the uses on site. The intensification of the uses has been assessed as not causing conflict with adjoining and surrounding development within the B7 Business Park zone and R2 Low Density Residential.

Suitable conditions could be included to minimise potential noise impacts generated from the uses within the site, including a requirement for a Plan of Management - Licensed Premises Plan and reduction in proposed operating hours of the pub.

The proposal satisfies the Objective.

WARRINGAH DEVELOPMENT CONTROL PLAN

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B4 Site Coverage (site area 1.897ha)	Max 33.3%	26.3% (4990m ²)	N/A	Yes
B5 Side Boundary Setbacks	Merit (nil)	Pub Hotel Retail Shop	Nil Nil Nil	Yes Yes Yes
B7 Front Boundary Setbacks (frontage to Frenchs Forest Road East)	10m	12.3m (retail shop) 10m: car park	Nil Nil	Yes Yes
B14 Main Roads Setback (frontage to Warringah Road)	30.0m	28.5m: hotel 25.5m: ramp to basement car park	5% (1.5m) 15% (4.5m)	No No
D1 Landscaped Open Space (LOS) and Bushland Setting	33.3% (6317m ²)	21.9% (4151.8m ²)	34.3% (2165.2m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4 Site Coverage	Yes	Yes
Side Setbacks - B7	Yes	Yes
Land in the vicinity of Warringah Road, Allambie Road and Wakehurst Parkway, Frenchs Forest with frontage to Warringah Road or Wakehurst Parkway	Yes	Yes
B14 Main Roads Setback	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
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
Non-Residential Development	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
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
D23 Signs	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B14 Main Roads Setback (frontage to Warringah Road)

Description of non-compliance

The hotel and ramp to the basement car park have setbacks of 25.5m and 28.5m to Warringah Road, respectively, which does not comply with the minimum 30.0m requirement of the control.

This represents a variation of 15% (4.5m) and 5% (1.5m), respectively.

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 a densely landscaped buffer between the development and the main road/s.***

Comment:

Existing and proposed landscaping within the Warringah Road setback and road reserve will provide a satisfactory physical screen to soften and minimise the visual impact of the built form, particularly given the relatively minor extent of the non-compliance and adequate spatial separation to Warringah Road.

The development satisfies the Objective.

- ***To enhance the aesthetic quality of main roads.***

Comment:

At the southern portion of the site, the existing hard paved car park extends the width of the car park and extends from the southern elevation of the existing Parkway Hotel to the southern boundary (facing Warringah Road).

The proposal seeks to provide substantial landscaped open space areas, including small to large size canopy trees, within this setback area and road reserve which will substantially improve the landscape setting of this setback and enhance the aesthetic quality of main roads.

The development satisfies the Objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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 is supported, in this particular circumstance.

C2 Traffic, Access and Safety

As detailed under the Referral section of the report, Council's Traffic Engineer has reviewed the proposal and relevant traffic and parking reports submitted with the application and raises no concern to the development, including the car park, entry/exit access driveways and loading bays subject to conditions which could be applied.

Council's Traffic Engineer has provided the following relevant comments in relation to parking and traffic;

- Traffic queues should not impact on the entry/exit for the development (with future traffic signal controls and traffic volumes associated with the Northern Beaches Hospital operating);
- The right turn in and out of the site is permitted, however, this turn should be reviewed after 12 months (to assess traffic queuing to Romford Road); and
- The access driveways are not adequately wide enough to accommodate the proposed size of service vehicles, including semi-trailer trucks.

C3 Parking Facilities

A total of 269 on-site carparking spaces are provided by the development. The provision of onsite carparking is as follows:

- Pub - Parkway Hotel: 34 spaces located adjacent pub;
- Retail Shop Premises - Dan Murphy's: 71 spaces located off the eastern elevation of building; and
- Hotel Accommodation - Parkway Hotel: 67 ground level carparking spaces located adjacent to hotel and pub and 97 basement level spaces located beneath the hotel.

Council's Traffic Engineer has reviewed the proposal and relevant traffic and parking reports and raises no concern to the development, including the number of onsite carparking spaces provided,

subject to conditions which could be applied.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Landscaped Open Space (LOS) is calculated at 21.9% (4151.8m²) and increased to 25.2% (4779.9m²) when including areas with a dimension less than 2m.

This represents a variation of 34.3% (a shortfall of 2165.2m²) to the minimum 33% requirement of the control.

Merit consideration

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

- ***To enable planting to maintain and enhance the streetscape.***

Comment:

Existing LOS is calculated at 11% and includes large areas of hard bitumen carparking areas, being nearly the width of the lot and contained within both front setbacks.

LOS for the proposed development was also calculated at 11.5%, a marginal improvement to the existing situation.

Both front setbacks remained devoid of any meaningful LOS. In summary, the applicant was advised that LOS was deemed insufficient given the scale of redevelopment proposed and that the development was relying on existing use rights and could not be supported under relevant existing use right planning principles.

Amended plans were received which showed that landscape open space had increased to approximately 21.9% (4151.8m²). This included substantial areas of LOS within both front setbacks, the removal of carparking areas and access driveways from both front setbacks and the provision of a basement car park beneath the hotel.

An additional 3.3% (628.1m²) in soft landscaped areas (i.e. areas with dimensions less than 2.0m) is also provided onsite, making a total of 25.2% landscaped areas.

Landscaped areas are proposed to be planted with a variety of grasses, low lying shrubs, medium high shrubs and small to high size canopy trees of a size and density to enhance the streetscapes of Warringah Road and Frenchs Forest Road East.

Based on the above, the amount of landscaped areas provided is considered acceptable, particularly given the proposed site will transition from a poor to highly valued landscape setting.

The development satisfies the Objective.

- ***To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.***

Comment:

Existing LOS is calculated at 11% and the development will provide a total increase in landscaped areas to 25.2% (4779.9m²). In this regard, the increase in landscaped areas will enhance indigenous vegetation, topographical features and habitat for wildlife.

The development satisfies the Objective.

- ***To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk, and scale of the building.***

Comment:

As detailed above, LOS is calculated at 11% and the development will provide an increase in landscaped areas to 25.2% which will enable the establishment of low lying shrubs, medium high shrubs, and canopy trees of a size and density to mitigate the height, bulk and scale of the building.

The development satisfies the Objective.

- ***To enhance privacy between buildings.***

Comment:

Adequate spatial separation and landscaping within the front setback to Frenchs Forest Road East is provided to maintain privacy to nearby residential development.

The development satisfies the Objective.

- ***To accommodate appropriate outdoor recreational opportunities that meets the needs of the occupants.***

Comment:

The proposed landscaped open space will allow for adequate recreational areas for the occupants of the hotel to utilise, including the outdoor landscaped lawn area located adjacent the hotel.

The development satisfies the Objective.

- ***To provide space for service functions, including clothes drying.***

Comment:

Not applicable given the commercial nature of the development.

- ***To facilitate water management, including on-site detention and infiltration of stormwater.***

Comment:

The proposed landscaped open space is sufficient enough in area to assist and facilitate water management, including on-site detention and infiltration of stormwater.

The development satisfies the Objective.

The development satisfies the Objective. Having regard to the above assessment, it is concluded that the proposed development is consistent 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 is supported, in this particular circumstance.

D3 Noise

An acoustic report (Acoustic Logic (Revision 2 dated 9 /09/2015) was submitted with the application to assess potential noise impacts on adjoining development. The site is bounded by commercial and industrial uses on the western and eastern boundaries, Warringah Road reserve to the south and residential development to the north on the northern side of Frenchs Forest Road East.

The report conducted an assessment of potential noise impacts associated from the re-development of the site and addressed the following noise sources;

- The operation of the redeveloped pub, including sports bar, beer garden, function rooms and children's play area;
- The Hotel function room;
- Cars entering and exiting the parking lot;
- Loading dock operations; and
- Emissions associated with the mechanical plant in principle.

Noise impacts in the report were addressed against the requirements of the following;

- Warringah Council Development Control Plan 2011;
- Office of Liquor, Gaming and Racing;
- Environment Protection Authority (EPA) Industrial Noise Policy; and
- Environment Protection Authority (EPA) Road Noise Policy.

Residential development is located on the northern side of Frenchs Forest Road East, approximately 100m from the northern elevation of the pub.

The report concludes that the noise generated from areas within the proposed development (detailed above) can comply with relevant authorities and regulations for the proposed period of operation during the day, evening and night. However, the concern is valid that the proposed extended trading hours to 1am and 3am will have a detrimental impact of the residential premises in Frenchs Forest Rd East from vehicles and patron leaving the site at closing time.

Council's Environmental Investigations (Industrial) Officer has also provided comments in relation to the development, including the acoustic report and provided the following comments:

"The Noise impact assessment prepared by Acoustic Logic (Revision 2 dated 9 /09/2015) indicated that a noise assessment was undertaken with regards to the levels of noise required from a residential receiver (where the reading is much lower from a commercial site). No objections subject to the implementations of the recommendations outlined in the acoustic report and the following condition, furthermore, it is recommended a management plan for patrons leaving the property to be implemented to ensure offensive noise is not created to surrounding properties."

As per the comments above, suitable conditions could be applied requiring the acoustic report recommendations to be implemented as part of the development, including acoustic screening in the beer garden, a requirement for the doors of the sports bar to the beer garden to be closed during live music events and no music to be played within the outdoor gaming room.

Further, additional conditions could be applied for a Plan of Management - Licensed Premises, restrictions on the hours of operation for the pub and use of delivery hours and loading dock and a standard requirement for the use of the site not to give rise to '*offensive noise*' as defined by the Environmental Protection Authority's NSW Industrial Noise Policy and any other appropriate legislation.

The proposed hours of operation of the pub are unacceptable and would warrant refusal, however, such issues along with noise management could be conditioned to be acceptable and not unreasonable.

D6 Access to Sunlight

The shadow diagrams submitted with the application show that the development will not overshadow surrounding residential development, including residential development located on the northern side of Frenchs Forest East.

D7 Views

No submissions were received from the notification and advertisement of the application in relation to view loss. Notwithstanding, site inspections were carried out on the road reserve areas located on Frenchs Forest Road East and corner streets, including Romford Road, Hurdis Avenue, Harmston Avenue and Inverness.

The site inspections were carried out to assess whether the proposed development of the site would impact on the available views from residential development located on these streets. It is concluded from the site inspections that the development, including the six (6) storey hotel, would maintain view sharing to nearby and surrounding residential development.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 44,979,000		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 427,301
Section 94A Planning and Administration	0.05%	\$ 22,490
Total	1%	\$ 449,790

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section

79C of the Environmental Planning and Assessment Act, 1979, the provisions of relevant Environmental Planning Instruments, including Warringah Local Environment Plan 2011, the relevant codes and policies of Council, the relevant provisions of the Warringah Development Control Plan 2011. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

The proposed development represents a major redevelopment of the site. Currently, the site is occupied by a pub (Parkway Hotel) which comprises of a tavern, accommodation, and drive through bottleshop. Apart from the hotel, the bottleshop and motel have been assumed to have been established as part of consent in 1960 for a hotel, not as separate landuses. Since 1960, Council has approved refurbishments and additions to the hotel which plans and descriptions of development on the consents clearly indicated the existence of a motel and bottleshop. There has been no issue raised historically in these approvals with the permissibility, however, none of these relevant approvals have sought to establish new uses as motel or retail shop or change the dominant use of the site.

The significant enlargement of the bottleshop and motel, which only exists under the 1960 consent as a hotel, to a major retail (shop) facility and the motel is not considered to be ancillary or subservient to the definition of a pub under WLEP 2011.

The retail and motel facility as submitted would require consideration under a planning proposal to make the proposed uses permissible as independent activities due to their size and scale. The site is within land subject to a structure plan being prepared for the new hospital precinct. The structure plan should be the strategic document that delivers zonings and subsequent landuses to cater for growth into the future.

In the context of the current bottleshop being on site, this is no difference to any other pub or registered club in NSW which sells alcohol for take away consumption. The Liquor Act allows hotel licenses to retail alcohol sales for take away consumption. This does not change a definition under a planning instrument from the hotel to retail in any pub or club. This proposal changes the relationship by the scale and size of the bottleshop and motel to create 3 separate activities which were previously approved under the defined use as a hotel. The bottleshop, motel, and approved restaurant could only ever be considered ancillary activities to the hotel.

The legal cases of *Jojeni* and *Boyts Radio & Electrical* cited in support of the existing use rights, that is characterised of uses to establish independent and separate uses, are not directly relevant as in both cases the arguments centred around uses which were not defined in the consents or planning controls of the day. In this application consent was issued in 1960 for a defined land use, 'hotel' under the County of Cumberland Planning Scheme Ordinance.

Whilst today a pub is a permissible use under Schedule 1 of WLEP2011, and the current ancillary activities fall under the original approval as a hotel. There cannot be existing use rights established for an independent and separate retail or motel activities as no evidence (consent for motel or shop) has been provided to establish the lawful commencement of such uses outside the original 1960 consent. The applicant failed to establish existing use rights, therefore as the proposed uses are not permissible the application must be refused.

RECOMMENDATION

THAT the Sydney North Planning Panel as the consent authority refuse DA2015/0901 for Demolition Works, Alterations, and Additions to Licensed Premises (Hotel), Construction of Hotel Accommodation and Retail Premises. on land at Lot X DP 405206, 39 Frenchs Forest Road East, FRENCHS FOREST, for the following reasons:

Warringah Local Environmental Plan 2011 – B7 Business Park

Pursuant to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act 1979 the proposed retail premises and hotel accommodation is not permissible in the B7 Business Park zone.