



OBJECTION TO:

**DA2014/0875 – Harbord Diggers Club’s Coastal Headland site at:
80 Evans Street, FRESHWATER, NSW.
(Lot 12, DP1197725), A proposed 97 Seniors Living Units etc. Development.**

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proposed 97 Seniors Living Units etc. Development.

Thursday, 11 September, 2014

Dear Sir/Madam,

**RE: DA2014/0875 - THE HARBORD DIGGERS CLUB'S [HDC] SITE,
80 EVANS STREET, FRESHWATER. NSW. (Lot 12, DP 1197725).**

Reference is made to Warringah Council's "WARRINGAH update" advertisement in The Manly Daily newspaper of Saturday 9 August 2014, wherein under the "Development Proposal" notices, notification was given concerning the display of plans etc. for the above Development Application proposal, and written advice that submissions to this application may be made to Warringah Council.

I hereby wish to submit my written **OBJECTIONS** to this DA's \$160+ Million over-development proposal of the HDC's site, which as well as being in breach of the site's applicable planning controls and instruments would result in adverse impacts upon adjoining and nearby lands and also upon the Public Amenity of the location and its surrounds.

My written objection to this DA is lodged for consideration by:

- a) Warringah Council's Development and Compliance Unit's assessment of this DA, and
- b) The Joint Regional Planning Panel (JRPP) - Sydney East Region, in their deliberations on and the determination of this DA.

Would you please:

- 1) Ensure my objection is circulated to appropriate Warringah Council and JRPP staff for their consideration in their dealings with this DA.

Thank You,

Warringah LGA Resident/Ratepayer/Voter

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The Democratically Elected Warringah Councillors and the Mayor of the Warringah LGA as representatives of its 145,000 + Residents - have passed a unanimous decision on the proposal for 97 Seniors Living Units on the HDC's land site:

“10.3 NOTICE OF MOTION NO 29/2012 HARBORD DIGGERS
APPLICATION FOR SENIORS LIVING SITE COMPATIBILITY
CERTIFICATE

280/12 RESOLVED

Cr Dr Kirsch / Cr Regan

That Council object to the application by Harbord Diggers for Seniors Living Site Compatibility Certificate at the Harbord Diggers Club (HDC) site, Freshwater and make a formal submission in that regard to the Director General of the Department of Planning and ask that the application be refused and no Site Compatibility Certificate be issued.”

Source: Warringah Council Meeting Minutes, 28 August 2012 - Page 13.
http://www.warringah.nsw.gov.au/council_then/documents/MinutesCouncilMeeting-20120828-pdfformat.PDF

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The Democratically elected NSW Parliamentary Representative (Mr. Mike Baird, NSW Premier) of Sydney's Freshwater area - has publicly expressed the following views on a development on the HDC's site:

Manly MP Mike Baird says development along the coastline is a "hugely sensitive subject for obvious reasons". "That headland in particular is a jewel in the Northern Beaches crown. The strong sense in the community is that the site is for a club and not a development," he tells *Peninsula Living*.

Source: Peninsula Living Magazine published article, April 2011, (p.22).

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The General Manager,

Attention: Development and Compliance Unit,

Warringah Council, DEE WHY NSW 2099.

Dear Sir/Madam,

RE: DA2014/0875 - HARBOR DIGGERS CLUB [HDC] - COASTAL HEADLAND SITE, FRESHWATER, NSW. (Lot 12, DP1197725).
Redevelopment proposal for the Harbord Diggers Club's Site for 97 Seniors Living Units, Privatised Cafes, Restaurant, Gym, Childcare etc.

As a long term permanent Freshwater, NSW, Resident, Ratepayer and Voter including being an active member of its Community involved in Community service activity protecting its beautiful Natural Environment, who has read and considered all available documentation, videos etc. concerning this DA and has visited the HDC's site many thousands of times over 50+ years, I hereby lodge strong **OBJECTIONS** to the above Development Application on the following grounds:

Breaches of Planning Controls applicable to the HDC's site.

This **NEW** DA2014/0875 proposes significant variations to the building envelopes compared to the former Stage 1 DA2013/0412. As such, this NEW DA does **NOT** form a Stage 2 application of the former Stage 1 DA2013/0412. It is a brand NEW Development Application that is different to and is independent of the former Stage 1 DA for the HDC's site. Accordingly this brand **NEW DA** for the site **is required to be independently assessed on its merits and its compliance with all applicable Planning Controls** for the HDC's prominent Coastal Headland site in Freshwater, NSW.

The HDC Coastal Headland Site's Warringah 2011 LEP, DCP and the Housing for Seniors or People with a Disability 2004 (SEPP HSPD 2004) - Statutory Planning Controls are set out at **APPENDIX 1**.

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The HDC's land site is zoned R2 Low Density Residential under the 2011 Warringah LEP (WLEP 2011).

This DA seeks merit assessment approval of the HDC site's proposed future uses and buildings' envelopes sizes. It should be fully noted, that the restrictions on development in Warringah Council's 2011 Warringah LEP, *militate against* the density of development (97 Seniors Living Units etc.) that the Mounties Group have sought in this DA for the HDC's Freshwater, NSW site in the Warringah Local Government Area (LGA).

The HDC's consolidated site of approximately 15,599 square metres is located on a visually prominent headland between South Curl Curl and Freshwater Beaches and is visible from numerous local and more distant vantage points. This Coastal headland is a remarkably beautiful location with remnant sandstone coastal heath in excellent condition containing endangered Flora and Fauna. There are a number of Warringah LGA Heritage items plus a National and World Surfing Reserve located on and around this Coastal Headland's inherent natural beauty.

The HDC site's R2 low density residential zoning is reflective of its scenic and visually sensitive character. The use of this site as inter alia a 97 Seniors Living units development is **NOT** a permissible use within the R2 low density residential zone under the planning controls applicable to the HDC's site. **The Site Compatibility Certificate for this site does NOT constitute development consent - and this new unapproved DA2014/0875 is required to be assessed and determined on its merits.**

The intensity of development proposed (for example, up to five storeys of buildings and for heights up to 15.95 metres) far exceeds the WLEP's planning controls and is inappropriate for such a prominent location. It is not compatible with the intended use of the site, and would adversely impact the natural beauty of this sensitive coastal location and the dominant character of detached housing forms in a landscaped setting.

The R2 "Low density Residential" zoning of the site and the applicable built form controls, do not provide for or encourage multi-storey flat buildings on it. The R2 zone anticipates that future development within the R2 zone should be similar in scale and have the appearance of detached style housing which is its predominant character.

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The scale and intensity of proposed development on the HDC's site (being in the most prominent location in Freshwater both in terms of scenic and visually) is a key factor in shaping the identity and character of the area. This area is mainly used for passive recreation within a Natural Coastal setting and this use must be strongly considered in the assessment of all of the adverse impacts of this proposed development.

The building envelopes proposed on the HDC's site are not consistent with the bulk, scale and the character of the surrounding area, e.g. with the low density residential development to the West and North of the HDC's site, are not sympathetic to the scenic and visually sensitive character of the prominent Coastal Headland and would materially detract from its outstanding scenic and visual quality.

The development proposal is inconsistent with the following objectives of the HDC site's R2 zoning and the reasons for these inconsistencies are:

- To provide for the housing needs of the community within a low density residential environment.

The design and scale of the development does NOT constitute appropriate housing "within a low density residential environment" - because of the size and scale of the proposed new buildings nearby to detached dwellings to the west and south-west and the changing of the HDC's clubhouse building into 2 new 5 storey residential living buildings.

- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The large bulk, scale, height and massing of the proposed overdevelopment of this site is NOT in harmony with the location's Natural Environment, significantly with the proposed 2 new 5 storey buildings adjacent to McKillop Park's Headland Reserve.

The proposal for 97 Seniors Living units is a change of land use that is equivalent to a rezoning of the HDC's site from its R2 low density zoning to a medium density development R3 zoning. This proposal is not compatible with the LEP controls which have been put in place for the HDC's site - after extensive Community Consultation with Warringah LGA residents during the making of the WLEP 2011.

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The Multistorey Unit Blocks opposite to the HDC's site and the HDC's Clubhouse's height, bulk and scale are **an eyesore monolithic legacy** from the 1960/70's era of inappropriate development on this Coastal headland site which were inappropriately granted development consent by the corrupt Warringah Shire Council of that era.

In the late 1960's Warringah Shire Council was dismissed (its 1st of 3 dismissals) for corruption in respect of its corrupted property development approvals - and 2 of its then Warringah Councillors were prosecuted under the *Secret Commissions Prohibition Act 1919 (NSW)*, with both receiving jail sentences for receiving bribes to influence both planning and development decisions in the Warringah LGA. (See: [Appendix 2](#)).

Warringah Development Control Plan (WDCP) 2011

Front Boundary Setbacks

The WDCP 2011 requires a 6.5 metres setback to all three (3) boundary frontages. The buildings fronting Evans Street, Carrington Parade and Lumsdaine Drive have nil boundary setbacks along their Basement Levels 1 and 2 - which levels are proposed to be built to the street boundary. This does not comply with the boundary setback requirements and is an inadequate setback proposal driven by the parking needs of this over-development proposal.

An adequate landscape buffer of at least 6.5 metres should be provided here to allow for the provision of adequate deep planting landscaping - which is commensurate with the height and scale of this proposal's Carrington Parade side walls - which also are in breach of height limits by up to 31.25% (other walls of the proposal breach by up to 99.3%).

Part B: Built Form Controls - Side Boundary Setbacks.

The boundary setback from the Eastern side boundary (where the club gymnasium's Eastern wall etc. is currently located) of the proposed converted existing Clubhouse to mainly Seniors Living Units building has 0 metres setback in places, in breach of the WDCP 2011 requirement of at least a 900mm side setback.

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This inadequate setback is located where the proposed 2 new 5 storey buildings adjoin the Western side of the Crown lands McKillop Park Reserve and does not provide adequate softening of the visual impacts of the proposed Seniors Units' 5 storey buildings' bulk and scale. The setback from the South Eastern site boundary to Building F will exceed the side boundary envelope constraint and is an abrupt change in scale.

The HDC's site is situated on an island site which includes Crown Land (McKillop Park) to its South East and Warringah Council owned land to its North West, which land is an identified existing wildlife corridor for seabirds etc. identified in the Warringah Natural Area Survey.

The following Natural Environment controls are applicable to the HDC's site under the WDCP 2011, Part E, The Natural Environment:

- 1) E2 Prescribed vegetation - shown on the WLEP 2011 - Land Application Map,
- 2) E4 Wildlife Corridors - The North Western side of the site contains a Priority 3 Wildlife Corridor identified on the DCP Map Wildlife Corridors,
- 3) E6 Retaining unique environmental features - shown on the WLEP 2011 - Land Application Map,
- 4) E7 Development of land adjoining public open space - shown on the DCP Map Land Adjoining Public Open Space, and
- 5) E10 Landslip Risk - the site is identified within Land Slip Risk Class B pursuant to WLEP 2011 Landslip Risk Map, which is defined by a land slope of between 5 and 25 degrees.

<http://www.warringah.nsw.gov.au/ePlanning/pages/Plan/Book.aspx?vid=14332>

This development proposal's close proximity to coastal corridors and McKillop Park's sandstone Coastal Heath which contains endangered Flora and Fauna, requires an assessment of its impacts on the local and visiting ecological communities, local vegetation and the sustainability of this environmentally sensitive park - which would be significantly impacted by the proposed more intensive site use proposal in respect of traffic, noise, increased human impacts etc.

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Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD 2004).

The Seniors Living residential units’ component of this development proposal is spread amongst five (5) buildings and is to be assessed against the SEPP HSPD 2004, see:

http://www.austlii.edu.au/au/legis/nsw/consol_reg/seppfsopwad2004826/index.html#s40

The proposal involves building on the entire HDC’s Coastal Headland site - with the loss of nearly all ground level Landscaped Open Space (LOS). The proposed above ground landscaped area - does **NOT** meet the landscaping requirements under the Planning controls.

The soil depth on the site for plantings will mostly be limited and is less than the planning controls requirements - due to nearly the entire site’s footprint being concreted over in what is a gross over-development of the site. Shallow planting on the top of the multi-storey roofs of this over-development should not count as LOS towards meeting the controls.

The vital sections of this SEPP are addressed below:

Seniors Living Policy - Urban Design Guidelines for infill development:

The critical component of this policy is the section detailing objectives on site planning and design, which objective inter alia states: “*to minimise the impact of new developments on neighbourhood character*”.

The development proposal’s physical appearance and built form envelopes will not be in harmony with the existing “local area” character - because the urban context of this Headland area is predominately low density and scale associated with detached and landscaped houses.

The proposal would introduce a significantly different visual presentation with the entire residential component being comprised of multi-storey residential flat buildings - which are incompatible with the surrounding predominately detached building forms in a landscaped setting.

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Division 2 of Part 3 of the SEPP - Design Principles:

The proposal is inconsistent with Regulation 33 of the SEPP because the bulk, scale, height and density of the proposed development do not reflect the predominant character of this Coastal Headland area.

Clause 40(4) of the Seniors SEPP - Development standards concerning minimum sizes and building height.

The majority of the existing HDC's clubhouse's massive building envelope is proposed to be converted into 2 Seniors Living multi-storey unit complexes. The proposed conversion of the existing Clubhouse's building envelope into a Seniors Living Units multi storey proposal's height of up to **15.95 metres** (on the Northern Lumsdaine Drive side) - far exceeds **(by 99.3%)** the applicable 8 metres height restriction under SEPP (HPSD) 2004 - Clause 40(4)(a).

The proposed 2 buildings on the Eastern part of the HDC's site adjacent to McKillop Park would be five (5) storeys high. **These 2 proposed five (5) storey developments exhibit a significant departure from the permitted [Clause 40(4)(b)] number of two (2) storeys and the permitted [Clause 40 (4) (b)] 8 metres height controls - and this issue is vital with regards to the scale of the development and the location's character test.**

The DA's proposal also fails to implement the 2013 JRPP decision's requirement of a 3 Metres setback for all the upper most floors of the new buildings - to reduce the size and scale of the buildings and to be more consistent with that of the adjoining detached dwellings to the West and South-West of the HDC's site.

The presentation of the proposed 97 residential flats development from external areas in the locality is a major change to the existing character, particularly for a site located on a prominent headland in a highly used natural coastal passive recreation area.

The keeping of the existing clubhouse building to take advantage of its height which far exceeds the R2 zone's 8.5 metre and the SEPP's 8 metre height controls - but changing most of its use to Seniors Living units (and in doing so receiving a highly significant \$Multi-Million uplift in the HDC site's commercial value) - does not strike the right balance in planning a significant redevelopment of the HDC's site.

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PROPOSED ADAPTIVE RE-USE OF THE HDC's CLUB HOUSE.

I note the published written report of GM Urban Design and Architecture dated May 2013 on the proposed adaptive re-use of the existing Harbord Diggers Clubhouse in a report commissioned by Warringah Council:

"It is not clear how a Seniors Living Units residential development will be integrated into the existing frame and slab configurations given the greater floor to floor height seen in a club in comparison to a residential development. Therefore there is some question as to how much of the existing structure would really be retained and reused or whether the intent is really to seek to retain the existing envelope in terms of its height, location and potential yield." (Emphasis added)

The proposal intends to retain and adaptively re-use the existing club building for the purposes of seniors' housing. The height, bulk, scale and visual massing of the existing HDC clubhouse building far out ways any other building in the area, therefore it is very important that the Applicant provides compelling evidence to demonstrate that adaptive re-use of the existing clubhouse is being achieved by the proposal.

At the previous JRPP meeting to consider a development proposal (DA2013/0412) on the HDC's site, the height of the existing clubhouse building was only accepted on the basis that the proposal was for re-adaptive use. This DA relies upon the 'adaptive re-use' of the existing club building which is now proposed to be broken into 2 new buildings.

With the breaking up of the existing HDC's Clubhouse building into 2 buildings, what is now proposed are 2 new and distinct 5 storey buildings - which are radically changed in appearance and design - and which bear virtually no resemblance to the existing HDC's Club house building.

This DA is for the redevelopment of the site and the design of the existing club building is proposed to be changed into separate Buildings E and F. Accordingly, this DA has significantly changed the existing building's proposal when compared to the previous DA's proposal. There are such extensive changes proposed to the existing Clubhouse's structure, features, external appearance etc. it is now unrecognisable.

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An examination of publicly available documentation concerning the proposals re-use, e.g. Appendix X of the Statement of Environmental Effects - Construction Methodology - does not dispel concerns that the real intent is to seek to maintain the Clubhouse’s building existing envelope - for 2 new 5 storey buildings which are not permitted. It is apparent from Appendix X, that most of the existing Clubhouse is going to be stripped out and demolished - rather than retained and re-used.

The 1.5 page “enstruc” letter dated 31 July 2014 (Appendix X) does not provide sufficient detail or any drawings etc. to adequately explain how the existing HDC’s Club house would be retained and re-used in this development proposal. It appears that apart from retention of the upper slab (which would have to be cut into 2 pieces and its configuration changed etc.) - most of the existing clubhouse will be the subject of strip out and demolition works for the new vertical and horizontal structures.

The Mounties Group are required to retain and adapt the existing Harbord Diggers Clubhouse - as a consequence of the planning controls preventing demolition without loss of the right to rebuild within part of the current clubhouse building’s envelope. They have failed to provide compelling evidence that their proposal is for an adaptive re-use - an objective analysis shows it is NOT an adaptive re-use.

As this development proposal seeks to virtually redevelop the entire HDC’s site - it should respond in sympathy, amongst other things, to contemporary planning objectives and design standards applicable to the HDC’s site under current planning controls, i.e. 8 Metre maximum height and 2 storeys maximum development size limits.

The proposed new Seniors Living Units buildings far exceed both the Building height limit of 8 metres and the requirement for buildings adjacent to a boundary that must not be more than 2 storeys in height under the provisions of the SEPP (HPSD) 2004.

Given the proposed change of use and the site’s sensitive location, support should **NOT** be given to property development schemes which seek to almost double the permitted height of buildings - in a totally unreasonable breach of relevant built form controls.

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Clause 33 of the SEPP must be addressed in the proposal's design.

The proposal's new buildings also do NOT have the 3 metre upper floor level setbacks - a requirement stipulated by the JRPP that they must have. These new buildings do NOT ensure the development's appearance and built form is in harmony with for example the character of Carrington Parade, Freshwater - which they front.

The Site Compatibility Certificate (SCC) for Seniors Living issued for the HDC's site - Contentious and Concerning Issues with NSW Planning.

The Mounties Group's DA proposal for the HDC's site seeks to bypass existing WLEP2011 and WDCP2011 planning controls for this Headland site - which were the subject of extensive Freshwater and surrounds Community consultation and feedback to Warringah Council in respect of the making to the WLEP2011.

This DA proposal if approved, would allow development which was not envisaged for the HDC's site under the WLEP2011 and the Freshwater Communities expressed desired future development of this site.

This proposal also seeks to breach the SEPP for Seniors' height planning controls. The process for issuing a SCC for Seniors' living units is NOT the same as a planning proposal to rezone the HDC's site. A process that is not as rigorous as a rezoning process therefore cannot be relied upon as a definitive indication of the suitability of the site for a proposed land use, if that use is to be more intensive than is permitted on a site.

An SCC should NOT be given the same weight as a rezoning of the site, because an SCC has not been subject to the same degree of scrutiny or public consultation. The SCC means that land use is considered to be "permissible" for the purposes of the development assessment, but it is not presumed to be "permitted". The SCC requires development consent before any Seniors living units could be built on the HDC's site.

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The SCC does not “approve” an application; it merely allows it to be submitted for a more detailed assessment by an independent consent authority to the SCC’s issuing body. A more comprehensive assessment of the land use implications is required to ascertain whether the proposed land use of a site is appropriate.

The SCC for the HDC’s site is based on the opinion of the Director General of the NSW Department of Planning about the broad compatibility of the proposal. A more refined analysis of the proposal and the better application of Administrative Law requirements by both Warringah Council and the JRPP (Sydney East Region) - than what NSW Planning have demonstrated in this matter - see details below, would in my submission reveal that the proposed use of land in this DA is NOT compatible with the site constraints or surrounds.

Administrative Law deficiencies in the issuing of the HDC’s SCC.

A detailed reading and consideration of the NSW Department of Planning’s documentation concerning their issued SCC for Seniors Living for the HDC’s site granted on 3/12/12, inter alia reveals that:

- 1) The SCC has been granted to a non-existent organisation, legal entity or business name, described by the NSW Department of Planning and Infrastructure in the Site Compatibility Certificate as the: “Mount Pritchard Community Club”.

A thorough search of ASIC’s Organisations & Business Names Register did NOT reveal any such Organisation or Business with the name “Mount Pritchard Community Club” to be in existence.

- 2) The syntax of the final paragraph of the SCC, signed off by the NSW Department of Planning is simply a nonsense - it reads:
“- the development described in Schedule 1 is compatible with the surrounding environment having had regard to the criteria specified in clause 25 (5) (b); and” but there is no further text, only the signature of a Mr Sam Haddad, Director General.

See: <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=VG3-NjnBs-s%3d&tabid=314&language=en-US>

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A detailed and considered reading of the NSW Department of Planning's HDC's SCC Report - has revealed that it contains numerous factual errors and unsubstantiated opinions.

For example, in this Report on page 8, at paragraph 10:

"A community information and feedback session was held on 31 December 2011" - **which is simply factually untrue because no such session was held on that New Year's Eve date.**

The Department of Planning's Report, for example on page 5, also refers to the non-existent for years suburb name of Harbord.

See: <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=oRKQZHb5Ug0%3d&tabid=314&language=en-US>

The numerous pieces of conjecture and unsubstantiated by supporting evidence opinions, expressed throughout this flawed NSW Department of Planning HDC SCC Report, and the maladministration in the issuing of the SCC to a non-existent legal entity are highly concerning.

It is valid to wonder if NSW Planning's former Director General (Mr Sam Haddad), his co-signatories to and the author of this Site Compatibility Certificate for the HDC's site - have properly read and fully considered the HDC's SCC flawed report's information and the fundamental planning issues involved?

It is noted that a number of Administrative decisions made by NSW Planning in 2012/13 were the subject of a Formal Complaint by the NSW Better Planning Network - and that these formal complaints were up held.

NSW Planning's former Director General Mr Haddad had to publicly concede that he and his Department of Planning had made numerous Administrative errors in their decision making. (Appendix 3 - Full details).

It is noted in respect of the planning processes operating in NSW Planning in 2011-13, that Documents forcibly disclosed from the NSW Government by order of the State's Upper House of Parliament - **show high level political interference in the planning approval processes.**

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For example, in the controversial Windsor Bridge replacement project:

Hidden documents reveal political interference in planning process

“The documents revealed show how in less than a month following the political interference, the Department of Planning changed from a position of opposing the application to one of supporting it.”

(Appendix 4 – Full details).

It is further noted that Mr Sam Haddad was summarily dismissed from his NSW Planning Director General position - when the now NSW Planning Minister Ms Pru Goward commenced in April 2014 as the NSW Planning Minister (Appendix 5 - Full details).

The former NSW Minister of Planning Mr. Brad Hazzard is the former Solicitor of the HDC; he acted for it in legal matters for several years.

Mr. Hazzard also had been a long term Club member of the Harbord Diggers Club - and he has on occasions publicly supported this club during his time in the NSW Parliament (20 + years).

Despite these perceived Conflicts of Interest, Mr. Hazzard in his publicly issued Press Release (3/12/2012), see:

<http://www.planning.nsw.gov.au/AboutUs/Contactus/MediaCentre/tabid/381/ctl/PreviousReleases/mid/950/source/1/language/en-AU/Default.aspx?tb=2&yr=2012&mth=12> - concerning the granting of the HDC’s SCC, advises that his actions in this matter included:

“After considering competing views, I think it is appropriate for the proponent to lodge a development application with the council”

- in respect of a Seniors Living units development proposal on his former Legal client’s site.

It is alleged that Political Interference by the former NSW Planning Minister Hazzard and/or others *may have* occurred in respect of the NSW Department of Planning’s granting of the HDC’s SCC for Seniors Living. (Please see [APPENDIX 6 - for full details](#)).

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On the 27 September 2012, during a telephone conversation with a Senior Officer of the NSW Department of Planning, this Departmental Officer after looking up Departmental records inadvertently informed me that the Site Compatibility Certificate (SCC) application for the HDC's site had been REFUSED by the Department of Planning.

Sometime between the 27 September 2012 and 3 December 2012, NSW Planning has reversed its stated REFUSAL position for the HDC's SCC application lodged with it.

In respect of the HDC's SCC issued in early December 2012, the reasons behind this U-Turn are NOT transparent. Was there Political interference by any member of the NSW Parliament directed towards the NSW Department of Planning concerning this SCC matter??????

The opaqueness of this situation is highly concerning. The reasons behind this decision making U-Turn by the NSW Department of Planning - should be independently investigated, fully explained and be made fully transparent in the Public Interest.

It is noted that some of the practices of the NSW Department of Planning under former NSW Planning Minister Brad Hazzard have been exposed in media reports, including a recent (August 2014) article:-

Hazzard's department rezoned properties for donors

PUBLISHED: 06 Aug 2014, The department of former NSW planning minister Brad Hazzard rezoned properties for a Central Coast group in 2013, two years after it made a donation to the Liberal party.

See: The Australian Financial Review.

http://www.afr.com/p/national/hazzard_department_rezoned_properties_G5lqKkr4YPx46dojNlykJJ

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The Mounties Group have engaged a number of paid Political Lobbyists to further their commercial interests and their development proposals for the HDC's site. Public Records show the Mounties Group have engaged:

- 1) Ms Keri Huxley, Director of Huxley Communications Pty Ltd, and
- 2) Premier State Consulting Pty Ltd (Mr Michael Photios, Mr David Beg et. al.) - who are registered Political Lobbyists with the NSW and Commonwealth Governments.

(See APPENDIX 7 – For full details concerning the Mounties Group's use of paid Political Lobbyists concerning their commercial and property interests.)

Premier State Consulting Pty Ltd - paid Political Lobbyists for several NSW Registered Clubs - including the Mounties Group of Clubs.

Premier State's Chairman, Mr. Michael Photios was summonsed and appeared twice before the current ICAC Public Inquiry (Operation Spicer) into Political Donations and Political Lobbying practices.

Premier State has acted for several NSW Registered Clubs who have sought this Lobbyist Firm's assistance with their interests at both NSW and Federal Government levels - as Premier State Consulting is a Registered Lobbyist with both NSW and Federal levels of Government.

One of the NSW Registered Clubs which Premier State has acted for - the Balmain Leagues Club has been the subject of a series of Investigative Journalism articles in The Sydney Morning Herald concerning its Clubhouse site's redevelopment proposals.

A Sydney Morning Herald article (hyperlink is below) inter alia states:

Mr. Photios emailed the club saying "we have some useful intel to share with you and importantly, a perspective on the approach to the DoP [Department of Planning] before lodgment." One of Premier State's assets appeared to be a very useful contact in the Planning Department: - Mr. Photios' good friend and fellow Liberal Matt Daniel.

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A 2011 document refers to the DoP's Mr. Daniel dining with Premier State staff - the night before Mr. Photios met his Balmain/Rozelle Village clients. "Have talked to Matt about it, and am workshopping ways forward," said Premier State's Dominic Kelly in a 2012 email to the developers. See: <http://www.smh.com.au/nsw/michael-photios-the-tigers-and-the-wrath-of-angry-client-benny-elias-20140721-zuxpf.html>

The relationships between Premier State Political Lobbyist firm's staff and its Chairman Michael Photios - with certain staff in the NSW Department of Planning (who make decisions on Club Property Development proposals, e.g. the issuing of Site Compatibility Certificates for Seniors Living Developments on Club sites), including their good friendships, shared membership of the Liberal Party, dining out together with NSW Planning staff etc. - is highly concerning, possibly has caused illegal acts and warrants an independent investigation as to whether improper influence may have been exerted in this development matter.

See APPENDIX 8 - Premier State Consulting Pty Ltd, Political Lobbyists.

In my view, this necessary independent investigation should include inquiries into what actions the paid Political Lobbyists of the Mounties Group may have played in the controversial granting of the SCC by the NSW Planning to the Harbord Diggers Club site in Freshwater, NSW.

The current ICAC's Public Hearing (Operation Spicer) has exposed the nefarious activities of numerous Political Lobbyists and their insidious influence over certain NSW Parliamentary Politicians - particularly in respect of large property development proposals in NSW.

Numerous NSW Parliamentarians have been publicly exposed at the ICAC's current public hearings for inter alia accepting Political Donations from and/or being under the influence of certain Property Developers' Political Lobbyists - concerning some large Property Developments.

Several Liberal Parliamentarians have resigned from the Parliament admitting their guilt concerning improper/illegal practices and 8 former NSW Liberal Parliamentarians - now sit on the NSW Parliamentary cross- benches awaiting their fate from the ICAC's forthcoming findings.

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The SEPP for Seniors Living - Issues.

The SEPP for Seniors indicates that the DA's consent authority may have a different view from the NSW Department of Planning, as to whether this Seniors living development proposal is compatible [Regulation 24 (2) (b)].

In my submission, the HDC's controversial and contentious SCC for Seniors Living should NOT be given majority weight in the consideration of and deliberations by the consent authority of this Masterplan DA.

It would I believe be a very useful exercise to obtain a Planning and Administrative Law specialist - Senior Counsel Barrister's legal advising on the legal validity of this NSW Department of Planning issued SCC for Seniors Living for the HDC's site in Freshwater, NSW - given its numerous concerning issues regarding NSW Planning's actions.

Both the elected representatives of the Warringah LGA and Warringah Council's Planning Staff - oppose the Seniors Living units' component of this DA proposal.

At a full Warringah Council meeting held on Tuesday 28 August 2012 - Warringah's Councillors and its Mayor unanimously adopted a Notice of Motion (see page 2 of this submission) to formally object to the HDC's proposed Seniors Living units development.

This unanimous formal objection to the Mounties Group's SCC for a Seniors Living development application on the HDC's site - by the Warringah Councillors and Mayor, as the democratically Elected Representatives of the Freshwater and surrounds communities, is the strongest possible objection against a Seniors Living units development on the HDC's Freshwater site.

Warringah Council's Planning staff have also objected to the NSW Department of Planning against it issuing a SCC for a Seniors Living development on the HDC's site.

The Freshwater and surrounds communities' Local Member of the NSW Parliament (Mr Mike Baird) has also publicly expressed views (see page 3 of this submission) opposing a non-club development on the HDC site.

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The Mounties Group in their pursuit of DA2014/0875's residential component of 97 Seniors living units - show their *ongoing disregard* for the decision of the Warringah LGA's democratically elected Warringah Councillor Representatives, Warringah Council Planning staff advice and Freshwater's NSW Parliamentary elected representative (NSW Premier).

The Mounties Group's so called "Community Consultation" process in respect of this matter has been analysed based on its representatives' published statements and documents (Appendix 9). In my considered view, this process has been A SHAM since its beginnings, with a pre-determined outcome for it - of a Seniors Living multi units' property development on the HDC's site.

This DA is for a much larger residential component development proposal of 97 Seniors Living units - than previously rejected several times DA's for 26 residential units on the HDC's site.

Since taking over the HDC's site in May 2006, the Mounties Group has lodged several DA's with Warringah Council and a former Part 3A application for the HDC's site and has had them all rejected. These previous DA's had a much smaller number of residential units proposed in them than what this latest DA seeks, e.g. the refused DA2008/1163 lodged with Warringah Council was for a 26 units' development.

On appeal of this DA2008/1163's refusal by the Mounties Group to an independent planning review panel, the Warringah Development Assessment Panel (WDAP) also again refused its approval.

The Mounties Group further appealed its DA2008/1163's refusal by Warringah Council and the WDAP - to the Warringah Development Review Panel (WDRP). This Section 82A of the EP&A Act review [REV2010/0033] of the DA for 26 units was assessed by the WDRP independently of both Warringah Council and the WDAP - and for the third time this DA was finally rejected in November 2010.

The WDRP's findings included:

"That the Section 82A review for the Stage One Development Application No. 2008/1163 for a residential development consisting of 8 buildings containing a maximum of 26 dwellings with underground

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carparking for 51 vehicles at Lot 100, DP 1136132, No. 80 Evans Street, Freshwater and Lot 7108, DP 1074767, No. 77 Evans Street, Freshwater be refused for the following reasons:

1. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the development is not considered to be consistent with the Desired Future Character of the H1 Freshwater Beach locality suburbs in the following respects;

(a) Future development will not maintain the visual pattern and predominant scale of detached style dwellings in landscaped settings.

(b) The proposed development detracts from the visual quality of the headland.”

See: <http://www.warringah.nsw.gov.au/ecouncil/doccache/1704698.pdf>

Accordingly, a previous Mounties Group DA for 26 residential units on the HDC’s site - was refused 3 separate times by 3 different consent authorities, i.e. by Warringah Council, the WDAP and the WDRP. Despite these 3 separate rejections of a 26 residential units’ proposal, the Mounties Group is now seeking development consent for 97 Seniors’ Living residential units on the HDC’s site.

Given these 3 prior refusal decisions concerning the HDC’s site for much smaller development proposals, why the NSW Department of Planning issued a SCC for the site for up to 125 Seniors Units is at least highly inconsistent - if not highly questionable given the Political Lobbying etc. involved with obtaining the SCC for the HDC’s site.

What is the correct land zoning for the HDC’s Registered Club’s land site - Matters for consideration?

In March 2012, the Mounties Group through Urbis, made a submission to Fairfield City Council in NSW concerning the Draft Fairfield Local Environmental Plan 2011 to request that it “amend the RE2 zone

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boundary to include other sites under the ownership of the Club.” at
Mount Pritchard ([Appendix 10](#))

In this case Mounties (through Urbis) applied to Fairfield City Council to have the Mounties club site and adjoining properties owned by Mounties, changed from *R2 Low density residential* to *RE2 Private recreation* in the Draft Fairfield LEP 2011, so that it may in the future expand the club to “provide services to its members and the wider community”.

It is further noted that the *Fairfield City Submission Summary Number 146* includes this Council Officer’s Comment:

The DP&I instructed Council to apply the RE2 zone to registered club sites within the residential zones as part of this Council’s preparation of the draft FLEP 2011. It was on this basis that Council has applied the RE2 zone to Mounties Club Site.

This included four residential lots adjoining the Club’s core site. The application comments that: “the review of the draft LEP aims to secure the long term viability of the Club and enhance its contribution to its members and wider community”.

The Mounties Group’s application also states: **“The submission acknowledges the proposed application of the RE2 zone to the club site as the most appropriate zone for the club site.”**

I have visited the Mounties Mount Pritchard Club site and after viewing it, fully agree with the Mounties Group’s views concerning RE2 as the most appropriate zone for its club site.

I applaud Mounties, Fairfield City Council and the NSW Department of Planning’s efforts to provide for the future recreational needs of the Mt. Pritchard community - by zoning the Mounties Group’s Mt. Pritchard Registered Club site as RE2 (Private Recreation) zoning.

However, I am concerned that both Mounties and the NSW Department of Planning seem intent on removing that opportunity from the community of Freshwater located about 50 km from Mt Pritchard, NSW.

I cannot understand why the HDC’s Freshwater site is not also zoned RE2 - surely both these Mounties Group’s Club lands in Sydney, NSW residential locations should both be zoned RE2 Private Recreation.

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I strongly suspect that NSW Planning has made another very bad Administrative decision concerning the HDC zoning's outcome.

The NSW Department of Planning should have acted to also protect future recreational opportunities on the HDC's site in Freshwater by also zoning the HDC's site as RE2 zoned land.

Warringah Council should now properly address this land zoning anomaly for the HDC's site and re-zone the site as RE2 Private Recreation. A comprehensive set of reasons as to why this RE2 re-zoning should occur are set out in a legal advising obtained from a Specialist in Local Government and Planning Law firm. ([Appendix 11](#)).

Traffic Issues concerning the HDC site's proposed development.

The HDC's own traffic impact assessment estimates that almost 500 cars per hour during evening peak traffic hours would enter/leave from the development proposal's entry/exit points for vehicles in Evans Street, Freshwater.

This volume of traffic converging on and off this Headland will cause severe traffic and parking problems around it and also create very unsafe conditions for pedestrians using Evans Street, Carrington Parade and Lumsdaine Drive, Freshwater located next to the HDC.

The HDC's traffic impacts report inter alia chose days in late Autumn (May 2014) and in mid-Winter, (Friday 27 July 2011), to calculate their traffic figures. As a long term Freshwater resident who has driven and walked around the HDC's site thousands of times - considered observations and logic dictates that if a mid-Summer weekend day had been chosen for the traffic report, the volume of traffic and parking demands impacts on the HDC's location would have been much higher.

A summer day's traffic demands on and around the HDC's site would have produced very different traffic impacts and onsite parking requirements in the traffic/parking report for the HDC's site.

I have seen numerous traffic accidents around this Headland site because of its narrow, windy and undulating roads, which on their bends around this Headland have inadequate sight lines to oncoming traffic -

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particularly turning right into the McKillop Park Headland carpark. The entry and exit points of Evans Street and Lumsdaine Drive for traffic egressing onto Carrington Parade are steep and also have limited views of oncoming traffic into them.

I note that the traffic study for this proposed development on the HDC site was conducted by GTA Consultants. I note a Roads and Maritime Services (RMS) independent audit's findings of this firm's traffic report for another Registered Club - the Balmain Tigers' development, inter alia found: "However, a response to the report by Transport for NSW and Roads and Maritime Services said the traffic modelling contained "numerous errors", such as underestimating travel times in one direction by 50 per cent." In respect of GTA Consultants traffic report.

"The issues were detected in an independent audit commissioned by the RMS."

"Two government agencies have refused to support the development, saying the modelling contains so many errors it is useless."

"Traffic assessments were carried out by two firms, GTA Consultants and Halcrow." **(Emphasis added)**

Read more: <http://www.smh.com.au/nsw/shambolic-traffic-model-sets-back-balmain-tigers-development-pitch-20130222-2ewwh.html#ixzz2S6gryqNc>

The GTA Consultants latest traffic report identifies that this DA proposal would generate a total number of 322 and 482 vehicles per hour respectively in the AM and PM peak hours - resulting in **an increase of 119 and 284 vehicle movements in the AM and PM peak hours respectively.**

Parking Requirements

According to the GTA Consultants report, based on the individual parking requirements for each proposed use, the proposed development will require 755 parking spaces and it is suggested by GTA Consultants that a provision of only 705 parking spaces is adequate.

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The shortfall of 50 off street parking spaces is NOT acceptable for this area of Freshwater which is already under intense pressure for street parking spaces - particularly during the warmer months when many more people drive to visit its Coastal Headland and Freshwater Beach.

There is no parking survey or reference provided in relation to the assumptions applied in the calculation of the expected parking demand.

In addition, the child care and seniors living visitor car spaces must be specifically allocated for these purposes - and cannot be used in a shared parking pool set up for other uses.

Access Driveway

The traffic report indicates that the loading dock access driveway and the car ingress driveway have been proposed to be located at respectively 38m and 48m from the intersection of Evans St and Carrington Parade, however, the distances mentioned in the report are NOT consistent with the distance on the lower ground architectural plans (approximately 30 and 40m). The driveways are located on a low point between two road crests which restrict the sight lines of the vehicles using these driveways.

The proposed driveways are NOT acceptable due to the poor visual sight distance for traffic turning into the driveway and traffic on Evans St for both directions of travel, as well as the downhill grades on Evans St. The traffic on Carrington Parade turning left into Evans St does NOT have adequate visual sight distance of large rigid trucks and vehicles entering the driveways. Also, due to the location of proposed driveways on the downhill, the Evans Street traffic heading to Carrington Parade does not have adequate stopping distance to the entry driveway.

I have been driving on Evans St., Freshwater for over 35 years - it is a dangerous road due to the dips in it and presents a road safety problem as it is with its current traffic volumes - almost doubling its PM peak traffic volume will create traffic chaos and is a recipe for numerous instances of vehicle grid lock and more vehicle accidents occurring.

Considering the fact that the proposed driveways provides access to large rigid vehicles and the GTA Consultants report states 483 vehicles in PM peak hours, the likelihood of the simultaneous arrival of vehicles resulting in queuing at the entry should be taken into consideration.

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The report refers this matter to the traffic modelling, however, the ingress and egress to the development has NOT been considered in the report's modelling. The two lane egress driveway to Evans Street would need to be designated for separate "left turn only" and "right turn only" lanes.

The Loading Dock

The design of the loading dock access driveway does NOT comply with Australian Standards AS2890.2-2002; Parking facilities - Off street commercial vehicle facilities. The minimum requirements for width of an access driveway for HRVs are 12.5m together with an additional 1.5m on both sides. The provision of driveway taper of 1 in 5 must also be considered in the dock's design.

From the demonstrated swept path, it appears that trucks are required to cross the Evans Street road network's centrelines across all oncoming traffic and use both traffic lanes (both traffic directions) to be able to turn - thereby monopolising and impeding other traffic vehicles. Entering trucks must take the turn into the loading dock within the traffic lane - without crossing the road's double centrelines.

Pedestrian Access

There is concern regarding the location of child care access proposed on Carrington Parade on the low point of the crest which needs to be addressed. The provision of crossings for the childcare centre, as well as for the elderly people walking to/from the site and using public transport are to be addressed. A pedestrian access to the club is to be provided from Evans Street. Providing the proposed configurations, pedestrians would use the ramps to the car park as an access to the club which is unsafe. Where is the onsite provision for Service Vehicles' parking?

The development proposal will generate far too much traffic on an already dangerous road network around the HDC's site with further adverse traffic effects also being imposed onto surrounding streets. There will be Pedestrian/Traffic conflicts all around the development site from traffic entering and leaving the development and walking around it.

Lumsdaine Drive is regarded by the Freshwater Community as a pristine area, as is the Coastal Headland in McKillop Park. To direct more traffic to it and having a club entrance in this area - is a highly negative impact on the Headland's Natural Environment and its public visual amenity. Other property Developers - are also trying to cram people in to the site's

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surrounding streets' with new larger developments and the cumulative traffic impacts have become increasingly problematic - the traffic situation on busy summer days around the HDC's site is horrendous.

Evans Street is already too narrow to take two-way traffic without moving very carefully on it. This new development would turn Evans Street into an arterial road. More buses (and many more cars) will use this route. There is a consolidation of 2 existing car parks into 1 car park within the new development. A queue of cars getting into a single entry car park will create pedestrian danger on the dip in the road on Evans Street.

The intersection of Evans and Carrington Streets is already very busy and is dangerous for pedestrians. Pedestrians crossing here have to contend with cars travelling too fast down Carrington Parade or coming around a blind corner of Evans Street.

The Friends of Freshwater Inc.'s August 2014 Update Newsletter, at pages 2- 3 eloquently explains the traffic chaos which this development proposal if approved would impose onto the Freshwater Community:

“SPARE A THOUGHT FOR THE RESIDENTS OF EVANS STREET.

Evans Street, Freshwater, was never meant to be a major thoroughfare. At its western end it is squeezed between a cliff face on one side and domestic housing on the other. It was never designed to carry articulated buses or trucks but has been called upon as a carriageway for both.

In the new Mounties Development, it will be a major thoroughfare for near 200 new residents and business personnel in the proposed Mounties Development. They will be daily seeking to travel to the nearby Village, Manly or further. Clearly this street will be unable to cope, given that already all traffic has to grind to a halt when the E65 or 139 buses pass through or negotiate the turn into Charles Street.

On-street parking will undoubtedly be at a premium and squeeze points along the street will become more problematic. For east Evans Street unit dwellers, the parking arrangements in the DA will undoubtedly mean that the informal overnight undercover parking within the Diggers site will cease, as will the Crown land car park currently used jointly by club members and the community. The DA foreshadows this area being returned to native vegetation.

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In the end result, the owners of all these vehicles will be forced to seek On-Street parking in Evans, Lumsdaine or adjacent locations. There is no also no consideration in the Mounties DA for these adverse outcomes from the development, nor does there appear to be active planning from Warringah Council to rectify this situation." See: <http://www.freshie.org.au/the-Duke-Newsletter-August-2014>

What is the point of having an over-developed 'island' site - surrounded by a ring road of too many cars travelling in conflict with Pedestrians - where families, the young and the elderly cannot approach or exit the site in safety because of the traffic chaos created by over development of this Coastal Headland site?

The shortage of onsite parking and the amount of additional traffic generated by the over-development proposal - will force overflow vehicles visiting the site to park in the McKillop Park car park on the Northern freshwater Beach Headland.

This prime piece of Public Coastal Recreation land which is now part of a protected World Surfing Reserve etc. - will again become a de-facto carpark of the Harbord Diggers Club, as it was in the late 1980's to early 1990's era - when this Club's then many patrons' vehicles took it over. The result then was large amounts of rubbish including broken glass being left in this car park, numerous altercations between unsupervised persons affected by alcohol etc.

It is my belief that Warringah Council must conduct their own (independent of this DA's Owner/Applicant) traffic impacts and parking requirements assessment for **this proposed over-development - which is a pedestrian and traffic "train wreck" just waiting to happen** - to ensure that independent and appropriate, e.g. non middle of winter minimal traffic volume data etc. - is used for an independent and reliable assessment of the traffic impacts and parking requirements of this over development proposal.

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Is this Development Proposal in the Public Interest - Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act, 1979??

Like many of the Freshwater Community's long term residents, I see the HDC's land site as a community facility - rather than as a land compound to be plundered for commercial gain by non-Freshwater Community controlled commercial interests who this Community land site was entrusted to following their representations that they would look after it.

In my view, it is totally inappropriate for most of the HDC's Community Club's lands to be privatised and leased to personal and commercial interests - and the HDC's magnificent site ruined by property over development for a Trojan horse Property Developer's financial interests.

This attempted plundering of the HDC's lands long (55+ years) used for the Freshwater Community's leisure and recreational facilities - is a gross betrayal of our Community which has for over 5 decades supported this Club. The HDC has been, and all of it should remain as such - an important provider of leisure and recreational facilities and social support to ALL of the local Freshwater and surrounds community.

A club exists to serve the interests of its members **and** the local Community it is located in. As ClubsNSW has succinctly and correctly stated many times: "**Clubs are owned by the Community for the Community!**" See: <http://www.youtube.com/watch?v=7snNoDYITII>

The Community minded practices of the Mounties Group in respect of some of Sydney's most disadvantaged youth in the Fairfield Local Government Community, were the subject of public exposure by The Sydney Morning Herald in May 2012 ([Appendix 12](#)).

The Mounties Group of Clubs amongst other large NSW Registered Clubs were the subject of significant empirical research and scrutiny for a PhD Thesis undertaken at Sydney University, which looked at the activities of the "Big 18 Clubs" i.e. Casino Clubs in NSW.

This Doctoral thesis was the foundation of a now published book: Betty Con Walker (2009) *CASINO CLUBS NSW - Profits, Tax, Sport and Politics*, Sydney University Press ISBN 9781920899400

This published Doctoral thesis' research and its findings included that the large NSW Clubs have questionable income taxation status as 'mutuals',

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which allows them to pay little if any corporate income tax and low state tax (compared to NSW Hotels) on their gambling profits.

When NSW Clubs were first allowed to legally operate poker machines in 1956, clubs were in fact mutual organisations whose profits were invested back into the community they served, and into the club for the sole benefit of its members. These genuine club and community arrangements were the beginning of the favourable government policies for clubs which continue on to today.

“However, while all the privileges of such clubs have survived the passage of time, the mutuality requirement is now absent from many clubs - particularly the larger clubs. It is apparent that the shared interests are no longer a requirement for membership. In fact, the membership of many clubs is open to anyone who walks in off the street.”

Page 6, *Casino Clubs NSW - Profits, Tax, Sport and Politics*.

Serious questions must now be raised as whether what is proposed for the HDC's site in this DA is in fact a mostly commercial operation for Private and Contractors' Commercial gain - rather than a “mutual” Registered Club?? The already questionable income taxation status as a “mutual” of the Mounties Group - is further questionable and an audit by the Australian Taxation Office may have significant taxation implications.

It is noted that a material change in operations of a so called “mutual” Club will result in Income Taxation consequences for a Club. The Mounties Group has already had a large tax bill from its takeover of the HDC, as well as the legal costs of a Court Case it lost against the ATO.

Mount Pritchard & District Community Club Limited v Commissioner of Taxation [2011] FCAFC 129 (17 October 2011)

Source: <http://www.austlii.edu.au/au/cases/cth/FCAFC/2011/129.html>

The Mounties Group are a very wealthy (e.g. **net assets of over \$233.5 Million as at 30/6/2014**) group of clubs whom enjoy for example, substantial income taxation benefits - despite the significant adverse social costs they externalise onto communities from their extensive gambling and liquor sales activities.

With this DA, the Mounties Group are also seeking to impose further social costs onto the Freshwater Community - in the form of Environmental degradation and loss of Public amenity from and around

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the HDC's club site - which is claimed by the Mounties Group to be operating as a Community Club.

In the Public Interest tests placed upon this DA's proposed development of the HDC's Club's Community lands, the observations of others bear consideration:

"Some Clubs, rather than operating for the benefit of members, appear to operate for the benefit of their management."

Page 210, *Casino Clubs NSW - Profits, Tax, Sport and Politics*.

The Mounties Group's Club Secretary's Register, reveals its CEO Mr Greg Pickering's remuneration package paid from its Club members' funds exceeded \$540k pa + additional benefits. This position holder's salary package has greatly increased since the Mounties Group's takeover of the HDC (in May 2006) - and has been as high as **\$640k pa + benefits** - whilst the HDC has on the basis of the Mounties Group's published figures since the May 2006 takeover lost over \$20+ Million in numerous years of financial losses under this one CEO's control of it. The HDC under Mounties Management has been a great big "White Elephant" in terms of its financial performance, loss of market share etc.

The existence of a club implies a special or common interest among its members. Clubs are claimed to be "Not for Profit" organisations. The original HDC's goals of promoting and pursuing its social purpose and community benefit for which it was established - has now become superseded by a main mission of commercial and personal gain.

The pursuit of commercial and personal gain - rather than the 'common interest' for which the HDC was originally established on 5 June 1930 - lies at the heart of the Mounties Group's latest property overdevelopment proposal for the HDC's site. This DA's proposal would mean the overdevelopment of and privatisation of a large portion of the HDC's iconic headland site. In desperation for a commercial fix to a long badly mismanaged club - the baby is being thrown out with the bathwater.

OBJECTIONS SUMMARY

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Objections to this proposal are severable and cumulative concerns regarding the scale, bulk, height, density of development, and the unsuitability of the proposed 97 units of Seniors Living residential units - an over-development proposal which is not in harmony with the site's surrounding built area and Natural Environment.

The HDC's site is located on a remarkable Natural Coastal Headland area with sandstone coastal heath containing endangered flora and fauna species located adjacent to it. The HDC site is in the near vicinity of heritage items (the Duke Kahanamoku Statute and Memorial Park); Freshwater's National/World Surfing Reserves protected under the NSW Crown Lands Act and Heritage conservation areas (the Coastal cliffs).

The design of the proposed development does not complement the character of its nearby Heritage items and the protected National/World Surfing Reserves. The significant and highly valued views to and from these heritage items and National/World Class Surfing Reserves would be adversely affected by this DA's proposed over-development.

The DA's proposed developments contain building envelopes which are far too heavily weighted towards a residential over-development component which is overly dominant on this sensitive and beautiful Headland landscape setting. The proposed development is not sympathetic to the scenic and visually sensitive character of the location.

The proposed use of a Seniors Living development of 97 units is inappropriate for the HDC site on numerous grounds including:

- **The scale and density of the seniors' living units' component of the proposal. The Club and recreation uses - would become ancillary to seniors units which would overwhelmingly dominate the HDC's site.**
- **A failure to comply with both Council and State Planning controls by an over development of the site which results in adverse impacts upon adjoining and nearby land and the streetscape, in addition to providing inappropriate levels of amenity to surrounding and nearby lands.**
- **The development proposal fails to meet policy objectives to achieve a good design outcome, which minimises impacts on the amenity and character of the locality. The proposal breaches "built form" principles in applicable policies, particularly with regards to the bulk and scale of the development and the compatibility with the surrounding development.**

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- • Concerns are held in relation to the design of the proposed development. The proposal is inconsistent with Clause 33 of the SEPP (HSPD), in that the bulk and scale of the development do not reflect the predominant character of the site's Coastal Headland area.
- • The proposed building adjacent to McKillop Park Public Reserve is five (5) storeys high. The development proposal exhibits a significant departure from the permitted number of two (2) storeys in this area.
- • The design and scale of the adaptive re-use of most of the existing clubhouse building as a residential flat building development does not constitute housing within "low density residential environment" based on the size and scale of the buildings adjoining detached dwellings to the west and south-west.
- • The design of the proposed development does NOT complement the character of the adjoining heritage and protected Reserve items. Significant views to and from heritage items or heritage conservation areas, are adversely affected by the proposed development.
- The proposed 2 new 5 storey blocks of Seniors Living Units are NOT an adaptive re-use of the existing HDC Clubhouse building - rather they are a greedy attempt *to retain the existing Clubhouse's building envelope in terms of its height, location and potential commercial yield.*
- There are serious doubts concerning the validity of the issuance of the Site Compatibility Certificate (SCC) for the HDC's site - because of alleged Maladministration in the process by the NSW Department of Planning. It is noted that the former Minister for Planning Brad Hazzard (former Solicitor of the HDC) and NSW Planning were politically lobbied by The Mounties Group's paid Lobbyists concerning the issuing of the SCC for the HDC's site - which was initially REFUSED by NSW Planning - before NSW Planning's mysterious U-Turn approval of the SCC for the site.

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This DA proposal's indicated future uses by the Mounties Group would privatise most of the HDC's site as Seniors Living units - which would be the subject of long term leases to residents and therefore this part of the HDC's site would become inaccessible to Members or Public use.

If this DA were approved and the building envelopes then used as has been indicated by the Mounties Group, the HDC's club facility would lose its views to its South overlooking Freshwater Beach, it's South East district views of Manly and North Head - as well as district views to the West which are currently enjoyed and valued by its Members/Guests.

The current elevated views to the North from the HDC's Gymnasium area would be lost and restricted by the proposal for the Clubhouse to be located at basement level and lower. The proposed development would remove and privatise the HDC club's best views - because the Seniors Living units would occupy the upper levels of the existing HDC's clubhouse and have the best panoramic views from the HDC's site.

The privatisation of the majority of the HDC's site will threaten, not cater to, the current and future recreational needs of the Freshwater community. The *Warringah Recreation Strategy 2009* identifies that Queenscliff and Freshwater have the lowest available open space for recreation of all the 20 suburbs in the Warringah LGA.

The development proposal removes the identification of the HDC's site as a registered club - to an intensive 97 units Seniors Living residential development - with a smaller club function beneath it - which is a significant departure from the site's character.

It is property over-development by stealth by a Trojan horse property developer posing as a Community Club. The appearance of the proposed residential flat development from external areas in the locality is a detrimental change to the locality's Public Amenity.

This proposal would adversely affect the amenity of the HDC, and greatly restrict the site's available area for recreational and leisure needs available to ALL - by privatising most of it to a privileged few in the overwhelmingly dominating of the site Seniors Living units development.

See [APPENDIX 13](#) - An example of the public misrepresentations, e.g. **"All assets and profit will be to the club"** - made by the Mounties Group in respect of this proposal's purposes.

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Conflicts are likely to occur between the recreational uses of the site and its proposed private residential use. This DA proposal is not in the best interests of the Freshwater Community and the Warringah LGA - it would sacrifice the legacy of the HDC, which has grown in the Freshwater Community to occupy the headland site over a period of over 60 years.

The HDC site has great historic value to the Freshwater and surrounds areas, and is one of the few club sites which truly directly represents an important part of Australian history and culture. The whole of the recreation land of the HDC's site should be retained as Community Club lands for suitable recreational and leisure facilities to be provided for the needs for ALL of the Community in the Freshwater and surrounds areas.

The Harbord Diggers Club site *is a dedicated war memorial site* - also a site of historical and family significance which should be preserved as such. The original Crown Land Grant in 1952 to the HDC stipulated that the Club's site was dedicated to the Club as a War Memorial site - NOT a land site for a large Residential property over-development.

This fact is confirmed in the HDC's founding father and Club Badge #1 holder - Mr. Edwin Sidney "Meggs" Madigan's Obituary - "Askin's mate, the heart of Harbord Diggers"- which inter alia advised:

"The new club opened in 1957 on Crown land, a "war memorial site" between Freshwater and Curl Curl beaches. The Minister for Lands had approved the deal." <http://www.smh.com.au/news/obituaries/askins-mate-the-heart-of-harbord-diggers/2008/08/12/1218306885946.html>

The Mounties Group's primary focus with this DA is the privatisation of the HDC's site and commercial profit making for themselves and for profit private sector contractors they will be engaging to run it - it demonstrates a total lack of respect for the significance for this iconic Freshwater Headland War Memorial site.

By any measure, the Northern Freshwater Beach Headland location of the HDC is a superb physical location. **It is simply irreplaceable** - and needs to be respected as such and as the much loved largest piece of the Freshwater Community's social capital.

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The impacts of this proposed over-development for the Mounties Group's investment purposes, if approved would be inflicted upon the Freshwater and surrounds Communities for decades to come - a very long time. A once in a generation opportunity for a great Architectural work on the HDC's site - would be lost to uncontrolled developer greed.

The HDC's superb site provides a rare opportunity for the visual celebration of the esteem in which Australian Diggers are held in the Freshwater and surrounds communities and for a celebration of the remarkable sandstone Coastal headland upon which this Community Club should sit - rather than a privatised over-development of the best pieces of the site and their ocean views for a privileged few.

The ugly 5 storey boxes of Seniors Units proposed for the site are visually disappointing for such a prime location - and the resultant traffic congestion etc. consequences of this overdevelopment would ruin the Public Amenity on and around the HDC's site.

There is ample potential for a more sympathetic development outcome for this superb land site - which is compatible with it and is responsive to the topography of the land and the visual qualities of its prominent Coastal Headland location.

**I strongly urge Warringah Council's
assessment of this DA to recommend
its refusal - and for the JRPP to reject
this DA outright.**

THANK YOU.

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APPENDIX 1

HARBORD DIGGERS CLUB'S HEADLAND LANDS SITE, FRESHWATER, NSW.

THE Warringah 2011 Local Environment Plan (WLEP2011) & Warringah 2011 Development Control Plan (WDCP2011) - Planning Controls.

The Harbord Diggers Club site's land zoning under the
Warringah LEP 2011 can be viewed at:

http://www.legislation.nsw.gov.au/map/1800_COM_LZN_010_020_20111117.pdf?id=0203c0be-7144-6878-c96a-ce4ac6009692

The zoning map shows that the whole of the HDC site's land
has been zoned R2 - Low Density Residential under the
WLEP2011. The permitted uses for this land zoning are:

“Warringah Local Environmental Plan 2011
Current version for 9 December 2011 to date
Land Use Table Zone R2.

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provides facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

2 Permitted without consent

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Home-based child care; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3"

Source:

<http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+649+2011+cd+0+N>

The Harbord Digger's Club site's building height restriction is a maximum building height of 8.5 metres under the WLEP2011.

The height of buildings map information can be viewed at:

http://www.legislation.nsw.gov.au/map/1800_COM_HOB_010_020_20111122.pdf?id=37ebd753-0f04-ef55-f0fc-eada3278bedb

The Harbord Diggers Club's site minimum lot size is 450

Square Metres per land lot. See:

http://www.legislation.nsw.gov.au/map/1800_COM_LSZ_010_020_20110919.pdf?id=31733ead-2327-eedd-8f2a-bd6dd38efa94

Warringah Local Environmental Plan 2011

Current version for 9 December 2011 to date

Schedule 1 Additional permitted uses

1

13 Use of certain land at Lumsdaine Drive, Freshwater

(1(1) This clause applies to land at Lumsdaine Drive,

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Freshwater, being Lot 100, DP 1136132 and Lot 2, DP 579837, shown as “Area 10” on the Additional Permitted Uses Map.

(2(2) Development for the purposes of recreation facilities (indoor), recreation facilities (outdoor) (but only if the facility, whether indoor or outdoor, operates in conjunction with a registered club) and registered clubs is permitted with consent.

Source:

<http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+649+2011+cd+0+N>

The Warringah LGA’s 2011 Development Control Plan - the details of the DCP which is applicable to the HDC’s site are viewable at:

<http://www.warringah.nsw.gov.au/ePlanning/pages/Plan/Book.aspx?vid=14332>

The “State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004” is viewable at:

<http://www.legislation.nsw.gov.au/viewtop/inforce/epi+143+2004+cd+0+N>

Warringah Council’s website information for the HDC’s site:

80 Evans Street FRESHWATER NSW 2096 - advises that:

Attributes

Zone(s):

LEP - Land zoned R2 Low Density Residential

LEP - Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011

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Hazards and Overlays:

LEP - Lot Size Map-all land shown as 450sm

LEP - Height of Buildings Map-all land shown as 8.5m

LEP - Land Slip Risk Map-Area B

DCP - Landscaped Open Space and Bushland Setting 40% of site

DCP - Building Envelope 5m

DCP - Wildlife Corridors

DCP - Land adjoining public open space

Stormwater - within 2m of Council pits and pipes

Please note: the above attributes may be abbreviated and are not a complete list. Council highly recommends obtaining a Section 149 Certificate and consulting all of the planning maps and controls.

Source:

<http://eservices2.warringah.nsw.gov.au/ePlanning/Public/XC.Track/SearchProperty.aspx?id=333126>

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APPENDIX 2

The Multistorey Unit Blocks opposite to the HDC’s site in Evans Street, Freshwater, NSW and the height of the HDC’s Clubhouse - Background.

The multi-storey Unit Blocks across the road from the HDC’s site in Evans Street, Freshwater were developed from the mid 1960’s to mid 1970’s. During this era the consent authority was Warringah Shire Council who gave development approval for them. During this “colourful” era of Warringah Shire Council’s history it was sacked for corruption and two (2) of its Councillors were jailed for receiving bribes in respect of their approving Property Development Applications in the Warringah LGA.

The Wikipedia entry for Warringah Shire Council explains as follows:

“Dismissals

Warringah Councils have been dismissed three times since the 1960s.

1967

Warringah Shire Council was first dismissed in April 1967 by the [Askin](#) State Government and was triggered by the gaoling of two Councilors for bribery. The Councilors involved, Dennis Thomas and George Knight, were prosecuted under the *Secret Commissions Prohibition Act 1919 (NSW)* for receiving bribes from a development company to influence planning and development decisions, and both received gaol sentences.

Source: http://en.wikipedia.org/wiki/Warringah_Council

Former NSW Premier Robin Askin was a highly controversial man who played a significant part in the history of the HDC by inter alia helping it obtain its original Crown Land site (c. 1952), fund its clubhouse and obtain its development approvals through the mid 1950’s to mid-1970’s.

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Robert Askin - Allegations of corruption - “Since his death, there have been persistent allegations that Askin, allegedly assisted by then Police Commissioner [Norman Allan](#), oversaw the creation of a lucrative network of corruption and bribery that involved politicians, public servants and police and the nascent Sydney organised crime syndicates.”

See: http://en.wikipedia.org/wiki/Robert_Askin#Allegations_of_corruption

The main reason that the Freshwater Beach Headland high rise units located opposite the HDC were allowed to be built to the height they are - was the then antecedence of and ongoing endemic corruption in Warringah Shire Council during the era of their development approvals.

The high rise units next to the Harbord Diggers Club and the height of the HDC's clubhouse itself - are part of the very unfortunate and inappropriate legacy of Robin Askin and Warringah Shire Council's 1960-70's colourful era in respect of property developments.

These 1960's -70's residential flat buildings are totally inappropriate for the Freshwater Coastal Headland area which they unfortunately sit upon and they should not be used as an argument to support this DA's height, bulk and scale etc. proposals - as the Mounties Group are trying to do.

These Evans Street, Freshwater existing blocks of flats are a legacy of bad planning that has spoiled the visual and recreational amenity of the Northern Headland of Freshwater Beach. These existing flats do not justify additional unit over-developments on the HDC's site - to compound these inappropriate planning and development problems.

To allow new multi-storey units on the basis of these existing flats would only perpetuate bad planning outcomes, with new multi-storey units becoming a highly visible landmark reflecting the insensitivity of over development of this visually scenic Coastal Headland.

As an example of the HDC's history of Environmental vandalism It should be noted that the HDC's first Secretary/Manager (Mr Edwin “Meggs” Madigan) had part of McKillop Park's native coastal headland flora and fauna on the Eastern side of the HDC's site, illegally cleared and converted into a car park for the HDC's use in the early 1960's.

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In the HDC's published biography of Mr "Meggs" Madigan, it advises:

"ASKIN INTERVENED FOR MEGGSIE WHEN, without permission, he transformed the native vegetation area on the ocean side of the club into a car park. He had the site cleared, then slipped some beer to the road gangs to deliver their excess loads of asphalt and level it out. He was dobbed in and received a State Government directive to dig up the car park and restore the vegetation within twenty-eight days - because this area had not been part of the club's Crown land allotment.

Meggs: I saw Bob and we did a deal with the Lands Department. Instead of ripping up the asphalt the club took over the site on a lease, which it continues to pay for annually."

See Pages 66 - 67, ***HARBORD HERO Meggsie Madigan, Digger Number One***

Author: Gary Martin (2007). Sydney, Harbord Diggers Memorial Club Limited.

I am informed the road gangs in the above quote were employees of Warringah Council - per conversations I had with Mr Edwin "Meggs" Madigan about the Harbord Diggers Club's history.

A Permissive Occupancy (P.O.) [1966/301 M] was granted by the NSW Crown Lands Office for the Harbord Diggers Club's occupancy in the illegally cleared part of McKillop Park, Freshwater ([DP 1074767](#)) for use as a carpark, **with the uninhibited use by the General Public of this area.** A further P.O. of Crown Lands in McKillop Park for landscaping purposes was granted in 1988 to the Harbord Diggers Club.

McKillop Park is a part of Reserve 145 for Public Recreation notified in the NSW Government Gazette on the 3rd April 1886. **This public carpark land which is the subject of a P.O. to the HDC - has permanently remained part of Crown Reserve 145 - and the P.O. was only ever granted with the intention that it would be a temporary tenure - with this land being required at some future date, to be fully remediated back to being part of McKillop Park's Public Coastal Recreation Reserve.**

From its original flat roofed single storey Clubhouse building opened in October 1957 when the HDC was deeply in debt, assisted by a series of "interventions" by the then immensely politically powerful Local member

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and NSW Premier Robin Askin - and aided by a then compliant to him and corrupt Warringah Shire Council, the HDC’s Clubhouse building through the 1960’s and early to mid 1970’s under the stewardship of its first Club Secretary/Manager “Meggs” Maddigan (“Askin’s Mate”) - was able to gain approval for its numerous building extensions - funded by the cashflow from its alcohol sales and poker machine gambling to become the inappropriate Coastal eyesore which it now unfortunately is.

The HDC’s land and clubhouse buildings’ very colourful history - and the over 2 decades (c.1952 - 1975) of “interventions” for it by former NSW Premier Robin Askin was published as part of the HDC’s 50th Anniversary events:

“Coming clean on Dirty Diggers”,

The Manly Daily Newspaper - published article, on Saturday 20 October 2007, at pages 46 & 47 - a scan of this article is shown below:

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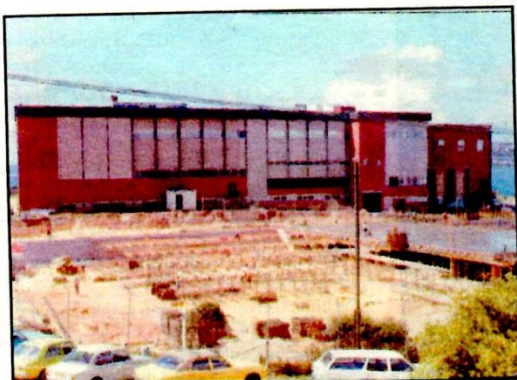
PAGES 46 & 47;

MANLY DAILY, Saturday, October 20, 2007

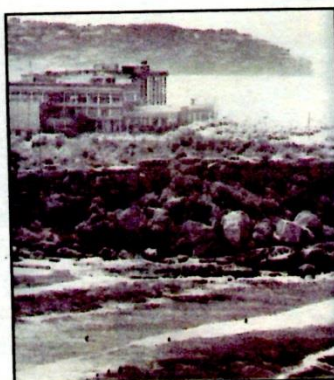
WEEKEND

A candid new book written about the Harbord Diggers Club fills in some interesting gaps about the club's history, writes
JOHN MORCOMBE

Coming c



Harbord Diggers Club car park being built in 1978.



The club in 1971.



In 1968, the club was c

THE origins of the Harbord Diggers Club go back to 1930, when World War I veterans who lived in the area met in an old hut near the beach that had once been the shop attached to a mini-golf course.

They called themselves the Harbord Legion of Ex-Servicemen's Club but were sometimes affectionately called the Dirty Diggers.

From that humble beginning the club grew to become one of the strongest on the peninsula until tough financial times several years ago forced it to merge with the Mt Pritchard and District Community Club, known as Mounties.

The golf course was washed away in a storm in 1932 and the hut suffered the same fate the following year, after which the members of the fledgling club gathered in a large vacant barber shop in Moore Rd.

In 1952, the club, now bolstered by World War II veterans, decided it needed larger premises and set in train plans to build a new clubhouse on the headland between Freshwater and Curl Curl beaches.

In the same year the club gained a new honorary secretary, Edwin "Meggsie"

Madigan, about whom the club has recently published a book.

In *Harbord Hero: Meggsie Madigan, Digger Number One* by Gary Martin, Mr Madigan candidly fills in the gaps in the club's history left by *Club and Community: A History of Harbord Diggers* by Roger Bell and Mark Hutchinson, which was published in 1991.

In fact, so candid is Mr Madigan that some of the club's members might blush at the whatever-it-takes attitude that got the club from its barber-shop beginnings to the prominent building that now occupies the headland.

One key to the rapid growth of the club in its early years was that, unlike RSL clubs,

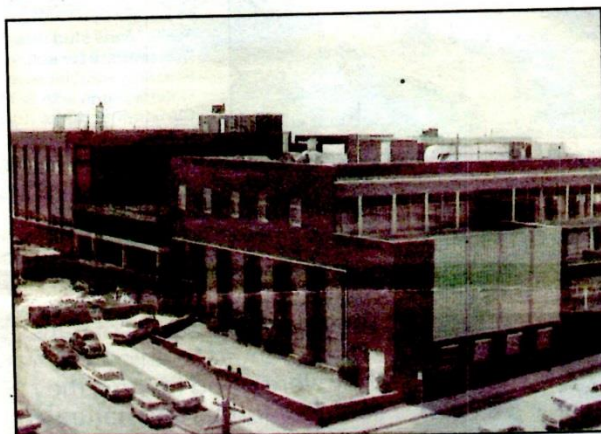
the Diggers accepted ex-servicemen who hadn't served overseas.

But other contributors to its rapid growth were Mr Madigan's ability to use - or circumvent - the law to the club's advantage and his friendship with powerful people, including Collaroy state MP and future premier Bob Askin.

When the club tried to obtain access to McKillop Park, where it wanted to build its new clubhouse, it lobbied the Lands Department but was rebuffed.

After being approached by Mr Madigan, Mr Askin helped the club obtain a lease on half of the park in 1952.

In 1956, Mr Askin also got the local Commonwealth Bank to lend the club the money to build its new clubhouse,



Harbord Diggers Club being extended in 1971.

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WEEK

lean on Dirty



on right, the gym on the left.



The Harbord Ex-Servicemen's Club opened in 1957.

although Mr Madigan took full financial responsibility for the £6000 loan - if it had fallen through he would have had to pay back the bank.

But the clubhouse got built using much local - and often unpaid - labour and the bank loan was quickly repaid.

The new clubhouse - a single-storey brick building with a flat roof that dominated the McKillop Park landscape that was now called the Harbord Ex-Servicemen's Club - was opened on October 25, 1957.

Mr Madigan realised the only way to attract people to the new club and away from other clubs in the area was to offer entertainment and the club quickly became an entertainment hub.

But there were always difficulties to overcome.

"We were in and out of court all the time over licences or land, or building alterations," Mr Madigan said.

When the club obtained its liquor licence it did so after Mr Madigan created nearly 200 fictitious "paid-up members", and he makes no secret of the fact the club flagrantly breached the licensing laws on

numerous occasions as he worked to get the club on a sound financial footing.

As Mr Madigan's biographer relates: "Harbord Diggers at times resembled a non-stop building site as expansion accelerated from the late 1950s to the late 1970s", as the flat-roofed single-storey building was transformed into a club complex as sporting, dining, entertainment, lounge, administrative and parking areas were added or extended.

This almost constant expansion was achieved by buying neighbouring properties in what Mr Madigan calls his "Monopoly strategy", which included buying a street - Minnie St - from Warringah Council to make way for the multi-storey car park behind the club.

Premier Bob Askin helpfully intervened after the club illegally cleared native vegetation on the ocean side of the club for a car park.

The club was ordered to rip up the car park and re-instate the bush but Mr Madigan "saw Bob and we did a deal with the Lands Department. Instead of ripping

“So candid is Mr Madigan that he might blush at the whatever club from its barber-shop building that now occupies

up the asphalt, the club took over the site on a lease, which it continues to pay annually”.

On another occasion the club's tenure on the Crown land it occupied was threatened when the state government introduced legislation that could have seen the club stripped of its title to the land it occupied. But again Mr Askin helped the club by negotiating a compromise that saw the club surrender its title deed to the land in return for a perpetual lease.

When the club wanted to build a youth club in Oliver St, it asked Warringah Council to donate the land on which it was to be built.

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KEND

Diggers



Edwin 'Meggsie' Madigan.

at some of the club's members
-it-takes attitude that got the
beginnings to the prominent
the headland,

The council demurred but then gave the club a \$10,000 cheque so the club could buy the land from the council for \$10,000.

As well as constantly expanding its own facilities during Mr Madigan's tenure, the club also built a chalet at Perisher in the Snowy Mountains and a 10-unit holiday resort at Sussex Inlet.

By the time Mr Madigan stepped down in 1978 the club had assets and investments worth more than \$6.5 million, liabilities of only \$660,000 and a net surplus of \$591,000 - a testament to his prowess in the position he held for 26 years. In 2002 Mr Madigan was awarded the Medal of the Order of

Australia in 2002 for service to the community through the club.

But in 2003 the club found itself in financial troubles and was forced to sell the Sussex Inlet holiday resort to Mounties.

By 2005 the club had a debt of \$7.7 million and entered amalgamation talks with Mounties after abandoning talks with the Manly Warringah Rugby League Club.

Eventually the club's members voted to merge with Mounties and in 2006 the merger was approved by the Licensing Court.

Since the amalgamation, the clubhouse has been revitalised with new fit-outs in the bistro, main lounge and gaming areas. The club is about to lodge an application with Warringah Council for a refurbishment of the club, including a residential component, that will cost at least \$20 million, according to Mounties chief executive officer Greg Pickering.

The club is holding a function on Thursday night to mark the 50th anniversary of its clubhouse on the headland. □

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[APPENDIX 3 - NSW PLANNING'S FORMER DIRECTOR GENERAL
SAM HADDAD'S PUBLIC ADMISSIONS OF ERRORS BEING MADE
BY NSW PLANNING STAFF.](#)

Top official admits errors over draft planning laws

Date

August 13, 2013

Nicole Hasham, Urban Affairs



Concerned: Planning and Infrastructure Director-General Sam Haddad.

Photo: Kate Geraghty

The state's top planning bureaucrat has said a proposed overhaul of planning laws has "gone further than the government intended", reducing the community's ability to fight bad decisions.

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Planning and Infrastructure Director-General Sam Haddad also conceded department staff may have unintentionally spread "inaccurate or misleading information" about the changes, touted as the biggest overhaul of the state's planning system in more than 30 years.

He was responding to a formal complaint from the Better Planning Network community group, which claimed statements by department officials at public forums that the new laws would not reduce "judicial review rights" - residents' ability to appeal planning decisions where the law may have been breached - were wrong.

The group's convenor Corinne Fisher pointed to a clause in the draft legislation that could prevent such appeals in the case of strategic or infrastructure plans.

Mr Haddad said he was "concerned" that the clause "may ... reduce the circumstances" in which reviews could be sought.

"The department acknowledges that the current drafting of [the clause] has gone further than the government intended," Mr Haddad wrote, adding there had been a "disconnect" between the drafting of the bill and the message communicated to the public.

Ms Fisher also questioned department claims that "ecologically sustainable development" - including placing biodiversity at the core of decisions - was enshrined in the draft legislation.

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Mr Haddad agreed several such principles were not "expressly referred to" in the bill. He described an earlier departmental response to the contrary as "regrettable".

Ms Fisher questioned the department's claims that the Heritage Council's powers to veto developments on heritage grounds would not change under the new system.

Mr Haddad acknowledged the relevant clause was "open to interpretation" that the council's authority would be removed. He added this was unintentional and the bill's wording would be clarified.

Ms Fisher said the "shocking" admissions meant the draft laws should be revised and released for more public consultation.

"This is very important legislation and the people of NSW have a right to be accurately informed about its effect on communities, environment and heritage," she said.

Greens MP David Shoebridge said the department had misled the public on "critical" issues and the draft laws were "fundamentally flawed".

Labor MP Luke Foley demanded the government delay introducing the bill until it was redrafted.

Planning Minister Brad Hazzard said issues had arisen "which require attention", however the government would introduce the new laws in the next session of Parliament.

He said the government had conducted "an unprecedented level of consultation" which had elicited support and opposition.

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"Issues such as ensuring ongoing heritage protection and availability of judicial reviews are being considered and, if appropriate, the draft bill will be amended," Mr Hazzard said.

Source: <http://www.smh.com.au/nsw/top-official-admits-errors-over-draft-planning-laws-20130812-2rsht.html#ixzz2boZjGpRY>

DA2014/0875 – Harbord Diggers Club's Coastal Headland site at:
80 Evans Street, FRESHWATER, NSW. (Lot 12, DP1197725), A
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[APPENDIX 4 - An example of the High Level Political Interference by NSW Liberal Parliamentarians into the NSW Department of Planning's planning approval processes.](#)

Windsor Bridge – Hidden documents reveal political interference in planning process

December 4, 2013 in **Heritage, Media**

Documents forcibly disclosed from the NSW government by order of the State's Upper House show high level political interference in the planning approval process for the controversial Windsor Bridge replacement project.

The project has been strongly criticised for the damage it will do to Thompson Square, Australia's oldest public square.



The documents revealed show how in less than a month following the political interference, the Department of Planning changed from a position of opposing the application to one of supporting it. This was despite none of the Department's external consultants supporting the application.

See [report in SMH here](#).

Background

The Roads and Maritime Service (RMS) is seeking planning approval for the construction of a \$65 million replacement bridge across the Nepean River at Windsor.

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Local community groups have opposed the plan arguing that it will irreparably destroy the heritage of a Macquarie town and Australia's oldest public square.

They also argue that a far lower cost option would be to repair the existing serviceable bridge for a fraction of the cost. The government's independent consultants assess the cost of repairing the existing bridge at just \$15 million.

Timeline:

4 October 2011: The Windsor bridge major projects application was lodged with the Planning Minister as the consent authority

1 July 2013: Department of Planning internal Summary of Project opposes the application finding repairing the existing bridge was in the public interest.

22 July 2013: Following pressure from Coalition backbenchers the Acting Chief of Staff of the NSW Premier's office contacts the COS of the Roads Minister and the Planning Minister ensuring: "they are fully aware of the importance of delivering the road and that local MPs are very supportive of the need to improve the region's roads and at the heart of this is Windsor Bridge."

1 August 2013: Despite being in receipt of draft expert reports from heritage, traffic and engineering consultants not supporting the project Department of Planning produces a draft report recommending approval.

16 August 2013: Final reports from heritage, traffic and engineering consultants received not supporting project.

20 September 2013: Final recommendation in support of project signed off by Director General of Planning.

14 November 2013: NSW Upper House orders all the relevant documents to be produced in face of opposition from the government.

A good example of the kind of advice that has been ignored by the Department of Planning in its most recommendation to approve the replacement bridge comes from the external engineering consultants who wrote this:

It appears the optimum option is some combination between the RMS and the Pearson Wedgewood options which will be able to provide a viable option to refurbish and strengthen [the existing bridge] to carry T44 loading with a load factor of 2 which will be sustainable for the next 25 to 50 years, and not build a new bridge at this stage. Then at some time in the future a bypass alignment can be identified, approved and built which avoids all the damage to property, heritage values etc. So with a relatively modest expenditure (approx. \$14.5m) the bridge can be serviceable for the next 50 years within which time an alternative route will have been identified and agreed.

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Comment by Greens MP and planning spokesperson David Shoebridge:

"On 1 July this year the NSW Department of Planning's own internal assessment was that the new bridge should not be built and the public interest was best served by refurbishing the existing bridge.

"The planning staff in the department found that repairing the existing bridge would fix local traffic problems, protect heritage and save taxpayers at least \$50 million dollars compared to the government's preferred option of building a damaging new bridge.

"But in just one month the department of planning did a u-turn and went from a position of supporting modest repairs to the existing bridge to recommending the government's preferred option of a costly, new bridge.

"The only thing that changed in that one month was that the Premier's office intervened to make sure Minister Hazzard's office knew of "the importance of delivering the road".

"In the face of independent advice from the departmental planners, the political fix was in, and by 1 August the department produced the first draft report that recommended a new bridge be approved.

"Amazingly the new recommendation was made more than a fortnight before the Department received the final heritage, engineering and traffic reports.

"All the independent reports, whether heritage, engineering or traffic, recommend against building a new bridge.

They all agree that the public interest, our heritage and the budget are best served by repairing the existing bridge and fixing the approaches.

"Building a new bridge and approaches through Thompson Square will destroy Australia's oldest public square and irremediably damage existing Aboriginal heritage.

"This is all about politics, with the Coalition and Roads and Maritime, sticking blindly to a 'new road at all costs' approach.

"This ugly political process has directly implicated the Minister's office. To retain some shred of public confidence in the planning process Minister Hazzard should immediately refer the decision to the Planning Assessment Commission," Mr Shoebridge said.

Source: <http://davidshoebridge.org.au/2013/12/04/windsor-bridge-hidden-documents-reveal-political-interference-in-planning-process/>

DA2014/0875 – Harbord Diggers Club's Coastal Headland site at:
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[APPENDIX 5 - THE SUMMARY DISMISSAL OF MR SAM HADDAD
FROM HIS POSITION OF DIRECTOR GENERAL OF NSW PLANNING.](#)

Sam Haddad the first casualty - Pru Goward takes control as Planning Minister

- by: ALICIA WOOD, *Political reporter Exclusive*
- From: *The Daily Telegraph*
- April 23, 2014 3:59PM



Sam Haddad has been given his marching orders as Pru Goward shakes up the planning department. *Source: News Limited*

IN her first act as minister for planning, Pru Goward has sacked long-time planning department boss Sam Haddad.

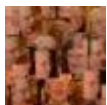
Mr Haddad, who has been the state's top planning bureaucrat since 2005, will be axed and a worldwide search will be undertaken to find his replacement.

DA2014/0875 – Harbord Diggers Club's Coastal Headland site at:
80 Evans Street, FRESHWATER, NSW. (Lot 12, DP1197725), A
proposed 97 Seniors Living Units etc. Development.



Pru Goward has sacked long-time planning department boss Sam Haddad.
Picture: John Appleyard *Source: News Limited*

“The position of Director General of Planning and Infrastructure was abolished as part of setting up a new principal Department of Planning and Environment. The new role of Secretary will have wider responsibilities serving three ministers (Planning, Environment and Heritage and Local Government) and will be filled through a competitive merit selection process,” a spokesman for Ms Goward said.



Laurie Apr 23, 2014

Congratulations Pru this bureaucrat was on the side of many inquiries and questionable deals. He had to go and it was a mark of the naivety of BOF that he kept on those in the SES who have no loyalty to his govt as they were appointed not on merit as Greiner hoped but often because of their closeness to the ALP govt. or its Obeid appointed flunkies.

Source: <http://www.dailytelegraph.com.au/news/nsw/sam-haddad-the-first-casualty-pru-goward-takes-control-as-planning-minister/story-fni0cx12-1226893515944>

DA2014/0875 – Harbord Diggers Club’s Coastal Headland site at: 80 Evans Street, FRESHWATER, NSW. (Lot 12, DP1197725), A proposed 97 Seniors Living Units etc. Development.

APPENDIX 6 - Possible Political Interference by the former NSW Minister for Planning (Mr. Brad Hazzard) in the granting of the HDC’s SCC for Seniors Living by the NSW Department of Planning.

The NSW Planning Minister Brad Hazzard had perceived Conflicts of Interest in respect of the HDC’s Site Compatibility Certificate (SCC) application by the Mounties Group with the NSW Department of Planning, because of the following issues:

- 1) Mr Hazzard had many years of membership of the Harbord Diggers Club in Freshwater, and
- 2) Mr Hazzard has held the role of being the Club appointed Solicitor for the Harbord Diggers Club for a number of years.

Given NSW Planning Minister Brad Hazzard’s perceived Conflicts of Interest in this Harbord Diggers Club SCC application matter, I was interested to read Minister Hazzard’s 3 December 2012 Media Release concerning the Harbord Diggers Club’s SCC application. Please see:

<http://www.planning.nsw.gov.au/AboutUs/Contactus/MediaCentre/tabid/381/ctl/PreviousReleases/mid/950/source/1/language/en-AU/Default.aspx?tb=2&yr=2012&mth=12>

Mr Hazzard’s assertions on this matter, which I quote him directly from his Media release, included his statement: **“After considering competing views, I think it is appropriate for the proponent to lodge a development application with the council.”**

Mr Hazzard’s above direct quote shows that despite his perceived Conflicts of Interest in the SCC matter - he states he has had a **deliberative role in the considering of this SCC application**, i.e. he states that “After considering competing views,” he has formed his views that it is appropriate for the Mounties Group to lodge a DA with Warringah Council seeking up to 125 Seniors Living units on the HDC’s site.

In mid-2012 before this SCC application was determined, I informed NSW Department of Planning’s Senior staff both orally and in writing of Mr Brad Hazzard’s both long term HDC membership and of the role he had held as the Solicitor for the HDC.

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The NSW Planning Minister Brad Hazzard is a long term member of the NSW Liberal Party, which political party in October 2010 before the last NSW State election, signed a Memorandum of Understanding (MOU) with ClubsNSW, the peak representative body of the Registered Clubs industry in NSW - that it would strongly support NSW Clubs if voted into State Government in March 2011.

ClubNSW's MOU with the NSW Liberal Coalition Government, is viewable at: http://members.clubsnsw.com.au/docs/ecm-files/CNSWandCoalition_MoU_Oct10_pdf.pdf?sfvrsn=0

The Mounties Group of Clubs is a member of the Registered Clubs Association of NSW (T/as ClubsNSW), this NSW Club industry's Peak Industry body has a long history of making large \$\$\$6 figure political donations to the NSW and Federal Liberal Parties - and of lobbying Political parties to achieve the goals of the NSW Clubs' industry. ClubsNSW has also been involved in extensive targeting of a Political party, e.g. a targeted campaign against the Federal Labour Party in respect of Poker Machine spending mandatory pre-commitment proposals.

I note that within a week of the 3 December 2012 press release of Minister Hazzard concerning the HDC site's SCC for Seniors Living, his NSW Liberal Party Parliamentary colleagues were the subject of an article published in The Sydney Morning Herald (SMH) headed:

“Political interference claims swirl around Tigers redevelopment bid”

This SMH article, inter alia asserted:

“Last week, five Liberal MPs appeared in a Ryde newspaper, *The Weekly Times*, draped in club colours and urging the public to "Save Our Tigers" by supporting the proposal, submissions on which close on Monday.

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They included the Attorney-General, Greg Smith, and the Minister for Fair Trading, Anthony Roberts, from the party's hard right faction, and the Minister for Aboriginal Affairs, Victor Dominello, Drummoyne MP John Sidoti and Strathfield MP Charles Casuscelli, of the moderates.”

“The Leichhardt mayor, Darcy Byrne, said the show of support made a mockery of claims that the project would be decided without political interference.”

Source: <http://www.smh.com.au/nsw/political-interference-claims-swirl-around-tigers-redevelopment-bid-20121209-2b3c5.html>

On the 27 September 2012, during a telephone conversation with a Senior Officer of the NSW Department of Planning, this Officer after looking up NSW Planning records inadvertently informed me that the SCC application for the HDC’s site had been REFUSED.

Sometime between the 27 September 2012 and 3 December 2012, NSW Planning has reversed its stated REFUSAL position for the HDC’s SCC application lodged with it. The reasons behind this decision making U-turn by the NSW Department of Planning - should be independently investigated, fully explained and be made fully transparent to the Public.

When former NSW Planning Minister Brad Hazzard was questioned in the NSW Parliament in 2013 via Questions on Notice by Mr. David Shoebridge MLC about his role as the former Solicitor for the Harbord Diggers Club, Mr Hazzard’s response was as follows:

1. When did the Minister for Planning and Infrastructure cease acting as a solicitor for the Harbord Diggers Club?

Answer— “I have no recollection of acting for Harbord Diggers.”

Source:

<http://parliament.nsw.gov.au/prod/lc/qalc.nsf/search/A16B02407CA2FE6DCA257BD5000E1915>

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Mr Hazzard's "no recollection" of acting for the Harbord Diggers as its Solicitor is an interesting response he has given to the NSW Parliament.

During a meeting in Mr Hazzard's Office on the 25 October 2012 to discuss the Harbord Diggers Seniors Living Units development proposal's issuance of a SCC etc. - attended by the Friends of Freshwater, I am informed Mr Hazzard acknowledged that he had acted as the Harbord Diggers Club's Solicitor. I am also informed that Mr Hazzard verbally recalled at this meeting that when he acted as the HDC's Solicitor - he formed his opinion that it was a badly run club.

In conversations I have also held with former HDC Board Members (e.g. Mr Edwin "Meggs" Maddigan etc.) and a former Secretary Manager of the Harbord Diggers Club - I have also been informed that Brad Hazzard was a former Solicitor of the Harbord Diggers Club.

It is noted that numerous NSW Liberal Party Parliamentarians during the current NSW ICAC Public Inquiry (Operation Spicer) also had "no recollection" of many of their conflict of interest activities etc. which were the subject of the ICAC's forensic scrutiny. Many of the NSW Liberal Parliamentarians when challenged about their questionable activities - appear to respond with a standard response of: "I have no recollection".

Some of Mr Hazzard's activities available on the Public Record include:

Former NSW Planning Minister Brad Hazzard's ICAC Appearance:

Hazzard spent his first term embroiled in controversy over his relationship with Terry Metherell, the Davidson MP whose appointment to a public service sinecure ultimately led to Nick Greiner's resignation as Premier.

The proceedings at the Independent Commission Against Corruption led Hazzard to launch legal action against his own party's Attorney-General, Peter Collins, who rejected his bid for legal assistance due to what Hazzard claimed were the political sensitivities of the issue.

He ultimately dropped the claim against Collins, and had to sell three properties to cover his legal expenses. The ICAC report exonerated him, but declared him "a distinctly unsatisfactory witness".

<http://www.crikey.com.au/nsw2011-wakehurst/>

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Former NSW Planning Minister Brad Hazzard's large inheritance from his client – as the Executor of and Sole Beneficiary of her will.

The Kindly Solicitor And The Lonely Widow

Sydney Morning Herald

Thursday July 2, 1992

John Slee

THE Liberal backbencher Mr Brad Hazzard, solicitor, has responded passionately to allegations raised in Parliament about his relationship with a client who made him executor and sole beneficiary under her will.

On Tuesday he denied allegations by the Opposition that he had sent unsolicited cheques worth \$5,000 to friends and neighbours of the deceased who had inquired about her will. And in an emotional statement to Parliament on Wednesday, Mr Hazzard gave a detailed account of the close relationship he and his family enjoyed with the late Mrs Kitty Lawson.

It remains to be seen whether this matter goes any further. The then Attorney-General, Mr Collins, has refused Opposition demands to pursue it and has advised the Opposition either to substantiate or drop its allegations. If the Opposition does have any evidence against Mr Hazzard, it should pass it on to the Law Society of NSW, Mr Collins has said.

There is no reason to doubt Mr Hazzard's account of his warm relationship with Mrs Lawson. Indeed, for a man with a busy legal practice to attend to and a developing political career, Mr Hazzard appears to have been generous with his time and affection, especially in the years from the death of Mrs Lawson's husband in 1982 until her own in 1989.

"When she turned to me for support," Mr Hazzard told Parliament, "I could not and did not refuse her. I helped her because she needed care, not for any expectations of benefit from her."

Yet can Mr Hazzard really be surprised that questions are now being asked?

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Obviously, there is a powerful political undercurrent that has helped drive what Mr Hazzard has described as the "scurrilous accusations reflecting on my parliamentary and professional probity". If Mr Hazzard had not had a bit part in the Metherell drama, it is unlikely these allegations would have been made at this time.

Not that the allegations are petty or, as Mr Hazzard has sought to make out, old hat. Even if they were raised more than a year ago, when Mr Hazzard was seeking preselection before the last election, they gained new force during the Metherell affair.

This is partly because of Mr Hazzard's own actions. He was a determined applicant for special legal assistance and became engaged in a bitter fight with Mr Collins, who thrice refused his applications for funds to help pay for lawyers to represent him as a witness before the Independent Commission Against Corruption. In the course of these fruitless applications, Mr Hazzard said he would be forced to borrow money to pay legal fees of \$100,000 or more.

It was inevitable that the Opposition would seize on this. Here Mr Hazzard was crying poor when, barely three years earlier, he had inherited from Mrs Lawson cash and assets said by his accusers to be worth \$1 million and by Mr Hazzard to be worth something less than that.

Indeed, putting all controversy over Mrs Lawson's will aside, it must have always struck many people as extraordinary that Mr Hazzard ever thought he was entitled to special assistance for the ICAC hearing.

He is, after all, a lawyer himself, with only a peripheral role in the Metherell affair. If he wanted another lawyer, or lawyers, to hold his hand at the ICAC inquiry, he surely could afford to pay without the taxpayers' help. Apart from his parliamentary salary and income from his legal practice, he has property which, according to the parliamentary pecuniary interest register, includes his home at Allambie Heights, eight adjoining lots in Manly, a property in Balgowlah Heights and a half share in two other Manly properties.

On the propriety of Mr Hazzard's conduct as a solicitor, it is the Law Society to which, according to Mr Collins, his accusers should take their complaints - and presumably to which the public should look for guidance.

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The Law Society's position is simple. As far as the facts of this case have been made public, Mr Hazzard did the right thing: he referred Mrs Lawson to separate legal advice. If there is evidence of any wrongdoing the society will investigate. Yesterday, the president, Mr John Marsden, said no such evidence had been produced.

Yet many people will say that regardless of the details of Mr Hazzard's case, it will always look wrong for a solicitor to inherit all of a former client's large estate.

There is no simple solution to this problem of inevitable appearance of impropriety. It may be said, for example, that there should be a rule that no legal adviser should benefit under the will of a former client.

That would be consistent with roughly analogous rules in other professions, such as the strict requirement that a doctor's relationship with a patient must never be other than professional.

But there would obviously have to be exceptions - for example, for the solicitor who was legal adviser to his or her own parents and against whom therefore nothing could be said when the solicitor inherited their wealth. The reasonable exceptions would not stop there.

Like many areas of professional ethics it really comes down to the lawyer's own perception of what is right, and peer pressure.

In the present case, Mr Hazzard is living with his own moral choice.



Source: <http://www.executor.com.au/executor-articles/1992/7/2/the-kindly-solicitor-and-the-lonely-widow/>

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APPENDIX 7 - MOUNTIES GROUP'S LACK OF TRANSPARENCY -
NON DISCLOSURE OF ITS USE OF PAID POLITICAL LOBBYISTS IN
RESPECT OF POLITICAL LOBBYING FOR THIS PROPOSAL's SCC.

The Mounties Group have engaged paid Political Lobbyists to further their commercial interests including the following persons/firms: -

- 1) Ms Keri Huxley, Director of Huxley Communications Pty Ltd, and
- 2) Premier State Consulting Pty Ltd (Michael Photios, Mr David Begg et al) – registered Political Lobbyists with the NSW and Commonwealth Governments.

Formal Government Information (Public Access) [GIPA] documents obtained from the NSW Department of Planning's Office reveal that the Mounties Group engaged a paid Political Lobbyist **Ms Keri Huxley** – (who is a former Mayor of Woollahra and was formerly a Senior advisor to two New South Wales Liberal Party Senators - Helen Coonan and Bill Heffernan - as well as being a prominent member of the NSW Liberal Party, which Political Party includes former NSW Planning Minister Brad Hazzard) - to act for them, including Ms Huxley attending the Mounties Group's meeting with then NSW Planning Minister Brad Hazzard - concerning the Harbord Diggers Club's Site Compatibility Certificate (SCC) application for Seniors Living apartments.

The GIPA documents also reveal that Ms Keri Huxley had met with then NSW Planning Minister Brad Hazzard in December 2011 about the HDC's Seniors Living development aspirations for its Freshwater site.

The above Formal GIPA was lodged by the Honourable David Shoebridge MLC in 2013, as a result of numerous concerns with the granting of the Site Compatibility Certificate (SCC) to the HDC by NSW Planning and requested:

“All correspondence, communication and briefing (including emails and meeting notes) regarding the consideration and granting of a Site Compatibility Certificate for Seniors Living for the Harbord Diggers Club's site from 1 January 2012 to 30 December 2012.”

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A total of 72 pages of documentation were released from the NSW Department of Planning's files pursuant to this Formal GIPA Application. Analysis of this documentation reveals ongoing lobbying activities by Political Lobbyist Ms Kerri Huxley including her meeting with Mr Hazzard and also by the Mounties Group's CEO Greg Pickering, e.g. his letter dated 26 July 2012 directed at then NSW Planning Minister Brad Hazzard in respect of the issuance of a SCC for the HDC's site.

According to the GIPA documentation's "Record of Meeting – IM12/31499", on Wednesday 28 November 2012 a meeting was held with then NSW Planning Minister Brad Hazzard at 10:30 am on Level 31, 1 Farrar Place, Sydney and was attended by Ms Keri Huxley, Mr Greg Pickering, CEO of the Mounties Group, Dale Hunt GM of Harbord Diggers - along with representatives of Cerno (Paul Di Cristo) and Philon (Lee Pinder) who are the Development and Project Managers in respect of this DA.

At the NSW Government level, the Mounties Group are listed as a Client of Premier State Consulting Pty Ltd – a firm of Political Lobbyists who are registered by the NSW Department of Premier and Cabinet's Lobbyists Register to conduct Political lobbying activities etc. for the Mounties Group.

Source:

[http://www.dpc.nsw.gov.au/data/assets/pdf_file/0012/124221/Premier State Consulting Pty Ltd - 50.pdf](http://www.dpc.nsw.gov.au/data/assets/pdf_file/0012/124221/Premier_State_Consulting_Pty_Ltd_-_50.pdf).

The relevant section of the Lobbyists Register is reproduced below:

View Lobbyist Details

Business Entity Name:	Premier State Consulting Pty Ltd
ABN:	26 149 964 189
Trading Name:	Premier State

Details of all persons or employees who conduct lobbying activities

Name:	Michael Photios
Position:	Chairman
Name:	David Begg

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Position:	Director
Name:	Chris Stone
Position:	Director Policy & Strategy
Name:	Nick Campbell
Position:	Director
Name:	Natalie Christiansen
Position:	Manager – Governance & Strategic Planning
Name:	Tracey Hughes
Position:	Manager – Client Liaison
Name:	Ian Hancock
Position:	Government and Policy Analyst
Name:	Lauren Emma Gain
Position:	Advisor
Name:	Christine Kirk
Position:	Executive Assistant

Client Details

Name:

Mounties Group
Mounties Group

Details last updated: 08/08/2014

At the Commonwealth Government level, the Mounties Group are also listed as a client of Premier State Consulting - with the Department of the Prime Minister and Cabinet - whom maintains a "Register of Lobbyists", see: http://lobbyists.pmc.gov.au/register/view_agency.cfm?id=516

The relevant section of the Lobbyists Register is reproduced below:

Lobbyist Details

- | | |
|-------------------------|---|
| ▪ Business Entity Name: | Premier State Consulting Pty Ltd |
| ▪ A.B.N: | 26 149 964 189 |
| ▪ Trading Name: | Premier State |

Details of all persons or employees who conduct lobbying activities

No.	Lobbyist Name	Position	Former Government Representative	Cessation Date
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**DA2014/0875 – Harbord Diggers Club's Coastal Headland site at:
80 Evans Street, FRESHWATER, NSW. (Lot 12, DP1197725), A
proposed 97 Seniors Living Units etc. Development.**

No.	Lobbyist Name	Position	Former Government Representative	Cessation Date
1	Michael Photios	Chairman	No	
2	David Begg	Director	No	
3	Natalie Christiansen	Manager – Governance & Strategic Planning	No	

Client Details

No.	Client Name
1	Australian Hotels Association (NSW)
11	Mounties Group

During the Mounties Group of Clubs campaign for its proposed Development on the Harbord Diggers Club site in Freshwater, Mr. David Begg who is a Director and Partner of Premier State Consulting – also appeared in a promotional video for this Club's property development proposal in Freshwater.

Please see:

http://www.harborddiggers.com.au/index.cfm?page_id=1398&page=A+New+Dawn+For+The+Diggers&var_sw=1&dd=0&d0=1398&d1=0&d2=0&d3=0&pp=0&cp=1398

This "New Dawn" video in the above hyperlink, shows Premier State Consulting's David Begg speaking from 1:45 to 1:58 of its time log - in support of the Harbord Diggers Club's' Seniors living property development proposal.

Mr. David Begg's comments on the Harbord Diggers Club were also used in the Mounties Group's print media campaign concerning its property development proposal on the Harbord Diggers site.

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APPENDIX 8 - THE MOUNTIES GROUP'S PAID POLITICAL
LOBBYISTS PREMIER STATE CONSULTING - SOME ACTIVITIES.

*The actions of Premier State Consulting Pty Ltd - paid Political Lobbyists for
several NSW Registered Clubs including the Mounties Group of Clubs - and
this firm's influence over certain staff in the NSW Department of Planning.*

Premier State's Chairman Mr. Michael Photios was twice summonsed before the
current ICAC Public Inquiry (Operation Spicer) looking into Political
Donations and Political lobbying practices in NSW.

Mr. Photios' firm has acted for several NSW Registered Clubs including the
Mounties Group of Clubs, who sought his assistance with their interests at both
NSW and Federal Government levels - as Premier State is a Registered
Lobbyist with both of these levels of Australian Government.

One of the NSW Registered Clubs Mr. Photios has assisted (Balmain Leagues
Club), has been the subject of a series of Investigative Journalism articles in The
Sydney Morning Herald concerning its redevelopment proposal - article below.

A Sydney Morning Herald article ([http://www.smh.com.au/nsw/michael-
photios-the-tigers-and-the-wrath-of-angry-client-benny-elias-20140721-
zuxpf.html](http://www.smh.com.au/nsw/michael-photios-the-tigers-and-the-wrath-of-angry-client-benny-elias-20140721-zuxpf.html)) inter alia states:

Mr. Photios emailed the club saying "we have some useful intel to share with
you and importantly, a perspective on the approach to the DoP [Department of
Planning] before lodgement."

One of Premier State's assets appeared to be a very useful contact in the
Planning Department: - Mr Photios' good friend and fellow Liberal Matt Daniel.

A 2011 document refers to the DoP's Mr Daniel dining with Premier State staff
- the night before Mr Photios met his Balmain/Rozelle Village clients. "Have
talked to Matt about it, and am workshopping ways forward," said Premier
State's Dominic Kelly in a 2012 email to the developers.

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The relationships between Premier State Political Lobbyist's staff and Chairman Michael Photios - with certain staff in the NSW Department of Planning (who made decisions on Club Property Development proposals, e.g. issuing Site Compatibility Certificates for Seniors Living Developments etc. on Club sites) - including good friendships, shared membership of the Liberal Party and dining out together etc. with certain NSW Planning staff is highly concerning.....

Mr. Photios' friendships etc. with NSW Liberal Party Members and their Political staff were highlighted by those who attended his 3rd Wedding: -

Michael Photios' wedding raises questions about lobbyists

It was the wedding invitation to cherish for at least seven Liberal MPs. But Michael Photios's nuptials on the Thai holiday isle of Phuket - attended by the MPs and senior O'Farrell government staff - puts in question the Premier's claims lobbyists will have "no influence" with his government.

Mr Photios, 50, married 25-year-old Kristina Iantchev, his third wife, this month. *The former Liberal minister, who has had immense sway over preselections as a left-wing factional powerbroker, only recently quit as Liberal vice-president over conflicts with his new role as Premier State Consulting head.*

Captured in wedding photographs were Legislative Council president Don Harwin and MPs Geoff Lee, Ray Williams, Natasha Maclaren-Jones, Gareth Ward, Mark Coure and Matt Kean. Among senior staffers were Deputy Premier Andrew Stoner's chief of staff, Rod Bruce, and Health Minister Jillian Skinner's chief of staff, Tom Callachor.

Source:

http://www.democracy4sale.org/index.php?option=com_content&view=article&id=559:michael-photios-wedding-raises-questions-about-lobbyists&catid=103&Itemid=262

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APPENDIX 9

The Mounties Group’s concerning “Community Consultation” processes regarding the HDC site’s future development options.

In December 2010, a request was made by Urbis on behalf of the Mounties Group, that the redevelopment of the HDC’s site be declared a major project under the discredited former Part 3A of the EP&A Act. The application proposed five buildings ranging from 2 to 6 storeys and accommodating a redeveloped club (8,000m²) and 100 seniors housing dwellings.

This Mounties Group Part 3A application lodged without any Freshwater and surrounds Community Consultation at all - drew a response from the NSW Premier and NSW Parliamentary Local Member for Freshwater:

“Baird warns Diggers to get onside

11 Jan 11 @ 03:58pm by Brenton Cherry



The December 2010 proposal for the Harbord Diggers Club site.

MANLY State MP Mike Baird has warned Harbord Diggers to get the local community onside with its latest proposal or have it face the same fate as previous failed plans.

The club, owned by the Mounties Group, has lodged a 3A application with the Department of Planning for a \$111.5 million proposal which would see the existing building knocked down and rebuilt along with 100 onsite seniors living units.

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It comes after the community and Warringah Council rejected previous plans to build 26 townhouses on the headland site.

“My view is that any proposal for that site, given how sensitive development on the coast is, would need to get the community on side with it,” Mr Baird said.

“Unless the community supports it I do not think it has much chance.”

Mr Baird said overdevelopment of the headland site would likely face opposition.

“The sense is that the site is for a club and not a development.”

Mounties CEO Greg Pickering said community consultation would form a major part of the planning.

“We acknowledge that the community and local council have overturned our endeavours to transform the site,” he said.

Comments

Displaying (1) Comments

Mounties saddle up - Trojan horse Developers posing as a Community Club! writes:

Posted on 11 Jan 11 at 06:43pm

A new Clubhouse is welcomed - but not the 100 apartment overdevelopment!

To build 100 apartments is a gross overdevelopment of a magnificent headland - which will environmentally ruin it - and also create traffic chaos around it with a proposed 712 car spaces. This proposal also requires the loss of part of its McKillop Park Crown Reserve for Mounties exclusive use. Mounties previous proposals for 26 apartments onsite, were comprehensively rejected several times by Independent Planning Panels. Now a proposal to build 100 apartments - they just aren't listening!

Mounties have gone directly to the NSW Planning Minister to bypass local planning, zonings and controls. This lodgment of a rezoning & Part 3A proposal with NSW Planning, is designed to

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deliberately cut out our Community and Council - from any say in
this controversial Part 3A overdevelopment.

How is Mounties valuing the Community's concerns and input,
when this new development proposal has already been prepared
and lodged for Part 3A and rezoning assessment with NSW
Planning - before any Community consultation has occurred
concerning it?? “

Source: <http://manly-daily.wherelive.com.au/news/story/baird-warns-diggers-to-get-onside/>

In April 2011 after the NSW Government had changed - and when the
Part 3A provisions of the EPA Act were about to be repealed, the
Mounties Group withdrew its Part 3A application with NSW Planning.

The Mounties Group's land rezoning application for an R3 land zoning
for the HDC's site lodged with NSW Planning and corrupt former NSW
Planning Minister Tony Kelly in late 2010 also without any consultation
with either Warringah Council or the Freshwater Community - was
blocked by Warringah Council who engaged a Senior Counsel Barrister
to affect this outcome until the NSW Election removed Mr Tony Kelly -
who the NSW ICAC subsequently found to have acted corruptly in office.

Reference is made to the following published statement of the CEO of
the Mounties Group of Clubs:

**“We have definitely started the new
process with a clean slate** and we are eager to
consult with the community, club members and residents.”
(Emphasis added).

Mr Greg Pickering, CEO, Mounties Group.

Peninsula Living Magazine, Page 22, April 2011

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This public assertion made by the Mounties Group of Clubs CEO, published in April 2011 - before any so called Community Consultation had occurred in respect of the HDC site’s future - is in direct contradiction to the Mounties Group’s advice to Warringah Council a few weeks later on 15 June 2011 at a Pre Lodgement Consultation with Warringah Council, wherein the Mounties Group identified that they would be seeking to establish “Seniors housing” for investment purposes and in this meeting they advised Warringah Council of their plans for this outcome for the HDC’s site.

“PRE LODGEMENT CONSULTATION - WARRINGAH COUNCIL
15 JUNE 2011

The meeting between the Club
and representatives of
Warringah Council was
attended by the following:

WARRINGAH
COUNCIL

David Kerr (Manager of
Strategic Planning)

Ryan Cole (Team Leader
Development Assessments)
Kathryn Fadeev (Principal
Strategic Planner)

REPRESENTATIVES FOR
THE APPLICANT

Lee Pinder (Philon Pty Ltd)
Paul di Cristo (Cerno
Management)
David Hoy (Urbis)
Matthew O’Donnell (Urbis)
Gabrielle Morrish (GMU)
Karla Castellanos (GMU)

Key matters discussed at the meeting included:

The HDC Club’s representatives advised that the Club is seeking to embark on a new planning process for the site that is entirely separate from any process that has occurred for the site to date.

The Club identified that they would be seeking to establish:

- A registered club together with associated facilities similar to those existing e.g. Gymnasium

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- *Seniors housing that will be a wholly retained and owned by the Club for investment purposes*

(Emphasis Added).

Source:

<http://www.warringah.nsw.gov.au/ecouncil/doccache/2601610.pdf> at
page 19.

This June 2011 Warringah Council Pre-DA Lodgement consultation document only became publicly available in April 2013 with DA2013/0412’s lodgement, when that Masterplan DA’s documentation was lodged. A GIPA Application and a Formal Complaint to the Office of the Information Commissioner had been instigated seeking this informative document before that DA was lodged.

This Pre-DA Lodgement document shows that from at least the 15 June 2011, the Mounties Group’s representatives had already identified and advised to Warringah Council - that they would be seeking to establish Seniors housing on the HDC’s site for their investment purposes.

The Mounties Group’s CEO when seeking public input into the HDC site’s future, also publicly issued statements in The Manly Daily newspaper on 29 November 2011 - stating that the Harbord Diggers Club’s site was a “blank canvas” in respect of its future development options:

“We think there’s an opening for seniors living **but that’s yet to be determined and will be something that has to go to the community.”** (Emphasis added)

On 13 July 2012, in the midst of a so-called consultation process (which was little more than a series of briefings), the Mounties Group applied for a Seniors Living SCC for the HDC’s site from the NSW Department of Planning. The scale of the proposed Seniors Living development project (up to 125 units inter alia in a building up to 5 storeys high) was NOT discussed with the public or Warringah Council at all **before** the Mounties Group submitted their SCC Application for this large number of Seniors Living units for the HDC’s site.

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A Harbord Diggers precinct project Community reference group
Workshop #6 - was held on 1 August 2012.

At page 4 of this Workshop's Minutes:

“▪ The facilitator asked group members for their
feedback on the draft master plan options.

▪ *Question: Michael mentioned at the beginning
of his presentation a project brief. When was the
brief to Architectus put out?*

When we commenced [meeting] with you [the
CRG, in November 2011]. There has always been
a brief about the club including fitness; what
we've done now is separate the fitness from the
club from a built form perspective. We've also
added the complementary uses over time.

▪ *Question: What was your original brief?*

Investigating options for an 8,050 square metres
[sqm] club with approx. 500 car spaces and 12-
15,000 sqm of other uses.

*So what you're saying is 12-15,000 sqm was
always earmarked for seniors living? What was all
the other stuff [the CRG discussed] about leading
up to here?* We have consistently and openly
looked at seniors living as an option and we have
articulated that throughout the [consultation]
process.

▪ *When was it decided that seniors living was to
be a significant part of the site? We were
originally asked what we wanted on site. I am
concerned that this has been driven in a particular
direction. From the notes that I have taken - and I
have attended every meeting - this is where it has
been going. “*

Source: [http://newdiggers.com.au/wp-
content/uploads/2012/CRG%20workshop%20%
20summary_FINAL.pdf](http://newdiggers.com.au/wp-content/uploads/2012/CRG%20workshop%20%20summary_FINAL.pdf)

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The Friends of Freshwater Incorporated met on Sept 5 2012 with Urbis Consultants who act on behalf of the Mounties Group in this matter. The Friends were briefed on a range of design options - all of which revolved around Seniors and Aged Care usages for the HDC's site.

They were informed that the HDC's clubhouse would be rebuilt in an excavated site overlooking Lumsdaine Drive, Freshwater. These options were also put to the 1 August 2012 Meeting of the Harbord Diggers Community Reference Group.

Prior to this 5 September 2012 meeting, The Friends of Freshwater had discovered that Mounties Group had lodged a Seniors Living Site Compatibility Certificate application with the NSW Dept. of Planning (on 13 July 2012), for the HDC's iconic consolidated headland site. They stated to Urbis that this definitive action at this time undermined the ongoing consultation process, and gave the strong perception that Mounties Group has already made up its mind on the HDC's site usage.

A Harbord Diggers precinct project Community reference group - workshop #7 was held on Wednesday 26 September 2012. At pages 4 -6 of this workshop's notes they advise:

Questions and discussion: general

"Are you saying that the whole club would be on one level, restaurants, functions, bar, gaming? Yes. And you're only looking towards Curl Curl, not Freshwater and the lights of Manly? Yes. That's crazy. "

"This committee has been railroaded in to supporting these options, I can't support this. I'm frustrated. "

(Emphasis added)

Source: http://www.newdiggers.com.au/wp-content/uploads/2012/CRG%20workshop%207%20summary_Draft.pdf.

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Upon consideration of the public information available concerning this so called "Community Consultation" project, it is noted:

- 1) The published assertion of Urbis on the www.newdiggers.com.au website that: "Meetings will be independently facilitated by the Urbis consultation team.",
- 2) that Urbis as well as allegedly "independently facilitating" these meetings, has also filtered and selected by a written application process which members were on this community reference group,
- 3) no Freshwater and surrounds Community Members had any input into or say at all into the design of or methodology being adopted in this "Community Consultation" process,
- 4) no Freshwater Community Members having any input or say concerning who was the necessarily Independent Chairperson of this Urbis run "independent facilitation" process, and
- 5) Given Urbis have been solely engaged by, instructed by and are being paid by - their client the Mounties Group of Clubs - the use of the words "independently facilitated" for the so called "Community consultation" process adopted in this matter - raises numerous questions about the independence of Urbis from its fee paying and instructing client the Mounties Group.

It should be noted that the Mounties Group and Urbis had previously lodged a very similar development application under the former Part 3A of the NSW Environmental Planning and Assessment Act for 100 Seniors Units to be built on the HDC's site in late 2010 - without any "Community Consultation" at all in respect of their Part 3A application.

This Mounties Group/Urbis Part 3A "Major Projects" application for the HDC's site was rejected by the incoming new NSW Government as part of its election promises platform to repeal this highly controversial "Major projects" provision of the EP&A Act.

Like others who have observed (and some who have been personally involved in) this so called "Community Consultation" process being

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driven by the Mounties Group for the HDC site's future development options - my considered view is this **"Community Consultation" process** has, as is demonstrated above, had since its very beginnings - a pre-determined outcome of a major Seniors' Living Units property development on the HDC's site.

The actions of the Mounties Group in this matter are highly concerning and raise a number of legal issues concerning its processes and public representations. It is noted that the NSW Crimes Act contains Criminal offences for Publishing False and Misleading Statements and for Benefit by Deception actions.

My concerns regarding the Mounties Group's sham Community Consultation were reported several times in both emails to and in face to face meetings with - the solely appointed by, instructed by and paid for by the Mounties Group's Probity Auditor - tasked by the Mounties Group with overseeing Probity in this matter.

Despite these considerable concerns being raised at length with the Mounties Group's Probity Auditor - no action at all was taken by the Mounties Group to rectify its actions. I was told directly by their Probity Auditor that my concerns of a sham Community Consultation being staged in this matter - when a pre-determined outcome was already in place for the HDC's site - would be ignored by the Mounties Group.

This response given was consistent with the longitudinal behaviours of the Mounties Group in respect of persons who raise issues concerning Mounties practices or who raise concerns with the Mounties Group's position on a matter - they are simply ignored by Mounties Group.

Members of the Freshwater and its broader Community formed the view that - they would NOT participate in the sham Community Consultation being run for the Harbord Diggers Club site's re-development.

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**Transparency of processes in the so called “Community Consultation”
for the HDC site’s future???**

The Mounties Group claims it has operated fully transparent processes in its so called “Community Consultation” concerning this matter. I have read all of the publicly available information concerning this development proposal and I cannot find any public financial information whatsoever pertaining to the financial analysis - which it is claimed is underpinning the Mounties Group’s crucial assertion in this matter - that it must develop 97 Seniors Living units on the HDC’s site in order to make the HDC’s future as a Registered Club financially viable.

Why all of this Seniors Living units’ development proposal’s financial information has remained totally hidden throughout this Mounties Group’s so called transparent “Community Consultation” processes with the Freshwater and surrounds Communities - says a lot about how “transparent” to the public the processes adopted really are.

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APPENDIX 10

The Mounties Group’s RE2 zoning submission to Fairfield Council for their Mount
Pritchard Club land site.



Submission to Draft Fairfield Local Environmental Plan 2011

Submission Summary and Officer Recommendation

Submission Number	146
Subject Site	101 Meadows Road

Submission to

Draft Fairfield Local Environmental Plan 2011

Submission Summary and Officer Recommendation

Submission Number

146

Subject Site 101 Meadows Road

Current Zone 2(a) Residential A

Proposed Zone RE2 Private Recreation

Submission Summary The submission has been prepared on behalf of the Mounties Club.

The submission acknowledges the proposed application of the RE2 zone to the club site as the most appropriate zone for the club site. The submission requests that Council amend the RE2 zone boundary to include other sites under the ownership

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of the Club. These sites are as follows:

89 and 115 Meadows Road, Mt Pritchard; and 8 and 10 Leo
Street, Mt Pritchard.

Officer Comment The DP&I instructed Council to apply the RE2 zone to registered club sites within the residential zones as part of Council's preparation of the draft FLEP 2011. It was on this basis that Council has applied the RE2 zone to the Mounties Club Site. Council officers examined the ownership pattern of properties surrounding the club during Council's consideration of the application of the RE2 zone to the Mounties site.

On the basis of the ownership pattern at the time, Council has applied the RE2 to sites that are owned by the club which directly adjoin the club's core site. Due to the lag period of when Council developed the proposed zoning plan and its eventual exhibition, the Mounties Club may have acquired additional properties that directly adjoin the club's core site.

Recommendation It is recommended that Council prepare a separate Planning Proposal that proposes to extend the RE2 zone boundary around the Mounties site to include 115 Meadows Road and 8 and 10 Leo Street as these site share a direct interface with other sites in the club's ownership. This is consistent with Council's approach when it considered the application of the RE2 to the club site. This approach will provide the Club the

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flexibility to expand onto these sites in the short term giving consideration that Registered Clubs are no longer permissible within the R2 Low density Residential zone (of which the subject sites are proposed to be zoned).

A separate Planning Proposal initiated by Council will provide the community within that locality the opportunity to comment on the proposed amendment to the RE2 zone boundary.

It is recommended that 89 Meadows Road be excluded from the above amendment as the site does not share a common boundary with the club's core site. And in this regard the R2 zone that is proposed for the site should remain unchanged.

15 March 2012

31942

Draft LEP 2011

Fairfield City Council

Source: Fairfield Council

Fairfield Council Comprehensive LEP Committee

AGENDA

DATE OF MEETING:

17 April 2012

RECOMMENDATION:

5. Submissions to PRIVATE RECREATION ZONES

That:

- 5.3 115 Meadow Road and 8-10 Leo Road, Mount Pritchard be included in a separate planning proposal to be prepared by Council to rezone these parcels RE2 to be consistent with the zoning of the land containing the Mounties Club, Mount Pritchard.

Source:

http://www.fairfieldcity.nsw.gov.au/bps/Open/2012/LEP_17042012_COM_AT.PDF

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APPENDIX 11

NSW Local Government and Planning Specialist Legal Firm's Legal
Advising that a RE2 Private Recreation zoning is the appropriate land
zoning for the HDC's land site in Freshwater, NSW.

WOODWARD legal

P 61 2 9686 9888
F 61 2 9639 2759
ABN 92159920920

Suite 1
8 Tristania CT
Baulkham Hills
NSW 2153

Mail
P.O. Box 999
Baulkham Hills
NSW 1755

woodwardlegal.com.au

Your Ref:
Our Ref: TH:13/1028

15 May 2013

To whom it may concern,

Re: Zoning of the Harbord Diggers Land – “Lost in Translation”

Introduction

I have been asked to review the historical context and legality of the zoning of land known as the Harbord Diggers Club (HDC) at 80 Evans Road, Freshwater (the HDC land). The land came within the Warringah Local Environmental Plan 2000 (WLEP 2000) from December 2000 to be zoned R2 Low Density residential in the Warringah Local Environmental Plan 2011 (WLEP 2011).

Representations were made to the community by the NSW State Government and Warringah Council that in the process of developing a comprehensive LEP as required by state legislation in 2006, there would be a “translation” of zones from the existing LEP, to the new. Members of the Freshwater community have raised concern that the HDC land which was characterised under the WLEP 2000 as an area catering “for the recreational and leisure needs of the community”, became “lost in translation” in that the land upon which the club stood became zoned in 2011 for residential development (R2) where a “registered club”, is an Additional Permitted Use.

Background

a) **The WLEP 2000** - The WLEP 2000 was gazetted on 5 December 2000. The planning regime adopted was very different from that of other local government areas in the state. It did not separate land uses in a hierarchy based on land use type (for example residential, business and industrial uses) from each other in “zones”. It employed a multilayer approach.

The intention of those drafting the WLEP 2000 was to identify broad geographical areas which were identified by natural features, existing patterns of development, and specific desires of local communities. “Desired Future character statements” were prepared for each area, including one for the Harbord area. For some areas the “Desired future character statement” closely reflected the existing style of development and environment. For the Harbord area (Locality H1 Freshwater Beach), the “Desired future character statement” reflected the community’s rejection of the existing home unit development, and specified the visual pattern and scale of existing detached style housing.

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The concept of "desired future character" statements contained within the LEP and the form of "zoning" was quite ground breaking and the Court grappled with its interpretation in the early years of its adoption.

The first layer within the planning instrument was the idea of a "locality", identified in the planning maps, with desired future character described in the "Desired future character statement" - (DFC) statements.

The WLEP 2000 identified five hydrological catchments, a locality centred on middle harbour and two geographical locations of Dee Why and Harbord. Each geographical area was assigned with a letter (A-H). Of relevance to this advice is the geographical area of Harbord which was assigned the letter "H". The subset of that locality is the area of Freshwater Beach assigned: "H1".

Contained within the "desired future character" statement for Freshwater Beach (Locality H1) forming part of Appendix H to WLEP 2000, is:-

"The Freshwater Beach locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment style housing and a range of complementary and compatible uses.

Future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality except for the Harbord Diggers Club. The streets will be characterised by landscaped front gardens and consistent front building setbacks

The Harbord Diggers club will continue to cater for the recreational and leisure needs of the community. If the existing approved building and carparking areas are to be expanded, regard must be had to any approved and detailed masterplan for the site....."

The WLEP 2000 uses the localities and special purpose areas as a means to control development in the LGA.

Permitted development is divided into three categories for any particular locality which will depend on the "desired future character" of that locality. The note to clause 12 of WLEP explains:-

"Category one development is development that is generally consistent with the desired future character of the locality. Category two development is development that may be consistent with the desired future character of the locality, and category three development is generally inconsistent with the desired future character of the locality."

The unusual factor of interpretation with WLEP 2000 is that all three categories permit development. However, if development is fundamentally inconsistent with the desired future character of the locality then it would not be permitted. It is upon this premise that the LEP operates and it is upon this premise that the Court interpreted the LEP.

Clause 12(3)(b) of WLEP 2000 required that the consent authority *must be satisfied* that the development was consistent with the *desired future character* described in the *locality statement* before consent could be granted for categories 2 and 3 development.

b) The Standard Instrument Legislation - On 31 March 2006 the NSW Government introduced the *Standard Instrument (Local Environmental Plans) Order 2006* with the

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objective of introducing a standard format and content for LEPs throughout NSW. The program was designed to simplify the plan making system in NSW as previously there had been no standard approach. Planning throughout NSW was extremely complex and diverse. The program was introduced to reduce the level of complexity and to address what was seen to be a serious flaw in the understanding of planning law by the people of NSW.

The NSW Government introduced a standard LEP (or, "comprehensive LEP" as they were often termed) for Councils to adopt. Councils were to transfer the zoning within its boundaries into the new standard LEP format. This was to be undertaken within a 5 year timeframe. The government was optimistic; still some Councils have not adopted a new instrument.

Under the new standard instrument a "template" was provided which councils were to use as the basis for preparing a new LEP for their local area. Standard zones; definitions; clauses; and, format were also to be used.

The standard instrument provided 34 zones from which councils could select in preparing their LEPs. The zone choice under the new instrument was to reflect the primary use of the land. The intention of most local government areas, including Warringah, in translating the old LEP into the standard instrument was to achieve a "best fit" for the old zones into the new.

The zone names were to be changed and put into like zones as prescribed under the standard LEP. The zone groups included such zones as "R" – residential; and, "RE" – recreational. Those further groups were then to be divided into actual zones for example the "R" zone group for residential were divided into "R2 Low Density" and "R3 Medium Density" in the new Warringah LEP.

c) Report to Council - 2 May 2006 - Warringah Council complied with the requirements commencing its program on 2 May 2006 when it resolved to prepare a comprehensive LEP in compliance with the standard instrument.

d) Report to Council – 13 March 2007 - On 13 March 2007 a report (**the March report**) was submitted to the Council meeting seeking Council's endorsement of a strategy for the development of the new LEP in accordance with the standard instrument together with a strategy for managing requests made by submissions (which inevitably would be made) for the rezoning of property.

The March report noted at Item 8.3 that:

"Council is developing a new comprehensive LEP that seeks to translate its existing Warringah Local Environmental Plan 2000 (WLEP 2000) into the new format required by the NSW Government's Department of Planning. As part of the new requirements, Council will also need to develop a new Development Control Plan that incorporates and translates many of the existing provisions of the WLEP 2000" (the underlining is mine for emphasis).

The March report notes in a number of places that the Council would be translating the LEP into the new format. It was the clear intention that there was to be a smooth transition from one instrument to another with little, if any, rezoning. The recommendation given in the March report (p.181) was that:-

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"In developing a new comprehensive LEP for Warringah, Council will translate the Warringah LEP 2000 into the new LEP Standard Instrument format and into the Warringah Development Control Plan" (the underlining is mine for emphasis).

The body of the report (p. 182) states that:-

"...it is considered appropriate that the process to prepare the new comprehensive LEP should be one that translates the existing provisions contained in WLEP 2000 into the new standard LEP format and into the Warringah DCP. Exception to this process should only be made to allow provisions to be included within the LEP and the DCP that provide a strategic response to the housing and jobs capacity targets and major infrastructure requirements of the Metropolitan Strategy" (the underlining is mine for emphasis).

The report to Council noted that based on previous experience it was anticipated that there would be requests from individuals and land owners for private property to be rezoned as part of the adoption of a new LEP. A strategy was put into place to defer most of those representations/submissions.

e) Exhibition of Draft WLEP 2009 – In October 2009 council made a number of resolutions relating to the draft LEP including:

"That in conjunction with the draft Warringah Local Environmental Plan and the Warringah draft Development Control Plan (attachment 4) be placed on public exhibition for a minimum of 28 days and submissions invited from the public."

The draft Warringah Local Governmental Plan 2009 (draft WLEP 2009) was exhibited between 12 October 2009 and 30 December 2009.

Submissions were received as a consequence of the exhibition and these were assessed and reported to Council in June 2010.

f) Report to Council 8 June 2010 - On 8 June 2010 the matter was reported to Council (**the June report**). It was noted that the review of the land use for the LGA was not to be undertaken again as the process had been comprehensively carried out in the five years prior to the gazettal of the WLEP 2000.

It was observed that some of the "current" LEP content was out-dated and that there would be circumstances where the nature of some of the existing clauses, zones and land uses rendered them inappropriate or unable to be converted (translated) into the new LEP. Generally however, the "zoning" was to remain the same.

The June report was submitted to the council making directions in regard to the relationship of the proposed new LEP and the standard instrument. The executive summary of the report refers again that there would be a "translation" as much as possible of the zonings from the old LEP to the new. Reference is made (p.45) to the HDC and significant issues raised in submissions.

The June report reflected upon submissions regarding the HDC. The Council resolved that there be no change to the draft WLEP 2009 but rather, noted that the land owners could submit an application for an amendment at a later time.

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g) Submission to the Department - On 25 June 2010 the amended draft WLEP 2009 was sent to the Department of Planning who responded by way of letter dated 7 December 2010 proposing draft changes to the draft LEP.

h) Report to Council - 14 December 2010 - On 14 December 2010 (**the December report**) a report was submitted to the Council dealing with proposed changes to the draft WLEP 2009 by the Department. The report notes that the Department's letter referred to a submission on behalf of the HDC that the land be rezoned "R3 Medium Density" residential to permit a range of additional uses on the land.

The letter from the department noted that it *"proposes to recommend to the Minister that he amends the Plan and includes residential flat buildings as an additional permitted use through the use of Schedule 1, and identify the site on the Additional Permitted Uses Map. This will enable the permitted uses on the land to be consistent with uses currently permissible under the Warringah LEP 2000."*

The Council responded to that comment by the Department and the submission by the HDC by noting that the Department had based its advice on an incorrect assumption. The council noted that *"the Harbord Diggers Club is not zoned for multi-unit housing and has not been so zoned by past planning instruments... Under WLEP 2000 this site has special provisions that require the Recreation Area (Registered Club) to remain on the site."*

Advice

The HDC is situated on the Freshwater headland above the coastal cliffs between Curl Curl Beach and Freshwater Beach. McKillop Park and the HDC land occupy most of the Freshwater Headland. The HDC land is in close proximity to a scenic walking route. The coastal area attracts many residents and visitors for recreation and leisure purposes.

The DFC statements for the Freshwater Beach Locality include:

"The locality contains hillsides and elevated landforms, prominent coastal headlands and cliffs and remnant bushland. These elements will be protected from development that would detract from their visual and natural qualities, presenting in some parts of the locality a constraint to further development".

"The Harbord Diggers Club will continue to cater for the recreational and leisure needs of the community."

The DFC statement for the whole of the HDC land is specifically intended to cater for *"the recreational and leisure needs of the community"*.

The HDC land was specifically identified in the DFC statement as it is of strategic importance in its context:

- It is adjacent to a Memorial Park listed as a regional heritage item in the WLEP 2000;
- It is near to Coastal Cliffs which are listed as a heritage conservation area;
- It has a social benefit for recreation and leisure that complements the adjoining coastal area, walkway and reserve;

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- It has an historical and cultural association with the Diggers and ex-servicemen;
- The Freshwater locality is predominantly residential with relatively few social venues for recreational and leisure needs;
- The HDC provides employment in the locality.

The HDC land consists of a consolidation of allotments over the years since the late 1950's. There has been a gradual acquisition of adjoining lots of land when the need or opportunity arose. As recently as 2006/2007 the club achieved the amalgamation of previously leased Crown land within the adjoining McKillop Park. The whole of the HDC land was shown on the WLEP 2000 map Sheet 8. There was no dividing line between the area of the Registered Club; the adjoining multi-layer car park; outdoor bowling area; and, the "unused" land to the north. I am instructed that the land consisted of a number of separate lots in 2000 however the whole of the site was simply referred to as the Harbord Diggers Club in the 2000 LEP.

The strength of the club over the years has been due in no small part to the cooperation of the public authorities and community. To have the land zoned in a manner which could alienate the community, is contrary to the recognised purpose given to the land in the WLEP 2000.

Because of the nature of the drafting style of the WLEP 2000, the accompanying map does not specifically refer to individual private recreation sites. It is the DFC statement that refers to sites and it is the HDC land which is cited as an area to meet the "*recreation and leisure needs of the community*" within that statement. It is therefore the whole of the HDC land to which the DFC statement relates.

The State Government and Warringah Council gave commitments post 2006 that the zonings in the WLEP 2000 would be translated into the new standard instrument. The HDC land was "translated" into an R2 *Low Density Residential* zone under the draft WLEP 2009 and the subsequent WLEP 2011 which permitted residential development with "Registered Clubs" as an additional use. Such a zoning would theoretically permit the registered club to be removed (or substantially reduced) from the site leaving no (or very few) facilities for recreation or leisure needs of the community; this would be totally contrary to the DFC statements contained in the WLEP 2000.

It could *not* have been the intended consequence of the zone "translation" to leave the HDC land exposed to being used by private developers to the exclusion, or even partial exclusion, of the community's recreation and leisure needs. This was not an accurate "translation" of zones.

I have reviewed the range of zones proposed in the *Standard Instrument (Local Environmental Plans) Order 2006* by the State Government. In my opinion the zone which "translates" most appropriately was the RE2 *Private Recreation* zone. This would have zoned the HDC land in such a way that the recreational use for the community would have been retained; and, it would have prevented its loss (or diminished use) to a developer for housing which is contrary to the desired future character sought in the 2000 LEP, adopted only after many years of detailed land use studies.

During the Standard Instrument adoption process, the Council opposed the Department's suggestion to rezone the Freshwater Beach locality to R3 *Medium Density Residential* on the basis that such housing was inappropriate and contrary to the 2000 zoning. However, Council at that time overlooked the appropriate "translation" of the specific zoning of the

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HDC land which should have been RE2 *Private Recreation* rather than R2 *Low Density Residential* to maintain the consistent "translation" of one zone to another.

Residential development on the HDC land would be inconsistent with the desired future character as stated in the DFC statement, namely the continuation of the recreation and leisure needs of the community, and would not have achieved the level of satisfaction required under clause 12 of WLEP 2000 for such a development to have been approved.

In my opinion there has been a fundamental error in the "translation" of the WLEP 2000 zoning to that of the WLEP 2011. The HDC land has been now zoned for residential development whereas the whole of the land had been previously identified for "*the recreational and leisure needs of the community*". The zones are fundamentally opposed to each other.

If the zoning is to be maintained in the WLEP 2011, considerable weight should be given to the history of the zoning in the assessment of any development application on the HDC land. Residential development is at total odds with the intention of the zoning (DFC) of the HDC land apparent from its 2000 zoning which was adopted after considerable land use analysis. Giving over the land for residential development, or a large portion of it, would be to take away from the community an asset which was based, to a large extent, upon the generosity of public authorities and Diggers who sought to expand the facility for the benefit of the community.

The current zone which supports residential housing is at the opposite end of the spectrum for the vision held for the HDC land. The underlying objective of the Club, the Council and the community had been to allow the expansion of the HDC through amalgamation of lots to enhance it as a major facility which would serve the recreational and leisure needs of the community. Now, theoretically, the HDC land may be developed for housing, to the exclusion of the recreational needs of the community.

In summary, the current zoning of the HDC land is fundamentally flawed and contrasts with the intentions of the community and Council since at least the mid 1990's when land use studies were conducted for the adoption of the WLEP 2000. The HDC land had been identified as a community asset for recreational and leisure needs however, the zoning adopted in the most recent WLEP 2011 fails to recognise this most important element, despite purporting to be a "translation" of WLEP 2000.

In my opinion there was an arguable challenge to the adoption of the WLEP 2011. There seems to be a number of anomalies and errors within the LEP in addition to that which I have discussed in this advice. This could have formed the basis of a challenge to WLEP 2011.

I recommend that a submission be made to the Council requesting that it recognise its error in translating the zoning of the HDC land to the WLEP 2011 and take the opportunity to make appropriate amendments in an anomalies LEP. The amending LEP could accurately reflect the "*recreational and leisure*" needs and importance of HDC land to the community and effectively prohibit housing on the site.

The amending LEP should reflect that which has been expressed throughout the planning instruments and life of the Club, that the HDC land is for recreation and not housing in the context of the locality which:

"contains hillsides and elevated landforms, prominent coastal headlands and cliffs and remnant bushland",

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in which the HDC sits catering for the *"the recreational and leisure needs of the community"*.

Please feel free to contact me should you wish to discuss this matter with me.

Yours faithfully,



Ian Woodward BA., LLB.

Lawyer | Director

Accredited Specialist (Local Govt. & Planning)

Woodward Legal Pty Ltd

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APPENDIX 12

The Community minded practices of the Mounties Group in respect of its funding for facilities for some of Sydney’s most disadvantaged youth.

[The Sydney Morning Herald](#)

“Club cancels funding over pokies row

May 9, 2012



Conflict of interest ... the Mounties Group will no longer be funding a youth centre after Fairfield City Council rejected the club's application to move up to 60 poker machines from two of their northern beaches satellite clubs, including Harbord Diggers, above. *Photo: James Brickwood*

ONE of the state's biggest clubs has withdrawn about \$3 million it promised to build a youth centre after Fairfield City Council opposed its bid to bring 60 more poker machines to Sydney's most disadvantaged area.

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The Mounties Group, operator of the Mounties club, told the council it was withdrawing from an agreement it signed last year to help fund the \$7.5 million centre because the council opposed its application to transfer gaming machines from two satellite clubs along the northern beaches to its Mount Pritchard base.

In a letter obtained by the *Herald*, the Mounties chief executive, Greg Pickering, told the council the club received its objection to the plan last August 18, six days after the two parties had agreed to fund the centre.

"The club was surprised that council objected to the allocation of revenue from gaming machines for the funding of the project, as the club had always believed there was a mutual understanding that funding would be sourced from gaming revenue," he said.

The council denied this. In a report to its operations committee, which met last night, it said it was never advised that the Mounties' contribution was reliant on securing income from the 60 new gaming machines.

"The funding deed of agreement, all previous correspondence, and initial discussions about the philanthropic project did not include any reference to reliance on additional revenue from a successful gaming application," the report said.

The report said the council was first approached by Mounties in 2009 with an offer to develop a "major philanthropic project", before the club promised to spend about \$3 million over 10 years to fund the centre. A clause within the agreement allows the club to withdraw after planning approval is granted.

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Mr Pickering's letter said although the club had provided \$250,000 for the design of the centre, funding for the construction and operational phases would come from additional revenue from the new machines.

The council said it first learned the club had linked the two proposals when notified in late July of the application made to the NSW Office of Liquor, Gaming and Racing to transfer the machines from Harbord Diggers and Manly Bowling Club.

With the Australian Bureau of Statistics ranking Fairfield as the most disadvantaged area in Sydney, the council has a policy to oppose any new poker machines.

"Mounties have interpreted council's objection to the transfer of additional gaming machines to the Mt Pritchard Club as being inconsistent with council's desire to build and operate the youth centre," the report read.

The application to transfer the machines is still being considered by the gaming authority.

Mr Pickering told the *Herald* that the club had received legal advice that it could not go ahead with the application while there was a benefactor who objected.

"And our advice is that will cause the application to be lost. We can't afford to do that," he said.

When asked why the area needed more poker machines, Mr Pickering said: "Fairfield doesn't, Mounties does."

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Mounties expects the extra machines will increase its annual profit by \$3.3 million to \$31.4 million. The group's total revenues from poker machines last year stood at \$72 million

If the transfer is approved, it would boost the number of machines at the club to 621 and those in the surrounding Fairfield area to 3838.

Government figures show that the average machine in the area makes in excess of \$85,000 profit a year, more than twice the \$31,000 average machine profit in Manly.

The council report said the withdrawal of funding would delay work on the youth centre until an additional source of funding could be found."

Source: <http://www.smh.com.au/nsw/club-cancels-funding-over-pokies-row-20120508-1yb2z.html>

[Also see:](#)

“Super-club reneges on deal to fund youth centre

A Sydney council says it will seek to force one of the state's largest clubs, Mounties, to abide by a written agreement to donate about \$3 million to a youth centre despite the club's decision to walk away. The mayor of Fairfield, Frank Carbone, said a committee meeting on Tuesday night resolved to refuse a request from Mounties to mutually abandon an agreement to build a \$7.5 million youth and community centre in Sydney's most disadvantaged area.

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In a letter to the council, Mounties chief executive Greg Pickering said the club was withdrawing from an agreement to help fund the centre after the council opposed its application to transfer 60 poker machines from less profitable areas along the northern beaches to its Mount Pritchard base.

But Cr Carbone said there was no understanding at Fairfield City Council that the two applications were linked and it was "shocked" to receive Mr Pickering's letter "saying he was going to tear up an agreement that as far as we're concerned never existed".

"They have attempted to coerce council into breaking up the agreement mutually, but as far as we're concerned we will stick to the agreement as first proposed and we won't be supporting any additional poker machines," he said.

The council said Mounties approached it in 2009 to support a philanthropic project, which led to the deal to help fund the youth centre.

"There's no doubt we're disappointed that Mounties tried to use this facility as a springboard to obtain more poker machines, which we have always rejected," Cr Carbone said.

Mr Pickering's letter said the club was surprised by the council's opposition to the additional machines as it believed there was "mutual understanding" its contribution to the youth centre would come from gaming profits.

The construction and operation of the youth centre would be directly funded by the \$3.3 million profit from the new machines, he said.

But the deed of agreement, obtained by the *Herald*, makes no reference to poker machines.

It states the two parties "wish to collaborate to achieve the best outcomes for young people in the community of the Fairfield Local Government area through a common understanding of roles, and a commitment to shared principles".

The agreement also stipulates that the council must mention the club's support "in all publications, promotion and advertising material, public

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announcements and activities by the council" relating to the centre for 10 years.

Although Mounties is seeking to withdraw from the deal now, an exit clause allows it to do so after the youth centre is granted planning approval. It is to go on public exhibition later this month.

Liberal councillor Zaya Toma said as the deed did not link the centre's funding to the approval of additional poker machines "the residents of our city have a right to know, who gave Mounties the idea or the understanding that it was?"

Mr Pickering did not respond to a series of written questions from the *Herald* yesterday.

The gaming authority is still considering Mounties' application to transfer 60 poker machines from Harbord Diggers and Manly Bowling Club to its Mount Pritchard base.

According to figures from the Office of Liquor, Gaming and Racing, the average machine in the Fairfield local government area makes more than \$85,000 profit a year – more than twice the \$31,000 average machine profit in Manly."

Read more: <http://www.smh.com.au/nsw/superclub-reneges-on-deal-to-fund-youth-centre-20120509-1ydce.html#ixzz3C2pbgJIL>

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APPENDIX 13 - AN EXAMPLE OF THE PUBLIC
MISREPRESENTATIONS MADE BY THE MOUNTIES GROUP IN
RESPECT OF THIS HDC RE-DEVELOPMENT PROPOSAL.

A factual analysis of some of the published Mounties Group's rhetoric v's the FACTUAL reality - concerning the HDC's redevelopment proposals.

In 2013, the Mounties Group published and disseminated a document which they titled:

A New Dawn for The Diggers, (2nd Edition),

Please see:

http://harborddiggers.com.au/site_files/s1001/files/A_New_Dawn_4pp_A_4_Brochure_V2_WebVersion.pdf - for the document in full.

In this public document on Page 4, at Paragraph 2, the Harbord Diggers Club's General Manager, Mr. Dale Hunt publicly stated that:

"I am more than willing to stand behind every comment I make"

At Paragraph 6 of this document, Mr. Dale Hunt also publicly asserted:

"THIS IS A GREEDY STRIP OF ASSETS BY A DEVELOPER

NOT TRUE - **All assets and profit will be to the club.**"

Analyses of the true factual situation in respect of Mr. Dale Hunt's public promise that: - **"All assets and profit will be to the club."** - was undertaken and revealed the following information:

In several colour advertisements in The Manly Daily newspaper in August 2014 and also online, for example at realcommercial.com.au - the following profit making opportunities were offered to the Commercial Market - requesting that Expressions of Interest for them were to be lodged by 5 September '14 with the Mounties Group's representatives.

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“Harbord Diggers Freshwater - Welcome to the Club of the Future

Seeking Expressions of Interest
Unique opportunities for;

- Cafe, restaurants (x3) and lounge bar - from approx. 150m2 - 800m2
- Child care - up to 90 places (STCA)
- Fitness centre - approx. 1684m2
- Aquatic centre (Learn to Swim) - approx. 1279m2 incl. 2 pools

Expressions of Interest close 5pm, Friday 5th September 2014.

Matthew Yovich

M: +61 401 718 152

P: +61 2 9432 0333

E: matthewy@rooksalinger.com

The Commercial Real Estate Agency handling the Expressions of Interest is:

“Rook Salinger – SYDNEY, Level 16, 68 Pitt Street, Sydney NSW 2000”

Please see: - <http://www.realcommercial.com.au/property-retail-nsw-freshwater-501255863> - for the publicly published information of the profit making commercial activities which the Harbord Diggers Club - is offering to the Commercial Market for private sector profit making.

Also note the Mounties Group's website's published information:

“The Club has recently appointed the seniors living operator who will be responsible for managing these residences.”

See Question 10 response at:

<http://www.newharborddiggers.com.au/news/faqs#faqanswer12>

In respect of the operation of the proposed 97 Seniors Living units on the HDC's site, the Mounties Group have publicly stated that Watermark - a private sector for profit operator - has been selected by the Mounties Group to manage on a Commercial for profit basis the Seniors Living units on the HDC's site. Watermark's for profit activities include a Seniors Living complex at Castle Cove, see:

<http://www.retirementvillagesydney.com.au/> for details.

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In respect of future capital gains increases in the value of the proposed 97 Seniors Living units - the Mounties Group’s documentation advises that a profit sharing arrangement between the Club and the Private residents of these units will be implemented.

“Any profits will be shared by both the senior's who lease/licence the apartments and the Harbord Diggers.” and;

“A percentage of the lease income will be used to manage and maintain the complex and the remainder will be invested in funds with the profits shared by the Harbord Diggers and the senior who occupies the property.”

See Question 12 response at:

<http://www.newharborddiggers.com.au/news/faqs#faqanswer12>

The above quotations are all from the Mounties Group’s own published public information.