

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

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| JRPP No | 2015SYE092 |
| DA Number | MOD2015/0152 |
| Local Government Area | Sydney East Region |
| Proposed Development | Modification of Development Consent No. DA2014/0875 granted for Demolition and Excavation works and Construction of Seniors Housing, a Registered Club, a Childcare Centre and associated car parking and landscaping (Harbord Diggers Club Site) |
| Street Address | Lot 12 DP 1197725 , 80 Evans Street FRESHWATER NSW 2096 |
| Applicant/Owner | Urbis Pty Ltd |
| Recommendation | Refusal |
| Report by | Malcolm Ryan, Deputy General Manager, Environment |

ASSESSMENT REPORT AND RECOMMENDATION

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| Application Number: | Mod2015/0152 |
| Responsible Officer: | Luke Perry |
| Land to be developed (Address): | Lot 12 DP 1197725 , 80 Evans Street FRESHWATER NSW 2096 |
| Proposed Development: | Modification of Development Consent DA2014/0875 granted for Demolition and Excavation works and Construction of Seniors Housing, Registered Club, Childcare Centre and associated car parking and landscaping (Harbord Diggers Club) |
| Zoning: | LEP - Land zoned R2 Low Density Residential LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011 |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Joint Regional Planning Panel (JRPP) |
| Land and Environment Court Action: | No |
| Owner: | Mount Pritchard & District Community Club Ltd |
| Applicant: | Mount Pritchard & District Community Club Ltd Urbis Pty Ltd |
| Application lodged: | 17/07/2015 |
| Application Type: | Local |
| State Reporting Category: | Other |
| Notified: | 31/07/2015 to 03/09/2015 |
| Advertised: | 01/08/2015 |
| Submissions: | 7 |
| Recommendation: | Refusal |

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;

- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.6 Exceptions to Development Standards
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan – C2 Traffic, Access and Safety
 Warringah Development Control Plan – C3 Parking Facilities
 Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

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| Property Description: | Lot 12 DP 1197725 , 80 Evans Street FRESHWATER NSW 2096 |
| Detailed Site Description: | <p>The site comprises the following parcel of land, Lot 12 DP 1197725, No. 80 Evans Street, Freshwater.</p> <p>The combined site has an area of 15,599 square metres and is irregular in shape. The site is located on a visually prominent headland between South Curl Curl Beach and Freshwater Beach. The site has three street frontages; being Evans Street to the south-west, Carrington Parade to the west/north-west and Lumsdaine Drive to the north-east.</p> <p>The topography of the site is characterised by a moderate fall to the north-east from the north eastern side of the existing Harbord Diggers Club building and car park and a gradual fall to the west on the south-west side of the existing Harbord Diggers Club building and car park.</p> <p>The Lot known as No.80 Evans Street is currently occupied by the part four and part five storey Harbord Diggers Club building and two storey car park. Three bowling greens are provided on the roof of the car park structure.</p> <p>The existing Harbord Diggers Club building incorporates a nil setback to Evans Street for a length of approximately 48m. The existing adjoining car park is setback 6.5m from the boundary adjoining Evans Street. Three vehicular crossings, a service block and other structures are located within the 6.5m setback.</p> |

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| | <p>The setback of the existing car park to Carrington Parade varies from 2.3 metres (midway along Carrington Parade) to approximately 20 metres (at the corner of Carrington Drive and Evans Street).</p> <p>Vehicular and pedestrian access to the Harbord Diggers Club building is currently provided from Evans Street. Three vehicular crossings have been provided. One vehicular crossing is the entry to the Club's car park, the second is the exit from the car park and the third provides access for members and provides access to the loading dock.</p> <p>Due to the visual prominence of the site, the existing Harbord Diggers Club building and surrounding land can be viewed from a number of vantage points to the north.</p> <p>The site adjoins McKillop Park to the north east. McKillop Park is a Crown Reserve.</p> <p>Development on the south-west side of Evans Street is characterised by apartment style dwellings. The development to the west is generally characterised by detached style dwelling houses. The topography of the land to the west of the site has resulted in many of the dwellings to the west being elevated above the subject site.</p> <p>The site is in the vicinity of the coastal cliffs located along the northern side of Lumsdaine Drive. The coastal cliffs are identified as a heritage 'Conservation Area' in Warringah Local Environmental Plan 2011.</p> |
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Map:



SITE HISTORY

Development Application No. DA2014/0875

This application for Demolition and Excavation works and Construction of Seniors Housing, a Registered Club, a Childcare Centre and associated car parking and landscaping (Harbord Diggers Club Site) was approved by the Joint Regional Planning Panel on 1/12/2014.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to Modify Development Consent No. DA2014/0875 granted for Demolition and Excavation works and Construction of Seniors Housing, a Registered Club, a Childcare Centre and associated car parking and landscaping (Harbord Diggers Club Site).

Specifically, the modifications involve:

Basement 3

- Basement 3 has been deleted and the club back of house facilities and plant redistributed to the two basement levels above.

Basement 2

- The basement has been setback from the Lumsdaine Drive boundary;
- Mechanical plant previously located on Basement 3 has been accommodated adjacent to the eastern boundary;
- The car parking provision has reduced by 29 spaces and the layout has been amended to incorporate improved ramp access and internal circulation;
- The club lobby has been relocated towards the western boundary; and
- The seniors living facilities have been reconfigured.

Basement 1

- The basement has been setback from the Lumsdaine Drive boundary
- Mechanical plant previously located on Basement 3 has been accommodated adjacent to the lift cores and the southern and eastern boundary;
- The car parking provision has increased by 26 spaces and the layout has been amended to incorporate improved ramp access and internal circulation; T
- The club lobby has been relocated towards the western boundary; and
- The club facilities have been removed.

Registered Club

- The gross floor area has reduced by 2,111m²;
- Access from the Porte Cochere has been moved the west. The Lumsdaine Drive access point has been moved west to reflect the change. The proposed modifications to access have resulted in consequent changes to the Lumsdaine Drive building line and overhang;
- The vehicular access ramps to Evans Street and the basement have been reconfigured resulting in a single ramp exit onto Evans Street;
- The Lumsdaine Drive landscaped outdoor area has increased in size;
- The prescriptive internal layout has been removed and hairdresser and day spa have been included;
- The 'Palm Gully' void has been reshaped to accommodate the relocation of the club access and reduction in floor space;
- The stairs to the upper ground level have been relocated to the eastern boundary; and
- The loading dock has been reduced in size.

Childcare Centre (Building C)

Modifications have been made to building footprint and façade, and the full site awning to the outdoor play area has been removed; and the pedestrian bridge access from Carrington Parade has been removed and replaced with ramped access from the corner of Evans Street and Carrington Parade.

Seniors Living

Buildings A & B

- Introduction of open stairs with the common corridors
- Minor amendments to internal apartment layouts; and
- Adjustments to skylight size and location; and painted lift overrun.

Building C

- Relocated building access;
- Minor amendments to internal apartments layouts; and
- Adjustments to skylight size and location; and painted lift overrun.

Building D

- Modifications to the building envelope along the Evans Street and internal courtyard facades. This has resulted in subsequent modifications to the building façade and setbacks;
- Building lobby street entries relocated to the internal courtyard and replaced by individual gates to apartments;
- Introduction of open stair within corridor and amendments to internal layouts;
- Reduction of one apartment; and
- Adjustments to skylight size and location; and painted lift overrun.

Buildings E & F

- Modifications to the building envelopes and subsequent internal reconfigurations;
- Removal of the concrete fins on the facades; and
- Adjustments to skylight size and location; and painted lift overrun.

Roofs

- Removal of the green roof and installation of pebble roof surface and balcony heathland planting.

Amendments to Conditions of Consent

- Modify Condition No. 4 'Facilities Associated with Harbord Diggers Club' to permit and include a Hairdresser and Day Spa;
- Modify Condition No. 6 (b) 'General Requirements' as follows to permit asbestos removal trucks to be on site from 7.00am:

b) Demolition and excavation works are restricted to:

a. 8.00 am to 5.00 pm Monday to Friday only.

*(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing **excavated** materials from the site).*

This will allow for trucks to be loaded only from 7.00am. Excavation will continue to be restricted to the hours of 8.00am to 5.00pm.

- Modify Condition No. 18 'Stormwater Disposal' to reflect further stormwater design resulting in the need for a minimum rainwater tank storage volume of 50kl rather than 200kl;
- Modify Condition No. 73 'Allocation of spaces' to reflect the proposed new allocation of spaces across each use of the site;
- Delete Condition No. 12 (b) (3) – 'Traffic Refuge Islands' as the condition impacts on road widths which allow the eastbound bus stop of Evans Street to be retained;

- Delete Condition No. 19 (b) 'Submission of Engineering Plans' relating to the deletion of layby bays on Evans Street and Lumsdaine Drive to allow for the originally proposed layby bays to be retained as a convenient pick up drop off area; and
- Delete Condition No. 80 'Restriction of Landscaping' on the roofs as the roof top landscaping is no longer proposed.

Note: A review of the submitted plans indicates that there is no reduction in the number of apartments as indicated within the applicants Statement of Environmental Effects. Rather, the apartment mix has been modified resulting in an overall increase of 6 bedrooms across the whole seniors living component of the development.

AMENDMENTS TO THE SUBJECT APPLICATION

Following a preliminary assessment of the application, Council's Traffic Engineer raised concerns regarding the proposed modification and narrowing of the exit driveway onto Evans Street to one lane, the proposed modification to the allocation of car spaces, modification to the refuge island on Evans Street and the proposed layby on Evans Street.

Subsequently, a meeting was held with the applicant to discuss the above issues. The applicant submitted additional information to seek to satisfy the concerns raised above.

The information included a revised site plan, widening the exit driveway to two lanes from the exit of the Porte Cochere to the kerb, formally withdrawing the modification to the refuge island and layby on Evans Street and a revised allocation of car spaces resulting in a loss of 2 spaces from the seniors living component of the development. The spaces allocated to the club and childcare centre remain as approved under DA2014/0875.

The amended allocation of parking spaces is as follows:

- *133 - Seniors apartments*
- *20 – Visitor Seniors apartments*
- *527 - Registered Club including associated facilities*
- *23 - Child Care*

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:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and 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 given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2014/0875, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:

| Section 96(2) - Other Modifications | Comments |
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| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: | |
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2014/0875. |
| (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and | Development Application DA2014/0875. Did not require concurrence from the relevant Minister, public authority or approval body. |
| (c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan. |

| Section 96(2) - Other Modifications | Comments |
|---|---|
| consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | See discussion on “Public Exhibition” in this report. |

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

| Section 79C 'Matters for Consideration' | Comments |
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| Section 79C (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. |
| Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument | None applicable. |
| Section 79C (1) (a)(iii) – Provisions of any development control plan | Warringah Development Control Plan 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) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional</p> |

| Section 79C 'Matters for Consideration' | Comments |
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| | <p>information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</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. This matter has been addressed via a condition in the original consent.</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). 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 insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</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). This matter has been addressed via a condition in the original consent.</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 matter has been addressed via a condition in the original consent.</p> |
| <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> | <p>Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. In summary, the modified development will not result in any adverse impacts on the natural or built environment subject to conditions which</p> |

| Section 79C 'Matters for Consideration' | Comments |
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| | <p>could be imposed should the panel be of a mind to approve the application.</p> <p>Social Impact The proposal will not have a detrimental social impact in the locality considering the mixed use character of the proposal. The new and improved registered Club will provide positive social impacts in terms of recreation and leisure opportunities for the locality.</p> <p>The proposal will also result in positive social outcomes in terms of providing housing to accommodate the needs of seniors and people with a disability.</p> <p>Economic Impact The proposal will result in a positive economic impact on the locality as the mixed uses of the development will assist to strengthen economic vitality in this area by maintaining the registered Club on the site, and providing additional housing opportunities and commercial activity on site.</p> |
| Section 79C (1) (c) – the suitability of the site for the development | 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 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. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the 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 7 submission/s from:

| Name: | Address: |
|--------------------------|--|
| William Rhodes Kugler Jr | 14 / 69 Evans Street FRESHWATER NSW 2096 |

| Name: | Address: |
|------------------------|--|
| Mr Trevor David Schwab | 9 / 69 Evans Street FRESHWATER NSW 2096 |
| Ms Kim Bowman | 44 Oceanview Road FRESHWATER NSW 2096 |
| Carolann Bristol | 16 / 69 Evans Street FRESHWATER NSW 2096 |
| Ms Kate Casey | 16 / 69 Evans Street FRESHWATER NSW 2096 |
| Mr Reece Reynolds | 22 The Drive FRESHWATER NSW 2096 |
| Ann Elizabeth Sharp | 77 Brighton Street CURL CURL NSW 2096 |

The matters raised within the submissions are addressed as follows:

1. Loading of Excavated Materials

The following specific concerns have been raised:

- *The approved DA2015/0875 restricted Excavation works to the hours of 8am to 5pm Monday-Friday. This MOD2015/0152 asks for permission to start movement of heavy trucks and loading of excavated materials starting at 7am. On top of all the other inconveniences to residential neighbours over a period of 2 years, this additional inconvenience is not acceptable.*
- *Truck noise before 8am and after 5pm - do not permit - as per DA2014/0875. Till (sic) 0800Hrs as approved DA2014/0875.*
- *Trucks should not be permitted earlier than 8am nor after 5pm. People live here. This is going to be a huge building site; it should not be made totally unbearable.*

Comment:

The modified proposal seeks to allow for the loading of excavated materials to occur from 7.00am rather than 8.00am as currently required by Condition No. 6- 'General Requirements' of DA2014/0875.

The applicant has indicated that the demolition works will involve the removal of asbestos from the site. The nearest asbestos material disposal centre is in Eastern Creek, which is 61km from the subject site. In order to remove the material in a timely and efficient manner the proposal seeks to allow for trucks to be on site and loaded from 7.00am onwards.

It is important to note that Condition No.6 permits building construction and delivery of materials between the hours of 7.00am to 5.00pm Monday to Friday.

In this regard, the noise generated from the loading of trucks with asbestos containing material is considered to be similar to that of the noise expected to be generated from the activities associated the delivery of materials or general construction of which is permitted between the hours of 7.00am and 5.00pm, Monday to Friday.

Therefore, no objection is raised to the proposed modification.

However, given that there will be an increase in heavy vehicles during the hour between 7.00am and 8.00am, should the Panel be of a mind to approve the application, a condition

could be included to ensure that any trucks used for the purposes of loading and transporting excavated materials during these times enter and exit via Lumsdaine Drive, away for the nearby residential properties.

This matter does not warrant refusal of the application and appropriate conditions could be included should the Panel approve the application.

2. Drop-off Area on Evans Street and Lumsdaine Drive

The following specific concerns have been raised:

- *The approved DA2015/0152 specifically disallowed a drop-off area on Evans Street. Cars dropping off people should use the internal drive-in ramp in order to minimize the noise impact on Evans Street. However, this Mod2015/0152 proposes that two drop-off spaces be built on Evans Street. This will significantly increase the noise from cars stopping and starting and car doors slamming 24/7. This is unacceptable to the near neighbours.*
- *Noise from the club should be kept as low as possible - therefore the 2 drop offs in Evans Street should not be permitted.*
- *Having drop off spaces in Evans street will produce even more noise than currently experienced, and is not acceptable.*
- *Condition 19 (b): "Layby bays proposed in Evans and Lumsdaine Drive are not permitted and should be deleted." Lumsdaine Drive is not suitable for a layby or drop-off access for two cars, as the road is narrow and located above a cliff-line.*

Comment:

The drop-off bay (layby) on Evans Street no longer forms part of this modification application and has formally been withdrawn by the applicant.

No further comment is made in this regard.

The drop-off bay (layby) on Lumsdaine Drive has been reviewed by Councils Traffic Engineer who is satisfied that the layby will not have an adverse impact on the road network and the modification is supported in this instance.

Appropriate conditions of consent could be imposed should the Panel be of a mind to approve the application.

3. View Loss and Painted Lift Overruns

The following specific concerns have been raised:

- *The original approval of the Envelope of the development limited the height of buildings A,B,C and D to 8.5m and specifically stated that no lift overruns or other utilities would be allowed above this limit. Then, in DA2015/0875, the Diggers requested building glazed lift overruns which exceeded this limit under the assumption that this would not further impact the views of neighbours on Evans St. Now the Diggers wants to replace the glazed lift overruns with painted overruns*

which will further degrade the views from apartments across Evans Street. This is also unacceptable.

- I would like also to complain about the totally outrageous statements in the View Analyses conducted for this development. The view from my apartment toward Curl Curl open waters is being completely obstructed by this concrete pile. The View Analysis says that my existing view is miniscule...which is just not true. The View Analysis also states that the "painted lift overruns have not been determined to have any visual impact"... which is not exactly the same as saying the " lift overruns do not have a visual impact"...which they will certainly have. This weasel wording is indicative of the kind of shifty consultant-speak used throughout the "community consultation" process of this development.*
- Nothing more should be allowed that will degrade even further the loss of views for nearby residents; so no painted lift overruns, these should be glazed*
- Our views are going almost completely, and now Diggers want to change from glazed to painted overruns. This should not be approved.*
- The stage 1 approval (DA2013/0412) stipulated that final building design, including lift overruns, be entirely within the approved envelopes; later DA2014/0875 approved glass lift overruns that exceeded the stage 1 building envelope. This modification seeks approval for painted lift overruns instead of glass. Included in the reason for this modification is 'painted lift overrun will reduce nocturnal light spill from the lift wells' - considering the development consists of multiple flat buildings, the light from the glass lift wells is likely to be insignificant compared with light from windows. The lift overruns are not included in the photo montages prepared for the view analysis. We are concerned about the visual impact and potential view loss from solid lift overruns, and therefore we submit this modification be refused.*

Comment:

This matter is addressed in detail elsewhere within this report (refer to Clause D7 – Views under the *WDCP 2011 section*).

The view loss from private properties is considered acceptable and does not warrant the refusal of the application.

4. Landscaping

The following specific concerns have been raised:

Comment:

- We currently enjoy views across the HDC site to the ocean, Manly (including St. Patricks Estate) and Freshwater Beach. The Design Landscape Statement proposes the planting of *Banksia Integriolia* along Carrington Parade road reserve, stating that it is a 'lower growing species to protect views', however this is misleading as the planting schedule lists these trees as growing to a height of 15 metres, which is well in excess of proposed building heights along Carrington Parade; other sources indicate these trees can in fact grow up to 25 metres. We are concerned that the use of this species for street planting will have the potential for the trees, as they mature, to reach a height which will have the effect of obstructing views from our property.*

This issue was raised in our submission to the original DA and with the JRPP, however it was not given proper consideration because street planting was deemed not to be a planning matter. This is contradicted by the inclusion of street planting in the landscape design that forms part of the stamped approved DA. We have spoken with the HDC management and they would be happy to address our concerns but believe they are constrained by their obligation to comply with the landscape design as approved in DA2014/0875.

- *The JRPP recognised the potential impact of landscaping on views by including a condition of consent stating ‘The landscaping on the roof of all new buildings is not to exceed the height of the parapet of each building. Reason: To maintain view of the adjoining properties.’ Therefore, it would seem reasonable to apply the same condition on the planting of street/verge trees. We are happy to note that the applicant has removed the roof planting entirely in this amendment to be replaced with pebbles as submitted in a prior DA.*
- *The Statement of Environmental Effects states ‘The Upper Ground Level terrace area provides open communal open space for residents, private patios for upper ground apartments, and bowling green facilities accessible by the general public. Views from this terrace are significant and kept open through the use of low heath species planting at strategic locations.’ Clearly the landscape design places an emphasis on protecting views from the HDC site but gives scant consideration for the impact of landscaping on views from neighbouring properties.*
- *Should Council deem that street planting forms part of the approved DA, then we propose a condition of consent requiring the applicant to select a tree species that will maintain views. Alternatively, it is submitted that the proposed development should confine any landscaping to within the development site and not within the public road reserve. Furthermore, Council is requested to ensure that any proposed landscaping does not include plant species which are capable of growing to a height that will adversely affect views from neighbouring properties. This also applies to the trees proposed for Evens Street, which grow to 10 metres in height.*

Comment:

The landscaping provided within the road verge along Carrington Parade was approved under DA2014/0875.

No part of this modification application proposes to alter or modify the approved street planting.

Notwithstanding this, should the Panel be of a mind to approve the application, conditions could be included which require street tree planting to be of a particular species (‘Tuckeroo’ or the like) that has a maximum mature height of between 8m – 10m.

This matter could be satisfactorily addressed by way of a condition should the Panel be of a mind to approve the application.

5. Child Care Centre Acoustic Impacts

The following specific concerns have been raised:

- *We note the Council has requested an amended Acoustic Report on the impact of the modified child care centre on residential apartments located above. We call on Council to also ensure noise from the child care centre does not impact on the amenity of neighbouring properties. We already have issues with noise from the existing playground area and believe the new development should aim to address this problem.*

Comment:

The application is supported by an Acoustic Report (refer to 'Acoustic Report – Section 96 prepared by WSP) which has been prepared having regard to the modified childcare centre design.

The report concludes that the proposal will not unreasonably impact on the acoustic privacy of neighbours in the vicinity of the development subject to compliance with the recommendations and requirements contained within the Acoustic Report.

Compliance with the recommendations and requirements made within the report will form a condition of consent should the Panel be of a mind to approve the application.

This matter could be satisfactorily addressed by way of a condition.

6. Modification to Conditions

The following specific concerns have been raised:

- *Condition 4 - Facilities Associated with Harbord Diggers Club Hairdresser: This proposed retail use is likely to take trade away from the local Freshwater Village.*
- *Condition 12 - No intervening driveway should be located between the pedestrian refuge and the eastbound bus stop, as this would conflict with pedestrian safety.*
- *Condition 18 - Stormwater Disposal - The provision of a rainwater tank storage volume of minimum 200kl should be maintained to protect the coastal zone. The reduction to only a quarter of this volume i.e. 50kl does not provide adequate tank storage volume to cope with larger rainfall events, which typically last for several days, and the increased impervious areas on the site.*
- *Condition 73 - Allocation of Spaces - The reduction in the club floor area by approximately 16% means that private apartments will become an even more dominant use on the Harbord Diggers Club site. The legacy and role of the club site 'to provide for the recreation and leisure needs of the community' will be further diminished.*
- *Condition 80 - Restriction of Landscaping on the roofs. The removal of landscaping from the roof of new buildings reveals the deficiency of the proposal to properly address the landscape requirements of SEPP (seniors housing). "It is noted that the proposed landscaping on the roof does not meet the technical definition under the Seniors SEPP."*

Comment:

Condition No. 4 – The inclusion of a Hairdresser can be and is appropriately classified as an ancillary use to the Harbord Diggers Club and the Seniors Housing.

The concerns that the hairdresser will take trade away from the local Freshwater Village cannot be substantiated as it is for the purposes of supporting the club patrons. The inclusion of this retail use is not considered to result in adverse economic impact on the nearby local retail centre.

Condition No. 12 – This modification has been withdrawn by the applicant.

Condition No. 18 – This modification has been reviewed by Council's Development Engineers who raise no objections to the proposed 50kl tank in place of the previously approved 200kl tank.

Condition No. 73 – This modification has been withdrawn by the applicant. The proposed modified allocation of spaces remains the same as previously approved with the exception of a 2 car space reduction associated with the seniors living component of the development.

The development will continue to provide adequate off street car parking in accordance with Appendix 1 of the WDCP 2011 and SEPP (HSPD) 2004.

Condition No. 80 – The roof top landscaping was not included in the calculation of landscaped open space and therefore the removal does not alter the conclusions made under the previous assessment of development against the requirements of the Seniors SEPP.

These matters does not warrant refusal of the application.

7. SEPP 71 Coast Protection

The following specific concerns have been raised:

- *The excavation will extend to the boundary with the Coastal Zone. Subsurface seepage that reduces soil moisture will affect native vegetation in the adjoining bushland reserve. Information has not been provided on the soil moisture profile adjacent to the excavation. A stormwater pipe will traverse the heritage listed cliff-line reserve and stormwater from the fully developed site will discharge onto a rock platform below the cliff-line. Information has not been provided on environmental impacts associated with the stormwater. The geotechnical report does not identify rock features, such as narrow ledges, along the cliff line, that are more likely to be susceptible to damage due to vibration impact. Any destabilisation of the cliffline would affect public safety, as well as the heritage conservation area. Dilapidation surveys and monitoring should be required for the cliff-line area and reserves in the adjoining Coastal Zone. Rock Anchors / Bolts: Rock anchors may be required to extend into the Coastal Zone. "Temporary rock anchors should be bonded at least 3m into bedrock..." EP&A Act s96C Matters for consideration: "the likely impacts of the development, including environmental impacts"*

Comment:

These matters were addressed at the time of assessment and determination of the original development application (DA2014/0875).

This modification application proposes to delete one basement level which will significantly reduce the amount of excavation required for the development. No further excavation is proposed as part of this modification beyond what has already been approved, in fact it will be reduced.

There is no modification proposed to the stormwater pipe as approved under DA2014/0875. Additionally the works do not extend into the area classified as Coastal Zone under SEPP 71 – Coastal Protection.

The geotechnical stability of the site has been assessed in detail and conditions of consent imposed to ensure that any excavation works undertaken in association with the development do not adversely impact on adjoining public or private property.

This matter does not warrant refusal of the application and appropriate conditions will be imposed should the application be approved

MEDIATION

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

REFERRALS

INTERNAL REFERRAL BODY

Building Assessment - Fire and Disability Upgrades

The application was referred to Council's Building and Assessment Team who raise no objections to the proposed modifications subject to conditions which have been included in the Recommendation of this report.

Development Engineers

The application was referred to Council's Development Engineers who provided the following comments:

The SEE prepared by Urbis proposes to amend conditions of consent in DA2014/0875.

In particular conditions 18 and 19.

- *Condition No. 18 - No objection is raised to the proposal to reduce the rain water tank to 50KL.*
- *Condition No. 19 – Traffic to comment and refer to Engineers for conditions if supported.*

Should the modification be approved appropriate conditions of consent should be included regarding the road works including road dedication.

Health and Protection (Food Premises)

The application was referred to Council's Environmental Health Team (Food Premises) who raised no objections to the proposed modifications as existing conditions of consent relating to food preparation facilities are satisfactory.

Landscape Officer

The application was referred to Council's Landscape Officer who provided the following comments:

'No objections to the proposed modifications in general terms, however the loss of the roof gardens across the site is disappointing given the environmental and visual benefits that they provided in the approved scheme.

Some concern is raised however with regard to the Evans Street/Carrington Parade corner of the site. The modifications appear to reduce the soft landscape components near the vehicular entry point and adjacent to the childcare building.

There may be some opportunity for additional street level planting on the corner within the road reserve, between the footpath and the boundary, subject to sightline requirements.

There also appears to be an opportunity to help soften the built form via the retention of the roof garden component to the roof of the childcare centre. With a lower roof level, the view across a landscape roof heading south along Carrington Street would be of visual benefit and bring some component of the heathland/headland ethos provided with the approved scheme. It is noted that elements of the roof gardens are proposed to be retained in buildings on Evans Street adjacent to the childcare centre, adding to the environmental and landscape value of retaining the roof garden to the childcare centre.

It is recommended that the modification include retention of the roof garden to the childcare centre and that some taller planting be included in the road reserve on the Carrington/Evans corner.

No objections are raised to the remainder of the modification application.'

Planners Comment:

The comments regarding the retention of the roof garden to the childcare centre are noted and concurred with and will form a condition of consent should the panel be of a mind to approve the application.

The comments regarding the opportunity for additional street level planting on the corner of Evans Street and Carrington Parade are noted, however it is considered that any additional planting has the potential to impact upon traffic safety and views in this location.

Further, the built form is considered to be acceptable and does not rely upon or require additional landscaping. In this regard, no further street planting is required in this location.

Natural Environment (Biodiversity)

The application was referred to Council's Natural Environment Unit (Biodiversity) who provided the following comments:

'The proposed modification to the development should not have a significant impact on biodiversity in the area.'

Works proposed on Lumsdaine Drive will disturb works previously conducted by Council's Bushland and Biodiversity Team, including works by the community volunteers as part of the Friends of the Bush program. A Site Rehabilitation Plan condition has been placed on these works, as the impact has increased from the original development proposal (originally directionally bored under the slope, now an open excavation 2.5 metres deep with this modification). Draft guidelines have been previously submitted to applicant's engineers on what Council would assess as satisfactory as part of discussions concerning the Road Opening Permit associated with the stormwater works.

The reduction of the roof-top landscaping is disappointing, as it would add a degree of biodiversity and habitat in this Wildlife Corridor. However, this is a matter best referred to the Landscape Officer for comment, as the impact from the modification is will affect amenity more than biodiversity.'

Parks, Reserves, Beaches, Foreshore

The application was referred to Council's Parks, Reserves, Beaches, Foreshore team who raised no objections to the proposed modifications

Urban Design

The application was referred to Council's Urban Designer who provided the following comments:

'The proposed amendment reduces the building separation distances in some areas. Buildings which are too close together create amenity problems like lack of visual and acoustic privacy.'

These matters could be included as a condition of consent requiring privacy treatments such as privacy screens affixed to the windows of windows of Buildings E and F where building separation has decreased, should the Panel be of a mind to approve the application.

Traffic Engineer

The application was referred to Council's Traffic Engineer who provided the following comments:

'These comments are provided on the amended exit driveway plan provided by the applicant in response to Council's comments on the Mod2015/0152 and the applicant's letter.'

Exit Driveway

The Harbord Diggers club development comprises seniors living independent accommodation, childcare centre, club, aquatic centre, gymnasium, and ancillary club facilities and provides a separate entry and exit driveway shared for all uses. Whilst it was desired that a separate driveway be provided for the seniors living accommodation, no objection was raised on the proposed shared exit driveway given the history of previous unsatisfactory access, site considerations on the fact that a two-lane wide driveway was proposed. In the approval of the DA, a condition was imposed that the two lanes be assigned as separate right and left turn to avoid potential conflict between the left and right movements at the driveway.

We do not support the proposed modification to reduce the exit driveway from two lanes to one lane. We also do not support the widening of the driveway to two lanes at Evans Street while retaining a one lane internally. The design is not satisfactory for servicing a development with about 700 parking spaces and the peak exiting traffic of 350 veh/hr. In this regard it is noted that the driveway does not comply with the following driveway design criteria:

- a) Warringah DCP requires a convenient access to the car park with no queuing and congestion at the driveway and on the street.*
- b) The RMS's Guide to Traffic Generating Developments requirements for driveway category 4 which is related to the driveways on a Road frontage on a minor road and number of driveway served by the driveway) is a width of 6.0 to 8.0m exit driveway.*
- c) Australian Standards AS2890.212004: requires separated 6.0 to 8.0 exit driveway for the developments having frontage to local road and comprising more than 600 parking spaces. It is indicated that where traffic flow data on an access driveway is either known or can be determined by separate means more accurately than by use of the categories of the Australian Standards, such data may be used to determine driveway widths by accepted design procedure.*
- d) The applicant has used traffic modelling of the intersection of the exit driveway and Evans Street to justify a one lane driveway. However, we do not agree with the assumptions applied in the modelling for the reasons highlighted below:*
 - I. The traffic volume of Evans Street was reduced by 50% of the existing traffic volume (106 and 103 veh/hr eastbound and westbound respectively) with no valid justification.*
 - II. The applied traffic flow capacity for the driveway does not appear to take into account the constraints, design speed, length, width, curves and sight distance properties at the driveway as well as the crest in Evans Street. These combined characteristic will reduce the traffic flow capacity of the driveway well below the capacity used in the model.*

- III. *A lane length of 500m has been used for the driveway which does not reflect the proposed design.*
- IV. *The existing traffic flow at the two intersections of Evans St / Carrington Pde and Lumsdaine Dr / Carrington Pde does not correlate with the assumed traffic distribution at the driveway (85% right turn and 15% left turn).*

In conclusion, a two lane driveway is required from the Port Cochere to Evans Street to avoid the potential conflict between the left and right turn movements at the driveway. The approved conditions require that the two lanes be assigned as separate right and left turn. The driveway needs to be designed to allow drivers merging and lane changing prior to reaching the car park exit.

In view of the foregoing we do not agree with the proposed modification.

Parking Allocation

The parking requirements for the Harbord Diggers development was originally calculated applying relevant rates for each use. The parking rate used for the Club was based on a patronage based survey on the existing parking provision for the Club use. On this basis, the total development required 755 parking spaces; however the provision of 705 spaces was justified by the applicant by using the child care centre parking spaces after the child care centre operating hours, as well as the seniors living visitor spaces.

The modification stated that there would be a reduction of 4,340sqm GFA. However, the Urbis letter indicates the reduction of the total GFA is 2,111sqm. It should be noted that the reduction of 32 spaces for the club was based on an overall reduction of 16% GFA (the reduction of 4340sqm GFA) for the whole development.

The changes in the GFA indicate a total reduction of 1684sqm in Ancillary Club Facilities, Member Services and Youth Centre, whilst these uses were never included as calculable floor space for parking requirements. These uses were considered as ancillary uses to the Club using the parking spaces provided for the Club.

Therefore, the total reduction on the club's GFA would be 258sqm and we do not consider that this would result in a reduction of parking requirements given that the club is highly unlikely to reduce its patronage. Also, it could be reasonable to expect that the new club could attract more patrons notwithstanding minor changes in the GFA. Therefore any reduction in the allocated parking spaces to the club is not acceptable.

In view of the foregoing comments we do not support the proposed modification of Development consent to reduce Club parking.

We note that as of 21 October 2015, the applicant has withdrawn the modification for the reduction of 32 Club parking spaces and is now seeking to reduce the car parking

by two spaces for the senior development. We do not object to this provided that the seniors development parking rate is satisfied.

Planners Comment

These matters have been addressed in detail elsewhere within this report (refer to Clause C2 – Traffic, Access and Safety and Clause C3 – Parking Facilities under the WDCP section).

In summary, these matters have been included as reasons for refusal.

Waste Officer

The application was referred to Council's Waste Officer who provided the following comments:

'Waste has no issues with the development as it will have a private waste service, and the bins will be serviced from within the property by appropriately licensed waste vehicles.'

EXTERNAL REFERRAL BODY

NSW Police - Local Command (CPTED)

The proposal was referred to NSW Police in accordance with Section 79C the EP&A Act for the assessment of Crime Guidelines, a Safer by Design Crime Risk Evaluation.

No response has been received from the NSW Police and therefore it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 19 - Bushland in Urban Areas

The aims of the SEPP are to protect the remnants of plant communities which were characteristic of land now within an urban area, in parcels of a size and configuration, which will enable the existing plant and animal communities to survive in the long term. The site adjoins land to which SEPP 19 applies, being land within the McKillop Reserve which is reserved for open space.

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

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

Comment:

An assessment of the development with regards to the requirements and objectives of SEPP 19 was carried out at the time of the assessment of the original development application. As part of the extensive ecological investigations undertaken by the applicant to support the development application and this modification application, a revised report (prepared by Ecological Australia dated 15 June 2015) has been submitted.

This information has been reviewed by Council's Natural Environment Unit who raises no objections to the proposed modifications on the basis that the modifications will not compromise the values of the adjoining bushland areas with respect to the aims of SEPP 19.

SEPP 65 - Design Quality of Residential Apartment Development

The SEPP requires an assessment and consideration of any application for residential flat development against the 9 Design Quality Principles and the matters contained within the associated "Apartment Design Guide".

Whilst the SEPP has been amended since the determination of the original application, fundamentally the principles and design guidelines remain the same with minor amendments.

This application, as modified, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made under DA2014/0875, with the exception to the guidelines of the Apartment Design Guide relating to Visual Privacy (separation distances) listed below:

Apartment Design Guide

The following table is a general consideration against the criteria of the Apartment Design Guide' as required by SEPP 65.

| Development Control | Criteria / Guideline | | | | | | | | | | | | |
|---|--|---------------------|-------------------------------|---------------------|-----------------------|----|----|-------------------------|----|------|-----------------------|-----|----|
| Part 3 Siting the Development | | | | | | | | | | | | | |
| Visual Privacy | <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="824 451 1360 898"> <thead> <tr> <th data-bbox="824 451 1003 590">Building height</th> <th data-bbox="1003 451 1166 590">Habitable rooms and balconies</th> <th data-bbox="1166 451 1360 590">Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td data-bbox="824 590 1003 695">Up to 12m (4 storeys)</td> <td data-bbox="1003 590 1166 695">6m</td> <td data-bbox="1166 590 1360 695">3m</td> </tr> <tr> <td data-bbox="824 695 1003 800">Up to 25m (5-8 storeys)</td> <td data-bbox="1003 695 1166 800">9m</td> <td data-bbox="1166 695 1360 800">4.5m</td> </tr> <tr> <td data-bbox="824 800 1003 898">Over 25m (9+ storeys)</td> <td data-bbox="1003 800 1166 898">12m</td> <td data-bbox="1166 800 1360 898">6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> | Building height | Habitable rooms and balconies | Non-habitable rooms | Up to 12m (4 storeys) | 6m | 3m | Up to 25m (5-8 storeys) | 9m | 4.5m | Over 25m (9+ storeys) | 12m | 6m |
| Building height | Habitable rooms and balconies | Non-habitable rooms | | | | | | | | | | | |
| Up to 12m (4 storeys) | 6m | 3m | | | | | | | | | | | |
| Up to 25m (5-8 storeys) | 9m | 4.5m | | | | | | | | | | | |
| Over 25m (9+ storeys) | 12m | 6m | | | | | | | | | | | |
| Comments | | | | | | | | | | | | | |
| <p>Inconsistent (satisfactory on merit)</p> <p>The building separation distances from buildings to the side boundaries of the site do not change. The approved development contains six buildings on the same site, being Buildings A, B, C,D, E and F.</p> <p>The building separation distances achieved under the approved development do not change for Buildings A, B, C and D. However, there is a minor reduction in the building separation achieved between Building E and F (existing club building).</p> <p>It is important to note that, fundamentally the design of the buildings remains the same as approved and that the separation achieved between Buildings E and F increases in some areas and decreases in others, providing an overall and appropriate balance.</p> <p>As detailed within the assessment of the original development application, the proposal is</p> | | | | | | | | | | | | | |

categorised under the SEPP as a 'hybrid development' which incorporates apartment type buildings surrounding a communal landscaped courtyard and other uses.

The internal building separations, together with variable building heights, provide adequate sunlight access to over 70% of the apartments. The minor reduction in separation between the two buildings does not reduce any of the apartment's access to sunlight.

Whilst no hybrid group type development can satisfy complete privacy, the proposed internal building separation distances (whilst numerical non-compliances with this requirement) could achieve an appropriate level of visual and acoustic privacy through the strategic placement of buildings around the site as well as the use of privacy screens and acoustic treatments.

The tables below illustrate the areas of compliance & non-compliance with regards to building separation.

Separation Distances (Minimum)

Building E to Building F

- Habitable Rooms to Habitable Rooms – 6.5m to 10m
- Non-habitable rooms to Habitable Rooms – 4m

The numerical non-compliances with this guideline are considered to be satisfactory in that they do not impact upon internal visual and acoustic privacy.

Should the Panel be of a mind to approve the application, conditions relating to privacy treatments of windows where building separation has decreased beyond that previously approved will be imposed.

SEPP (Building Sustainability Index: BASIX) 2004

SEPP BASIX applies to the proposed seniors housing component of the development. A BASIX certificate has been submitted with the modification application (see Certificate No. 606272M dated Thursday, 16 July 2015).

The BASIX Certificate indicates that the development will achieve the following:

| Commitment | Required Target | Proposed |
|------------------------|------------------------|-----------------|
| Water | 40 | 46 |
| Thermal Comfort | Pass | Pass |
| Energy | 35 | 35 |

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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

The original development application was lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as part of the development is for 'Seniors Housing'.

A comprehensive assessment of the application against the objectives and requirements of the SEPP was undertaken at the time of assessment of DA2014/0875.

The application, as modified, does not materially alter the design of the development such that it deviates from the original assessment and conclusions made under DA2014/0875.

In this regard, the modified proposal is considered to satisfy the requirements and objectives of the SEPP and no further assessment is made or required.

Warringah Local Environment Plan 2011

| | |
|--|-----|
| Is the development permissible? | Yes |
| After consideration of the merits of the proposal, is the development consistent with: | |
| aims of the LEP? | Yes |
| zone objectives of the LEP? | Yes |

Principal Development Standards

| Development Standard | Requirement | Approved | Proposed | % Variation | Complies |
|----------------------|-------------|---------------------|---|-------------|----------|
| Height of Buildings: | 8.5m | Building A - 9.5m | Building A - No change. | N/A | N/A |
| | | Building B - 12m | Building B - No change. | N/A | N/A |
| | | Building C - 9.15m | Building C - No change. | 21% | No |
| | | Building D - 10.3m | Building D - 10.3m (extension of Apartment No. 207) | 110.5% | No |
| | | Building E - 17.4m | Building E - 17.9m | 90.58% | No |
| | | Building F - 15.95m | Building F - 16.2m | | |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|---|
| 2.5 Additional permitted uses for particular land | Yes |
| 4.3 Height of buildings | No (see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Development on sloping land | Yes |

Detailed Assessment

4.6 Exceptions to Development Standards

In *'Gann v Sutherland Shire Council [2008] NSWLEC 157'*, the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 96 was a "free-standing" provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the JRPP can consider (and approve) a modification that still results in a breach of the height control, without reference to SEPP 1 or Clause 4.6, relying instead on the "free-standing" power of Section 96.

In this regard, the matters for consideration under clause SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 96 that is beyond the provisions of the planning controls.

Whilst this modification application will result in a height that exceeds the maximum permitted by Clause 4.3 of WLEP 2011 and SEPP HSPD, the application does not strictly need to address the requirements of Clause 4.6 or SEPP 1. This application has been made under section 96 of the EP&A Act, which is a free standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation or SEPP 1 objection in order to determine the modification.

Clause 4.6 and SEPP1 regulate whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications.

Notwithstanding that Clause 4.6 or SEPP 1 do not apply to modification applications, the merits of the departure have been assessed in detail within the original Assessment Report, where it was found that the development satisfied the underlying objectives of Clause 4.3 Height of Buildings under WLEP 2011 and the variation was supported.

The modification results in a further breach of the development standard of between 25mm to 50mm and relates only to lift shafts on the roof of Building E and Building F and the extension of the second floor level of Building D in the south-western corner of the building.

In this regard, Council is satisfied that the modified development is substantially the same development as previously approved and therefore no assessment against the objectives of Clause 4.6 or SEPP 1 is required and the departure from the development standard is supported in this instance.

Warringah Development Control Plan

Built Form Controls

| Standard | Requirement | Approved | Proposed | Complies |
|----------------------------|---------------------|--|-------------------|----------|
| B1 Wall height | 7.2m | This requirement is addressed under SEPP (HSPD) 2004. Note: The building height calculation under the SEPP (HSPD) 2004 is identical to Wall Heights of WDCP 2011. | No change. | N/A |
| B3 Side Boundary Envelope | 5m - Building E | Building F encroaches onto the building envelope | No change. | N/A |
| | 5m - Building F | Building E encroaches onto the building envelope | No change. | N/A |
| B5 Side Boundary Setbacks | 0.9m - Building E | Building E – minimum of 14m | No change. | N/A |
| | 0.9m - Building - F | Building F - Nil to 5m. | No change. | N/A |
| B7 Front Boundary Setbacks | 6.5m | <u>Basement Levels</u> Nil setbacks to all three street frontages. | No change. | N/A |
| | | <u>Building A</u> Ground Level – 5m to 6.8m Level 1 – 4.4m to 6.2m Level 2 – 4.3m to 6.1m | No change. | N/A |
| | | <u>Building B</u> Ground Level – 4.6m to 4.7m Level 1 – 4.3m Level 2 – 4.2m to 4.3m | No change. | N/A |
| | | <u>Building C</u> Ground Level – | Ground Level - No | N/A |

| | | | | |
|---|-----|---|--|-----|
| | | 6.9m to Carrington Parade & 5.5m to Evans Street | change. | No |
| | | Level 1 – 5.9m to 7.4m to Carrington Parade & 5.5m to 7.2m to Evans Street. | Upper Ground Level – 5.2m to Carrington Parade. 5.5m to 7.2m to Evans Street Unchanged. | N/A |
| | | <u>Building D</u> Ground Level & | Lower Ground Level - 0.7m to 6.5m | No |
| | | Level 1 – 5.4m to 7.5m | Upper Ground Level & Level 1 - 5.4m to 7.5m | No |
| | | Level 2 – 5.2m to 7.2m. | Level 2 - 7.8m to 18.1m | Yes |
| | | <u>Building E</u> 6.5m on all levels Note* Front setback is not applicable to Building F. | Upper Ground Level - 8.7m 6.5m on all other levels. Note* Front setback is not applicable to Building F. | Yes |
| B9 Rear Boundary Setbacks | 6m | Not applicable as the site has three street frontages and no rear boundary. | N/A | N/A |
| D1 Landscaped Open Space and Bushland Setting | 40% | This requirement is addressed under SEPP (HSPD) 2004. | Increase of 292m ² | Yes |

***Note:** The percentage variation is calculated on the *overall* numerical variation (i.e.: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area

by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|-------------------------------------|------------------------------------|
| A.5 Objectives | Yes | Yes |
| B3 Side Boundary Envelope | Yes | Yes |
| B5 Side Boundary Setbacks | Yes | Yes |
| Side Setbacks - R2 | Yes | Yes |
| Side Setback Exceptions - R2 | Yes | Yes |
| B7 Front Boundary Setbacks | No | Yes |
| R2 - All other land in R2 Zone | No | Yes |
| B9 Rear Boundary Setbacks | N/A | N/A |
| Rear Boundary Exceptions on Corner Allotments - R2 | Yes | 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 |
| Residential accommodation - 3 or more dwellings | Yes | Yes |
| Non-Residential Development | Yes | Yes |
| D1 Landscaped Open Space and Bushland Setting | Yes | Yes |
| D2 Private Open Space | Yes | Yes |
| 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 |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| D20 Safety and Security | Yes | Yes |
| D21 Provision and Location of Utility Services | Yes | Yes |
| D22 Conservation of Energy and Water | Yes | Yes |
| E1 Private Property Tree Management | Yes | Yes |
| E7 Development on land adjoining public open space | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

Building C

Upper Ground Level – 5.2m to Carrington Parade. 5.5m to 7.2m to Evans Street



Figure 1 – Increase in setback of Building C to upper ground level (approved building footprint shown in red)

Building D

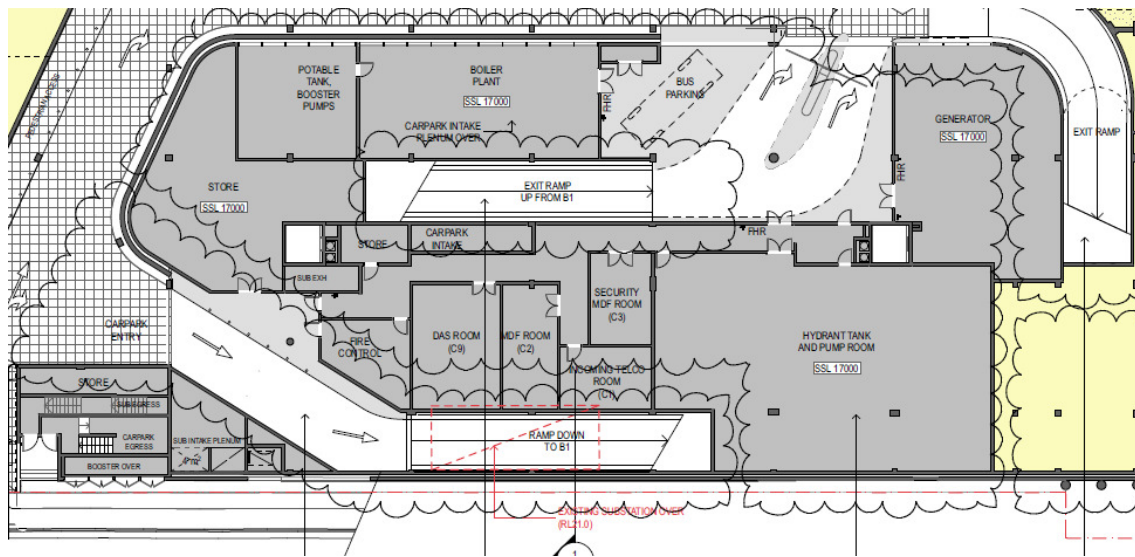


Figure 2 - Lower Ground/ Club entry (porte-cochere)- 0.7m to 6.5m (the building has shifted towards the Evans Street frontage with the boundary shown in broken red line)

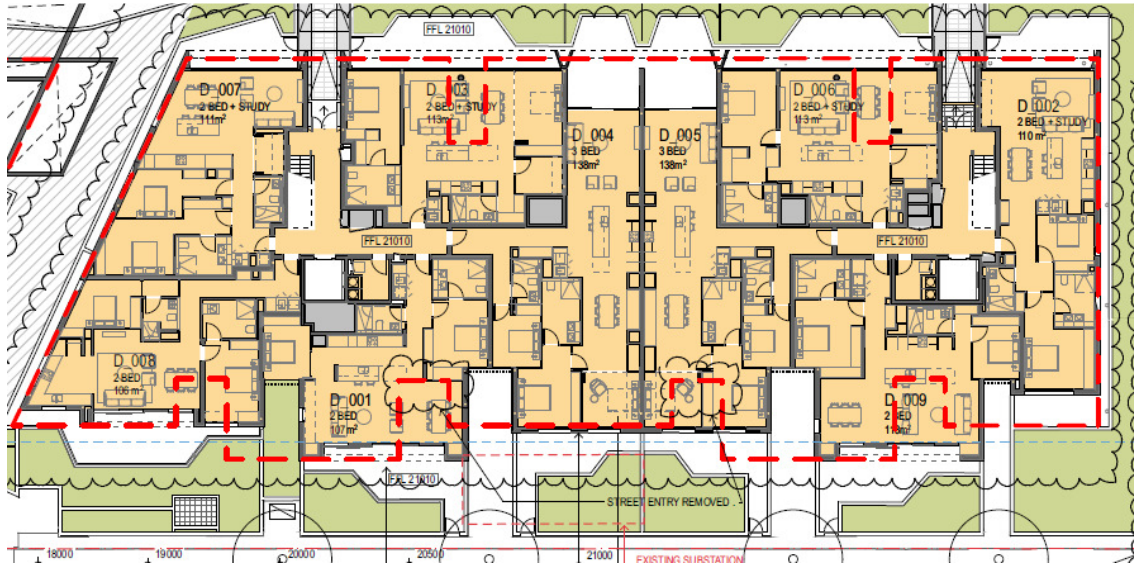


Figure 3 - Upper Ground Floor - 5.4m to 7.5m (approved building footprint shown in red)

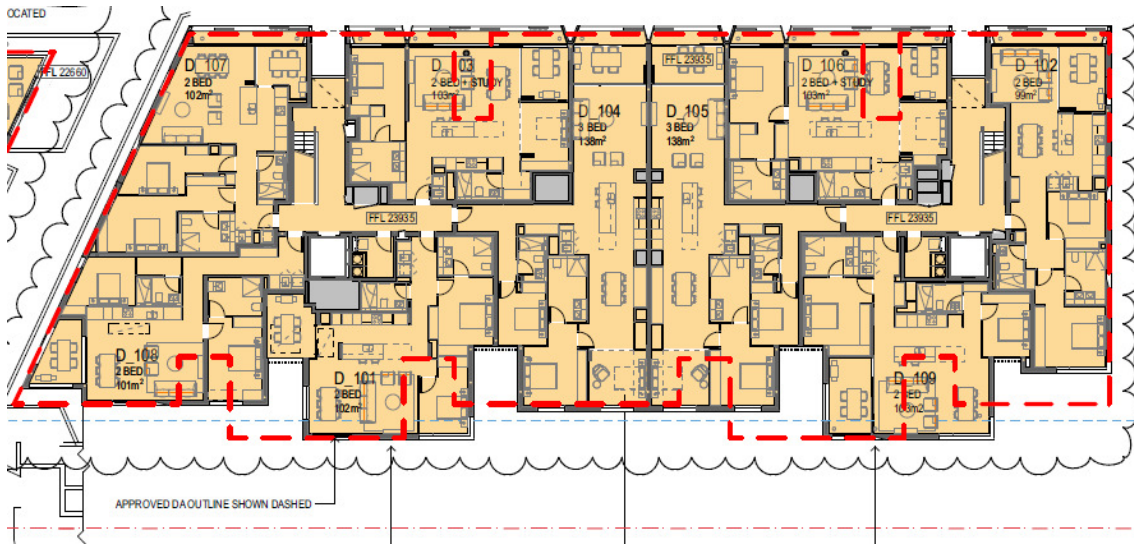


Figure 4 - Level 1 - 5.4m to 7.5m (approved building footprint shown in red)

Merit consideration:

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

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

Comment:

The proposed encroachments are minor and are a result of the refining of the design of Building C and Building D. As illustrated above, the proposed setbacks to Evans Street

are consistent with that of the approved development and do not result in any further encroachment or reduction in building setback to Evans Street from that already approved.

The encroachment on the lower ground floor will not be readily viewable from the street and relates to the porte-cochere entrance to the club facility.

The levels above the lower ground floor level will continue to include landscape elements and architectural features that will complement the approved building.

The non-compliant elements relating to all buildings are sufficiently setback and recessed from the front boundaries to facilitate a sense of openness.

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

Comment:

The proposal represents a significant improvement over the existing situation for this site. The minor non-compliances to Building C and Building D relate favourably to the streetscapes and maintain a visual interest that is consistent with other developments in the locality. The encroachments proposed to Building D are consistent with the approved building setbacks and do not further reduce the sense of openness across the Evans Street frontage beyond that already approved.

The proposal does not further reduce the setback of the Building D to Evans Street beyond that already approved under DA2014/0875. The upper ground floor level of Building C is located below the street level and will facilitate a new entry way and extension of the child care centre from Carrington Parade. The upper ground floor will continue to sit below the street level and will generally have minimal visual impact.

In this regard, the proposal will maintain the visual continuity and pattern of buildings and landscape elements as approved.

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

Comment:

Whilst the non-compliant elements will be visible at an oblique angle from each street frontage, the features and recessed facades will complement the overall design of the buildings and are generally consistent with that approved under DA2014/0875.

The outcome is satisfactory as the design provides a finishing detail to the development and high quality architectural interest thereby enhancing the visual quality of the streetscape.

- ***To achieve reasonable view sharing***

Comment:

The non-compliances do not result in any or contribute to any loss of view and therefore the development continue to achieve a reasonable sharing of views.

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

The objectives of this control are to minimise traffic hazards and to minimise traffic, pedestrian and cyclist conflict.

The proposed traffic impacts of the proposal have been discussed in detail elsewhere within this report (see to Referrals – Traffic Engineer section).

The approved development included a two lane, shared exit driveway from within the development site onto Evans Street, which included, by way of condition, dedicated left hand and right hand turning lanes to avoid conflict, congestion and queuing within the site.

The two lane exit driveway services the whole of the development (club and associated facilities, seniors living component and childcare centre) which includes 703 car spaces.

In determining the original application, the two lane exit driveway and dedicated left and right turning lanes was considered to provide the best outcome in addressing potential traffic hazards and minimising traffic, pedestrian and cyclist conflict based upon the number of car spaces and range of uses on site.

The proposal seeks to modify the approved exit driveway arrangement to a single lane exit driveway onto Evans Street within the site, which is then widened to two lanes once vehicles have exited from the Porte-cochere to the kerb line on Evans Street.

The single exit point will continue to service the whole of the development (club and associated facilities, childcare centre and seniors living component) and its 703 car spaces.

In considering the modified driveway, Councils Traffic Engineer is not satisfied that narrowing the exit driveway to one lane internally is adequate for servicing a development of this size and is not satisfied that the proposal meets the objectives of this control.

To this extent, Council considers the narrowed driveway to create a significant traffic hazard internally for the development with potential queuing and congestion within the site and at the property boundary. Therefore, the modified proposal fails to meet the objectives of this control and cannot be supported in this instance.

This matter has been included as a reason for refusal.

C3 Parking Facilities

Allocation of spaces

This control requires development to provide adequate off street car parking.

As discussed earlier within this report, the proposal includes a modification to the allocation of car spaces as conditioned under DA2014/0875.

Condition No. 73 – Allocation of spaces of DA2014/0875 required the following:

- *135 - Seniors Spaces*
- *20 - Seniors Visitor Spaces*
- *527 - Registered Club Spaces including associated facilities*
- *23 - Child Care Spaces*

The proposal seeks to modify the allocation of spaces as follows:

- *133 - Seniors Spaces*
- *20 - Seniors Visitor Spaces*
- *527 - Registered Club Spaces including associated facilities*
- *23 - Child Care Spaces*

This modification results in a reduction of 2 car spaces in total for the seniors living component of the development. Car parking for the seniors living development, as approved, was provided at a surplus of 43 spaces when assessed against the requirements of SEPP (HSPD) 2004.

In this regard, a reduction of 2 car spaces will result in a surplus of 41 spaces and therefore there is no objection to the proposed modification.

Should the Panel be of a mind to approve the application Condition No. 73 will be modified to reflect the proposed allocation of spaces.

Access/egress from car park

As discussed in detail throughout this report, the proposal includes a revised exit driveway from the site.

The requirements of this control, among other things, require the parking facilities for development (other than a dwelling) to provide for safe pedestrian and traffic movement.

In this regard, access/egress (i.e. driveways) to and from the parking facilities of a development of this size must be considered and must provide for safe pedestrian and traffic movement within the site.

The RMS Guide for Traffic Generating Development and the relevant Australian Standards require a minimum driveway width of between 6m to 8m for a development which contains more than 600 car spaces and that has frontage to a local road (Evans Street).

The relevant Australian Standard (AS2890.21:2004) indicates that where traffic flow data on the access/egress driveway is either known or can be determined by separate means, more accurately than can be done by the use of the Australian Standards, such data may be used to determine appropriate driveway widths.

The applicant submitted additional traffic information in the form of further analysis of the traffic modelling of the exit driveway at the intersection of Evans Street and an amended driveway design (two lanes from the exit of the porte-cochere to the kerb) in response to the concerns raised at the time of a preliminary assessment of the application relating to the narrowed driveway exit. The amended driveway width is 6.6m which provides for two lanes at the exist for an approximate length of 9m from the kerb into the site.

Council's Traffic Engineer has reviewed the additional information and does not agree with the assumptions applied in the modelling for reasons which have been discussed in detail earlier within this report (see Referrals – Traffic Engineer section).

In summary, the following concerns are raised with the additional information:

- *The traffic volume of Evans Street was reduced by 50% of the existing traffic volume (106 and 103 veh/hr eastbound and westbound respectively) with no valid justification.*
- *The applied traffic flow capacity for the driveway does not appear to take into account the constraints, design speed, length, width, curves and sight distance properties at the driveway as well as crest in Evans Street. These combined characteristic will reduce the traffic flow capacity of the driveway well below the capacity used in the model.*
- *A lane length of 500m has been used for the driveway which does not reflect the proposed design.*
- *The existing traffic flow at the two intersections of Evans St / Carrington Parade and Lumsdaine Drive and Carrington Parade does not correlate with the assumed traffic distribution at the driveway (85% right turn and 15% left turn).*

Therefore, consistent with what was previously approved, a two lane driveway is required from the Porte-Cochere to Evans Street to avoid the potential conflict between the left and right turn movements where the driveway exits onto Evans Street. As discussed previously, the approved development requires that the two lanes be assigned as separate right and left turn to reduce any conflict.

For the reasons detailed above and within this report, Council's Traffic Engineer does not consider a one lane exit driveway servicing a development of this size (with in excess of 700 car spaces) to provide for safe and convenient pedestrian and traffic movement.

Therefore, this matter has been included as a reason for refusal.

D7 Views

The proposed modifications involve an increase in building height of between 25mm and 50mm for the lift overruns to Building E and Building F. The lift overruns are also proposed to be modified from glazed to painted overruns.

These structures have been setback from the outer edges of the building to minimise their visual impact when viewed from the street or any neighbouring properties.

The existing building is one of the tallest buildings in the local area and therefore the ability for any neighbouring properties to view these localised additions to the roof form is minimal and confined to those apartments on Evans Street over 15m in height, facing north and those on top of the escarpment to the west (The Drive).

Given that these structures are localised additions to the existing roof form and the increase in height is of such a minor nature, it is considered that the modified development is satisfactory in maintaining a reasonable sharing of views from adjoining properties.

It should be noted that the original assessment of view impacts in the original development application did not consider the finishes of the lift overruns as a determining factor in the assessment of view sharing.

The proposed modification of the finishes from glazing to painted lift overruns will not diminish views obtained from neighbouring properties to the extent that it would warrant amendment or refusal of the application.

In this regard, and as previously assessed and recommended under DA2014/0875, the availability of views across the building will remain reasonable and there is no loss of view as a result of the proposed increase in building height or modification of lift overrun finishes under this modification that would warrant a further amendment or refusal of the application.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of the Environmental Planning and Assessment Act 1979; the provisions of the relevant Environmental Planning Instruments, including the Warringah Local Environment Plan 2011, the Warringah Development Control Plan; and the relevant Codes and Policies of Council.

On balance, the modifications to the built form and character of the proposed development are satisfactory. Similarly, the proposed changes to the conditions of consent are satisfactory. However, whilst all reasonable attempts were made to resolve the issues

relating to the vehicular access, namely the exit driveway design onto Evans Street, there remains a fundamental difference of position on the suitability and appropriateness of the traffic solution.

Therefore, based on the unsupported exit driveway design and the unresolved traffic safety concerns, the application is recommended for refusal for this reason.

The development, has been found to be inconsistent with the following controls contained within the WDCP:

- Clause C2 – Traffic, Access and Safety; and
- Clause C3 – Parking Facilities.

The proposed modification of the exit driveway to one lane results in unsatisfactory traffic impacts and is inconsistent with the requirements and objectives of the WDCP controls mentioned above. These matters have been included as a reasons for refusal.

RECOMMENDATION

THAT, the Sydney East Region Joint Regional Planning Panel (JRPP) as the consent authority, refuse Modification Application No. 2015/0152 for the modification of Development Application No.DA2014/0875 granted for demolition and excavation works and construction of Seniors Housing, Registered Club, Childcare Centre and associated car parking and landscaping on land at Lot 12 DP 1197725, 80 Evans Street, Freshwater (Harbord Diggers Club Site), for the reasons contained in Attachment 1.