



# AGENDA FOR THE CANTERBURY BANKSTOWN LOCAL PLANNING PANEL MEETING

4 June 2018 - 6.00pm

Location:

Council Chambers  
Cnr Chapel Road and the Mall,  
Bankstown

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## ORDER OF BUSINESS

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### BASS HILL WARD

- 1        8/24-26 Mitchell Street, Condell Park**  
Reconstruction of a fire damaged townhouse with the addition of a new pergola to the rear.....3

### REVESBY WARD

- 2        56 Prescott Parade, 67, 67A, 80, 80A, 90 and 100 Auld Avenue, 123 and 123A Raleigh Road, and 25 Martin Crescent, Milperra**  
  
Integrated development - Subdivision of land into 242 residential lots and consolidation of the remaining site into six large lots including proposed road access, provision of a park, and associated bulk earthworks, road construction works, tree clearing, soil remediation works, construction and installation of stormwater, sewerage and other utility services, works to the intersection of Keys Parade and Henry Lawson Drive, and provision of a waterfront reserve in accordance with an existing VPA.....29

### ROSELANDS WARD

- 3        31-33 Isabel Street, Belmore**  
  
Use of existing gymnasium for functions/social events associated with the Greek Orthodox Parish in addition to the current usage as gymnasium for the All Saints School.....83

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## Canterbury Bankstown Local Planning Panel - 4 June 2018

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<b>ITEM 1</b>	<b>8/24-26 Mitchell Street, Condell Park</b>
	<b>Reconstruction of a fire damaged townhouse with the addition of a new pergola to the rear</b>
<b>FILE</b>	<b>DA-237/2018 – Bass Hill</b>
<b>ZONING</b>	<b>R2 Low Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>27 March 2018</b>
<b>APPLICANT</b>	<b>Silver Wolf Projects</b>
<b>OWNERS</b>	<b>Scott Darryl Wagemaker</b>
<b>ESTIMATED VALUE</b>	<b>\$223, 143.25</b>
<b>AUTHOR</b>	<b>Planning</b>

### SUMMARY REPORT

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This matter is reported to Council's Local Planning Panel as the application seeks to vary a development standard by more than 10%.

Development Application DA-237/2018 proposes the reconstruction of a fire damaged dwelling (referred to in this report as Dwelling 8) within an existing multi-dwelling housing development. The dwelling is located in the rear, north western corner of the site.

The proposed reconstructed dwelling will be two storeys in construction with the addition of a new pergola to the rear. The living areas are located on the ground floor, with the first floor containing three bedrooms and a bathroom. This internal layout reflects that of the dwelling as originally approved and constructed with no additional gross floor area, generally the same architectural style and the same building footprint.

DA-237/2018 has been assessed against, among other things, *Bankstown Local Environmental Plan 2015 (BLEP 2015)* and *Bankstown Development Control Plan 2015 (BDCP 2015)* and the application fails to comply in regard to BLEP 2015 Clause 4.3(2B)(c)(ii) height of buildings (maximum wall and building height).

As detailed in this report, the non-compliances with the maximum wall and building height for dwelling 8 is justified and is considered worthy of support.

The application was notified for a period of 14 days from 3 April 2018 to 16 April 2018. No submissions were received.

## **POLICY IMPACT**

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This matter has no direct policy implications.

## **FINANCIAL IMPACT**

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This matter has no direct financial implications.

## **RECOMMENDATION**

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It is recommended that the application be approved subject to the conditions included at Attachment 'B'.

## **ATTACHMENTS**

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- A. Section 4.15 Assessment Report
- B. Conditions of Consent

## **DA-237/2018 ASSESSMENT REPORT**

### **SITE & LOCALITY DESCRIPTION**

DA-237/2018 seeks consent for the reconstruction of a fire damaged dwelling (Dwelling 8) within an existing multi-dwelling housing development. Dwelling 8 occupies the rear, north western corner of the site and was subject to fire damage in February 2018. The dwelling occupied a floor area of 91m<sup>2</sup> including a garage measuring 52m<sup>2</sup>. The existing lot is one of eight strata subdivided lots. All the dwellings within the multi-dwelling housing development, including Dwelling 8, are two storey.

Overall the development site has an area of 2,396m<sup>2</sup> and is regular in shape. A public reserve immediately adjoins the site's southern boundary. The surrounding development consists predominantly of low density residential dwellings of varying age and condition.

The context of the site is illustrated in the following aerial photo.



### **PROPOSED DEVELOPMENT**

DA-237/2018 proposes the reconstruction of a fire damaged dwelling within an existing multi-dwelling housing development, a newly proposed pergola to the rear and associated landscaping and site works.

**SECTION 4.15(1) ASSESSMENT**

The proposed development has been assessed pursuant to section 4.15(1) of the Environmental Planning and Assessment Act, 1979. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the proposed development.

**Environmental planning instruments [section 4.15(1)(a)(i)]*****Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (GMREP 2)***

The site is located within land identified as being affected by *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*, being a deemed SEPP under Clause 120 of Schedule 6 of the *EP&A Act, 1979*. The GMREP 2 contains a series of general and specific planning principles which are to be taken into consideration in the determination of development applications. An assessment of the proposal indicates that the development is generally consistent with the aims and objectives of the plan, as well as the planning principles as set out in Clause 8 of the GMREP 2.

***State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)***

The provisions of Clause 7 of *State Environmental Planning Policy 55 – Remediation of Land* specifies that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The subject site has long been used for residential purposes and this will not change as part of the development application. There is no evidence to suggest that the site is contaminated, nor is it considered necessary for any further investigation to be undertaken with regard to potential site contamination. Approval to demolish the dwelling, following the fire, was provided through Determination Notice DA-219/2018. Conditions 9(h) and 9(i) of that consent, as provided below, address any potential contamination issues.

- h) Where materials containing asbestos fibres or asbestos cement sheet are to be removed, demolition is to be carried out by licensed contractors who have current Workcover Accreditation in asbestos removal.*

- i) *Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 2004'.*

The subject site is considered suitable for the development and therefore satisfies the provisions of SEPP 55.

***Bankstown Local Environmental Plan 2015 (BLEP 2015)***

The following clauses of the Bankstown Local Environmental Plan 2015 were taken into consideration:

Clause 1.2 – Aims of Plan  
 Clause 2.1 – Land use zones  
 Clause 2.2 – Zoning of land to which Plan applies  
 Clause 2.3 – Zone objectives and Land Use Table  
 Clause 4.1B – Minimum lot sizes and special provisions  
 Clause 4.3 – Height of buildings  
 Clause 4.4 – Floor space ratio  
 Clause 4.5 – Calculation of floor space ratio and site area  
 Clause 4.6 – Exceptions to development standards  
 Clause 6.1 – Acid sulfate soils  
 Clause 6.2 – Earthworks

An assessment of the development application has revealed that the proposal complies with the matters raised in each of the above clauses of Bankstown Local Environmental Plan 2015, with the exception of a variation proposed to Clause 4.3 Height of buildings (wall and building height).

The table below is provided to demonstrate the proposal's compliance with the numerical controls as set out in the BLEP 2015.

STANDARD	PERMITTED	PROPOSED	COMPLIANCE
Height of Buildings	Max 3m - wall Max 6m - building	7.2m (wall height) 7.22m (building height)	No – see justification below No – see justification below
Floor space ratio (specific site)	Max. 0.50:1	A GFA of 91m <sup>2</sup> is proposed resulting in no increase in GFA nor FSR.	Yes

### Clause 4.3 – Height of Buildings

Clause 4.3(2B)(c)(ii) – Height of buildings of the BLEP 2015 refers to the maximum permitted height of buildings for multi-dwelling developments in an R2 Low Density Residential Zone as having a maximum building height of 6m and a maximum wall height of 3m. It reads as follows:

#### 4.3 Height of buildings

(1) The objectives of this clause are as follows:

- (a) **to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,**
- (b) **to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,**
- (c) *to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) *to define focal points by way of nominating greater building heights in certain locations.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) ...

(2B) *Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:*

- a) *for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,*
- b) *for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,*
- c) *for multi dwelling housing and boarding houses:*
  - i) *the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and*
  - ii) ***the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.***

...

The proposal seeks to vary Clause 4.3(2B)(c)(ii) of the *Bankstown Local Environmental Plan 2015*. The wall height for the dwelling is measured at 7.2m (4.2m variation – 140%) while the building height is measured at 7.22m (1.22m variation – 20.3%).



In response to the non-compliance with the permissible wall and building height the applicant prepared a Clause 4.6 submission for Council's consideration. An assessment of the Clause 4.6 submission is provided below.

#### **Clause 4.6 – Exceptions to development standards**

**(1) *The objectives of this clause are as follows:***

- a. to provide an appropriate degree of flexibility in applying certain development standards to particular development,***
- b. to achieve better outcomes for and from development by allowing flexibility in particular circumstances.***

The aim of Clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. Extracts from the applicant's submission are provided below:

*"The proposed development is for the reinstatement of the pre-existing and lawful design of the subject dwelling units on a like for like basis to which had been subjected to fire damage, and the rigid enforcement of the current maximum building height limitations would be patently unreasonable and restrictive.*

*...The reason for the current non-compliance with the current LEP's maximum height parameters is that the dwelling was constructed in 1983, approximately 35 years ago under earlier planning controls and therefore the subject dwellings enjoyed existing, lawful use rights. Given the special circumstances of this case, the rigid enforcement of the current height parameters would be unreasonable and would unnecessarily restrict the Owners of their design to reinstate their family home to its original design.*

*The fire damaged Unit 8 forms part of a block of an eight multi dwelling townhouses to which all displays the same building and wall heights, and it is reasonable and visually desirable from a planning perspective to maintain this consistency of design. In order to maintain visual and design continuity with the existing multi dwelling block, the proposed height parameters of the dwelling is necessary.*

*The requested variation would contribute towards the attainment of the objectives of the LEP in relation to building height, particularly in that the proposed design will be consistent and compatible with the design, style and character of adjoining and associated built forms.*

*The requested variation would be in the public interest, as it would be consistent and compatible with the design, style and character of adjoining and associated built forms".*

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.**

Clause 4.3(2B)(c)(ii) prescribes the maximum permissible wall and building heights for multi-dwelling housing developments on the subject site.

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:**
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

An extract of the applicant's Clause 4.6 submission has been reproduced above, as have the objectives for the maximum wall and building height controls as contained in Clause 4.3 of the BLEP 2015.

In addressing the proposed variations to the wall and building height, consideration must be given primarily to whether the built form is consistent with objective (a) of the control.

The building controls applicable to this site under the BLEP 2015 and BDCP 2015 provide the framework that regulates the overall built form outcome expected on site. The LEP controls the site by the application of a minimum lot size as well as height restrictions and floor space ratio controls. The DCP goes further and identifies minimum setbacks, private open space, parking, visual privacy and solar access which contribute to the overall built form and achievement of the character expected in a locality.

The relevant objectives of the R2 Low Density Residential zone are to “provide for the housing needs of the community within a low density residential environment”... whilst “To allow for the development of low density housing that has regard to local amenity” and ensuring “landscape as a key characteristic in the low density residential environment”. It is considered that the proposal is consistent with the objectives of the R2 zone, in that the proposal provides a low density residential development of a built form that is consistent with what was originally approved on the site, and with other units within the same development.

As such, it is considered that there are sufficient environmental planning grounds to justify a contravention to the development standards, given the proposed development does not result in any significant changes to the original built form.

Given the nature of the non-compliances, the development's consistency with all other relevant requirements under BLEP 2015 and on the basis of the applicant's submission, it is considered that compliance with the standards are unnecessary in this instance and that there are sufficient environmental planning grounds to support the variations.

**Draft environmental planning instruments [section 4.15C(1)(a)(ii)]**

There are no applicable draft environmental planning instruments.

**Development control plans [section 4.15(1)(a)(iii)]**

The following table provides a summary of the development application against the primary numerical controls contained within Part B1 of BDCP 2015.

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
Storey Limit	2 storeys	Max. 1 storey for dwellings at the rear of the site.	No – See justification point A.
Fill	No fill proposed	Any reconstituted ground level of an allotment is not to exceed 600mm above the natural ground level of adjoining allotments.	Yes
Levels	Replica dwelling proposed compared to original dwelling prior to burning down	Multi dwelling housing/landscaping must be compatible with the existing slope and contours of the allotment	Yes
Setback to primary road frontage	Dwelling 8 is located to the rear of the site, not being in the vicinity of any road frontage.	Ground floor– Min. 5.5m. First floor – Min. 6.5m	Yes
Side setbacks	5.3m setback to rear boundary	Min setback to rear boundaries: - 5m for a building wall that contains a living area or glass sliding door - 2m for a building wall that does not contain a living area window or glass sliding door - 900mm for a garage or carport that is attached to a building wall - driveway must have a minimum setback to the side/rear boundary of 1m	Yes
Private open space	94m <sup>2</sup>	Min. 60m <sup>2</sup> per dwelling	Yes
Solar access (site)	Achieved between 11:00am and 4:00pm to the north facing	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
	Living/Kitchen area.	living area of the proposed dwelling.	
Solar access (private open space – site)	Achieved to the private open space of the dwelling.	3 hours of sunlight between 9:00am and 5:00pm at the equinox to 50% of the required private open space for both dwelling.	Yes
Solar access (adjoining properties)	<p>Dwelling 8 has only minor impacts on the sunlight received into the living room for the dwellings located to the south with its shadow predominately projecting over the driveway and parking spaces.</p> <p>Dwelling 8 also has a minor impact on the direct sunlight received into the living room of 15 Leemon Street. Dwelling 8's primary overshadowing is directed towards surrounding parking spaces and the driveway to the south.</p>	3 hours of sunlight between 8:00am and 4:00pm at the mid-winter solstice to at least one living area of a dwelling on an adjoining allotment.	Yes
Solar access (solar collectors)	There are no solar panels on any of the adjoining dwellings.	Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the allotment and neighbouring properties.	Yes
Visual Privacy (living areas)	No windows are proposed that look directly into living or bedroom windows of dwellings on neighbouring properties.	Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling the development must offset the windows; provide a minimum sill height of 1.5 metres above floor level; provide fixed obscure glazing; or use another form of screening.	Yes
Visual Privacy (private open space)	First floor bedroom windows overlook the adjoining areas of private open space.	Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where the window is to a bedroom,	Yes

STANDARD	PROPOSED	BDCP 2015 PART B1	
		REQUIRED	COMPLIANCE
		bathroom, toilet, laundry or storage room; the window has a minimum sill height of 1.5 metres above floor level; the window has obscure glazing to a minimum height of 1.5 metres above floor level; or the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.	
Visual Privacy (private open space and balconies)	No balconies proposed.	An upper floor balcony to a multi dwelling housing may require screening where the open space overlooks more than 50% of the private open space of a lower level or neighbouring dwelling.	N/A
Roof top balconies	No balconies proposed.	Council does not allow roof top balconies and the like.	N/A
Roof pitch	21.5 degrees	Max. roof pitch 35 degrees	Yes
Demolition	Demolition was previously approved under DA-219/2018.	Demolition of all existing dwellings	N/A
Adaptable housing	Proposal is not applicable as this proposal is only based on an individual dwelling, rather than the whole multi-dwelling development.	Multi dwelling housing with 10 or more dwellings must provide one adaptable dwelling per 10 dwellings in accordance with AS 4299 – Adaptable housing	N/A
Car parking	Single attached garage already existing accommodating 2 x covered spaces.	Min. 2 car parking spaces per dwelling, 1 of which must be covered	Yes
Landscaping	Not applicable to this proposal.	Min. 45% of the area between the multi dwelling housing and the primary road frontage  1 x 75L tree between the multi dwelling housing and the primary road frontage	N/A
	No trees are impacted as a result of this development.	Development must retain any significant trees on the allotment	Yes

As demonstrated in the table above, an assessment of the development application has revealed that the proposal fails to comply with only the maximum storey limit as contained within Part B1 of the BDCP 2015. As mentioned previously, the proposed development is one that depicts a similar built form, and visual exterior to how it was previously built. It would also be inconsistent with the design and form to the remaining multi-dwelling houses if an alternate design was chosen.

Below are listed reasons, specific to the relative Bankstown Development Control Plan 2015, as to why the storey limit control should be varied in this instance:

A) **Storey Limit:**

- a. Compliance would be unreasonable in the circumstances of this case, given that the proposed development involves only the reinstatement of a previously approved dwelling destroyed or damaged by fire, with no change to the original wall heights.
- b. The proposed development will have no adverse environmental, amenity or any other impacts as, again, the development will simply reinstate the original building and use as it was prior to the fire event.
- c. The reinstatement of the dwelling unit to its original two-storey design is necessary to maintain the visual continuity and design consistency with the other seven units on the site.

**Planning agreements [section 4.15(1)(a)(iia)]**

There are no planning agreements that apply to this application.

**The regulations [section 4.15(1)(a)(iv)]**

The proposal does not raise any issues with respect to the Regulations.

**The likely impacts of the development [section 4.15(1)(b)]**

The likely impacts of the proposal have been managed through the design of the development which is compliant with Council's planning controls, with the exception of the wall and building height as contained within BLEP 2015 and the storey limit control contained within the BDCP 2015 which have been addressed previously within this report.

**Suitability of the site [section 4.15(1)(c)]**

The proposed multi-dwelling reconstruction is a permissible form of development on the subject site, and represents a built form that is compatible with the existing and desired future character of the locality. Whilst the development proposes a variation to the wall and building height, it is considered that the built form proposed is representative of the bulk and scale of the development as originally approved. The proposal is a development that can be expected in a Low Density Residential zone and is capable of accommodating the proposed development, as it stood before becoming fire affected. Accordingly, the site is considered to be suitable for the proposed development.

**Submissions [section 4.15(1)(d)]**

No submissions were received against the development.

**The public interest [section 4.15(1)(e)]**

With regard to the relevant planning considerations, it is concluded that the proposed development would not contravene the public interest. The matters raised have been satisfactorily addressed, and it is considered that there will be no unreasonable impacts on the locality.

**CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, and the relevant planning controls.

The proposed development complies with all applicable planning controls, with the exception of wall and building height in accordance with the BLEP 2015 and the storey limit in accordance with the BDCP 2015. It is recommended that the variations be supported in light of the justifications presented in this report.





## CONDITIONS OF CONSENT

- 1) The proposal shall comply with the conditions of Development Consent. A Construction Certificate shall not be issued until the plans and specifications meet the required technical standards and the conditions of this Development Consent are satisfied.
- 2) Development shall take place in accordance with Development Application No.DA-237/2018, submitted by Deniz Bekir, accompanied by Drawing No. E03, E04, E06, A01, A03, A04, A05 and A06 (External finishes) Revision A dated 19 March 2018 and A02 Revision B dated 16 April 2018 prepared by Silver Wolf Projects Pty Ltd, and affixed with Council's approval stamp, except where otherwise altered by the specific amendments listed hereunder.
- 3) The building must comply with the Category 1 fire safety provisions. Note: The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

*Prior to the release of a Construction Certificate the following conditions MUST be satisfied and nominated fees/contributions/bonds paid:*

- 4) The Certifying Authority must ensure that any certified plans forming part of the Construction Certificate are not inconsistent with this Development Consent and accompanying plans.
- 5) The landscape plan shall include the provision for the replacement of all boundary fencing affected by fire (where required). A new 1.8m fence is to be erected along the rear boundary of the subject allotment at full cost to the developer. The colour of the fence is to complement the development and the fence is to be constructed of lapped and capped timber paling, sheet metal or other suitable material unless the type of material is stipulated in any flood study prepared for the site. The selection of materials and colours of the fence is to be determined in consultation with the adjoining property owners. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 6) Approval in accordance with Council's Tree Preservation Order (TPO) is granted to lop or remove only the trees identified to be lopped or removed on the approved plans. Separate approval shall be obtained to prune or remove trees on adjoining properties or other trees located on the site. Failure to comply with Council's TPO may result in a fine of up to \$100,000.

- 7) A soil erosion and sediment control plan must be prepared by a suitably qualified professional, in accordance with the Bankstown Demolition and Construction Guidelines and Council's Development Engineering Standards, and submitted to the certifying authority for approval prior to the issue of a construction certificate.
- 8) The Council Approved building plans, including demolition plans, must be submitted to Sydney Water for assessment. This will determine if the proposed structure(s) would affect any Sydney Water infrastructure or if there are additional requirements. Building plan approvals can be submitted online via Sydney Water Tap in™.

Please refer to [www.sydneywater.com.au/tapin](http://www.sydneywater.com.au/tapin)

For Sydney Water's Guidelines for building over or next to assets, visit [www.sydneywater.com.au](http://www.sydneywater.com.au) 'Plumbing, building & developing' then 'Building Plan Approvals' or call 13000 TAPIN.

Prior to release of a construction certificate Sydney Water must issue either a Building Plan Assessment letter which states that your application is approved, or the appropriate plans must be stamped by a Water Servicing Coordinator.

- 9) A Construction Certificate shall not be issued until written proof that all bonds, fees and/or contributions as required by this consent have been paid to the applicable authority.
- 10) The demolition of all structures currently existing on the property (8/24 – 26 Mitchell Street, Condell Park) must be undertaken, subject to strict compliance with the following: -
  - a) The developer is to notify adjoining residents seven (7) working days prior to demolition. Such notification is to be clearly written on A4 size paper giving the date demolition will commence and be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site.
  - b) Written notice is to be given to Canterbury-Bankstown Council for inspection prior to demolition. Such written notice is to include the date when demolition will commence and details of the name, address, business hours and contact telephone number and licence number of the demolisher. The following building inspections shall be undertaken by Canterbury-Bankstown Council:
    - i. A *precommencement* inspection shall be carried out by Council when all the site works required as part of this consent are installed on the site and prior to demolition commencing.
    - ii. A *final* inspection shall be carried out by Council when the demolition works have been completed to ensure that the site is

left in a satisfactory manner, in accordance with the conditions of this consent.

**NOTE:** Payment of an inspection fee at Council's current rate will be required prior to each inspection. Council requires 24 hours notice to carry out inspections. Arrangements for inspections can be made by phoning **9707 9410, 9707 9412 or 9707 9635.**

- c) Prior to demolition, the applicant must erect a sign at the front of the property with the demolisher's name, license number, contact phone number and site address.
- d) Prior to demolition, the applicant must erect a 2.4m high temporary fence or hoarding between the work site and any public place. Access to the site shall be restricted to Authorised Persons Only and the site shall be secured against unauthorised entry when the building work is not in progress or the site is otherwise unoccupied. Where demolition is to occur within 3m of a public place a Work Permit application for the construction of a Class A or Class B hoarding shall be submitted to Council for approval.
- e) The demolition plans must be submitted to the appropriate Sydney Water Office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's requirements, the demolition plans will be stamped indicating that no further requirements are necessary.
- f) Demolition is to be carried out in accordance with the appropriate provisions of Australian Standard AS2601-2001.
- g) The hours of demolition work shall be limited to between 7.00am and 6.00pm on weekdays, 7.00am and 1.00pm on Saturdays and no work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- h) Where materials containing asbestos cement are to be removed, demolition is to be carried out by licensed contractors who have current Workcover Accreditation in asbestos removal.
- i) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes 2004'.
- j) Demolition procedures shall maximise the reuse and recycling of demolished materials in order to reduce the environmental impacts of waste disposal.
- k) During demolition, the public footway and public road shall be clear at all times and shall not be obstructed by any demolished material or vehicles.

The public road and footway shall be swept (NOT hosed) clean of any material, including clay, soil and sand. (NOTE: If required, Council will clean the public road/footway at the applicant's expense). On the spot fines may be levied by Council against the demolisher and or owner for failure to comply with this condition.

- l) All vehicles leaving the site with demolition materials shall have their loads covered and vehicles shall not track soil and other material onto the public roads and footways and the footway shall be suitably protected against damage when plant and vehicles access the site. All loading of vehicles with demolished materials shall occur on site.
  - m) The burning of any demolished material on site is not permitted and offenders will be prosecuted.
  - n) Care shall be taken during demolition to ensure that existing services on the site (ie. sewer, electricity, gas, phone) are not damaged. Any damage caused to existing services shall be repaired by the relevant authority at the applicant's expense.
  - o) Suitable erosion and sediment control measures shall be erected prior to the commencement of demolition works and shall be maintained at all times.
  - p) Prior to the demolition of any building constructed before 1970, a Work Plan shall be prepared and submitted to Council in accordance with Australian Standard AS2601-2001 by a person with suitable expertise and experience. The Work Plan shall outline the identification of any hazardous materials, including surfaces coated with lead paint, method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- 11) A long service levy payment which is 0.35% of the total cost of the work is to be paid to the Building and Construction Industry Long Service Payments Corporation.
- 12) Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Bankstown City Council Section 94A Development Contributions Plan 2009 (Section 94A Plan) , a contribution of \$2231.43 shall be paid to Council.

The amount to be paid is to be adjusted at the time of actual payment, in accordance with the provisions of the Section 94A plan. The contribution is to be paid before the issue of the construction certificate.

**Note:** The Section 94A Contributions Plans may be inspected at Council's Customer Service Centre, located at Upper Ground Floor, Civic Tower, 66-72 Rickard Road, Bankstown, between the hours of 8.30am-5.00pm Monday to Friday.

- 13) Finished surface levels of all internal works and at the street boundary, including driveways, landscaping and drainage structures, must be as shown on the approved

plans. The levels at the street boundary must be consistent with the Street Boundary Alignment Levels issued by Council.

- 14) A Work Permit shall be applied for and obtained from Council for the following engineering works in front of the site, at the applicant's expense (where required):
- a) Drainage connection to Council's system.
  - b) Repair of any damage to the public road including the footway occurring during development works.
  - c) Reinstatement of the footway reserve and adjustment or relocation of existing public utility services to match the footway design levels as proposed on the approved Work Permit. Adjustment or relocation to any public utility services shall be carried out to the requirements of the public utility authority.

Note: As a site survey and design is required to be prepared by Council in order to determine the necessary information, payment for the Work Permit should be made at least twenty one (21) days prior to the information being required and must be approved prior to the issue of the Construction Certificate.

- 15) Stormwater drainage from the development shall be designed so as to comply with Council's Development Engineering Standards and the requirements of the BASIX Certificate. A final detailed stormwater drainage design shall be prepared by a qualified Professional Civil Engineer in accordance with the above requirements and shall generally be in accordance with the concept stormwater plan No. A09 Revision A dated 7 May 2018 prepared by Silver Wolf Projects Pty Ltd. The final plan shall be certified by the design engineer that it complies with Council's Development Engineering Standards, the BASIX Certificate and the relevant Australian Standards.
- 16) Where Council approved cut or fill exceeds 200mm and stable batter of 1 vertical to 3 horizontal maximum grade cannot be achieved, then a masonry or other proprietary material retaining wall, intended and suitable for that purpose, shall be constructed within the development site. Note, filling of the site needs specific approval from Council.

The retaining wall shall be located so that it will not impede or obstruct the natural flow of stormwater. Retaining walls exceeding 600mm in height shall be designed by a qualified professional Civil/Structural Engineer. Plans and details prepared and signed by the Engineer are to be submitted to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate.

All works associated with the construction of the wall, including backfilling and drainage, is to be located wholly within the allotment boundaries.

- 17) The development is to be carried out in accordance with the commitments shown on the BASIX Certificate. The BASIX commitments approved with this Development Application are to be reflected in the Construction Certificate plans and specifications. Any proposed changes to the BASIX commitments after the Construction Certificate

has been issued will require an updated BASIX Certificate and a new Construction Certificate.

- 18) As any works within, or use of, the footway or public road for construction purposes requires separate Council approval under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993, Council requires that prior to any Construction Certificate for this development being issued, a Works Permit and or a Roadway/Footpath Building Occupation Permit shall be obtained where one or more of the following will occur, within, on or over the public footway or public road:

A PRIVATE CERTIFIER CANNOT ISSUE THESE PERMITS

WORKS REQUIRING A 'WORKS PERMIT'

- a) Dig up, disturb, or clear the surface of a public footway or public road,
- b) Remove or interfere with a structure or tree (or any other vegetation) on a public footway or public road,
- c) Connect a road (whether public or private) to a classified road,
- d) Undertake footway, paving, vehicular crossing (driveway), landscaping or stormwater drainage works within a public footway or public road,
- e) Install utilities in, under or over a public road,
- f) Pump water into a public footway or public road from any land adjoining the public road,
- g) Erect a structure or carry out a work in, on or over a public road
- h) Require a work zone on the public road for the unloading and or loading of vehicles
- i) Pump concrete from within a public road,
- j) Stand a mobile crane within a public road
- k) Store waste and recycling containers, skips, bins and/or building materials on any part of the public road.
- l) The work is greater than \$25,000.
- m) Demolition is proposed.
- n) Subdivision is proposed.
- o) A Swimming pool is proposed.

Assessment of Works Permits (a to e) includes the preparation of footway design levels, vehicular crossing plans, dilapidation reports and issue of a Road Opening Permit.

All proposed works within the public road and footway shall be constructed under the supervision and to the satisfaction of Council. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress.

For commercial or multi-unit residential developments within the designated CBD or an urban village area, footway design and construction and street tree supply, installation and tree hole detailing shall be as per the Council master plan for that area. Full width footways are to be supplied and installed at full cost to the developer

to specification as supplied by Council. Layout plan of pavement to be submitted to Council for approval prior to the issue of the Works Permit.

All Council fees applicable, minimum restoration charges and inspection fees shall be paid prior to the assessment of the Work Permit in accordance with Council's adopted fees and charges. Note: Additional fees after approval will be charged where the Work Permit requires occupation of the Road or Footpath ie Hoardings, Work Zones etc.

In determining a Works Permit, Council can impose conditions and require inspections by Council Officers.

Forms can be obtained from Council's Customer Service counter located on the ground floor of Council's administration building at 66 - 72 Rickard Road, Bankstown or Council's website [www.bankstown.nsw.gov.au](http://www.bankstown.nsw.gov.au)

Part of any approval will require the person or company carrying out the work to carry public liability insurance to a minimum value of ten million dollars. Proof of the policy is to be provided to Council prior to commencing any work approved by the Work Permit including the Road Opening Permit and must remain valid for the duration of the works.

The commencement of any works on public land, including the footway or public road, may incur an on the spot fine of not less than \$1100 per day that work continues without a Works Permit and/or a Roadway/Footpath Building Occupation Permit.

All conditions attached to the permit shall be strictly complied with prior to occupation of the development. Works non-conforming to Council's specification (includes quality of workmanship to Council's satisfaction) shall be rectified by the Council at the applicant's expense.

- 19) A certificate from a professional engineer certifying the structural capacity of the existing garage adjoining the proposed reconstructed Villa as well as the existing concrete slab will be appropriate to the building's proposed new use or is capable of supporting the loads imposed by the new structure must be provided to the certifying authority prior to the issue of a construction certificate.

#### **CONDITIONS TO BE SATISFIED PRIOR TO CONSTRUCTION**

- 20) The building / subdivision work in accordance with the development consent must not be commenced until:
- a) a construction certificate for the building / subdivision work has been issued by the council or an accredited certifier, and
  - b) the person having benefit of the development consent has:



- i. appointed a principal certifying authority for the building / subdivision work, and
    - ii. notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - c) the person having the benefit of the development consent, if not carrying out the building work as an owner-builder, has:
    - i. appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
    - ii. notified the principal certifying authority of any such appointment, and
    - iii. unless the person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - d) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the building / subdivision work.
- 21) Existing trees within the vicinity of the construction works or paths of travel for construction vehicles accessing the development that are to be retained shall be protected with temporary fencing of a style non injurious to tree roots, placed 2m from the trunk base of the existing tree to prevent damage during construction, and retained in accordance with Council's Tree Preservation Order. There is to be no stockpiling of materials within the 2m fenced zone.
- 22) Suitable erosion and sediment control measures shall be erected in accordance with the plans accompanying the Construction Certificate prior to the commencement of construction works and shall be maintained at all times.
- 23) Council warning sign for Soil and Water Management must be displayed on the most prominent point of the site, visible to both the street and site works. The sign must be displayed throughout the construction period.
- 24) Prior to the commencement of work, the applicant must provide a temporary on-site toilet if access to existing toilets on site is not adequate.
- 25) Prior to the commencement of work, a fence must be erected around the area of the works, except where an existing 1.8m high boundary fence is in good condition and is capable of securing the area. Any new fencing shall be temporary (such as cyclone wire) and at least 1.8m high. All fencing is to be maintained for the duration of construction to ensure that the work area is secured.



Where the work is located within 3.6m of a public place then a Type A or Type B hoarding must be constructed appropriate to the works proposed. An application for a Work Permit for such hoarding must be submitted to Council for approval prior to the commencement of work.

- 26) A sign shall be displayed on the site indicating the name of the person responsible for the site and a telephone number of which that person can be contacted during and outside normal working hours or when the site is unattended.
- 27) In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- 28) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - a) in the case of work for which a principal certifying is required to be appointed:
    - i. the name and licence number of the principal contractor, and
    - ii. the name of the insurer by which the work is insured under Part 6 of the Act,
  - b) in the case of work to be done by an owner-builder:
    - i. the name of the owner-builder, and
    - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- 29) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- 30) Prior to the commencement of construction works, a dilapidation report shall be prepared for all internal driveway areas of No. 24-26 Mitchell Street, Condell Park, and a copy is to be provided to the strata manager. The report must clearly identify the condition of existing driveway areas prior to the commencement of works. All care shall be taken during the demolition and construction process to ensure the internal driveway areas are protected, and should any change in condition occur from that recorded in the dilapidation report, the rectification of such shall be at full cost to the developer.
- 31) Prior to the commencement of construction works, a dilapidation report shall be prepared for the adjoining dwelling at No. 8/24-26 Mitchell Street, Condell Park, and a copy is to be provided to the owner of the dwelling. The report must clearly identify the condition of the dwelling prior to the commencement of works (with the exclusion of any existing fire damage that requires rectification). All care shall be taken during the demolition and construction process to ensure the existing dwelling is protected, and should any change in condition occur from that recorded in the dilapidation report, the rectification of such shall be at full cost to the developer.

#### **CONDITIONS TO BE SATISFIED DURING CONSTRUCTION**

- 32) The hours of site works shall be limited to between 7.00am and 6.00pm on weekdays and 7.00am and 1.00pm on Saturdays. No work shall be carried out on Sundays and public holidays, and weekends (Saturdays and Sundays) adjacent to public holidays.
- 33) The building work must be carried out in accordance with the requirements of the Building Code of Australia.
- 34) All Civil and Hydraulic engineering works on site must be carried out in accordance with Council's Development Engineering Standards. All Civil and Hydraulic engineering works associated with Council's assets and infrastructure must be carried out in accordance with Council's Work Permit requirements and to Council's satisfaction.
- 35) All excavations and backfilling must be executed safely and in accordance with the relevant Australian Standards.
- 36) If soil conditions require it, retaining walls or other approved methods of preventing movement of the soil must be provided, and adequate provisions must be made for drainage. Separate approval may be required for retaining walls should they be required.

- 37) If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- a) protect and support the adjoining premises from possible damage from the excavation, and
  - b) where necessary, underpin the adjoining premises to prevent any such damage.
- 38) All boundary fencing behind the building line shall be replaced (where required) by a 1.8m high lapped and capped timber or sheet metal fence, or as stipulated in a flood study prepared for the site, or as determined in consultation with the adjoining property owners at the developer's expense. Fencing forward of the building line shall be no higher than 1m unless otherwise approved by Council.
- 39) The stormwater drainage system shall be constructed in accordance with Council's Development Engineering Standards and the engineering plans and details approved by the Principal Certifying Authority (PCA). Should the developer encounter any existing, live, underground stormwater drainage pipes, which carry flow from upstream properties, the developer must maintain the stormwater flow and re-route the stormwater pipes around the subject building or structures at the developer's expense.
- 40) The rear pergola to dwelling 8 is approved as an open structure only and shall not be enclosed by a wall, roller door or similar obstruction.
- 41) Prior to the commencement of work, the builder shall prepare a photographic record of the road reserve which clearly shows its condition prior to works occurring on site. For the entirety of demolition, subdivision or construction works, there shall be no stockpiling of building spoil, materials, or storage of equipment on the public road, including the footway and the road reserve shall be maintained in a safe condition at all times. No work shall be carried out on the public road, including the footway, unless a Work Permit authorised by Council has been obtained.

#### **CONDITIONS TO BE SATISFIED PRIOR TO OCCUPATION**

- 42) The occupation or use of the building must not be commenced unless an occupation certificate has been issued for the building.
- 43) A final Occupation Certificate shall not be issued until all conditions relating to demolition, construction and site works of this development consent are satisfied and Council has issued a Work Permit Compliance Certificate.
- 44) Lighting must be provided to the entries of the dwellings, driveways and parking areas to promote a high level of safety and security at night and during periods of low light. Lighting provided should be hooded, shielded or directed away from neighbouring dwellings to minimise glare and associated nuisances to residents.

- 45) The premises must be readily identified from the street with the allocated house numbers. Numbering of the development without Council's written approval is not permitted.

-END-

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## Canterbury Bankstown Local Planning Panel - 4 June 2018

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<b>ITEM 2</b>	<b>56 Prescott Parade, 67, 67A, 80, 80A, 90 and 100 Auld Avenue, 123 and 123A Raleigh Road, and 25 Martin Crescent, Milperra</b>  <b>Integrated development - Subdivision of land into 242 residential lots and consolidation of the remaining site into six large lots including proposed road access, provision of a park, and associated bulk earthworks, road construction works, tree clearing, soil remediation works, construction and installation of stormwater, sewerage and other utility services, works to the intersection of Keys Parade and Henry Lawson Drive, and provision of a waterfront reserve in accordance with an existing VPA</b>
<b>FILE</b>	<b>DA-675/2017 – Revesby</b>
<b>ZONING</b>	<b>R2 Low Density Residential; RE2 Private Recreation; RE1 Public Recreation</b>
<b>DATE OF LODGEMENT</b>	<b>25 July 2017</b>
<b>APPLICANT</b>	<b>Statewide Planning Pty Ltd</b>
<b>OWNERS</b>	<b>Demian Holdings Pty Limited; Riverland Estate Pty Limited</b>
<b>ESTIMATED COST</b>	<b>\$15,827,373</b>
<b>SITE AREA</b>	<b>82.93 hectares</b>
<b>AUTHOR</b>	<b>Planning</b>

## SUMMARY REPORT

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This matter is reported to the Local Planning Panel (LPP) due to the number of submissions received.

Development Application DA-675/2017 proposes the subdivision of the land into 242 residential lots and consolidation of the remaining site into six large lots including proposed road access, provision of a park, and associated bulk earthworks, road construction works, tree clearing, soil remediation works, construction and installation of stormwater, sewerage and other utility services, works to the intersection of Keys Parade and Henry Lawson Drive, and the provision of a waterfront reserve in accordance with an existing VPA at 56 Prescott Parade, 67, 67A, 80, 80A, 90 and 100 Auld Avenue, 123 and 123A Raleigh Road, and 25 Martin Crescent, Milperra.

DA-675/2017 has been assessed against, amongst other things, the provisions contained in *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy 55 – Remediation of Land*, *State Environmental Planning Policy 19 – Bushland in Urban Areas*, *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (deemed SEPP)*, *Bankstown Local Environmental Plan 2015*, *Bankstown Development Control Plan 2015*, (draft) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and (draft) *State Environmental Planning Policy (Coastal Management) 2018*.

Council's assessment has identified departures from the provisions and controls contained within various environmental planning instruments and policies.

In summary, the primary issues relate to environmental impacts (stormwater and riverine flooding, tree removal, biodiversity, and riparian land and watercourses), inconsistencies with the site-specific controls for development on the Riverlands Golf Course site, and insufficient information regarding land contamination, acid sulfate soils and Aboriginal heritage.

During the course of the assessment of this application Council staff have requested the applicant to respond to the issues as raised above. At the time of preparing this report satisfactory supporting documentation, plans and detailed analysis have not been furnished to Council.

The application was initially advertised and notified for a period of 21 days from 30 August 2017 to 19 September 2017. During the exhibition, 32 submissions were received. The amended application was subsequently re-advertised and re-notified for a period of 21 days from 28 February 2018 to 20 March 2018. During the second exhibition a total of 42 submissions were received. The submissions raised objections relating to stormwater, flooding and drainage, tree removal, impacts on ecology and biodiversity, public open space and recreation areas, Aboriginal heritage, traffic and parking, impacts on existing residential properties, impacts on existing infrastructure, facilities and services, and the potential future development.

The application is recommended for refusal for the reasons outlined in Attachment B.

## **POLICY IMPACT**

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The recommendation of this report is that the Development Application be refused. Such a determination would not have any policy implications, as it would uphold the relevant planning and development controls. However, if a contrary decision is reached, this matter has direct policy implications as the proposed development is contrary to several site-specific provisions and controls contained in BLEP 2015 and BDCP 2015 that apply to development on the Riverlands Golf Course site. These have been implemented to ensure the development achieves high quality urban design and built form outcomes that are consistent with the environmental characteristics and ecological values of the site, and to ensure development conforms to the findings and recommendations of various studies that informed the planning proposal and subsequent rezoning to facilitate residential development on the site. Support of the proposed development would compromise the integrity of the site-specific provisions and controls, and the intended outcome for development on the site.

## **FINANCIAL IMPACT**

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This matter has no direct financial implications.

## **RECOMMENDATION**

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It is recommended that Development Application DA-675/2017 be refused for the reasons outlined in Attachment B.

## **ATTACHMENTS**

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- A. Section 4.15 Assessment Report
- B. Reasons for Refusal





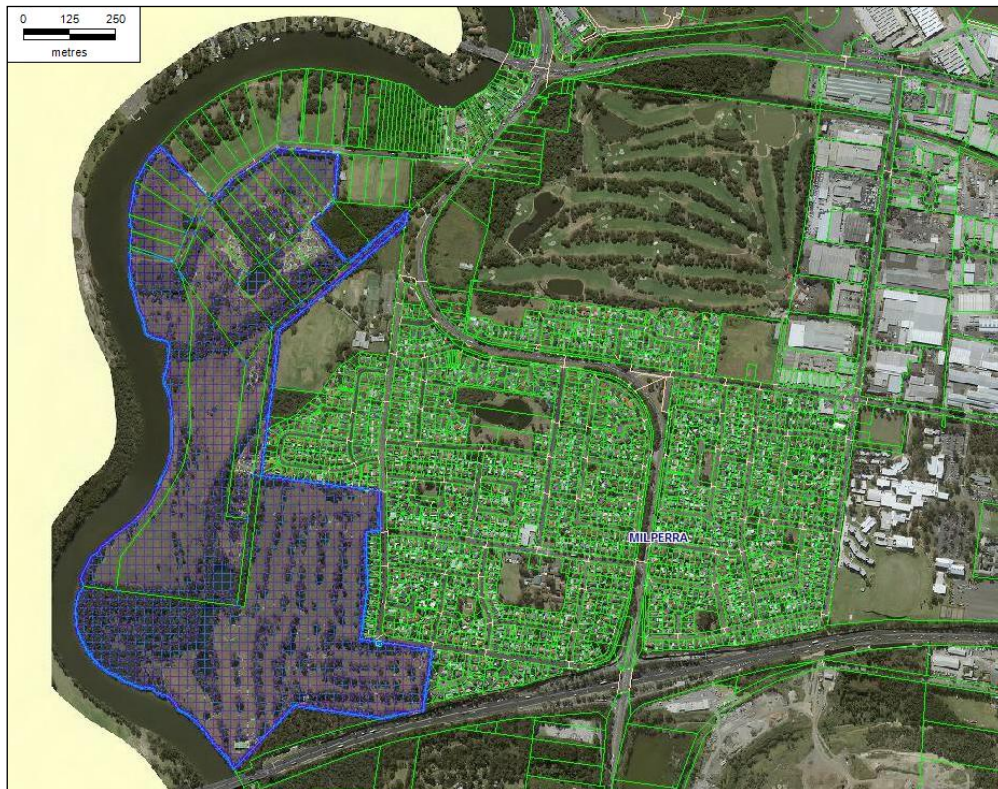
## **DA-675/2017 ASSESSMENT REPORT**

### **SITE AND LOCALITY DESCRIPTION**

The subject site comprises of 28 allotments legally described as Lot 10 DP 731859, Lot 1 DP 813007, Lots 23-27, 38-41 and 50-59 DP 7304, Lots 231 and 232 DP 805826, Lots 21 and 22 DP 749985, Lot 1 DP 813006, Lot 1 DP 625013, and Lot 24 DP 736006. The site has a street address of 56 Prescott Parade, 67, 67A, 80, 80A, 90 and 100 Auld Avenue, 123 and 123A Raleigh Road, and 25 Martin Crescent, Milperra. The majority of the proposed works associated with the residential subdivision are to be carried out on the eastern part of Lot 10 DP 731859, being 56 Prescott Parade.

The site is irregular in shape, with a total land area of approximately 82.93 hectares. The site occupies land zoned R2 Low Density Residential, RE2 Private Recreation and RE1 Public Recreation under the provisions of Bankstown Local Environmental Plan 2015. The site, in part, contains the former Riverlands Golf Course and associated greens, fairways and minor built structures. The area of the site that is subject to the residential subdivision contains in excess of 800 trees and tree groups comprising remnant local native species and planted non-local native species. The remainder of the site to the west and north-west of the proposed residential subdivision contains extensive native riverside vegetation (including Endangered Ecological Communities) on low-lying land, while parts of the site to the north contain areas that are used for the storage of fill material.

The site is bounded by Prescott Parade, Raleigh Road and residential properties to the east, the M5 Motorway to the south, the Georges River to the west, and residential properties along Martin Crescent, rural land and Council-owned public open space (Gordon Parker Reserve and Vale of Ah Reserve) to the north. Prescott Parade and Raleigh Road are primarily characterised by single and two storey detached dwelling houses. Milperra Public School is located approximately 350 metres from the site in Pozieres Avenue. The site is located approximately 500 metres from the intersection of the M5 Motorway and Henry Lawson Drive. The subject site is identified in blue in Figure 1.



**Figure 1 – Aerial photograph of subject site**

### **SITE AND APPLICATION HISTORY**

At its Ordinary Meeting on 23 June 2015, Council adopted the planning proposal for land in Milperra known as the Riverlands Golf Course site. Council's intended outcome of the planning proposal was to amend Bankstown Local Environmental Plan 2015 by rezoning part of the site (approximately 15 hectares) from the RE2 Private Recreation zone to the E3 Environmental Management zone. The intention of the rezoning was to allow a limited range of development (including dwelling houses and dual occupancies), that is compatible with the ecological and habitat values of the site.

The Department of Planning and Environment reviewed the planning proposal and made arrangements to draft the Local Environmental Plan to give effect to the planning proposal. In finalising the plan, the Department informed Council that it would not support the proposed E3 Environmental Management zone on the former golf course part of the site. The Department advised Council of its intention to vary the planning proposal submitted by Council by replacing the adopted E3 zone with the R2 Low Density Residential zone. The Department advised that the R2 zone would more appropriately align with the intended end use for the former golf course site. On this basis, the Department advised that it would ensure appropriate safeguards are in place to protect environmental qualities across the Riverlands site through a series of site specific requirements that would need to be satisfied by any future development. Those safeguards were embedded at Clause 6.11 'Development on Riverlands Golf Course site' of BLEP 2015.

At the Ordinary Meeting on 23 June 2015, Council also resolved to exhibit draft amendments to Bankstown Development Control Plan 2015. The draft amendments contained more detailed controls to support the planning proposal, including:

- Requirements to ensure development implements the recommendations of various specialist studies that informed the planning proposal;
- Requirements to ensure development integrates with the landform, overland flow path, vegetation and landscape of the site; and
- Requirements to ensure development protects certain hollow bearing trees on the site.

On 5 February 2016, Development Application DA-79/2016 was submitted to Council seeking approval for the removal of all trees and surface soils, earthworks, drainage works and re-contouring of the site at 56 Prescott Parade, Milperra. The Statement of Environmental Effects submitted with the development application stated that the works were *“required for future road construction and to improve the geotechnical capabilities of the Site for future development”*, and that *“detailed engineering design for the roads, subdivision and land uses will follow in future applications”*. The development application was lodged prior to the gazettal/commencement of the amendments to BLEP 2015 and BDCP 2015 that were required in order to permit residential development on the site.

On 7 October 2016, during the assessment of DA-79/2016, BLEP 2015 (Amendment No. 4) and BDCP 2015 (Amendment No. 4) came into force. The amendments did not include savings provisions, and were therefore effective immediately and were matters for consideration in the assessment of DA-79/2016.

On 17 July 2017, the Applicant of DA-79/2016 lodged an appeal with the Land and Environment Court (LEC) against Council’s deemed refusal of the development application.

On 25 July 2017, during the initial stage of the abovementioned proceedings, the subject development application, being DA-675/2017, was lodged with Council to seek approval for the subdivision of the land into 241 lots. The development application was initially described in the Statement of Environmental Effects as *“subdivision along with associated road construction, construction of stormwater services and installation of sewerage and other utility services”*. The application was proposed to be assessed in conjunction with DA-79/2016 and acknowledged that *“...documentation accompanying the already submitted development application for earthworks and site preparation addresses the environmental issues associated with the proposed low density residential subdivision”*. It was evident that DA-675/2017 heavily relied on the approval of the bulk earthworks proposed under DA-79/2016, in addition to the resolution of all associated environmental issues. For this reason, Council determined that the assessment of DA-675/2017 could not reasonably commence until there was a clear outcome from the LEC proceedings in respect to DA-79/2016.

On 31 August 2017, Council’s legal representatives filed a Statement of Facts and Contentions in response to the deemed refusal appeal of DA-79/2016. The Statement contended that the development for earthworks in isolation of any roads or subdivision

works was prohibited in the zone. The Statement also contended that the development did not satisfy the site specific controls contained in the BLEP 2015 and BDCP 2015, and resulted in significant environmental impact.

On 19 September 2017, the Applicant, with Council's agreement, requested to discontinue the LEC proceedings for DA-79/2016. This was subject to the Applicant agreeing to withdraw DA-79/2016 and to modify DA-675/2017 to include all aspects of the development relating to site preparation works and the like. On 6 October 2017, the Applicant requested to withdraw DA-79/2016.

Following meetings between the Applicant and Council officers in early October 2017, Council issued correspondence to the Applicant on 13 October 2017 advising, amongst other matters, that all environmental issues raised by Council in the Statement of Facts and Contentions for DA-79/2016 were relevant to the assessment of DA-675/2017 and must be satisfactorily addressed in the submission of any amended plans and additional information. Council advised that the issues primarily related to tree and biodiversity impacts, Aboriginal heritage, flooding as a result of the proposed fill, and water sensitive urban design principles. Council recommended that the contentions be reviewed and considered in detail during the preparation of amended plans and additional information. This advice was reiterated in further correspondence from Council to the Applicant on 2 November 2017.

On 3 November 2017, the Applicant advised that amendments to the DA would be submitted to Council by 30 November 2017 and that the amendments would address the issues raised in the previous development application.

On 18 December 2017 and 19 January 2018 the Applicant submitted amendments to Council, and on 23 January 2018 the Applicant requested for the description of the DA to be amended to read:

*Integrated development – Subdivision of land into 242 residential lots and consolidation of the remaining site into 6 large lots including proposed road access, provision of a park, and associated bulk earthworks, road construction works, tree clearing, soil remediation works, construction and installation of stormwater, sewerage and other utility services, works to the intersection of Keys Parade and Henry Lawson Drive, and a waterfront reserve in accordance with an existing VPA.*

### **PROPOSED DEVELOPMENT**

The development application proposes the following works:

- Subdivision of the land zoned R2 Low Density Residential into 242 residential lots, ranging from 500sqm to 698.1sqm in area;
- Consolidation of the remaining site zoned RE2 Private Recreation and RE1 Public Recreation into six large lots and a proposed road access lot;
- Provision of a 1.38 hectare park in the RE2 Private Recreation zone;
- Bulk earthworks, primarily to the area of the site accommodating the residential subdivision;



- Road construction works;
- Tree clearing;
- Soil remediation works;
- Construction and installation of stormwater, sewerage and other utility services;
- Works to the intersection of Keys Parade and Henry Lawson Drive in accordance with the executed VPA; and
- Subdivision of land to facilitate the provision of a waterfront reserve to be dedicated to Council in accordance with the executed VPA (the foreshore land embellishment and bank stabilisation works required by the VPA are proposed to be carried out under a separate approval).

The plan of subdivision is provided in Figure 2.



**Figure 2 – Plan of subdivision**

On 30 January 2018, following discussions with and advice from Council regarding the retention and protection of trees, the Applicant submitted further information to Council to propose the retention of an estimated 182 trees within the residential subdivision. The nominated trees are primarily to the rear of residential lots located along the northern and eastern perimeter of the part of the site zoned R2 Low Density Residential. This is contrary to Council's advice to retain specific groups of trees and corridors in designated reserves.

With respect to the bulk earthworks outlined above, the amended Statement of Environmental Effects describes and justifies the works as follows:

*"In general terms geotechnical works are required as the site has large areas of uncontrolled fill that are unsuitable to support structural loads. To improve the suitability of the site for future development the existing uncontrolled fill will be stripped back to the level of the underlying soil, stock piled and then blended with imported material to improve the workability of the soil."*

*The part of the site subject to the works will then be re-contoured to ensure appropriate drainage to the west, and to facilitate the construction of roads for future urban development activities...*

*The fill required to form the final surface levels has been revised to reduce the impact on the boundaries with a majority of fill proposed in the centre."*

The amended Statement of Environmental Effects confirms that the developer proposes to utilise approximately 20,000m<sup>3</sup> of existing stockpiled fill currently occupying the northern part of the Riverlands site, in addition to an undisclosed amount of imported fill. While not acknowledged in the description of the proposed development, the Bulk Earthworks Plan suggests that the total fill will result in a proposed ground level that is up to 2 metres above the existing natural ground level on the western side and central area of the residential subdivision. This level change is identified in dark blue on the bulk earthworks plan in Figure 3.

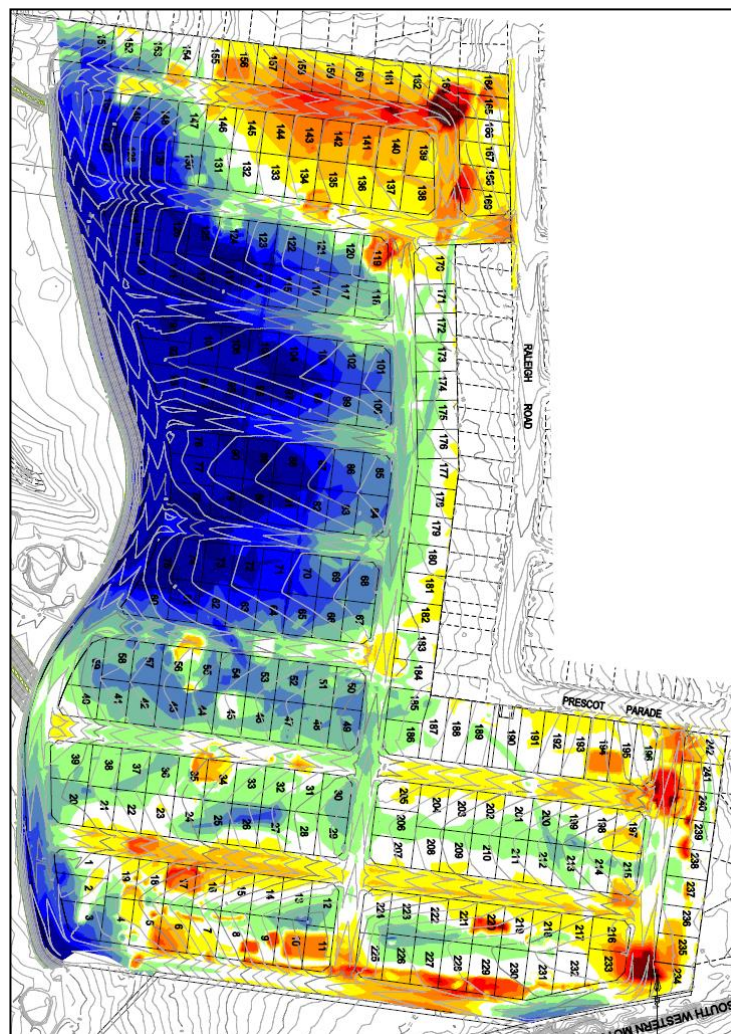


Figure 3 – Bulk earthworks plan

## **SECTION 4.15 ASSESSMENT**

The proposed development has been assessed pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

### **Environmental planning instruments [section 4.15(1)(a)(i)]**

#### **State Environmental Planning Policy (Infrastructure) 2007 (SEPP 2007)**

State Environmental Planning Policy (Infrastructure) 2007 aims to facilitate the effective delivery of infrastructure, including providing appropriate consultation with relevant public authorities about certain development during the assessment process.

The subject application proposes works to the intersection of Keys Parade and Henry Lawson Drive in accordance with the executed VPA, in addition to new road openings on Prescott Parade and Raleigh Road. In accordance with Section 4.46 of the Environmental Planning and Assessment Act, 1979, the application is for integrated development as those works require concurrence from the Roads and Maritime Services (RMS) under Section 138 of the Roads Act, 1993. Furthermore, the development is defined as 'traffic generating development' in accordance with Clause 104 and Schedule 3 of SEPP 2007, which also requires a referral to the RMS.

The RMS granted concurrence on 23 May 2018, subject to the imposition of conditions of consent relating to road works and traffic control signals, works being contained wholly within freehold property, public utility requirements, the submission of a Construction Pedestrian Traffic Management Plan prior to the issue of a Construction Certificate, access to the site, plan checking by the RMS, and the issue of a Road Occupancy License. The proposed development is therefore considered to be acceptable with respect to the provisions of SEPP (Infrastructure) 2007.

#### **State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)**

The provisions of Clause 7(1) of State Environmental Planning Policy 55 – Remediation of Land specifies that a consent authority must not consent to the carrying out of any development on land unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The portion of the site that is proposed for residential subdivision has historically been used as a golf course since the early 1900s, while the wider site has historically been used for a mix of rural/residential and commercial purposes.



A Phase II Environmental Site Assessment report (DSI), prepared by Environmental Strategies, dated July 2014, was submitted with the development application. The scope of the investigation was limited to the proposed residential subdivision only. The report was reviewed by Council's Environmental Health Officer who provided the following comments:

*"Whilst the DSI concluded that the site is suitable for the proposed residential use, Environmental Health recommends that the aforementioned DSI be reviewed by a NSW EPA Accredited Site Auditor and a Site Audit Statement be submitted prior to granting consent.*

*In addition, the DA proposes the provision of a park and foreshore reserve as well as the consolidation of smaller lots with the potential for further development therefore, Environmental Health require an additional or amended DSI to increase the scope to include the entirety of the proposal."*

It is further noted that the application proposes to utilise approximately 20,000m<sup>3</sup> of existing stockpiled fill currently occupying the northern part of the Riverlands site, in addition to an undisclosed nature and amount of imported fill. The information submitted with the application provides no detail of the origin of the existing stockpiled fill, and does not address potential contamination issues. A review of the historical aerial photographs of the site has confirmed that the amount and location of stockpiled fill on the subject site has changed substantially since the preparation of the DSI in July 2014.

Based on the above, insufficient information has been submitted with the development application to demonstrate that the provisions contained within Clause 7(1) of State Environmental Planning Policy 55 – Remediation of Land are satisfied.

**State Environmental Planning Policy 19 – Bushland in Urban Areas (SEPP 19)**

Clause 9 of State Environmental Planning Policy 19 – Bushland in Urban Areas applies to land which adjoins bushland zoned or reserved for public open space purposes. The part of the subject site that is zoned RE2 Private Recreation adjoins bushland reserved for public open space purposes to the north, south and west.

Clause 9(2) states that a public authority shall not grant approval or development consent in relation to land adjoining land zoned or reserved for public open space unless it has taken into account the following:

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



The proposed road that runs adjacent to the southern boundary of the R2 Low Density Residential zone is positioned immediately to the north of a parcel of bushland between the subject site and the M5 Motorway that is zoned RE1 Public Open Space. This bushland comprises Castlereagh Shale-Gravel Transition Forest, which is an Endangered Ecological Community. The development application does not satisfactorily address the potential effect of the proposed earthworks and construction works on the adjoining bushland.

The amended Statement of Environmental Effects submitted with the application does not address this policy. As such, the application has not only failed to have had suitable regard to the provisions contained within this policy but has failed to demonstrate compliance with the requirements of SEPP 19.

**Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (deemed SEPP)(GMREP2)**

The subject site is located within the Georges River Catchment and accordingly the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment applies.

The GMREP 2 contains a number of general aims and objectives for development in the Georges River Catchment, in addition to specific aims and objectives relating to environmental protection, water quality and river flows, and regional roles and land uses (including identifying potential impacts of different land uses, conserving, managing and improving the aquatic environment, reducing pollution, and protecting the safety and wellbeing of the local and regional community).

The GMREP 2 also contains planning principles that are to be applied when a consent authority determines a development application. The general principles include, but are not limited to, consideration of the aims, objectives and planning principles, the cumulative impact of development on the Georges River or its tributaries, and whether there are any feasible alternatives to the development. Furthermore, the specific planning principles include, but are not limited to, consideration of the disturbance of acid sulfate soils, disturbance of the bank or foreshore, flooding, land degradation, on-site sewage management, and urban/stormwater run-off.

The planning control table contained in GMREP 2 defines various types of development and the specific matters for consideration by the consent authority when determining an associated development application. In accordance with the planning control table, the proposed development includes flood control works, housing development, public utility undertaking, recreational facilities, sewerage management systems or works, stormwater management system or works, and development in vegetated buffer areas.

The amended Statement of Environmental Effects does not address the GMREP 2. The proposed development, and the information accompanying the application, has insufficient regard for the aims and objectives, planning principles and planning control table contained in the plan. The specific environmental issues associated with the proposed development are discussed in further detail throughout this report.

**Bankstown Local Environmental Plan 2015 (BLEP 2015)**

The following section of this report provides an assessment of the proposed development against the relevant clauses of Bankstown Local Environmental Plan 2015 (BLEP 2015).

**Clause 1.2 – Aims of Plan**

Council's assessment of the subject application has identified that the proposed development is inconsistent with the following relevant aims contained in Clause 1.2(2) of BLEP 2015:

- (b) to protect and enhance the landform and vegetation, especially foreshores and bushland, in a way that maintains the biodiversity values and landscape amenity of Bankstown,*
- (c) to protect the natural, cultural and built heritage of Bankstown,*
- (k) to consider the cumulative impact of development on the natural environment and waterways and on the capacity of infrastructure and the road network,*

The application proposes to alter the existing landform by filling part of the site up to 2 metres above the existing natural ground level, in addition to clearing a substantial amount of mature vegetation. The proposed development fails to retain and protect the existing landform and existing vegetation, in addition to maintaining the associated biodiversity value of the site.

The application has failed to demonstrate that the proposed development will not have an unacceptable impact on Aboriginal heritage. This matter is discussed in further detail below under Clause 5.10 of BLEP 2015.

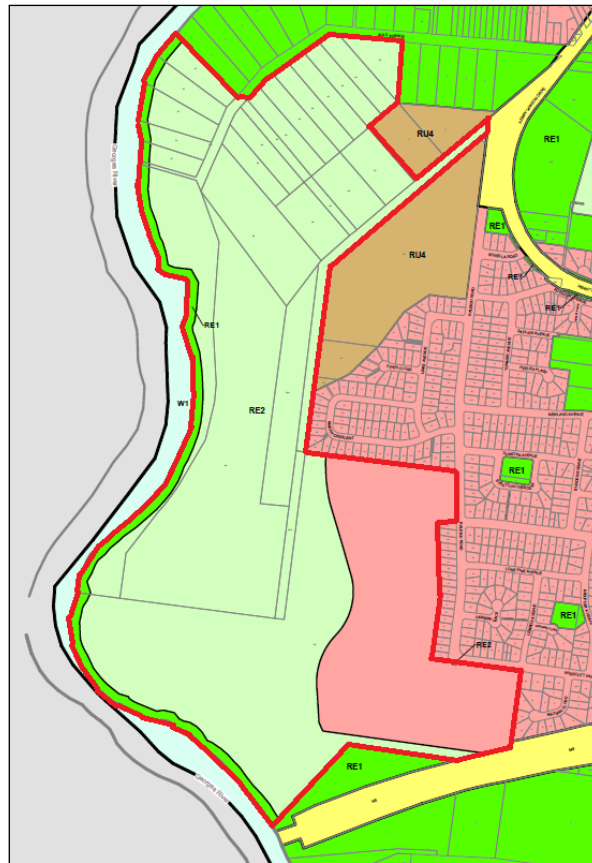
The proposed development will have an unreasonable and unnecessary cumulative impact on the natural environment and waterways, particularly as a result of the proposed clearing of trees and filling of the site. Again, the extent of the impact is detailed throughout this report.

Based on the above, the proposed development is not considered to satisfactorily address the aims of the Plan.

**Clauses 2.1-2.3 – Zoning and Objectives**

In accordance with Clause 2.2 and the Land Zoning Map of BLEP 2015, the subject site is zoned R2 Low Density Residential, RE2 Private Recreation and RE1 Public Recreation.

An extract of the zoning map from BLEP 2015, with the subject site outlined in red, is provided in Figure 4.



**Figure 4 – Zoning map**

The subject application proposes the following:

- The construction of roads in the part of the site zoned R2 Low Density Residential to facilitate the proposed residential subdivision;
- The construction of roads and a park in the part of the site zoned RE2 Private Recreation; and
- The subdivision of land to facilitate the provision of a waterfront reserve in the part of the site zoned RE1 Public Recreation.

In accordance with Clause 2.3 and the Land Use Table of BLEP 2015, development for the purpose of 'Roads' is permissible in the R2 Low Density Residential zone, development for the purposes of 'Roads' and 'Recreation areas' is permissible in the RE2 Private Recreation zone, and development for the purposes of 'Recreation areas' is permissible in the RE1 Public Recreation zone. Therefore, each aspect of the proposed development is permitted with consent in the respective zone. A plan prepared by a qualified and registered land surveyor is required in order to demonstrate that the line indicating the boundary of the R2 Low Density Residential zone on the plan of subdivision submitted by the applicant accurately corresponds with the zoning map contained in BLEP 2015. Council's assessment has identified potential discrepancies in this regard.

Further to the above, the proposed residential subdivision is not considered to satisfy certain objectives of the R2 Low Density Residential zone. These objectives include:

- *To allow for the development of low density housing that has regard to local amenity.*
- *To require landscape as a key characteristic in the low density residential environment.*

The general impacts of the proposed development on the amenity of the existing surrounding locality, and the absence of the retention of existing landscaping as a key characteristic of the environment, are discussed in further detail below under Clauses 5.9, 6.2 and 6.11 of BLEP 2015.

With respect to local amenity, the proposal fails to satisfactorily integrate with the surrounding locality and does not present as a contemporary infill subdivision. It is acknowledged that the proposed subdivision does have access to the recreation area to the north, however there is no opportunity provided to future residents to access small pockets of open space to congregate in direct proximity to residences. There is clear opportunity for the proposal to provide small pockets of open spaces amongst the proposed subdivision which could also be used to safeguard some of the ecological values of the site. The resultant outcome would be a dormant residential suburb that would not positively contribute to the amenity of the site or broader locality.

Accordingly, while the proposed development is permitted with consent in each respective zone, the proposed residential subdivision is not considered to satisfy the objectives of the R2 Low Density Residential zone.

#### Clause 4.1 – Minimum subdivision lot size

Clause 4.1 and the Lot Size Map of BLEP 2015 prescribes a minimum subdivision lot size of 450sqm for the R2 Low Density Residential zone, and no minimum subdivision lot size for the RE2 Private Recreation and RE1 Public Recreation zones.

The application proposes to subdivide the portion of the site zoned R2 Low Density Residential into 242 residential lots that range from 500sqm to 698.1sqm in area. The proposed development therefore complies with this development standard.

#### Clause 5.1A – Development on land intended to be acquired for public purposes

The objective of Clause 5.1A of BLEP 2015 is to limit development on certain land that is intended to be acquired for a public purpose.

The portion of the site that is zoned RE1 Public Recreation is identified on the Land Reservation Acquisition Map contained in BLEP 2015 as being marked for 'local open space'. Accordingly, development consent must not be granted to any development in this area other than development for the purpose of 'recreation areas'.

The application proposes to subdivide the portion of the site zoned RE1 Private Recreation for the purposes of a foreshore lot to contain a waterfront reserve in accordance with the executed voluntary planning agreement. This area is approximately 20 metres in width and runs adjacent to the Georges River. The application proposes to subdivide this area off from

the remainder of the development site to commence the process to implement the terms of the VPA, however the foreshore land embellishment and bank stabilisation works required by the VPA are proposed to be carried out under a separate approval pathway to the subject development application.

The proposed development satisfies Clause 5.1A as it is consistent with the intention of the future land acquisition. However, issues associated with the executed VPA are outlined below in this report under Section 4.15(1)(a)(iia) 'Planning agreements'.

#### Clause 5.9 – Preservation of trees or vegetation

Clause 5.9 of BLEP 2015 was repealed by State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 on 25 August 2017, however the clause applies to the assessment of the subject application as it was lodged prior to this date.

The objective of Clause 5.9 is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. The area of the site that is subject to the residential subdivision contains in excess of 800 trees and tree groups comprising several remnant local native species and planted non-local native species, which includes approximately 114 hollow bearing trees providing habitats to several fauna species (including threatened species such as the Grey-headed Flying-fox and Microchiropteran bat, and other species such as the Rainbow Lorikeet and Galah). The residential subdivision contains an Endangered Ecological Community along the southern boundary (Shale-Gravel Transition Forest), and the wider development site contains other EECs identified in recent mapping released by the Office of Environment and Heritage (including Swamp Oak Flood Plain Forest and River Flat Eucalypt Forest).

The subject application initially assumed the removal of all trees on the subject site within the R2 Low Density Residential zone on the basis that the tree removal was proposed under DA-79/2016, which was under assessment by Council at the time of lodgement. The arguments presented by the applicant during the assessment of DA-79/2016 in support of the tree removal was on the basis that the site is contaminated with the soil pathogens *Armillaria sp.* and *Phytophthora sp.* However, during the LEC deemed refusal appeal of DA-79/2016, Council contended that the removal of all trees within the R2 Low Density Residential zone due to the presence of soil pathogens is not considered to be an appropriate response. It had not been demonstrated by the applicant that it was necessary to remove all trees from the site to manage the pathogens, rather than to treat the pathogens by adopting the currently accepted approach based on hygiene, careful site management to reduce the impact on-site and to prevent spread off-site, and with respect to *Phytophthora cinnamomi*, the application of phosphonate.

During the assessment of the subject application (after the withdrawal of DA-79/2016), and following discussions with and advice from Council regarding the retention and protection of trees, the Applicant submitted further information to Council to propose the retention of an estimated 182 trees in the location of the residential subdivision. The nominated trees are primarily to the rear of residential lots located along the northern and eastern perimeter of the part of the site zoned R2 Low Density Residential.

Council's Tree Management Planner reviewed the additional information submitted by the applicant and determined that all trees proposed for retention will be impacted to varying degrees by the proposed cut and fill works of up to +/- 200mm within the tree root zone areas. Furthermore, Council's Environmental Planner determined that the trees will fail to regenerate if not retained in reserved plots, and therefore development should incorporate designated tree retention areas within the residential subdivision for bushland restoration/recreation purposes.

With respect to the objective of Clause 5.9, it is considered that the proposed quantum of tree removal, and the unacceptable method of tree retention, within the residential subdivision constitutes a poor environmental outcome. More than 500 of the trees proposed for removal have been identified as having a medium to long term useful life expectancy of up to 40+ years, with a further 172 trees having a useful life expectancy of up to 15 years. The removal of those trees would result in a significant loss of visual and environmental amenity, in addition to a loss of biodiversity and ecological value.

Clause 5.10 – Heritage conservation

Clause 5.10 of BLEP 2015 contains the following objective:

*(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Clause 5.10(2) states that development consent is required for disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed. Furthermore, Clause 5.10(4) requires the consent authority to consider the effect of the proposed development on the heritage significance of the item or area concerned.

In May 2012 an Aboriginal Heritage Study was prepared for the Riverlands Golf Course by Archaeological and Heritage Management Solutions Pty Ltd on behalf of Council. The study found that elevated areas in the southeast portion of the golf course site (and encompassing much of the golf course) had the potential to contain Aboriginal cultural heritage, and recommended that further investigation, including sub-surface (test) excavations be undertaken within areas of moderate-high archaeological sensitivity, and other forms of sub-surface investigation be undertaken in relation to other areas of archaeological sensitivity.

The Applicant submitted the following studies and reports with the subject application in support of the proposed development:

- Statement of Heritage Impact, prepared by Cracknell Lonergan Heritage Architects, dated January 2016;
- Aboriginal Archaeological Assessment, prepared by Heritage Concepts, dated May 2007; and

- Geotechnical Investigation Report, prepared by JK Geotechnics, dated November 2015.

The Applicant's amended Statement of Environmental Effects includes the following comment with respect to this matter:

*"The Heritage Concepts report noted that there may be potential archaeological significance based on soil profiles. However the Cracknell Lonergan report notes that the 2015 Geotechnical reports prepared by JK Geotechnics indicate that the site has been significantly disturbed with fill and other works associated with the golf course. The latest review took into consideration more current and detailed reports on the site than the previous 2007 study.*

*A further assessment of the history of the site indicates that the majority of the site was the subject of extensive sand mining and this coupled with the works associated with the golf course notably led to the conclusion in the Cracknell Lonergan report that the proposal will have no adverse impact on the subject site."*

The abovementioned reports and studies submitted by the Applicant were previously reviewed by Council's heritage consultant, Extent Heritage Advisors, during the preparation of the Statement of Facts and Contentions for DA-79/2016. The consultant concluded that the reports and studies contain various gaps and analytical issues, summarised as follows:

- The lack of previously documented sites within the study area, based on the Office of Environment and Heritage Aboriginal - Heritage Information Management System database, may be a reflection of the lack of academic and/or cultural resource management investigation in the area, rather than a lack of Aboriginal cultural heritage being present on site, as suggested in the Applicant's SoHI.
- The Applicant's SoHI only selects statements from the respective studies that are beneficial to its argument of disturbance while ignoring the overall results of these documents.
- The Applicant's Aboriginal Archaeological Assessment concludes that the site has been subject to extensive ground disturbance, and has no 'archaeological constraints'. These findings are on the basis that the golf course area has been subject to a combination of 'sand mining and related activity' and 'possible sand mining and related impacts', however the study provides no description or explanation of how this position was established.

In that regard, Council maintains that the material submitted by the Applicant does not provide clear evidence to support the Applicant's position that the golf course area has been heavily disturbed to a level where Aboriginal objects would not have survived, if present. Furthermore, having regard to recent findings of significant Aboriginal cultural heritage on the ridgelines overlooking Georges River in Moorebank, only evidence of complete soil profile replacement would demonstrate that no Aboriginal objects had survived past development activities.



On this basis, insufficient information has been submitted with the development application to demonstrate compliance with Clause 5.10 of BLEP 2015.

It is also noted that an Aboriginal heritage issue that was previously identified on the subject site was the potential for the presence of culturally modified (scarred) trees. The applicant previously submitted a letter to Council from the Office of Environment and Heritage (dated 7 April 2017), which indicates that cultural heritage officers inspected the trees and found none to be of cultural origin. The applicant has therefore satisfactorily addressed this matter.

#### Clause 6.1 – Acid sulfate soils

In accordance with Clause 6.1 and the Acid Sulfate Soils Map of BLEP 2015, the subject site is affected by Class 1, 2, 3 and 5 acid sulfate soils. The nature of the works proposed to various areas of the subject site require the preparation and submission of an acid sulfate soils management plan in accordance with the Acid Sulfate Soils Manual. An acid sulfate soils management plan was not submitted with the development application, and therefore the proposed development fails to satisfy Clause 6.1 of BLEP 2015. It is also noted that the amended Statement of Environmental Effects submitted with the application does not address this clause.

#### Clause 6.2 – Earthworks

The objective of Clause 6.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Clause 6.2(3) of BLEP 2015 reads as follows:

*In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:*

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*



As mentioned previously in this report, the amended Statement of Environmental Effects confirms that the application proposes to utilise approximately 20,000m<sup>3</sup> of existing stockpiled fill currently occupying the northern part of the Riverlands site, in addition to an undisclosed amount of imported fill. The Bulk Earthworks Plan suggests that the total fill will result in a proposed ground level that is up to 2 metres above the existing natural ground level on the western side and central area of the residential subdivision. The amended application provides no detail of the amount or source of imported fill that is required to undertake these works in addition to the existing stockpiled fill. Furthermore, the Bulk Earthworks Plan demonstrates that the proposed fill extends beyond the area of the site zoned R2 Low Density Residential.

Council's Development Engineer reviewed the information submitted with the application and determined that there is no clear justification for the inordinate amount of unnecessary fill that is proposed to the site, and the associated impacts on overland stormwater flow and tree retention. Similarly, Council's Catchment Management Planner reviewed the information submitted with the application and determined that the extent and depth of fill is unacceptable, unreasonable and removes valuable flood storage from the stormwater catchment and riverine floodplains. Accordingly, with respect to points (a), (d) and (g) outlined above, Council's assessment has determined that the proposal is likely to disrupt drainage patterns in the locality of the development, reduce the amenity of adjoining properties through cumulative impacts, and result in adverse impacts on the waterway and environmentally sensitive areas.

With respect to points (c) and (e), Council's Environmental Health Officer reviewed the Detailed Site Investigation report and determined that the report does not satisfactorily examine the quality of the existing soil to be excavated. Furthermore, the application does not provide sufficient information regarding the quality and source of the proposed fill materials (including the existing stockpiled fill and the proposed imported fill).

With respect to point (f), and as stated previously in this report, inadequate information has been submitted with the application to determine whether the proposed development is likely to disturb Aboriginal heritage relics.

With respect to point (h), and having regard to the objective of Clause 6.2 and the issues raised above, it is considered that appropriate measures have not been proposed to mitigate the impacts of the development, nor has it been demonstrated that the proposed earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land.

The amended Statement of Environmental Effects does not address this clause. Based on the above, it is considered that the proposed development fails to satisfy Clause 6.2 of BLEP 2015.

#### Clause 6.3 – Flood planning

The objectives of Clause 6.3 are to minimise the flood risk to life and property associated with the use of land, to allow development on land that is compatible with the land's flood

hazard taking into account projected changes as a result of climate change, and to avoid significant adverse impacts on flood behaviour and the environment.

Clause 6.3(3) of BLEP 2015 reads as follows:

*Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*

- (a) is compatible with the flood hazard of the land, and*
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The Applicant's response to this clause in the amended Statement of Environmental Effects reads as follows:

*"Flood-related matters have already been considered in the process that has led to the current R2 zoning for part of the site.*

*The proposed revised lot subdivision is not impacted by flooding and complies with the area nominated by the Riverlands Flood study and Evacuation Plan prepared by BMT WBM dated April 2012 (based on flooding + climate change + freeboard)."*

The Riverlands site is affected by both Riverine and Stormwater Catchment flooding. The area of the site zoned R2 Low Density Residential is above the 100 year riverine flood level, including allowances for climate change and freeboard. However, this area is affected by stormwater flooding and as such, stormwater flooding remains a matter for consideration under this Development Application.

The BMT WBM study referenced above recommended that flood modelling be undertaken at the master planning stage to reflect the internal development layout and refine the conceptual design and sizing of the drainage features. The BMT WBM study also highlighted the existing nuisance flooding issues (ponding and subsequent back up within Raleigh Road) at the southern end of Raleigh Road, and the opportunity presented by the development to lower the ground levels slightly would reduce water levels within Raleigh Road (which will also benefit future residents of the development). A bund at Prescott Parade was also recommended and it was noted that this may be incorporated into the developments landscaping. Furthermore, the study recommended that the master planning show how the potential for increased velocities downstream can be mitigated. These recommendations have not been addressed in the documents submitted with the Development Application.

Further to the above, Council's Catchment Management Planner reviewed the information submitted with the amended application and determined that the extent and depth of fill proposed is unacceptable, unreasonable and removes valuable flood storage from the stormwater catchment and riverine floodplains. The issues associated with the proposed development from a flood planning perspective are summarised as follows:

#### *Riverine Flooding*

- The R2 Low Density Residential zone is outside of the high and medium riverine flood risk precincts, however it is located in the low riverine flood risk precinct.
- The proposed stormwater and bio-retention basin is located solely in the high risk riverine flood precinct and is located outside of the area zoned for residential development. The application does not include sufficient details to support the location and design of the basin (which appears to be created by constructing an embankment of unknown height), nor does the application include sufficient detail of construction materials, methods and dimensions.
- The proposed stormwater and bio-retention basin will reduce the storage in the Georges River Floodplain by 44,000m<sup>3</sup>. The Georges River Flood model must be modified to incorporate this feature and a Flood Impact Analysis be undertaken to determine impacts on existing flood levels and identify if new areas of flooding have been created.
- The application was not accompanied by a Flood Impact Analysis to demonstrate that the proposed stormwater and bio-retention basin will appropriately function as a flood detention structure (i.e. is appropriate in size, and provides appropriate detention time to offset the development), nor has MUSIC modelling (Model for Urban Stormwater Improvement Conceptualisation) been undertaken to demonstrate that the basin will meet appropriate performance standards.
- Modelling is also required to demonstrate that the velocities would not damage the stormwater and bio-retention basin.
- With respect to the above, it is more appropriate for WSUD features be proposed within the area zoned for residential development.

#### *Stormwater Flooding*

- The majority of the R2 Low Density Residential area is located within the Kelso Creek Catchment, with a smaller portion located in the Milperra Catchment. Both catchments are significantly affected by stormwater flooding due to poor surface gradients. A significant part of the R2 Low Density Residential zone is affected by the 100 year flood extent, and almost all of the development site is affected by the Probable Maximum Flood (low flood risk precinct).
- The Development Application was not accompanied by a stormwater catchment Flood Impact Analysis, which should be undertaken using Council's Kelso Creek Flood Study. Stormwater catchments are more sensitive to filling than riverine catchments (e.g. the Kelso Creek catchment is 4km<sup>2</sup> while the Georges River catchment is approximately 1,000km<sup>2</sup>).
- A significant amount of fill is proposed to be imported to the residential subdivision. A Flood Impact Assessment of the impacts of the proposed filling and development in the Kelso Creek catchment has not been undertaken either during the rezoning or as part of this development application. Thus, the development does not satisfy Clause

6.3(3)(b) and (e) of BLEP 2015 in demonstrating that there will be no adverse off-site flood impacts caused by the development, for example:

- Properties that are already flood affected are not more flood affected in extent or depth;
- No new properties are affected by flooding; and
- Roads and other Council owned lands are not adversely affected by new flooding.
- The Flood Impact Analysis should include the proposed stormwater and bio-retention basin to confirm that it is an effective mitigation option.
- The Development Application does not demonstrate that the 100 year flows from stormwater flooding are accommodated in the proposed drainage and roadway system.

In summary, Council's Catchment Management Planner has determined that the proposed development is not acceptable as a comprehensive Flood Impact Assessment supported by flood modelling was not undertaken for either stormwater or riverine flooding. Such an assessment should consider filling and final landforms, the drainage and road network, the stormwater detention and bio-retention basin, and propose measures to mitigate adverse impacts.

On this basis, it is considered that the proposed development fails to satisfy Clause 6.3 of BLEP 2015, particularly with respect to the development's compatibility with the land, impact on flood behaviour, unsustainable social and economic costs to the community as a consequence of flooding and required mitigation measures.

#### Clause 6.4 – Biodiversity

The objective of Clause 6.4 is to maintain terrestrial and aquatic biodiversity by protecting native fauna and flora, protecting the ecological processes necessary for their continued existence, and encouraging the conservation and recovery of native fauna and flora and their habitats.

In accordance with Clause 6.4(2), extensive areas of the subject site that are zoned RE2 Private Recreation and RE1 Public Recreation contain land identified as "biodiversity" on the Terrestrial Biodiversity Map.

Clause 6.4(3) of BLEP 2015 reads as follows:

*In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider:*

- (a) *whether the development is likely to have:*
  - (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
  - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
  - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

- (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The Applicant's response to this clause in the amended Statement of Environmental Effects reads as follows:

*"The proposed dwelling house lots intended for dwelling house purposes are not mapped as "biodiversity".*

*A number of studies and reports have been submitted demonstrating there are no significant trees or habitats. The proposed subdivision will plant local and diverse species within the subdivision and further plan and restore appropriate conservation areas outside the site near the foreshore to promote a sustainable biodiverse preserve."*

While the land identified as "biodiversity" falls outside of the residential subdivision area, other aspects of the development (such as the proposed drainage channels to the bio-retention basin, northern access road and park) fall within these areas.

The information submitted with the application does not satisfactorily examine the potential impacts on the condition, ecological value and significance of these areas, and associated impacts on habitats and biodiversity functions. Accordingly, Council is unable to accurately assess or determine appropriate measures to avoid, minimise or mitigate these impacts.

Based on the above, insufficient information has been submitted to Council to demonstrate compliance with Clause 6.4 of BLEP 2015.

In addition, it is noted that the proposed tree removal and the unacceptable method of tree retention in the area of the site accommodating the residential subdivision will result in the loss of approximately 114 hollow-bearing trees, which provide habitats to several fauna species. While this part of the site is not identified on the Terrestrial Biodiversity Map, the habitat trees are considered to play a significant role in biodiversity protection in their current location and contribute to a greater network of vegetation to the south that ultimately extends to National parkland. In this regard, the site is recognised as part of a Core Corridor and Transition Corridor under the Bankstown City Council Biodiversity Strategic Plan 2015-2025 (adopted by Council on 28 July 2015) and is also identified as part of a habitat corridor (comprising priority habitats, supporting habitats and supporting areas) by the NSW Government Local Land Services.

To address this matter, the application proposes a 'no loss' policy for hollow-bearing trees by relocating the hollows into conservation areas in the riparian zones. However, Council has received previous advice from a Senior Ecologist at NGH Environmental, which suggests that this is not an acceptable solution as it has not been demonstrated that removing and re-deploying hollows would serve the same ecological function for hollow-dependent fauna.

Furthermore, the use of nest boxes is not considered suitable in circumstances where it has not been demonstrated that the impacts are justified and unavoidable.

Clause 6.4A – Riparian land and watercourses

The objective of Clause 6.4A is to protect and maintain water quality within watercourses, the stability of the bed and banks of watercourses, aquatic and riparian habitats, and ecological processes within watercourses and riparian areas.

In accordance with the Riparian Lands and Watercourses Map in Clause 6.4A(2), the subject site contains a watercourse adjacent to the proposed northern access road, and riparian land surrounding the watercourse and along the foreshore area of the Georges River.

Clause 6.4A(3) reads as follows:

*In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider:*

- (a) whether or not the development is likely to have any adverse impact on the following:*
  - (i) the water quality and flows within the watercourse,*
  - (ii) aquatic and riparian species, habitats and ecosystems of the watercourse,*
  - (iii) the stability of the bed and banks of the watercourse,*
  - (iv) the free passage of fish and other aquatic organisms within or along the watercourse,*
  - (v) any future rehabilitation of the watercourse and riparian areas, and*
- (b) whether or not the development is likely to increase water extraction from the watercourse, and*
- (c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The Applicant's response to this clause in the amended Statement of Environmental Effects reads as follows:

*"It [Clause 6.4A] identifies riparian land and a watercourse within part of the area of the subject site identified for 'superlots'. There still is a watercourse and associated buffer area identified alongside the existing road reserve area that is already formed. The proposed continued use of that roadway will not interfere with the watercourse. Therefore the amended proposal is therefore compliant with this clause."*

The existing road reserve referred to above is an informal access way that is predominantly unsealed and unformed. The proposed development will ultimately rely on this road as a key access point to the residential subdivision from Henry Lawson Drive. The statement above does not consider the intensification of the use of the access way, and the associated requirement for the existing road reserve to be formed, sealed and widened (to achieve the minimum required 17m road width specified in Part A3 of BDCP 2015). While the subdivision plan and landscape plan identify the location of the proposed road, the plans do not detail the interface between the proposed road and the adjacent watercourse and



riparian land. Figure 5 outlines the proximity between the watercourse and riparian land (indicated in blue and green) and the location of the proposed road (indicated in red).



**Figure 5 – Watercourse and riparian land**

Further to the above, in accordance with Section 4.46 of the Environmental Planning and Assessment Act, 1979 the subject application is for integrated development and requires concurrence from the Lands & Water Division of the Department of Industry (DoI) under Section 91 of the Water Management Act, 2000.

The response received from the Water Regulation Officer, Lands & Water Division of the Department of Industry, advised that the proposed development encroaches on several different watercourses, and does not adhere to the riparian setbacks prescribed in DoI guidelines. It was also noted that a Vegetation Management Plan is required in accordance with DoI guidelines. On this basis, DoI was unable to provide concurrence without the submission of further information to address these guidelines.

Accordingly, it is considered that insufficient information has been submitted with the application to also demonstrate compliance with Clause 6.4A of BLEP 2015.

**Clause 6.11 – Development on Riverlands Golf Course site**

Clause 6.11 of BLEP 2015 applies to all allotments that comprise the development site, with the exclusion of Lot 24 DP 736006 known as 25 Martin Crescent, Milperra.

As mentioned previously in this report, the Department of Planning and Environment varied the planning proposal submitted by Council for the Riverlands Golf Course site by replacing the exhibited E3 Environmental Management zone with the R2 Low Density Residential zone. The Department justified this amendment by including Clause 6.11 in BLEP 2015 to ensure appropriate safeguards are in place to protect the environmental qualities of the Riverlands site through a series of site-specific requirements for future development. As such, an outcome of the adopted planning proposal was the expectation and assurance that all future development on the subject site will strictly adhere to the provisions of Clause 6.11.

The objectives of Clause 6.11 are as follows:

- (a) to ensure that development on the site reflects the low density residential character of the surrounding area,*
- (b) to ensure that traffic generated by development of the site does not adversely affect the efficiency and safety of Henry Lawson Drive and surrounding local roads,*
- (c) to ensure that development protects and conserves the cultural heritage, ecological and habitat values of the site and the scenic values of the surrounding waterways and riparian corridors,*
- (d) to ensure that development integrates with the landform, vegetation, overland flow path and landscape of the site.*

The above objectives are incorporated into Clause 6.11(3), which states that development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied of a number of requirements. The requirements of this clause are outlined below, along with a response from Council beneath each sub-clause.

*Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied of the following:*

- (a) that the development is consistent with the low density residential scale and character of the surrounding area,*

Comment:

All lots within the proposed residential subdivision comply with the minimum lot size requirements of BLEP 2015. The R2 Low Density Residential zone permits development of a low density residential scale, including dwelling houses, secondary dwellings, dual occupancies and multi-dwelling housing (subject to minimum lot size and/or frontage requirements). While the proposal does not seek consent for the construction of any dwellings, the lot sizes proposed suggest that, subject to complying with Council's controls, the likely future development within the subdivision would be consistent with the scale and character of the surrounding residential area.

- (b) that the development will not significantly impact on the efficiency and safety of the surrounding road network,*

Comment:

The application was referred to the Roads and Maritime Services and Council's Traffic Engineer for assessment. The RMS granted concurrence on 23 May 2018. Council's Traffic Engineer raised concerns regarding the impact of the development on traffic at the intersection of Pozieres Avenue and Henry Lawson Drive (and the lack of proposed mitigation measures), and the function of the roundabout in Raleigh Road at Pozieres Avenue. On this basis, insufficient



information has been submitted with the application to demonstrate that the development will not significantly impact on the efficiency and safety of the surrounding road network.

- (c) *that the development of the site integrates with the road, pedestrian and cycle networks of the surrounding established Milperra neighbourhood area,*

Comment:

In accordance with the comment above, insufficient information has been submitted with the application to demonstrate that the development will satisfactorily integrate with the surrounding access networks of Milperra. The subdivision does not present as a natural extension of the existing adjoining residential neighbourhoods. The proposal does not provide for attractive landscaped entry points or small pocket parks to serve the community.

- (d) *that the development, including any lots created by the development, will be compatible with the topography of the site and integrate with the landform, vegetation and landscape of the site,*

Comment:

This matter has been addressed above under Clauses 5.9 and 6.2 of BLEP 2015. The development is not considered to be compatible with the topography of the site, nor does it suitably integrate with the surrounding landform, vegetation and landscape of the site. The applicant has not provided any clear rationale for such significant earthworks.

- (e) *that the development is appropriate given the environmental capabilities of, and environmental constraints that affect, the site (including, but not limited to, flood risks, land contamination, acid sulfate soils and bushfire risks),*

Comment:

Issues relating to land contamination, acid sulfate soils and flood risks have been outlined above under SEPP 55 and Clauses 6.1 and 6.3 of BLEP 2015. The proposed development is not considered to appropriately respond to these environmental considerations. With respect to bushfire risks, in accordance with Section 4.46 of the Environmental Planning and Assessment Act, 1979, the subject application is for integrated development and requires concurrence from the NSW Rural Fire Service under Section 100B of the Rural Fires Act, 1997. The RFS provided general terms of approval to the proposed development subject to conditions of consent relating to asset protection zones, water and utility services, and access.

- (f) *that the development will protect the cultural heritage values of the site and the scenic values of the surrounding waterways and riparian and biodiversity corridors,*

Comment:

This matter has been addressed above under Clauses 5.9, 5.10, 6.4 and 6.4A of BLEP 2015. Insufficient information has been submitted with the application to demonstrate that the development will not disturb potential Aboriginal heritage objects or existing riparian and biodiversity corridors, and the substantial tree clearing in the location of the residential subdivision will adversely impact the scenic value of the site.

- (g) *that the development will protect and conserve the ecological communities and areas on the site,*

Comment:

With respect to the extent of tree and vegetation clearing proposed, it is considered that the development does not appropriately protect and conserve potential Endangered Ecological Communities and other areas on the site that are of general ecological and biodiversity value. These issues have been discussed previously in this report.

- (h) *that adequate provision has been made for protecting and conserving hollow bearing trees on the site,*

Comment:

This matter has been addressed above under Clause 6.4 of BLEP 2015. The proposed development does not make adequate provision for the protection and conservation of hollow bearing trees on the subject site.

- (i) *that any adverse impacts of stormwater on the site, or caused by stormwater runoff on adjoining properties, native vegetation, wetlands or waterways, are properly managed or mitigated,*

Comment:

This matter has been discussed above under Clauses 5.9, 6.2, 6.3 and 6.4A of BLEP 2015. The information submitted with the application does not demonstrate that the proposed development will appropriately manage or mitigate adverse impacts on stormwater, native vegetation or waterways.

- (j) *that any lot created by the development will be compatible with the stormwater management measures on the site.*

Comment:

Council's Development Engineer reviewed the information submitted with the application and advised that the plans do not indicate all existing drainage systems and common drainage lines on the existing properties, and the design of the development does not emulate the existing catchments, discharge points and swales. On this basis, it is considered that the lots proposed to be created by the development are not compatible with the natural and built stormwater management measures on site.

As outlined above, the proposed development fails to satisfactorily address and demonstrate compliance with various aims, objectives and provisions contained in BLEP 2015.

**Draft environmental planning instruments [section 4.15(1)(a)(ii)]**

***State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017***

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 was gazetted on 25 August 2017 during the assessment of the subject application. As such, the SEPP is a matter for consideration in the assessment of the proposed development as a draft environmental planning instrument.

The SEPP repealed Clause 5.9 'Preservation of trees or vegetation' in BLEP 2015, and substantially reproduces the effect of this clause. Council's concerns relating to the impact of the proposed development on the existing vegetation on the subject site have been addressed in detail above under Clause 5.9 of BLEP 2015.

***State Environmental Planning Policy (Coastal Management) 2018***

State Environmental Planning Policy (Coastal Management) 2018 (and the Coastal Management Act, 2016) were gazetted on 3 April 2018 during the assessment of the subject application. Clause 21(1) of the SEPP states that the former planning provisions continue to apply (and this Policy does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this Policy. As such, the SEPP is a matter for consideration in the assessment of the proposed development as a draft environmental planning instrument.

The maps accompanying the SEPP identify the subject site as being affected by the following coastal management areas:

- Coastal Wetlands;
- Proximity Area for Coastal Wetlands;
- Coastal Environment Area; and
- Coastal Use Area.

There are various considerations under the SEPP that are applicable to the proposed development, however of most significance is Clause 10, which states that the carrying out of certain works (such as earthworks and draining the land) on land identified as “coastal wetlands” is declared to be designated development for the purposes of the Act. The proposed residential subdivision is not located within land identified as “coastal wetlands”, however other works associated with the development within the RE2 Private Recreation zone may conflict with these areas.

With respect to the above, the proposed development may contravene certain provisions of (draft) SEPP (Coastal Management) 2018, and further consideration of this policy (as a draft EPI) is appropriate due to the nature of the proposed development and the subject site.

**Development control plans [section 4.15(1)(a)(iii)]**

The following section of this report provides an assessment of the proposed development against the relevant clauses of Bankstown Development Control Plan (BDCP) 2015.

**Part A3 – Key Infill Development Sites**

Section 6, Part A3 of BDCP 2015 applies to development on the Riverlands Golf Course site. The intended outcome of this section is to ensure the subdivision and development of the site achieves high quality urban design and built form outcomes that are consistent with the environmental characteristics and ecological values of the site.

Section 6 contains the following desired character objectives for the site:

- To have development that integrates with the landform, vegetation, overland flow path and landscape of the site.*
- To have development that protects and conserves the ecological and habitat values of the site including the ecological communities and areas, riparian and biodiversity corridors, native vegetation and hollow bearing trees, and the ecological processes necessary for their continued existence.*
- To have development that avoids or minimises the adverse impacts of urban stormwater on the site, adjoining properties, native vegetation, wetlands and waterways.*
- To have development that protects and improves the scenic and cultural heritage values of the site, waterways and riparian corridors.*

- (e) *To have development that fully responds to the flood risks, land contamination, acid sulfate soils, bush fire risks and other environmental constraints that affect the site.*
- (f) *To have mostly dwelling houses or a balanced mix of dwelling houses and dual occupancies on the site that is compatible with the character, amenity and built form of the established Milperra neighbourhood area.*
- (g) *To have development that incorporates landscape as a key characteristic.*
- (h) *To have a legible access network within the site that is conducive to walking, and connects to the road, pedestrian and cycle networks of the established Milperra neighbourhood area.*
- (i) *To have appropriate infrastructure that enhances the quality of life and safety of the community.*

The above objectives are generally consistent with the objectives and controls contained in Clause 6.11 of BLEP 2015, which have been addressed previously in this report, and are also incorporated into the development controls contained in Section 6, Part A3 of BDCP 2015. An assessment of the proposed development against the controls contained in Section 6 is provided in the table below.

CONTROL	ASSESSMENT
<b>Subdivision</b>	
<b>6.1</b> Development that proposes the subdivision of land must submit a concept subdivision plan, landscape plan and detailed tree survey to the satisfaction of Council. These plans must be prepared by suitably qualified persons in the field of town planning, architecture and landscape architecture.	<p>The subject application was accompanied by a plan of subdivision and a preliminary engineering design (prepared by Pulver, Cooper &amp; Blackley), a landscape plan (prepared by Geoscapes), and an arboricultural asset audit (prepared by Urban Forestry Australia).</p> <p>Notwithstanding the above, the submitted documents are not to Council's satisfaction due to the design of the proposed development and the various issues detailed throughout this report.</p>
<b>6.2</b> The intended outcomes of the concept subdivision plan, landscape plan and detailed tree survey are: <ul style="list-style-type: none"> <li>(a) to identify the overall strategic vision and guiding principles to the subdivision and development of the site;</li> <li>(b) to demonstrate the opportunities and constraints of the site;</li> <li>(c) to contribute to the sustainable growth of the city; and</li> <li>(d) to respond and contribute to the local context and the urban structure of the city.</li> </ul>	<p>The proposed development detailed above does not reflect the strategic vision for the development site, nor does it appropriately respond to the site constraints and local context. Rather, in the most part, the proposed development seeks to maximise lot yield with insignificant regard to the site and locality. The site in fact presents a significant opportunity to create a unique and desired living environment that embraces the existing environmental features. Council's concerns with the proposed development are outlined in detail throughout this report.</p>

CONTROL	ASSESSMENT
<p><b>6.3</b> The concept subdivision plan, landscape plan and detailed tree survey must consist of a written statement (supported by plans or illustrations) explaining how the design and layout of the streets, lots and subsequent development on the site have regard to the following:</p>	<p>Council's assessment is provided below as a response to each sub clause.</p> <p>The applicant has provided a brief comment in response to each sub clause in the amended Statement of Environmental Effects. The applicant has not submitted a formal written statement supported by plans or illustrations to explain how the design and layout of the streets and lots have regard to each sub clause.</p>
<p><b>(a) <u>Design principles</u></b> The design and layout of the streets, lots and subsequent development must have regard to the design principles drawn from the site analysis and local context including:</p> <ul style="list-style-type: none"> <li>(i) Context and character studies.</li> <li>(ii) Visual assessment of the site and the local context.</li> <li>(iii) Survey of the site and neighbouring buildings.</li> <li>(iv) Survey of the topography, stormwater and drainage systems, trees, vegetation and landscape.</li> </ul>	<p>The design and layout of the residential streets and lots does not appropriately respond to the context and character of the site, or the existing topography, natural stormwater and drainage systems, trees, vegetation and landscaping. The proposed residential subdivision does not address common design principles that tend to inform greenfield subdivisions, such as the provision of public open space throughout the residential area, incorporating a road layout that responds to the site's existing topography and natural features, and minimising impacts on existing trees and biodiversity.</p>
<p><b>(b) <u>The studies which informed the planning proposal</u></b> The design and layout of the streets, lots and subsequent development are to conform to the studies and their recommendations which informed the planning proposal (PP_2011_BANKS_001) for the site including:</p> <ul style="list-style-type: none"> <li>(i) The 'Flora Assessment: Updated Study of the approximately 82 ha site of the Riverlands Golf Course site at Milperra', dated 23 January 2012, prepared by Anne Clements and Associates.</li> <li>(ii) The 'Fauna Habitat &amp; Species Constraints to Potential Redevelopment of the Riverlands Golf Course, Milperra', dated 22 January 2012, prepared by Ambrose Ecological Services.</li> <li>(iii) The 'Fauna Investigation and Tree Retention Advice', dated June 2015, prepared by NGH Environmental.</li> <li>(iv) The 'Riverlands Flood Study and Evacuation Plan', dated April 2012, prepared by BMT WBM.</li> <li>(v) The 'Bushfire Assessment', dated 30 April 2012, prepared by Eco Logical Australia.</li> <li>(vi) The 'Aboriginal Heritage Study', dated May</li> </ul>	<p>The applicant's response to this sub clause in the amended Statement of Environmental Effects reads as follows:</p> <p><i>"Some studies listed in the planning proposal have been adopted however the proposed amendment has undertaken a number of detailed further studies especially in the ecological and pathogen areas that are considered more relevant and up-to-date."</i></p> <p>Council disagrees with the applicant's position, and maintains that the studies and associated recommendations that informed the planning proposal hold significant weight in determining an appropriate development for the site. The partial rezoning of the site from RE2 Private Recreation to R2 Low Density Residential was, in principle, on the basis that the site-specific controls would ensure that appropriate safeguards are in place to protect environmental qualities across the subject site, and that these controls would need to be satisfied by any future development.</p>

CONTROL	ASSESSMENT
<p>2012, prepared by Archaeological &amp; Heritage Management Solutions.</p> <p>This includes the need for subdivision development to undertake additional archaeological investigations in accordance with relevant statutory requirements and guidelines.</p> <p>(vii) The 'Phase 2 Environmental Site Assessment– Riverlands Environmental Site Assessment', dated July 2015, prepared by Environmental Strategies.</p> <p>(viii) The 'Acid Sulfate Soil Preliminary Site Investigation', dated December 2011, prepared by Sydney Environmental &amp; Soil Laboratory.</p> <p>(ix) The 'River Bank Stabilisation Study', dated April 2014, prepared by National Project Consultants.</p> <p>(x) The Riverlands Golf Course voluntary planning agreement and corresponding vegetation management plan.</p>	<p>The applicant has not provided a detailed response to the findings and recommendations of each study listed in this sub clause, and the outcome of the proposed development is contrary to a number of these studies. The inconsistencies between the proposed development and the development envisaged by these studies is reflected in the various issues discussed throughout this report.</p>
<p><b>(c) <u>Sustainability and energy efficiency outcomes</u></b></p> <p>The design and layout of the streets, lots and subsequent development must have regard to the sustainability and energy efficiency outcomes through design including:</p> <p>(i) The integration of the streets and development with the topography, stormwater, biodiversity and riparian corridors, native vegetation and hollow bearing trees, and landscape of the site.</p> <p>(ii) Lot orientation. In assessing proposals for residential subdivisions, Council places major emphasis on the ease with which future dwellings with good solar access can be erected on the proposed lots. In general, this condition is best fulfilled when the side boundaries of the majority of the lots are on or near a north–south axis; however, there may be other solutions. It is important to strive for a future residential area in which the great majority of dwellings can achieve good solar access.</p> <p>(iii) The provision of deep soil zones and landscaping.</p> <p>(iv) Passive surveillance.</p>	<p>As mentioned previously in this report, the streets do not satisfactorily integrate with the topography, stormwater, biodiversity and riparian corridors, native vegetation and hollow bearing trees, or landscape of the site.</p> <p>The majority of lots within the residential subdivision have a side boundary on or near a north-south axis. The lots that are inconsistent with this requirement are those at the western end of each block and those positioned along the eastern boundary of the residential subdivision. In general, the lot orientation will maximise solar access to the majority of future dwellings.</p> <p>The design and layout of streets and lots does not allow for the provision of any substantial deep soil or landscaped areas outside of the individual residential lots. The design and layout will only allow for the provision of on-site landscaping and street tree planting. The application does not propose any designated reserves or public open space areas within the residential subdivision.</p> <p>The design and layout of the streets and lots will generally encourage passive surveillance.</p>



CONTROL	ASSESSMENT
<p><b>(d) <u>Built form and character</u></b> The design and layout of the streets, lots and subsequent development must:</p> <ul style="list-style-type: none"> <li>(i) Provide for mostly dwelling houses or a balanced mix of dwelling houses and dual occupancies on the site that is compatible with the character, amenity and built form of the established Milperra neighbourhood area.</li> <li>(ii) Provide for a variety of lot widths other than 15 metres to encourage a diversity of house and dual occupancy designs.</li> </ul>	<p>The subject application does not propose the construction of dwellings, however all proposed allotments have a minimum site area of 500sqm and a lot width of 15m or greater (with the exception of approximately six irregular-shaped/narrow corner lots). Accordingly, approximately 98% of the proposed residential lots have the potential to accommodate an attached dual occupancy under Clause 4.1A(2)(a) of BLEP 2015. This will result in an imbalance of dwelling houses and dual occupancies if all future property owners choose to construct a dual occupancy.</p> <p>The majority of lots range from 18.2m-18.8m in width, which will facilitate a diversity of dwelling designs.</p>
<p><b>(e) <u>Traffic and access</u></b> The design and layout of the streets, lots and subsequent development must have regard to traffic and access including:</p> <ul style="list-style-type: none"> <li>(i) The links between the site and the surrounding pedestrian, cycle, public transport and road access and circulation networks. This includes details of the internal and external movement networks, the public transport access routes, the pedestrian and cycle paths, linkages to external networks and pedestrian through-site links. The internal street network should avoid cul-de-sac roads.</li> <li>(ii) The links to the road access to the site being Keys Parade, Pozieres Avenue and Prescott Parade. Road access is not to be provided through Martin Crescent.</li> <li>(iii) The pedestrian / cycle link between the site and the public open space on the foreshore.</li> <li>(iv) The evacuation routes for residents during flooding.</li> </ul>	<p>As mentioned previously in this report, insufficient information has been submitted with the application to demonstrate that the development will not significantly impact on the efficiency and safety of the surrounding road network, and that the development will satisfactorily integrate with the surrounding access networks of Milperra.</p> <p>The internal street network does not include any cul-de-sac roads, and the application does not propose road access through Martin Crescent.</p> <p>The application does not provide any details of a pedestrian/cycle link between the residential subdivision and the public open space on the foreshore. The application also does not include an evacuation plan or the like with recommended evacuation routes for residents during a flood event.</p>
<p><b>(f) <u>Infrastructure and stormwater management</u></b> The design and layout of the streets, lots and subsequent development must have regard to infrastructure and stormwater management including:</p> <ul style="list-style-type: none"> <li>(i) The works to be undertaken in accordance with the Riverlands Golf Course voluntary planning agreement and corresponding vegetation management plan.</li> <li>(ii) The minimum 17 metre road width for public roads. This comprises a 10 metre wide</li> </ul>	<p>As mentioned previously in this report, the design of the proposed residential subdivision is not acceptable with respect to stormwater management.</p> <p>Issues associated with the voluntary planning agreement are discussed below under Section 4.15(1)(a)(iia).</p> <p>The proposed residential subdivision achieves compliance with the minimum 17 metre road</p>



CONTROL	ASSESSMENT
<p>carriageway and a 3.5 metre wide footpath on each side of the carriageway.</p> <p>(iii) Access for Council's waste trucks and emergency vehicles.</p> <p>(iv) The integration of the streets and development with the overland flow paths shown in Figure 2.</p> <p>(v) The incorporation of water sensitive urban design principles in the street and development design to attenuate runoff and promote water quality. Consideration may be given to treating stormwater runoff from the site by establishing wetlands, or installing bioswales or bio-retention basins prior to surface discharge.</p> <p>(vi) The siting of the electricity power lines and telecommunication lines underground in accordance with the bushfire assessment, and urban design and streetscape guidelines.</p>	<p>width for public roads, which comprises of a 10 metre wide carriageway and a 3.5 metre wide footpath on each side of the carriageway. This allows sufficient width for access by Council's waste trucks and emergency vehicles.</p> <p>The proposal does not integrate with the overland flow paths shown in Figure 2, nor does the proposal incorporate water sensitive urban design principles within the residential subdivision.</p> <p>The application proposes to locate all electricity power and telecommunication lines underground.</p>
<b>Development – general requirements</b>	
<p><b>6.4</b> In deciding whether to grant development consent, Council must be satisfied that development on the site conforms to the concept subdivision plan, landscape plan and detailed tree survey approved by Council.</p>	<p>N/A – at this stage Council has not granted approval for any concept subdivision plan, landscape plan or detailed tree survey.</p>
<p><b>6.5</b> Development on the site must provide for mostly dwelling houses on the site, or a balanced mix of dwelling houses and dual occupancies on the site that is compatible with the character, amenity and built form of the established Milperra neighbourhood area.</p>	<p>The subject application does not propose the construction of dwellings, however, as mentioned above the proposed subdivision has the potential to result in an imbalance of dwelling houses and dual occupancies in the future as the vast majority of lots are of a size and width that is capable of accommodating an attached dual occupancy.</p>
<p><b>6.6</b> Development on the site must locate the electricity power lines and telecommunication lines underground.</p>	<p>All electricity power and telecommunication lines are proposed to be located underground.</p>
<p><b>6.7</b> Development on the site must submit an Environmental Management Plan detailing the extent to which the development will impact on the site during construction in accordance with the flora and fauna studies which informed the planning proposal (PP_2011_BANKS_001) for the site and the Bankstown Demolition and Construction Guidelines.</p>	<p>The application was accompanied by an Environmental &amp; Waste Management Plan, prepared by Linx Constructions Pty Ltd, dated 27 November 2017. However, the EWMP primarily focuses on waste management during construction and does not detail the extent to which the development will impact on the environmental aspects of the site during construction in accordance with the flora and fauna studies which informed the planning proposal.</p>

CONTROL	ASSESSMENT
<b>Biodiversity protection</b>	
<p><b>6.8</b> In deciding whether to grant development consent, Council must be satisfied that development on the site conforms to the studies which informed the planning proposal (PP_2011_BANKS_001) for the site including:</p> <ul style="list-style-type: none"> <li>(a) The 'Flora Assessment: Updated Study of the approximately 82 ha site of the Riverlands Golf Course site at Milperra', dated 23 January 2012, prepared by Anne Clements and Associates.</li> <li>(b) The 'Fauna Habitat &amp; Species Constraints to Potential Redevelopment of the Riverlands Golf Course, Milperra', dated 22 January 2012, prepared by Ambrose Ecological Services.</li> <li>(c) The 'Fauna Investigation and Tree Retention Advice', dated June 2015, prepared by NGH Environmental.</li> <li>(d) The Riverlands Golf Course voluntary planning agreement and corresponding vegetation management plan.</li> </ul>	<p>The applicant's response to this control in the amended Statement of Environmental Effects reads as follows:</p> <p><i>"Council can be satisfied that the proposed subdivision has carefully considered these reports and undertaken a number of detailed further studies especially in the ecological and pathogen areas that are considered more relevant and up-to-date."</i></p> <p>The studies referenced in Clause 6.8 identify the site as being of significant biodiversity and ecological value. The proposed development does not conform to the recommendations contained in those studies, and Council does not agree with the arguments presented in the further ecological and soil pathogen studies submitted by the applicant.</p>
<p><b>6.9</b> Development on the site must protect the hollow bearing trees shown in Figure 3 in accordance with the 'Fauna Investigation and Tree Retention Advice', dated June 2015, prepared by NGH Environmental.</p> <p>In deciding whether to grant development consent, Council must be satisfied that the development is designed, and will be sited and managed, to avoid any potentially adverse environmental impact or, if a potentially adverse environmental impact cannot be avoided:</p> <ul style="list-style-type: none"> <li>(a) the development minimises disturbance and adverse impacts on the native vegetation and habitat; and</li> <li>(b) measures have been considered to maintain native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native flora and fauna movement through biodiversity corridors; and</li> <li>(c) measures have been considered to achieve no net loss of significant native vegetation or habitat.</li> </ul> <p>In this clause, <b>biodiversity corridor</b> means an area that facilitates the connection and maintenance of native fauna and flora habitats and, within the urban landscape, includes areas that may be broken by roads and other urban elements and may include</p>	<p>The figure referenced in Clause 6.9 identifies the hollow bearing/habitat trees on the subject site within the R2 Residential zone, and ranks the trees by value. The report then includes three subsequent figures containing different options for the valuable hollow bearing trees to be retained in corridors within the site with some linkage to vegetation outside of the residential subdivision.</p> <p>The applicant's response to this clause in the amended Statement of Environmental Effects reads as follows:</p> <p><i>"The proposed subdivision incorporates the recommendations from the detailed Gunningah Tree Assessment and Management Report 2017. This recommended a no net loss policy of tree hollows and the planning of more appropriate species and an ecological conservation area free from pests and predators."</i></p> <p>As mentioned previously in this report, the hollow bearing/habitat trees play a significant role in biodiversity protection in their current location and contribute to a greater network of vegetation to the south. The applicant has</p>

CONTROL	ASSESSMENT
remnant trees and associated native and exotic vegetation.	not provided sufficient information to demonstrate that removing and re-deploying hollows and the associated 'no net loss' policy would serve the same ecological function for hollow-dependent fauna. The biodiversity impacts associated with the proposed tree removal are not unavoidable or sufficiently justified.
<b>Stormwater and water sensitive urban design</b>	
<p><b>6.10</b> Development on the site must submit a Water Management Plan that provides the following details:</p> <ul style="list-style-type: none"> <li>(i) the stormwater management methods during construction and post construction; and</li> <li>(ii) how the water sensitive urban design methods will be used to meet the stormwater reduction targets set out in the Botany Bay and Catchment Water Quality Improvement Plan for greenfield development / large redevelopment.</li> </ul>	A Water Management Plan has not been submitted with the application. The proposed residential subdivision does not incorporate water sensitive urban design methods. The application does not acknowledge the stormwater reduction targets contained in the Botany Bay and Catchment Water Quality Improvement Plan.
<p><b>6.11</b> In deciding whether to grant development consent to development on the site, Council must be satisfied that:</p> <ul style="list-style-type: none"> <li>(a) water sensitive urban design principles are incorporated into the design of the development; and</li> <li>(b) riparian, stormwater and flooding measures are integrated; and</li> <li>(c) the stormwater management system includes all reasonable management actions to avoid any adverse impacts on the land to which the development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems; and</li> <li>(d) if a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways and groundwater systems.</li> </ul> <p>For the purposes of this clause, the water sensitive urban design principles are:</p> <ul style="list-style-type: none"> <li>(i) protection and enhancement of natural waterways;</li> <li>(ii) protection and enhancement of water quality, by improving the quality of stormwater runoff from urban catchments;</li> </ul>	As discussed previously throughout this report, the residential subdivision does not incorporate WSUD principles. The subdivision design does not emulate the existing catchments, discharge points or swales, and the proposed stormwater and bio-retention basin is located outside of the residential subdivision area. The application does not propose a stormwater management system that is integrated into the landscape, and therefore the multiple benefits associated WSUD principles have not been achieved.

CONTROL	ASSESSMENT
<ul style="list-style-type: none"> <li>(iii) minimisation of harmful impacts of urban development on water balance and on surface and groundwater flow regimes;</li> <li>(iv) integration of stormwater management systems into the landscape in a manner that provides multiple benefits, including water quality protection, stormwater retention and detention, biodiversity / habitat provision, public open space, and recreational and visual amenity;</li> <li>(v) retention, where practical, of on-site stormwater for use as an alternative supply to mains water, groundwater or river water;</li> <li>(vi) reduce peak flows through storage and infiltration.</li> </ul>	

As outlined in the table above, the proposed development fails to satisfactorily address various site-specific controls for development on the Riverlands Golf Course site. Accordingly, the proposed development is also considered to be contrary to the desired character objectives contained in Section 6, Part A3 of BDCP 2015.

#### Part B5 – Parking

The subject application proposes the provision of a 1.38ha park along the northern access road. This is defined as a ‘recreation area’ in accordance with the BLEP 2015. The recreation area is located within a walking distance of approximately 400m to the residential subdivision at the closest point, and walking distance of approximately 1.3km to the proposed residential lots located in the south-east corner of the site. It is also likely that the proposed recreation area will be used by residents who live outside of the subdivision area.

Clause 2.1, Part B5 of BDCP 2015 requires development to calculate the amount of parking required using the schedule of off-street parking requirements. The schedule does not include an off-street parking requirement for ‘recreation areas’. Clause 2.2, Part B5 of BDCP 2015 requires development that is not included in the schedule of car parking standards to submit a parking study, prepared by a qualified traffic consultant, for Council’s consideration.

The subject application was not accompanied by a parking study that examines the potential parking demand associated with the proposed recreation area. The application has therefore not addressed Part B5 of BDCP 2015.

### Part B11 – Tree Preservation Order

At the Ordinary Meeting of 28 November 2017, Council adopted amendments to Part B11 of BDCP 2015 that included an update to the tree management provisions to reflect the new State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. It is noted that the SEPP replaced Clause 5.9 of BLEP 2015.

Despite this, the amendments to Part B11 came into effect on 20 December 2017 and apply to development applications lodged on or after this date. As such, the former version of Part B11 of BDCP 2015 applies to the assessment of the subject application.

The objectives of Part B11 of BDCP 2015 are to maintain amenity through the preservation of trees, and to have the removal or pruning of trees carried out in accordance with the DCP.

Clause 2.4(a), Part B11 of BDCP 2015 reads as follows:

*Council must consider (but not be limited to) the following matters when determining an application under Part B11 of this DCP:*

- (a) the existing and likely future amenity of the area by considering if the tree is:*
  - (i) significant as a single specimen than as part of a group of trees;*
  - (ii) of historic or cultural significance;*
  - (iii) registered on Council's register of significant trees;*
  - (iv) prominent due to its height, size, position, or age;*
  - (v) endemic, rare, or endangered;*
  - (vi) provides a significant visual screen;*
  - (vii) part of an important wildlife habitat;*

Council's concerns regarding the proposed tree removal and tree retention have been outlined above under Clause 5.9 of BLEP 2015. The proposed development does not satisfy Part B11 of BDCP 2015 with respect to the significance of the trees and tree groups, the potential presence of endemic, rare and endangered species (including Shale-Gravel Transition Forest and other EECs), the visual value of the trees and associated impacts on wildlife habitats.

### Part B12 – Flood Risk Management

Part B12 of BDCP 2015 supplements BLEP 2015 by providing additional objectives and development controls to manage the development of flood liable land.

The site is located within the Georges River Catchment and is consequently subject to low, medium and high risk riverine flooding. The site is also located within the Kelso Creek Catchment and the Milperra Catchment, and is consequently subject to medium and high risk stormwater flooding.

Part B12 of BDCP 2015 contains criteria for determining applications, which includes specific controls for certain land use categories within each flood risk precinct. The proposed

development incorporates two separate land use categories, being 'subdivision' and 'recreation or non-urban uses'. These aspects of the development fall within different flood risk precincts, and therefore the proposed development is subject to several planning considerations and controls under Schedules 3 and 5, Part B12 of BDCP 2015.

The area of the site that is subject to the proposed residential subdivision is affected by low risk riverine flooding and medium risk stormwater flooding. The key planning considerations contained in Schedules 3 and 5, Part B12 of BDCP 2015 that are relevant to the assessment of this aspect of the development include (in summary):

- The consideration of flood impacts that may result from a significant loss of storage or conveyance; and
- The requirement for the applicant to demonstrate that the development will not increase flood effects elsewhere (due to a loss of flood storage, changes in flood levels/flows/velocities, and the cumulative impact of developments in the vicinity).

As stated previously in this report, Council's Catchment Management Planner determined that the extent and depth of fill proposed to the residential subdivision area is unacceptable, unreasonable and removes valuable flood storage from the stormwater catchment and riverine floodplains. It was also determined that a comprehensive Flood Impact Assessment is required.

The proposed development also incorporates a 1.38 hectare park to the north of the residential subdivision, which is defined as a 'recreation area'. The proposed park is in a location that is affected by high risk riverine flooding and high risk stormwater flooding. The key planning considerations contained in Schedules 3 and 5, Part B12 of BDCP 2015 that are relevant to the assessment of this aspect of the development include (in summary):

- The requirement for an Engineer's report to certify that the development will not increase flood effects elsewhere (e.g. loss of flood storage, changes in flood levels/velocities, and cumulative impacts).
- The consideration of evacuation requirements in the form of a report from a suitably qualified and experience person, where it is possible that the evacuation of persons might not be achieved within the effective warning time.
- The consideration of an evacuation strategy and proposal made for improving the evacuation arrangements to the site (e.g. access for pedestrians or vehicles to a publicly accessible location or refuge area above the probable maximum flood level).

The proposed park has not been detailed in the preliminary engineering design submitted with the development application, and the only information submitted in relation to the design of the park are the details shown on the concept landscape plan. As such, insufficient information has been submitted to Council to determine whether the proposed park, and adjacent northern access road, will result in any changes to existing natural ground levels and associated flood impacts.

The information submitted with the application has little to no regard for the abovementioned requirements. As such, it is considered that the proposed development

fails to address the key planning considerations and controls contained in Part B12 of BDCP 2015.

**Part B13 – Waste Management and Minimisation**

Section 2, Part B13 of BDCP 2015 applies to all development applications proposing demolition and construction, which includes earthworks and engineering works.

Clause 1.1, Section 2, Part B13 of BDCP 2015 requires development applications to be accompanied by a Waste Management Plan prepared in accordance with the Waste Management Guide for New Developments and the Bankstown Demolition and Construction Guidelines.

The development application was accompanied by an Environmental & Waste Management Plan, prepared by Linx Constructions Pty Ltd, dated 27 November 2017. The EWMP was referred to Council's Resource Recovery Officer for review and no issues were raised.

It is also noted that the Waste Operations Team was asked to confirm whether the proposed 10 metre wide carriageway within the residential subdivision is sufficient in width for access by a garbage truck with two-way traffic and cars parked on both sides of the road. Council's Coordinator Waste advised that the proposed carriageway width is acceptable.

The proposed development is therefore considered to be acceptable with respect to Part B13 of BDCP 2015.

**Planning agreements [section 4.15(1)(a)(iia)]**

As part of the Planning Proposal to rezone the subject site, Council entered into a voluntary planning agreement (VPA) with the applicant to ensure the completion of key infrastructure works and land dedication. The executed VPA includes the following works (in summary):

- Bank stabilisation works along the foreshore;
- Construction of connecting road network;
- Road infrastructure upgrades;
- Foreshore walkway embellishment works;
- Construction of pedestrian and cyclist crossings; and
- Provision of a riparian corridor along the foreshore.

As no development has commenced at this point, the works required pursuant to the voluntary planning agreement have yet to be undertaken.



Further to the above, Council's Strategic Planning Team reviewed the proposed development with respect to the terms of the executed VPA and identified the following potential conflicts/concerns:

- Impact of the proposed stormwater retention basin on the future 50m wide riparian corridor along the Georges River, as required by the VPA.
- Impact of the proposed park along Keys Parade and the Keys Parade alignment on the biodiversity corridor and Endangered Ecological Communities.
- Impact of the proposed internal road alignment with Raleigh Road on the future roundabout, as required by the VPA.

Based on the above, it is considered that insufficient information has been submitted with the application to demonstrate that the proposed development is not contrary to the terms of the executed VPA that applies to the subject site.

**The regulations [section 4.15(1)(a)(iv)]**

The subject application is inconsistent with Section 50(1) and Schedule 1, Part 1 of Environmental Planning & Assessment Regulation, 2000 as the development application does not contain sufficient information to indicate whether the development is likely to significantly affect threatened species, populations or ecological communities, or their habitats. Furthermore, the amended Statement of Environmental Effects submitted with the application does not consider all applicable environmental planning instruments and development control plans, and therefore does not include a comprehensive assessment of the likely environmental impacts of the development. This is despite numerous attempts by Council staff who have sought additional analysis. The amended Statement of Environmental Effects also does not propose appropriate steps to protect the environment or lessen harm on the environment.

**The likely impacts of the development [section 4.15(1)(b)]**

The planning proposal to rezone part of the subject site from RE2 Private Recreation to R2 Low Density Residential was endorsed by the Department of Planning and Environment on the basis that appropriate safeguards would be in place to protect the environmental qualities of the site through a series of site-specific requirements for future development. The safeguards are reflected in Clause 6.11 'Development on Riverlands Golf Course site' of BLEP 2015, which requires consideration of the surrounding road network, existing topography/landform and vegetation, and environmental constraints (such as flood risks, contamination and acid sulfate soils), amongst other requirements. Council's assessment of the application has identified several fundamental issues with the proposed development, which have been detailed throughout this report. Accordingly, the proposed development is likely to result in various adverse environmental, social and economic impacts on the locality.

**Suitability of the site [section 4.15(1)(c)]**

The intention of the former rezoning was to facilitate a residential subdivision and associated residential development within the R2 Low Density Residential zone. However, due to the environmentally sensitive nature of the site, it is critical that the residential subdivision be designed to adequately respond to the site constraints and achieve high quality urban design and built form outcomes that are consistent with the environmental characteristics and ecological values of the site. The development, as proposed, is not an acceptable response to the site or the applicable objectives and controls for development, and the site is therefore not considered to be suitable for the development that has been proposed.

**Submissions [section 4.15(1)(d)]**

The application was initially advertised and notified for a period of 21 days from 30 August 2017 to 19 September 2017. During this exhibition 32 submissions were received. The application was subsequently re-advertised and re-notified for a period of 21 days from 28 February 2018 to 20 March 2018. During this second exhibition period 42 submissions were received. The submissions raised objections relating to stormwater, flooding and drainage, tree removal, impacts on ecology and biodiversity, public open space and recreation areas, Aboriginal heritage, traffic and parking, impacts on existing residential properties, impacts on existing infrastructure, facilities and services, and the potential future development.

The primary points of objection have been grouped into issues below, along with comments from Council in relation to each group of issues.

**Objection: Stormwater, flooding and drainage**

- **Impacts of proposed fill and increase in impervious areas on natural water flows, stormwater drainage and flooding.**
- **Increase in flood risk for surrounding properties and impacts on evacuation during flood events.**
- **Proposed stormwater bio-retention basin.**

**Comment:**

Council's concerns regarding the proposed fill and associated impacts on the existing stormwater and riverine catchments, cumulative impacts on local flooding, and the location and function of the stormwater bio-retention basin have been discussed throughout this report. The information submitted with the application does not provide an acceptable justification for the proposed fill and associated modification to the existing landform. The application has also not been accompanied by a detailed Flood Impact Assessment to demonstrate that the proposed development will not result in any adverse impacts associated with flood risk and evacuation. The proposed development is not considered to be satisfactory with respect to these matters.

Objection: Tree removal

- **Loss of significant mature trees and vegetation.**
- **Loss of existing tree buffer areas/corridors between proposed residential subdivision and existing residential properties on Raleigh Road, Martin Crescent, Prescott Parade and Maygar Close.**
- **Impacts on lifestyle, amenity, character of the area, scenic value and outlook associated with proposed tree removal.**

## Comment:

Council's concerns regarding the proposed tree removal and associated impacts on the environment, amenity and character of the area have been discussed in this report. The information submitted with the application does not provide an acceptable justification for the proposed tree removal in the residential subdivision area, nor does it satisfactorily examine potential impacts of other aspects of the development on trees in the RE2 Private Recreation zone. The retention of trees in designated reserves and along property boundaries was considered during the assessment of the application. The amended proposal, which includes the retention of some of these trees in the rear of proposed residential lots however, based on further analysis, is not considered to be an acceptable solution as the trees will be adversely impacted by minor cut and fill. The proposed development is not considered to be satisfactory with respect to these matters.

Objection: Impacts on ecology and biodiversity

- **Impacts on Endangered Ecological Communities.**
- **Impacts on existing fauna due to loss of biodiversity value, habitats and hollow-bearing trees.**
- **Impacts on riparian corridors.**
- **Submitted reports and studies are dismissive of significant environmental issues.**

## Comment:

Council's concerns regarding the impacts of the proposed development on the ecological and biodiversity values of the site have been discussed in this report. The information submitted with the application does not satisfactorily examine potential impacts on Endangered Ecological Communities, riparian corridors, and fauna through the loss of habitats and hollow-bearing trees. Council does not agree with the arguments presented in certain reports and studies submitted with the application. The proposed development is not considered to be satisfactory with respect to these matters.

Objection: Public open space and recreation areas

- **Insufficient amount of parks and/or recreation areas within the proposed residential subdivision.**
- **Unacceptable distance between proposed park and residential subdivision.**
- **No public car parking area is provided in proximity to the proposed park.**

## Comment:

The site-specific controls contained in BLEP 2015 and BDCP 2015 do not require the provision of recreation areas within the proposed residential subdivision. However, it is acknowledged that the proposed recreation area is segregated from the residential subdivision and could be more appropriately located to meet the needs of the future residents preferably within the R2 zoned area in closer proximity to the proposed residential lots. The information submitted with the application does not satisfactorily examine the demand for parking associated with the proposed recreation area. Further information is required to address these matters.

Objection: Aboriginal heritage

- **Impacts on Aboriginal heritage relics.**
- **Impacts on culturally modified (scarred) trees.**

## Comment:

As discussed previously in this report, the applicant has not provided sufficient information to demonstrate that the proposed development will not disturb potential Aboriginal heritage relics. With respect to the presence of culturally modified (scarred) trees, the applicant has previously submitted a letter to Council from the Office of Environment and Heritage (dated 7 April 2017), which indicates that cultural heritage officers inspected trees on the subject site and found none to be of cultural origin.

Objection: Traffic and parking

- **Existing road network (in particular Henry Lawson Drive), infrastructure and intersections are unable to cater for an increase in vehicle demand.**
- **Cumulative impacts on local traffic, congestion, parking, cycle routes and road safety.**
- **Use of dedicated foreshore area by the general public will further increase vehicle movements and traffic impacts.**
- **Vehicle routes for trucks and machinery during construction works.**
- **Proposed road widths are narrow and are inconsistent with the surrounding road network.**

Comment

As mentioned previously in this report, the application was referred to the Roads and Maritime Services and Council's Traffic Engineer for assessment. The RMS granted concurrence on 23 May 2018. Council's Traffic Engineer raised concerns regarding the impact of the development on traffic at the intersection of Pozieres Avenue and Henry Lawson Drive (and the lack of proposed mitigation measures), and the function of the roundabout in Raleigh Road at Pozieres Avenue. Insufficient information has been submitted with the application to demonstrate that the development will not unreasonably impact on the efficiency and safety of the surrounding road network, and that the development will satisfactorily integrate with the surrounding access networks of Milperra. Approval of the application would be subject to conditions of consent requiring the submission of a Site, Pedestrian and Traffic Management Plan and Transportation Route Plan to Council prior to the issue of a Construction Certificate. The width of the proposed roads within the residential subdivision comply with Clause 6.3(f)(ii), Part A3 of BDCP 2015.

Objection: Impacts on existing residential properties

- **Concerns regarding the proximity between the proposed residential subdivision and the existing residential properties on Raleigh Road, Martin Crescent, Prescott Parade and Maygar Close.**
- **Impacts of construction noise and dust on surrounding residential properties.**
- **Impacts on existing boundary fencing during construction.**
- **Visual and acoustic amenity impacts on surrounding residential properties.**
- **Impacts on local crime.**
- **Impacts on the value of surrounding residential properties.**
- **Compensation required for adjoining property owners.**

Comment

The site-specific controls contained in BLEP 2015 and BDCP 2015 do not include any requirement for separation between the proposed residential lots and the existing residential lots that adjoin the subject site, however the retention and protection of trees is a consideration in the assessment of this matter. If the application was recommended for approval, Council would impose general conditions of consent relating to construction noise and dust, and existing boundary fencing. Potential visual and acoustic amenity impacts that may result from the proposed residential subdivision would primarily be assessed as part of the future development of each individual lot. There is no evidence to suggest that the proposed development will increase local crime or adversely impact the value of residential properties in the area.

Objection: Impacts on existing infrastructure, facilities and services

- **Local facilities and services (e.g. schools, libraries, hospitals, community facilities, public transport and shops) are unable to cater for an increase in demand.**
- **Cumulative impacts on sewer, water and electricity.**
- **Cumulative impacts on internet and phone reception.**

## Comment:

The potential impacts of the proposed development on existing infrastructure, facilities and services were considerations during the assessment of the planning proposal to partially rezone the subject site from RE2 Private Recreation to R2 Low Density Residential. The rezoning was endorsed by the Department of Planning and Environment, and it is therefore permissible for the R2 Low Density Residential zone to be developed for residential purposes. Council is unable to comment on the function and capacity of existing services in the locality as these are owned and managed by separate authorities. Similarly, issues associated with existing telecommunication facilities must be raised with the relevant service provider.

Objection: Future development

- **Permissible forms of development and associated density.**
- **Residential lots are capable of accommodating dual occupancy developments.**
- **Dual occupancy developments will result in further increases in population, and associated traffic and parking impacts.**

## Comment:

The permissible forms of development within the R2 Low Density Residential zone include (but are not limited to) dwelling houses, secondary dwellings, dual occupancies, multi-dwelling housing and boarding houses, subject to compliance with the applicable development standards and controls that apply to each form of development. The controls applying to the proposed residential subdivision are consistent with those that apply to the surrounding low density residential locality. The majority of the proposed residential lots are capable of accommodating an attached dual occupancy based on the typical site area and lot width. Any future development for the purpose of a dual occupancy would be subject to compliance with the car parking controls contained in BDCP 2015.

**The public interest [section 4.15(1)(e)]**

The public interest is best served by the consistent application of the requirements of the relevant environmental planning instruments and development controls, and by the consent authority ensuring that any adverse impacts associated with the development are mitigated or suitably addressed. The proposed development, and the information accompanying the application, does not satisfactorily respond to the environmental characteristics and constraints of the site. The application undermines the integrity of the site-specific controls

that have been implemented by the Department of Planning and Environment and Council for development on the Riverlands Golf Course site, as well as the various reports and studies that informed the planning proposal to rezone the site to facilitate residential development. The proposal does not present as a contemporary residential subdivision that provides high amenity outcomes for future occupants, does not integrate seamlessly with the surrounding locality and would detrimentally impact the environmental and aesthetical values of the current site, in this regard, it is considered the proposed development would not be in the public interest.

## CONCLUSION

The Development Application has been assessed against *State Environmental Planning Policy (Infrastructure) 2007*, *State Environmental Planning Policy 55 – Remediation of Land*, *State Environmental Planning Policy 19 – Bushland in Urban Areas*, *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (deemed SEPP)*, *Bankstown Local Environmental Plan 2015*, *Bankstown Development Control Plan 2015*, (draft) *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and (draft) *State Environmental Planning Policy (Coastal Management) 2018*.

The proposed development is not considered to be a satisfactory response to the environmental characteristics of the site and the applicable development controls. Council's assessment has identified extensive issues associated with the proposed development and the information accompanying the application. The issues identified and discussed throughout this report independently are important and each have a detrimental impact on the site and locality however cumulatively demonstrate that the proposal cannot be supported in its current form. The issues are also of a nature that would require substantial amendments to the application and the preparation of further detailed studies and reports. On this basis, the application is recommended for refusal.



**REASONS FOR REFUSAL**

1. Insufficient information has been submitted with the application to demonstrate that the provisions contained within Clause 7(1) of State Environmental Planning Policy No. 55 – Remediation of Land are satisfied. The Detailed Site Investigation report does not relate to the full scope of the development site and the proposed works. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*].
2. Insufficient information has been submitted with the application to demonstrate that the provisions contained within Clause 9 of State Environmental Planning Policy No. 19 – Bushland in Urban Areas are satisfied. The development application does not address potential effects of the proposed earthworks and construction works on adjoining bushland zoned for public open space and associated Endangered Ecological Communities. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*].
3. Insufficient information has been submitted with the application to demonstrate that the proposed development satisfies the aims and objectives for development, planning principles and planning control table contained in Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (deemed SEPP). [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*].
4. The proposed development and the information submitted with the application does not demonstrate compliance with Clauses 1.2, 2.3, 5.9, 5.10, 6.1, 6.2, 6.3, 6.4 and 6.4A of Bankstown Local Environmental Plan 2015 with respect to the aims of the Plan, zone objectives, tree preservation, Aboriginal heritage conservation, acid sulfate soils, earthworks, flood planning, biodiversity, and riparian land and watercourses. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*].
5. The proposed development and the information submitted with the application does not demonstrate compliance with the site-specific provisions for development on the Riverlands Golf Course site as contained in Clause 6.11 of Bankstown Local Environmental Plan 2015. In this regard, the proposed development does not satisfy the objectives and corresponding provisions relating to the efficiency, safety and integration of the road network, the protection and conservation of cultural heritage, ecological and biodiversity values of the site, and integration of the development with the natural features and constraints of the site. [Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979*].
6. Insufficient information has been submitted with the application to demonstrate that the proposed development will satisfactorily address applicable draft environmental planning instruments, that have since been

made, including State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and State Environmental Planning Policy (Coastal Management) 2018. [Pursuant to Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act, 1979*].

7. The proposed development and the information submitted with the application does not demonstrate compliance with the site-specific controls for development on the Riverlands Golf Course site as contained in Section 6, Part A3 of Bankstown Development Control Plan 2015. In this regard, the subdivision and associated development is not considered to achieve high quality urban design and built form outcomes that are consistent with the environmental characteristics and ecological values of the site. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*].
8. The proposed development and the information submitted with the application does not demonstrate compliance with the applicable controls contained in Part B5, Part B11 and Part B12 of Bankstown Development Control Plan 2015 with respect to parking, tree preservation and flood risk management. [Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act, 1979*].
9. Insufficient information has been submitted with the application to demonstrate that the proposed development will not be contrary to the terms of the executed voluntary planning agreement that applies to the site. [Pursuant to Section 4.15(1)(a)(iia) of the *Environmental Planning and Assessment Act, 1979*].
10. The application is contrary to the regulations as it does not contain sufficient information to indicate the likely impacts of the development on threatened species, populations, ecological communities or their habitats, and the amended Statement of Environmental Effects does not include a comprehensive assessment of the likely environmental impacts of the proposed development. [Pursuant to Section 50(1) and Schedule 1, Part 1 of the *Environmental Planning and Assessment Regulation, 2000* and Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act, 1979*].
11. For the above reasons, the proposed development is likely to result in adverse environmental, social and economic impacts on the locality. [Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act, 1979*].
12. For the above reasons, the site is not considered to be suitable for the proposed development. [Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act, 1979*].
13. The proposed development is not considered to be acceptable with respect to the issues raised in public submissions, in particular the concerns relating to

adverse and unjustified environmental impacts. [Pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act, 1979*].

14. For the above reasons, the proposed development is not considered to be in the public interest. [Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act, 1979*].



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## Canterbury Bankstown Local Planning Panel - 4 June 2018

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<b>ITEM 3</b>	<b>31-33 Isabel Street, Belmore</b>
	<b>Use of existing gymnasium for functions/social events associated with the Greek Orthodox Parish in addition to the current usage as gymnasium for the All Saints School</b>
<b>FILE</b>	<b>DA-382/2015– Roselands</b>
<b>ZONING</b>	<b>R3 Medium Density Residential</b>
<b>DATE OF LODGEMENT</b>	<b>27 August 2015</b>
<b>APPLICANT</b>	<b>Greek Orthodox Parish and Community of Belmore</b>
<b>OWNERS</b>	<b>Greek Orthodox Parish and Community of Belmore</b>
<b>ESTIMATED VALUE</b>	<b>Nil</b>
<b>AUTHOR</b>	<b>Planning</b>

### **SUMMARY REPORT**

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The development application seeks consent for the use of the existing All Saints School gymnasium by the All Saints Greek Orthodox Parish (Church) for the additional purposes of functions associated with Church activities at the property known as 31-33 Isabel Street, Belmore (Lot 110 of DP 1143322).

The proposal seeks capacity for up to 250 persons including five staff, with events to be held in the gymnasium generally outside of school hours. The proposal entails functions associated with Church celebrations including, but not limited to, Palm Sunday celebrations, Mother's and Father's Day dinner and New Years Eve Church celebrations.

The proposed development does not include any alteration to the building nor seek any physical works.

The application was originally advertised during the period 24 February 2016 to 23 March 2016 pursuant to Part 7 of Canterbury Development Control Plan 2012 (CDCP 2012). During

this period a total of 14 individual submissions objecting to the proposal were received, as well as one petition of objection containing 253 signatures from 152 households. Concerns raised include, however are not limited to, the loss of amenity as a result of acoustic impacts as well as traffic and parking impacts.

During the course of the assessment process, the proposed maximum number of patrons increased from 230 to 250. Given the revised proposal included increasing the maximum number of patrons to 250, the application was readvertised during the period 13 March 2018 to 3 April 2018. A total of eight submissions from five households and one petition comprising 300 signatures from 163 households were received. Concerns raised include, but are not limited to, acoustic impacts, parking and traffic impacts, loitering, waste, odour control, number of patrons and location of notification documents.

The proposal has been referred to Council's Building Surveyor, Team Leader – Traffic and Transportation, Resource Recovery Officer and Environmental Health Officer, each of whom responded in support of the proposal, subject to the imposition of conditions of consent.

The application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 and all relevant development control plans, codes and policies. Subject to the imposition of appropriate conditions of consent to mitigate and manage environmental impacts, the proposal is capable of operating at the site without significant adverse amenity impacts to surrounding properties.

It is recommended that the application be approved, subject of the imposition of conditions, including a twelve month trial period.

## **POLICY IMPACT**

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This matter has no direct policy impacts.

## **FINANCIAL IMPACT**

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The matter has no direct financial implication.

## **RECOMMENDATION**

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It is recommended that the application be approved subject to conditions of consent, including a twelve month trial period.

## **ATTACHMENTS**

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- A. Section 4.15 Assessment Report
- B. Conditions of Consent

## **DA-382/2015 ASSESSMENT REPORT**

### **BACKGROUND**

A Complying Development Certificate (CDC) 09/225/02 was approved by Steve Watson and Partners on 29 April 2010 relating to the construction of the school gymnasium at the site. The building, being the subject of this application, has been fully constructed.

Since 2010, a number of complaints have been received by Council in regards to alleged unauthorised use of the existing gymnasium building for other purposes. These matters were investigated by Council, as required. In 2014, a number of complaints were received that the gymnasium was being utilised, unlawfully, for Church purposes. Multiple discussions occurred between representatives of the Church and Council Officers regarding this matter during 2014 and early 2015. The Church was advised in writing that the use of the gymnasium for Church purposes required development consent and therefore it was recommended that a Development Application be submitted to Council for consideration of the additional use of the gymnasium for Church purposes.

The application was submitted on 27 August 2015. Since the lodgement of the application, a number of complaints have been received by Council regarding the use of the gymnasium for Church functions, despite approval not being provided. These complaints have been investigated by Council's Compliance Department, and subsequent parking infringements, written warnings as well as a notice of intention to give Order was issued.

Over the course of the assessment of the application, the number of patrons (including staff) has changed from 260, to 230, to the now proposed 250 patrons. A detailed breakdown of the background of the assessment is provided below.

On 21 October 2015, Council wrote to the Applicant advising that the application was deficient of information to allow Council Officers to undertake a preliminary assessment of the application. The requested information was provided by the Applicant on 1 February 2016. The application was subsequently publically advertised from 24 February 2016 until 23 March 2016.

On 1 April 2016, upon completing a preliminary assessment of the application (including external peer review of the acoustic report submitted), Council wrote to the Applicant advising of additional information required to facilitate Council's assessment. The matters raised included inter alia the requirement for a revised acoustic report, traffic report, operational management plan, owners consent for the proposed use of 13-17 Cecelia Street, and use of the site. Further information was provided by the Applicant on 16 June 2016. However, it should be noted that the use of 13-17 Cecelia Street does not form part of this development application.

Upon a review of the additional information submitted (including external peer review of the traffic report submitted), a further additional information request letter was issued by Council on 12 January 2017. The matters raised primarily related to use and acoustic impacts.



Further information to address the matters raised by Council was received 29 August 2017. A further letter was issued by Council on 30 October 2017 noting a number of inconsistencies provided within the documentation submitted 29 August 2017.

Further information to address Council's concerns was received 14 December 2017. Council wrote to the Applicant on 17 January 2018 outlining concerns regarding the incomplete and inconsistent nature of the information submitted. Information to address these matters was submitted by the applicant on 19 February 2018. The information submitted identified that the maximum number of patrons proposed is 250, including staff. The application was subsequently readvertised until 3 April 2018 and forms the basis of this report.

### **SITE ANALYSIS**

The site is located at 31-33 Isabel Street, Belmore and is legally described as Lot 100 in DP 1143322. The site is zoned R3 – Medium Density Residential with a total site area of 2,493sqm (by Deposited Plan) and currently occupied by both the All Saints Greek Orthodox Church, located on the southern portion of the site, as well as a multi-use gymnasium associated with the All Saints Grammar School, located on the northern portion off the site (on the opposite side of Cecilia Street).

The gymnasium building has a frontage of approximately 31m to Etela Street to the north, whilst the Church building holds a frontage of approximately 27m to, and is generally orientated towards, Isabel Street to the south. The site also holds a frontage of approximately 86m to, with primary access to gymnasium obtained from, Cecilia Street to the east. The site holds service vehicle access to the Church building only, located centrally within Cecilia Street at the rear of the Church building.

The site is located opposite to, and generally associated with, the All Saints Grammar School, located across Cecilia Street to the east at 26-30 Etela Street, Belmore. The school comprises one large building containing all classrooms, offices and associated facilities as well as an outdoor courtyard and is also bound by Etela Street to the north, Isabel Street to the south and Cecilia Street to the west.

Development immediately surrounding the site to the north, south, east and west consists predominantly of established low density single detached dwellings interspaced with dual occupancy developments, consistent with the R3 – Medium Density Residential zone. As shown within Figure 2 below, land to the west of the site, on the western side of Sudbury Street, is zoned R4 – High Density. Development within this zoning consists of a variety of residential housing types including detached dwellings, dual occupancy developments and residential flat buildings. The site is located approximately 300m from the Belmore Centre and 350m from the Belmore Railway Station to the south west of the site.

Parking in the surrounding street network is generally unrestricted, however the immediate area surrounding the site is subject to parking restrictions (5 minute pick up and drop off only) during peak school times (7am – 9:30am and 2:30am-6pm on school days). Such restrictions are however limited to areas immediately adjacent to the school

(and the subject gymnasium/hall building) and do not extend beyond the boundaries of these properties. It is noted that given the long standing established residential nature of the locality that the majority of dwellings benefit from private off street parking.



Figure 1: Aerial Location Map



Figure 2: Zoning Map



Figure 3: All Saints Gymnasium, view north-west from Cecelia Street

### **PROPOSAL**

The Applicant seeks the use of the existing gymnasium building for functions/social events associated with the All Saints Greek Orthodox Church in addition to the current usage as a gymnasium for the All Saints School.

#### **Nature and Number of Events**

The documentation submitted indicates that the proposed use entails functions associated with the Church, including the following:

- Palm Sunday luncheon;
- Mother's Day Dinner;
- All Saints Weekend luncheons and dinners;
- Father's Day Dinner;
- National Greek Independence Day Dinner;
- New Year's Eve Dinner;
- In addition to the above, a maximum of six additional Church functions (including a maximum of one fundraising event) would occur each calendar year. The additional Church functions will be limited to wakes, religious festivals and significant Church events.

In light of the above, the gymnasium will be utilised for Church proposes a maximum of twelve times a calendar year.

The proposed development is for the use of the school gymnasium for Church functions only and will not be used or leased to private or any other commercial interests or any non-church related activities. The gymnasium will not be used concurrently with the Church nor will it be used concurrently with functions associated with the school.

### Proposed Hours of Operation

The proposed hours of operation of each of the proposed functions is as follows:

- Palm Sunday luncheon: Sunday 11am – 5pm.
- Mother's Day Dinner: Saturday 7pm – 12midnight.
- All Saints Weekend: Saturday and Sunday: 11am-5pm.
- Father's Day Dinner: Saturday 7pm – 12midnight.
- National Greek Independence Day Dinner: 11am-5pm (one day in October).
- New Year's Eve Dinner: 31 December 7pm-1am.
- Other Church functions (maximum of 6 functions): 9am-5pm for day events and 7pm to 12 midnight for night time events.

No Sunday evening functions are proposed.

The abovementioned hours of operation incorporate setting up and cleaning of the premises. No staff or patrons will be in the gymnasium outside of the hours proposed.

### Proposed Maximum Patronage and Staff Numbers

The documentation submitted indicates that the proposal will provide for a maximum of 250 patrons including the maximum five staff at any one time. The staff will comprise cooks/chefs, wait-staff and event management personnel.

### Amplified Music

The Plan of Management and Acoustic Report submitted outlined that there may be amplified music associated with the proposed use, both the PA system within the building as well as music and DJ.

### No Building Alterations

The proposed development does not include nor require any building alteration or upgrade. The proposal seeks use of existing facilities only and does not include any physical works.

### No Change to Existing School Gymnasium Activities

The proposed development does not seek any change to the existing primary use of the gymnasium for activities associated with the All Saints Grammar School. For clarity, the gymnasium will not be used for school use and church use simultaneously. The proposed development would not preclude the possibility of additional uses to occur at the site under the existing primary school function (e.g fete, fair or any other community event).

## **STATUTORY CONSIDERATIONS**

When determining this application, the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979 must be considered. In this regard, the following environmental planning instruments, development control plans (DCPs), codes and policies are relevant:

- (a) State Environmental Planning Policy 55 – Remediation of Land (SEPP 55).
- (b) Canterbury Local Environmental Plan 2012 (CLEP 2012).
- (c) Canterbury Development Control Plan 2012 (CDCP 2012).



(d) Canterbury Development Contributions Plan 2013.

### **SECTION 4.15 ASSESSMENT**

The proposed development has been assessed pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979.

#### **Environmental planning instruments [Section 4.15(1)(a)(i)]**

#### **State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)**

State Environmental Planning Policy 55 – Remediation of Land aims to promote the remediation of contaminated land for the purposes of reducing risk to human health or any other aspect of the environment. Clause 7 of SEPP 55 states that a consent authority must not consent to the carrying out of development unless it has considered whether the land is contaminated. If the land is contaminated, it must ascertain whether it is suitable in its contaminated state for the proposed use or whether remediation of the land is required.

The previous and existing land uses on the site are not identified as development that may give rise to contamination. Given that the site has been used for the purposes of a place of worship and education establishment, and a similar use will continue on the site, the site is considered to be consistent with State Environmental Planning Policy 55 – Remediation of Land.

#### **Canterbury Local Environmental Plan 2012 (CLEP 2012)**

This site is zoned R3 Medium Density Residential under Canterbury LEP 2012. The controls applicable to this application are:

Standard	Requirement	Proposal	Complies
<b>Zoning</b>	R3 Medium Density Residential	The proposed use is defined as a Place of Public Worship. Places of Public Worship are permissible with the R3 zone.	Yes – see comment below
<b>Building Height</b>	8.5m	No change	N/A
<b>Floor Space Ratio</b>	0.5:1	No change	N/A
<b>Heritage Conservation</b>	Clause 5.10(5) specifies that Council may request a heritage management document to determine any potential impacts on heritage items.	The site is located within the vicinity of three heritage items at 35-39 Isabel Street (items 15, 16 and 17 – described as federation inter war houses). Given the application does not consist of any physical building works, it will not result in any adverse impact on the heritage significance of these items. No heritage management document is required.	Yes

### Permissibility

The site is zoned R3 – Medium Density Residential pursuant to CLEP 2012. The proposal seeks the use of the existing gymnasium building for functions/social events associated with the All Saints Greek Orthodox Church in addition to the current usage as a gymnasium for the All Saints School. The proposed use will be for Church functions only and will not be used or leased to private or any other commercial interests or for any non-church related activities. The proposed functions associated with the Church, include but are not limited to, wakes, social functions associated with Church celebrations such as feast day celebrations, Mother's and Father's Day lunches and New Year's Eve.

The gymnasium will solely be utilised for social events associated with the Greek Orthodox Parish located on the site. This use is consistent with the 'Place of Public Worship' definition specified within CLEP 2012. A 'place of public worship' is defined within CLEP 2012 as follows:

***place of public worship** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.*

A place of public worship is permitted in the R3 – Medium Density Residential Zone with development consent.

### Zone Objectives

In accordance with Clause 2.3(2), the consent authority must have regard to the objectives for development in a zone when determining a development application.

The objectives of the R3 – Medium Density Residential Zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal seeks the use of the site for purposes associated with the All Saints Greek Orthodox Church, being a long standing non-residential use at the site. In this regard the proposed development is not applicable to a number of objectives outlined above.

Notwithstanding, the proposal will provide for the utilisation of the existing school gymnasium primarily outside of school hours, promoting and coordinating the orderly and economic use of the land, where the gymnasium would otherwise remain vacant and underutilised. In this regard, the proposal will contribute to the provisions of facilities and services to meet the needs of residents, consistent with the applicable zone objective outlined above. Although the proposed Church use is not a "day to day need" of residents, it is an important community resource which is permissible in the zone.

**Proposed Environmental Planning Instruments [Section 4.15(1)(a)(iii)]**

There are no proposed environmental planning instruments that impact on the proposed development.

**Development Control Plans [Section 4.15(1)(a)(iii)]****Canterbury Development Control Plan 2012 (CDCP 2012)**

Given the nature of the proposal, a number of controls outlined within CDCP 2012 do not apply to the application. An assessment of the proposal against the relevant sections of CDCP 2012 is undertaken below:

**5.8 – Non-Residential Development in Residential Zones**

Part 5.8 of CDCP 2012 specifies the following:

- i. Non-residential development in a residential zone will be assessed for its impact on residential amenity.*
- ii. Non-residential development in a residential zone will only be acceptable where adverse impacts on the amenity of residents in the immediate area (for example through traffic generation, parking demand, noise or any other form of pollution that is incompatible with residential uses) are avoided or minimised.*
- iii. Council may impose conditions of consent to minimise any impact on residential amenity including limited the scale of the development, restricting hours of operation or the like.*

As detailed within the submissions received, there is tension with the surrounding residential properties. The tension has been caused because of the way the alleged unauthorised use has been poorly managed, rather than a natural and unavoidable tension. Primarily, the key issues expressed by the surrounding residents relate to noise and traffic and parking impacts. These matters are discussed below.

In respect to potential acoustic impacts, the proposed development includes provision for up to 250 patrons (including staff) for each event held at the site. The documentation submitted outlines that there may be amplified music associated with the proposed use, both the PA system within the building as well as music and DJ.

An Acoustic Assessment prepared by Inhabit Group (dated August 2015) accompanied the application. The assessment includes estimated noise emission levels at closest affected receiver, being 36 Etela Street (adjoining the site to the west). An addendum Acoustic Statement prepared by Inhabit Group (dated 30 January 2018) was submitted to address a number of matters raised by Council's Environmental Health Officer. Such matters include, but are not limited to, description of events along with confirmation of maximum patron numbers, details of logger location, Rating Background Level (RBLs) used for determining criteria requiring review and revision, construction materials of the gymnasium, location and consideration of services (i.e air conditioning), and potential for sleep disturbance due to noise levels associated with patrons outside and departing the venue.



Overall, the acoustic assessment considers the likely noise impacts of the proposed development (including number of patrons, music etc) on the nearest residential receivers. The reports conclude that the estimated noise emissions at the closest affected receiver will comply with the relevant noise criteria with the exception of the New Year's Eve event between midnight and the proposed 1am closure. In this circumstance, the report states *"the estimated noise level at 36 Etela Street, Belmore boundary may exceed the NSW Office of Liquor, Gaming and Racing (OLGR) requirements. Therefore it is recommended that noise levels within the facility be reduced to 85dB(A) after midnight either by natural means or by a time limited on the sound reinforcement system"*. Based on this conclusion, it is recommended that the sound reinforcement system be switched off at 12midnight to ensure compliance with the relevant noise criterion is achieved and subsequently, any adverse amenity impact on nearby residential properties is minimised.

Furthermore, the report demonstrates that the proposal is capable of operation within the maximum acoustic disturbance levels, subject to adherence with operating parameters and procedures contained within the acoustic report, and submitted Plan of Management. As detailed below within this report, Council's Environmental Health Officer has recommended more stringent operational parameters than that specified within the acoustic report submitted. Therefore, the recommendations of the acoustic report have not been included as conditions of consent to avoid inconsistencies. Accordingly, it is recommended that all operational parameters and procedures outlined within the Plan of Management are imposed as conditions of consent to provide clarity to the scope of operations at the site.

The acoustic documentation submitted was also referred to Council's Environmental Health Officer. It is noted that Council's Environmental Health Officer, within their final referral comments provided on 7 March 2018, raised no concern regarding the proposal, subject to conditions of consent. The recommended conditions of consent include but are not limited to, restricting maximum noise levels to be emitted from the premises and enforcement of noise mitigation measures. The conditions outlined within the referral comments are recommended to be included in any determination, should the application be supported.

It is imperative to note that the gymnasium will not be used simultaneously with the school or the Church so the noise levels considered within the report reflect the proposed use of the site. Based on the information submitted with the development application, it is considered that the proposal will not result in any substantial adverse impacts, subject to compliance with the conditions of consent. However, it is acknowledged that if the development is not carried out directly in accordance with the recommended conditions of consent, there is the likelihood of adverse impacts to adjoining residents. Accordingly, and given the level of concern raised by adjoining properties regarding the proposed use, it is recommended that consent be granted on the basis of a twelve month trial period. This will enable the Applicant to demonstrate that it can comply with the conditions of consent and subsequently, potential impacts on neighbouring properties are minimised.

#### 6.1 – Access and Mobility

The application does not propose any physical works to the existing building. Access to the building will be as per existing. Subsequently, no further assessment against the provision of Part 6.1 of CDCP 2012 is required. Furthermore, the application was referred

to Council's Building Surveyor who raised no objection to the development.

#### 6.8 – Vehicle Access and Parking

The aims of Part 6.8 of CDCP 2012 seek to ensure that development provides for adequate off-street car parking and access arrangements dependent on building type and to minimise overflow parking and other traffic impacts in residential streets and neighbours.

The existing gymnasium was approved and constructed as part of a Complying Development Certificate. No parking was allocated to the approved gymnasium use.

Based on a review of Council's records, the Church was approved by the former Canterbury City Council on 10 June 1968 (DA-68/2201) subject to the following conditions:

1. *Provision being made by the Church for the off-street parking of parishioners' vehicles to comply with the requirements of Council's off-street parking code.*
2. *The submission of satisfactory detailed plans and specification complying with the requirements of Ordinance 71 and the Local Government Act.*  
*It is pointed out that car parking provisions are to be made at 13 Isobel Street for the parking of approximately 27 vehicles.*

There is no record on Council's file illustrating that the parking had been provided as required. Furthermore, it is noted that 13 Isobel Street is a residential dwelling. In light of this, no parking is provided onsite for the existing Church use.

To determine the parking and traffic impacts of the proposed development, a Traffic and Parking Assessment Report with survey of similar developments is required as specified within Part B1 of CDCP 2012.

A Traffic and Parking Assessment report prepared by TEF Consulting dated 29 June 2015 accompanied the application. An addendum to this report, also prepared by TEF Consulting dated 6 December 2017 was submitted to Council to address matters raised by Council during the assessment period. The traffic report included a traffic and parking survey undertaken at the site, for the existing 230 patrons that currently attend the Church.

Both reports were referred to Council's Team Leader – Traffic and Transportation for comment. In summary, the report and Council's assessment concludes the following:

- The Church currently caters for a maximum of 230 patrons with no on-site parking provided. Therefore, the Church use currently relies on on-street car parking to service the existing number of worshippers.
- The proposal seeks consent for a maximum of 250 patrons (including staff) to attend the site (additional 20 patrons). For the events proposed, the 250 patrons will be located within the gymnasium instead of the Church.
- The original Traffic and Parking Assessment report dated 29 June 2015 concluded that currently, when 230 patrons attended the site, a total demand of 90 (plus or minus 20) on-street car parking spaces was generated.

- The additional 20 patrons (max of 250 patrons including staff), would generate a need for a further 8 (plus or minus 2) on-street car parking spaces. This results in a total maximum generation of 120 on-street car parking spaces.
- The spare on-street car parking capacity within the surrounding road network is considered sufficient to accommodate the additional six to ten car parking spaces required to cater for maximum 250 patrons on site. Furthermore, based on Council's site visits and survey of the area, extending approximately 200m from the site, included within the survey area map (referred to as Figure 4 in the Traffic and Parking Assessment report prepared by TEF Consulting dated 29 June 2015 – see insert below), all properties comprise their own vehicular access from the respective street with the exception of three properties in St Clair Street, one property in Etela and Cecelia Streets as well as three properties in Adelaide and Hall Streets. This equates to approximately 96% of the surrounding properties within the survey area comprising their own vehicular access. This observation, supports the findings of the traffic and parking assessment, in that the majority of the surrounding residential properties do not rely on on-street parking for their benefit. Therefore, the surrounding streets are likely to have capacity to cater for the on-street parking generated by the proposal, as concluded within the traffic and parking assessment.
- The number of additional trips resulting from the additional six to ten cars is low when distributed on the road network. The report concludes that the additional traffic generation would constitute as an addition of one car per hour per turning movement at the nearest intersections, given the span of the on-street parking area coupled with the number of subsequent intersections. On this basis, it was concluded that the additional traffic generation would be negligible.
- A Church function will not occur simultaneously with a school function. The gymnasium and Church are not to be used concurrently for Church purposes. As outlined earlier within this report, this will be enforced via condition of consent to ensure potential traffic and parking impacts are not exacerbated.
- The proposal generates a requirement for 12.5(13) bicycle spaces. This requirement can be conditioned, should the application be supported.



**Figure 4: Insert of the on-street parking survey included as Figure 4 within the Traffic and Parking Assessment Report submitted.**

In addition to the above, the addendum dated 6 December 2017 also calculates car parking generation through considering the parking rate of one space per five people (accommodation capacity) for first 100 and then one space per two thereafter outlined as a guide within CDCP 2012. This results in a generation rate of 70 spaces for the proposed 250 patron capacity. The report outlines that in addition to the reliance of on-street parking, the 13 parking spaces provided on the school ground at 13-17 Cecelia Street can be relied upon, which will reduce on-street demand. However, owner's consent has not been provided for use of the site at 13-17 Cecelia Street. Furthermore, the application does not detail how the 13 parking spaces on the school grounds will be managed and utilised during the proposed Church events nor does this application extend to the school site located at 13-17 Cecelia Street. Therefore this option does not form part of Council's consideration. As discussed above, Council relies upon the traffic generation data provided as part of the original traffic and parking assessment report given this data provides a better representation of what occurs at the site from a traffic and parking view.

In light of the above, the application can be supported from a Traffic and Parking perspective. However, given the history of the site and number of complaints around unauthorised use, it is considered that approval be granted subject to a twelve months trial period to provide the Applicant the opportunity to demonstrate compliance with the conditions of consent and that subsequently, the site can operate with minimal impact on the surrounding road network. Accordingly, the following conditions of consent pertinent to traffic matters are recommended:

- A further traffic and parking assessment be undertaken by a suitably qualified traffic engineer during the twelve month trial period to provide an updated traffic and parking assessment that reflects the approved use of the site. The data relied upon as part of this assessment is to be from a 250 patron event held at the gymnasium

on at least one of the dates approved. The updated report is to be submitted as part of any future application seeking continued use of the site to demonstrate whether the local road network can cater for the use, as proposed.

- Three RMS accredited traffic wardens are to attend the site on the event days approved by this consent. It is recommended that one warden count, manage and cease entry when capacity has been reached.
- Each traffic warden is recommended to attend 30 minutes prior to and ending of the Church function. It is recommended that two wardens patrol the streets considered within Figure 4 of the Traffic and Parking impact assessment for illegal parking. These wardens must record the number plates of any vehicles parked illegally and prior to the commencement of the functions, announce number plates and require the owner to park elsewhere.
- A report be provided to Council each month detailing the number of illegal parking incidents or any other parking and traffic issues relating to the use of the gymnasium for the nominated Church functions.
- A revised Plan of Management that reflects the above is to be submitted to Council prior to the commencement of operation of the site.

Subject to compliance with the recommended conditions of consent, the proposal is not considered to result in a level of traffic and parking impacts that cannot be suitably managed within the current road network.

#### 6.9 – Waste Management

Council's Waste Contracts Coordinator reviewed the application and raised no objection to the proposal given it will not greatly affect the existing waste management operations.

#### Development Contributions Plans

Canterbury Development Contributions Plan 2013 applies to the site. However given the proposal does not comprise any physical works, it does not generate any payable contributions.

#### **Planning Agreements [section 4.15(1)(a)(iii)]**

There are no planning agreements applicable to the proposed development.

#### **The Regulations [section 4.15(1)(a)(iv)]**

The proposed development is consistent with the relevant provisions of the Environmental Planning and Assessment Regulation, 2000.

#### **Any Coastal Zone Management Plan [section 4.15(1)(a)(v)]**

There is no coastal zone management plan that applies to the subject site.

#### **The Likely Impacts of the Development [section 4.15(1)(b)]**

The likely impacts of the proposal have primarily been discussed, where appropriate, within the body of this report. In light of the assessment against the relevant

development controls, the proposed development is not likely to result in any unreasonable adverse environmental, social or economic impacts on the locality.

Likely impacts, in addition to those discussed within the body of this report, are discussed below:

#### Visual Privacy

The proposed use is to be wholly contained within the existing school gymnasium building which does not hold any opportunity for direct lines of sight nor overlooking and the proposal is not anticipated to present any visual privacy impact to surrounding properties from within this building.

Furthermore, the proposal does not comprise any physical works to the existing gymnasium.

#### Impact on the Public Domain

The proposed use is to be wholly contained within the existing school gymnasium building. However there will be the movement of persons between the school gymnasium and patrons' parked vehicles which will result in some disturbance.

On this basis, it is recommended that should the application be supported, a condition be imposed to ensure signs are appropriately located within the premises advising the congregation of the proximity of nearby residences and seeking quiet and orderly entry and departure from the premises. The Management must ensure that supervisors give appropriate directions to, and take reasonable steps to, control noisy behaviour of persons entering and leaving.

Provided the recommended conditions of consent are complied with, it is considered that the impact of the proposed development on the locality will be acceptable.

#### Building and Fire Services

The application was referred to Council's Building Surveyor and Fire Safety Officer who raised no objection to the proposal, subject to conditions of consent.

#### **Suitability of the Site [section 4.15(1)(c)]**

The site is considered to be suitable for the proposed development, in that the proposal is for a Place of Worship which is permissible in the zone, subject to conditions. The proposed development does not result in changes to the building and as such the existing building remains appropriate for the site.

The submitted information, including Plan of Management, Acoustic Survey and Transport and Parking Assessment, have shown that the proposed increase in number of patrons can be accommodated within the site in an organised and functional manner which will not detrimentally impact on the adjoining and neighbouring residences.

On balance, the ongoing matters regarding the history of the site are not considered to outweigh the planning merits of the subject application as demonstrated.



However, the proponent is required to demonstrate that the increased number of patrons can be suitably controlled to avoid a detrimental impact on residential amenity. Given the history of unauthorised use at the site and the impacts noted in submissions received, it is not appropriate at this point to provide a permanent consent to the use of the gymnasium for Church purposes. On this basis, it is recommended that approval be granted on a twelve months trial period basis.

**Submissions [section 4.15(1)(d)]**

The application was originally advertised during the period 24 February 2016 to 23 March 2016 pursuant to Part 7 of Canterbury Development Control Plan 2012 (CDCP 2012). During this period a total of 14 individual submissions objecting to the proposal were received, as well as one petition of objection containing 253 signatures from 152 households.

The application was readvertised during the period 13 March 2018 to 3 April 2018. A total of eight submissions from five households and one petition comprising 300 signatures from 163 households were received.

The issues raised in those submissions have been summarised as follows:

- **Loss of Acoustic Amenity to residential properties.**

**Comment**

An acoustic assessment prepared by Inhabit Group was submitted as part of the application. The findings of the assessment concluded that the estimated noise emissions at the closest residential receiver will comply with the relevant noise criteria which the exception of the New Years Eve event between midnight and the 1am closure. The report subsequently recommended that noise levels within the facility be reduced to 85dB(A) after midnight either by natural means or by a time limit on the sound reinforcement system. Based on this conclusion, it is recommended that the sound reinforcement system be switched off at 12midnight to ensure compliance with the relevant noise criterion is achieved and subsequently, any adverse amenity impact on nearby residential properties is minimised.

Furthermore, the acoustic assessment submitted was referred to Council's Environmental Health Officer who raised no concern regarding the proposal, subject to conditions of consent. The recommended conditions of consent include but are not limited to, restricting maximum noise levels to be emitted from the premises and enforcement of noise mitigation measures. The conditions outlined within the referral comments are recommended to be included in any determination, should the application be supported. On this basis, the proposal will not result in any significant adverse acoustic impacts on nearby residential properties.



- **Reduced parking availability and increase in traffic generation.**

Comment

A traffic and parking assessment report was submitted as part of the development application and was referred to Council's Team Leader – Traffic and Transportation for review. Based on Council's assessment, it was determined that sufficient on-street parking is available to cater for the proposed number of patrons expected to attend the site. However, given the history of the site and number of complaints received around the existing unauthorised use of the site, the application is recommended for approval based on twelve month trial period. The trial period enables the Applicant to confirm that they can manage the site and mitigate potential impacts, as proposed.

- **Reduction in air quality (pollution and odour) from kitchen facilities.**

Comment

The proposed development seeks to utilise existing kitchen facilities within the school gymnasium to facilitate catering for events held at the site. The use of these facilities, having been designed and installed at the time of construction for school purposes is not considered to result in any unreasonable impact to air quality or odour to surrounding properties.

- **The proposed use is not appropriate within the residential zone.**
- **The proposal constitutes a “function centre” which is prohibited in the zone.**
- **The proposed use of the premises is against the intention of the site as a school facility.**
- **Potential for use of the premises for commercial purposes.**
- **The development does not meet the objectives of the R3 zone.**

Comment

The proposed use entails wakes and social functions associated with the Place of Worship located on the site. The proposed use satisfies the definition of a Place of Worship within Canterbury Local Environmental Plan 2012. A Place of Public Worship is a permissible use within the zone. The proposed use will primarily be for Place of Worship functions only and will not be leased to private or any other commercial interested or any non-church related activities.

The proposal will provide for utilisation of the existing school gymnasium when it is not in use for school purposes, thereby contributing to the orderly use of this land where the gymnasium would otherwise remain vacant. The proposed use will not detract from the primary use or intention of the building for general school purposes. This is recommended to be enforced through the imposition of a suitable condition of consent.

The proposal will contribute to the provision of facilities and services to meet the needs of residents, consistent with the applicable R3 zone objective and is considered acceptable in this regard.

- **Reduction of safety for residents and pedestrians.**

Comment

The proposed development seeks the use of the existing All Saints Grammar School gymnasium for functions associated with the Place of Worship.

The proposed use is to be wholly contained within the gymnasium only, with no element of functions or events to be carried out within the public domain. It is acknowledged that the use entails the coming and going of patrons from the gymnasium. Should the application be supported, it is recommended that a condition be included in the consent to ensure Management give appropriate directions to, and take reasonable steps to, control noisy behaviour of persons entering and leaving.

In this regard, the proposal is not considered to result in any reduction in the safety at the site and will maintain positive safety outcomes.

All vehicle movements related to the proposed use will be required to adhere to all other state legislation and applicable road rules at all times.

- **Oppose to the service of alcohol.**

Comment

The subject application does not approve the service of alcohol. A separate application with NSW Liquor & Gaming is required to serve alcohol at the premises.

- **The existing site operation is poorly managed.**

Comment

Council acknowledges that concern has been raised relating to the existing site circumstances, including both unlawful operation of the premises for Church purposes and general loss of amenity through the operation of the Church and associated functions. The information submitted as part of the application outlines that the site can operate as proposed with minimal adverse impact on surrounding residential properties, provided the recommended conditions of consent are complied with. On this basis, the application is recommended for approval, on a twelve month trial period basis.

- **Increased burden on resources of Council or the Police in monitoring the site.**

Comment

Based on Council's assessment, it has been recommended that a condition of consent be imposed to ensure that three NSW Roads and Maritime Services Accredited traffic wardens attend the site, on the approved event days. Each traffic warden is recommended to attend 30 minutes prior to and ending of the Church function. It is recommended that two wardens patrol the streets considered within the Traffic and Parking impact assessment for illegal parking.

These wardens must record the number plates of any vehicles parked illegally and prior to the commencement of the functions, announce number plates and require the owner to park elsewhere. Furthermore, the condition is recommended to require a report to be provided to Council each month detailing the number of illegal parking incidents or any other parking and traffic issues relating to the use of the gymnasium for the nominated Church functions. These conditions will reduce the reliance on Council or Police resources.

- **Loss of overall residential amenity.**

Comment

Based on Council's assessment of the application, an appropriate level of amenity will be maintained to surrounding residential properties. Furthermore, it is recommended that the application be approved for a twelve month trial period to allow Council to monitor the use of the site and be comfortable that the site can operate in accordance with the recommendations of the supporting documentation.

- **The use of the gymnasium will result in children playing in school grounds out of school hours.**

Comment

The application relates to the use of the site at 31-33 Isabel Street, Belmore only. The proposal does not grant consent for the use of the school at 13-17 Cecelia Street beyond the existing approval relating to the site.

- **Affected residents have been denied their right of expression on the DA as the application was not advertised correctly and re-advertising documentation was not available at Campsie Library.**

Comment

The application has been advertised and notified in accordance with Part 7 of Canterbury Development Control Plan 2012. The re-advertising documentation clearly outlined that the documentation was available for viewing at Campsie Customer Service and Riverwood Library.

- **The gym is not fire compliant for commercial functions.**

Comment

The application was referred to Council's Fire Safety Officer who raised no concern, subject to conditions of consent.

- **The gymnasium is currently being used for Church purposes with no governance, accountability or consequence.**

Comment

Council acknowledges the tension between surrounding residents and the proponent have been heightened by the history of unauthorised use of the site. Council's records indicate that a number of complaints have been received by

Council prior to the lodgement of the subject application as well as since the lodgement of the application regarding the unauthorised use. Council has issued Notice of Intentions to issue orders at the site, as well as sent Rangers to monitor illegal parking and issue infringements, as required.

The intent of the DA is to formalise the variety of uses the gymnasium is used for and to ensure appropriate and relevant conditions of consent are imposed to best manage and mitigate future impacts of events on the subject site.

- **Will Council obtain an independent review of the addendum traffic and acoustic reports submitted.**

Comment

An independent review of the traffic report was undertaken in addition to the review undertaken by Council's Team Leader – Traffic and Transport. An independent review of the addendum acoustic report was not required and was deemed acceptable, subject to conditions, by Council's Environmental Health Officer.

- **Does the existing Church comprise parking spaces and can a parking credit be applied to the site.**

Comment

The existing Church does not comprise parking spaces and no parking credit has been applied to the site nor has any parking credit been considered by Council as part of the assessment of the application.

- **Should the application be supported, will Council be allocating an increase in resources to ensuring parking regulations are met?**

Comment

Should the application be supported, a number of stringent conditions of consent are recommended to be imposed to ensure the site operates as proposed with minimal impact on the amenity of surrounding residential properties. Should it come to Council's attention that the premises is operating contrary to the conditions of consent, adequate provisions exist in the planning legislation to remedy such situation, if necessary.

- **Has Council considered Clause 35(5) of the State Environmental Planning Policy (Education Establishments and Childcare Facilities) 2017.**

Comment

Council is not required to consider State Environmental Planning Policy (Education Establishments and Childcare Facilities) 2017 given the proposal does not comprise the construction of an education establishment or childcare facility. Notwithstanding, Clause 35(5) of the SEPP outlines that *"a school (including any part of its site and any of its facilities) may be used, with development consent, for the physical, social, cultural or intellectual development or welfare of the*

*community, whether or not it is a commercial use of the establishment". The proposal is not inconsistent with the intent of this clause.*

- **How will Council ensure and enforce the gymnasium not to be used concurrently with the Church to ensure only one is in operation?**

Comment

Should the application be supported, a condition of consent is recommended to be enforced to ensure the Church and gymnasium are not used concurrently for Church purposes.

**The Public Interest [section 4.15(1)(e)]**

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments and by the consent authority ensuring that any adverse impacts on the surrounding area and environment are satisfactorily managed and mitigated as much as possible. This requires adherence to the recommendations contained within the traffic and acoustic reports and conditions of development consent. The subject application is in the public interest subject to compliance with all requirements of this development consent.

**CONCLUSION**

The development application has been assessed pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 and all relevant development control plans, codes and policies. Given the history of complaints received regarding the unauthorised use of the site, a twelve month trial period is recommended to ensure the Applicant can demonstrate compliance with the conditions of consent and subsequently, the site can operate as proposed with minimal adverse impact on surrounding residential properties.

The Plan of Management prepared by the proponent as well as recommended conditions of consent must be strictly adhered to during the trial period.

It is considered that the proposed development will not cause unreasonable impacts to surrounding residential development subject to the above conditions, however in the interests of a precautionary approach, a twelve month limited consent is recommended.

**RECOMMENDATION**

THAT Development Application DA-382/2015 be **APPROVED** subject to the following conditions.

**GENERAL**

1. The development being carried out in accordance with the plans, specifications and details prepared by Candalepas Associates, Drawing Number DA-1100, Revision A, dated 28.1.16 except where modified by the conditions of this consent.
2. This approval is limited to a period of 12 months from the date of this consent, after which time any use of the premises whatsoever will require a Section 4.55 modification or a further development consent of the Council. In this regard an appropriate application is to be made to Council for consideration within three months of 4 June 2019, supported by appropriate information. If an application is submitted with appropriate documentation within this time (and requests for further information are addressed in the time limits imposed by the Council) the use may continue in accordance with this consent until the application is finally determined by the Council or the NSW Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council's determination).
3. If an application is submitted in accordance with Condition 2 above is supported with appropriate documentation (and requests for further information are addressed in the time limits imposed by the Council) and this application is not determined by Council within the twelve month period referred to in Condition 2 then the use may continue in accordance with this consent until the application is finally determined by the Council or the Land and Environment Court on appeal (but in relation to the appeal, only if the appeal is lodged within 14 days of the Council's determination).
4. The approved hours of operation and the approved social events/function associated with the All Saints Greek Parish Church **during the twelve month "trial" period on the site** are to be confined as follows:

EVENT	TIME
Palm Sunday (Sunday)	11.00 am to 5.00 pm
Mother's Day Dinner (Saturday)	7.00 pm to 12.00 am (Midnight)
All Saints Weekend (Saturday and Sunday)	11.00 am to 5.00 pm
Father's Day Dinner (Saturday)	7.00pm to 12.00 am (Midnight)
National Day	11.00 am to 5.00 pm
New Year's Eve	7.00 pm to 01.00 am
Maximum of five (5) other events/functions per calendar year (limited to wakes, religious festivals, significant Church events and one (1)	9.00am to 5.00pm for day events and 7.00pm to 12.00 am

fundraising event)	(Midnight) for evening events.  No evening events (7pm-12midnight) are to occur on Sundays.
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5. The hours of operation specified within Condition 4 incorporate setting up and cleaning of the premises. No staff or patrons are to be situated in the gymnasium outside of the hours proposed.
6. The proposed use of the gymnasium is limited to All Saints Greek Orthodox Parish Church related social and fundraising activities and is not to be leased or hired out for any other commercial or non-church related activities.
7. The maximum number of patrons per event/function is limited to 250 including a maximum of 5 staff and including a maximum of 3 traffic wardens.
8. The gymnasium must not be used simultaneously with the Place of Public Worship on the site.
9. The gymnasium must not be used simultaneously for events associated with the All Saints Grammar School and the Place of Public Worship.
10. The use is to be operated in accordance with the updated plan of management referred to in Condition 11 below.
11. The applicant/operator of the use shall submit a revised Plan of Management for this use. The Plan of Management shall specify how the premises are to be operated and shall address issues including, but not restricted to, the following:
  - a) The holding of events;
  - b) The carrying out of activities likely to cause a nuisance;
  - c) Staffing details;
  - d) Patron capacity;
  - e) Patron behaviour & monitoring of persons;
  - f) Maintaining good relations with neighbours;
  - g) Noise and noise mitigation measures;
  - h) Security measures;
  - i) Entry and exit procedures;
  - j) Emergency evacuation procedures;
  - k) Food preparation procedures;
  - l) Delivery procedures;
  - m) The parking of vehicles;
  - n) The registering of complaints;
  - o) Dealing with complaints;
  - p) Cleaning of premises;
  - q) Disposal of waste/waste management procedures;



- r) Patrol of the facility and surrounding road network to be undertaken by three Roads and Maritime Services (RMS) accredited parking control wardens during each event.

The Plan of Management shall be submitted to the Principle Certifying Authority as well as Council's Team Leader Public & Environmental Health prior to the operation of the use. The use shall be operated in accordance with the approved Plan of Management at all times. The applicant/operator of the use shall, as part of the Plan of Management, provide the Council and all neighbouring properties with a telephone contact number to be used for the registering of complaints. The applicant/operator of the use is to monitor the number and nature of complaints, shall formally register all complaints received and shall detail the action taken to rectify the problems that have arisen. This information shall be collated into a Complaints Log. The Complaints Log shall be made available to Council within 24 hours of a request being made.

12. The premises shall be operated so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupants. In the event of Council receiving complaints and if it is considered by Council that excessive noise is emanating from the premises, the person(s) in control of the premises shall, at their own cost arrange, for an acoustic investigation to be carried out and submit a report to Council specifying the proposed methods for the control of excessive noise and/or vibration emanating from the premises. This acoustic investigation is to be conducted by a suitably qualified Acoustic Consultant recognised by the Australian Association of Acoustical Consultants (AAAC) and who has not been previously involved with the proposal. The report must be completed and submitted within 30 days from the date requested by Council. The measures set out in this report shall be approved by Council prior to implementation and shall be at full cost to the applicant.
13. The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.
14. The sound reinforcement system must be switched off at 12midnight.
15. The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.
16. In regard to noise from events/functions/activities for the proposed use of the premises:
  - a) The LA10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) by more than 5dB between 7:00 am and 12:00 midnight at the boundary of any affected residence.

- b) The LA10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz–8kHz inclusive) between 12:00 midnight and 7:00 am at the boundary of any affected residence.
  - c) Notwithstanding compliance with the above, the noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 7:00 am.
17. The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil, or other harmful products.
  18. All activities from the proposed use of the premises must be confined to wholly within the building.
  19. The premises must operate in accordance with the Smoke-free Environment Act 2000 and the guidelines outlined in the Smoke-free Environment Amendment Regulation 2007 and the Smoke-free Environment Amendment Regulation 2009.
  20. All doors leading into the gymnasium to be fitted with an automatic closer and shall remain closed, except for ingress and egress.
  21. All fire exit doors to the outside to remain closed at all times, except in emergency situations.
  22. Within 90 days of the commencement of the use of the premises, a report prepared by a suitably qualified Acoustic Consultant recognised by the Australian Association of Acoustical Consultants (AAAC) who has not been previously involved with the proposal shall be submitted to Council certifying that the development complies with the requirements of the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance), Protection of the Environment Operations Act 1997 and Regulations, conditions of development consent. The report shall include post construction validation test results. A copy of the report must be provided to Council for record.
  23. All parts of the premises used for the storage and preparation of food are to be constructed and fitted out strictly in accordance with the Australian New Zealand Food Standards Code, Australian Standard AS 4674-2004 (Design, construction and fit-out of food premises) and the conditions of any Council consent.
  24. Appoint a Food Safety Supervisor and ensure the Food Safety Supervisor's Certificate is kept on the premises for inspection. For further information regarding Food Safety Supervisor requirements refer to the NSW Food Authority website at <http://www.foodauthority.nsw.gov>.
  25. Within 90 days of the date of this consent, a City of Canterbury Bankstown Council Pre Occupation Food Premises Inspection report is to be obtained from Council confirming satisfactory compliance with applicable food standards and legislation.

26. Within 90 days of the date of this consent, a Business Registration Form must be completed and submitted to Council. This form is available online at [www.cbccity.nsw.gov.au](http://www.cbccity.nsw.gov.au). In the instance details on the original registration form change, Council is to be notified of the change within seven (7) days of the change occurring.
27. A bicycle rack accommodating a minimum of 13 bicycles shall be provided at a suitable location on the site.
28. A further traffic and parking assessment must be undertaken by a suitably qualified traffic engineer (who has not been previously involved with the proposal shall) during the 12 month trial period. The assessment must provide an updated traffic and parking assessment that reflects the approved use of the site. The data relied upon as part of this assessment is to be from a 250 patron event held at the gymnasium on at least one of the dates approved. A copy of the report must be provided to Council for record. The updated report is to also be submitted as part of any future application seeking continued use of the site to demonstrate whether the local road network can cater for the use, as proposed.
29. At least three RMS accredited parking control wardens must be present during each event. One warden must be located at the front of the premises to monitor and count worshipper numbers and cease permitting entry once at capacity (maximum 250 patrons including 5 staff). The remaining two wardens must patrol St Clair Street, Sudbury Street, Cecelia Street, Adelaide Street, Etela Street, Hall Street, Isabel Street, Lark Street and Redman Parade for illegal parking.
30. The traffic wardens must record the number plates of any vehicles illegal parked, and prior to the commencement of any event, announce number plates parked illegally and require the owner to park elsewhere.
31. The Plan of Management must be amended to provide a minimum of three traffic wardens at least 30 minutes to and 30 minutes after the scheduled events to ensure worshippers do not illegally park in surrounding streets, can be approached by local residents and facilitate safe traffic management in the area.
32. Each traffic warden must be provided with brightly covered identification clothing.
33. A report must be provided to Council each month detailing the management strategies undertaken by the Greek Orthodox Parish (or any Proponent operating under this consent or DA-382/2015) and submit attendance records for each event.
34. The Plan of Management must be uploaded and available for public view on the website and social media pages of the subject Place of Public Worship.
35. The facility shall not be used under any circumstances for major events or festivals which are outside those days and times, or involve greater numbers.

36. Mechanical ventilation or other approved ventilation systems being installed in accordance with the minimum standards of the Building Code of Australia. The operation of machinery or mechanical ventilation systems must not give rise to a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A).
37. The Management of the facility being responsible at all times for the orderly dispersal of persons from the premises.
38. Signs being appropriately located within the premises advising the congregation of the proximity of nearby residences and seeking quiet and orderly entry and departure from the premises. The Management must ensure that supervisors give appropriate directions to, and take reasonable steps to, control noisy behaviour of persons entering and leaving.
39. Any security lighting or outdoor lighting shall not impact adjoining properties as a consequence of light spill.

WE ALSO ADVISE

1. This application has been assessed in accordance with the National Construction Code.
2. Any works to be carried out by Council at the applicant's cost need to be applied for in advance.
3. Compliance with the National Construction Code does not guarantee protection from prosecution under "The Disability Discrimination Act". Further information is available from the Human Rights and Equal Opportunity Commission on 1800 021 199.
4. Our decision was made after consideration of the matters listed under Section 4.45 of the Environmental Planning and Assessment Act 1979, and matters listed in Council's various Codes and Policies.
5. If you are not satisfied with this determination, you may:
  - 5.1. Apply for a review of a determination under Sections 8.2-8.5 of the Environmental Planning and Assessment Act 1979. A request for review must be made and determined within 6 months of the date of this Notice of Determination and be accompanied by the relevant fee; or
  - 5.2. Appeal to the Land and Environment Court within 6 months after the date on which you receive this Notice of Determination, under Sections 8.7 and 8.10 of the Environmental Planning and Assessment Act 1979.

-END-