

30 April 2020

Our Ref: 10730 CBLPP response 29042020

General Manager  
Canterbury Bankstown City Council  
PO BOX 8  
BANKSTOWN NSW 1885

Attention: Larissa Hubner

via email: - Larissa.Hubner@cbcity.nsw.gov.a

Dear Larissa,

**RE: Planning Proposal to Amend Canterbury Local Environmental Plan 2012:  
Property: 165-169 Holden Street, Ashbury**

GLN Planning have assisted in the preparation and submission of the Planning Proposal to amend Canterbury Local Environmental Plan 2012 (CLEP 2012) to enable residential development to be undertaken on identified surplus Sydney Water land at Ashfield Reservoir.

The Planning Proposal was considered by Canterbury Bankstown Local Planning Panel (CBLPP) and whilst we and our client support the recommendations of Council staff and the Canterbury Bankstown Local Planning Panel to support the Planning Proposal, we seek to provide additional information for the consideration of Council in progressing the Planning Proposal to seek Gateway approval.

**Amendment to the lands to be rezoned and proposed access to Peace Park**

The CBLPP recommends the adjustment of the boundary of the land to be rezoned so as to delete the land to the rear of the Reservoir to provide for a more regular area of land to be rezoned. This recommendation is based on the indicative subdivision layout which was provided in support of the Planning Proposal.

The indicative layout is not a matter for which approval is being sought. The area of the land to be rezoned has been determined by consideration and determination of an appropriate heritage curtilage for the reservoir and providing for the efficient and economic use of the land in keeping with the aims and objectives of the Environmental Planning and Assessment Act. The Planning Proposal indicative layout has been provided as advice only as to the manner in which development of the land could be achieved under a future development application.

The recommendation of the CBLPP to provide access to the Peace Park across the Sydney Water Land is also considered inappropriate. The Sydney Water land surrounding the reservoir and identified within the heritage curtilage, remains zoned SP2 Infrastructure under CLEP 2012 and is not a landuse which could be considered ordinarily incidental or ancillary to infrastructure development, nor consistent with the operational use of the reservoir.



Equally, the future form of residential development within the land proposed to be rezoned is neither certain. Whilst the indicative form of the development was shown as a residential subdivision any permissible use of the land under the R2 Low Density Residential zone could be submitted in the future with a undeveloped parcel of land with a reduced area of 2934m<sup>2</sup> would limit the return to Sydney Water and future development of the site. We are of the opinion that this would represent a lost opportunity for both Sydney Water and the broader community.

Access to the Peace Park exists from Holden Street via the access handle adjacent to 149 Holden Street, Ashbury that is zoned RE1. Council has confirmed that the land is currently owned by Council and that there is an arrangement with the owners of 149 Holden Street, Ashbury the details of which have not been made available to us via a GIPA application prior to finalising this letter. The absence of access to the park from Holden Street as a result of Council's actions is not a matter that should be remedied by obtaining access to either Sydney Water land or any other privately owned land. Equally, it is a matter that can be addressed via future site specific development control plan provisions or via the development application process with due consideration of the value of the acquisition of an alternate access to the Peace Park by Council.

Any limitation of development to the rear of the reservoir is more correctly determined as a result of the development assessment process for the actual development proposed. The Planning Proposal process is to determine the appropriate zoning of land not the resultant form of a development. The land is identified as being surplus to the Sydney Water operational needs and not contributory to the heritage curtilage. Accordingly, it is reasonable that the land be rezoned consistent with that of the adjoining land. This will enable the future use of the land in an orderly and economic manner.

The CBLPP in reaching their recommendations to Council has taken a point of view that fails to consider the broader public interest in providing a larger parcel of land that could be developed and the overall gains realised by the broader NSW community.

### **Remediation of Land**

The CBLPP has recommended to Council that the Planning Proposal (PP) proceed to gateway subject to a Remediation Action Plan (RAP) being provided prior to exhibition. We note Council's advice that the recent amendments to State Environmental Planning Policy 55 (SEPP 55) with the deletion of Clause 6 and its relocation to the Section 9.1 Ministerial Directions requires a RAP.

We have discussed this matter with a Planning Officer of the Department of Planning, Environmental and Industry, who has verbally advised that the 1998 Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land remain in effect and the intent and effect of the provisions remains consistent with the previous Clause 6 of SEPP 55. The amendments have essentially been made to rectify a position as a result of the NSW Court of Appeal decision in *Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* [2018] NSWCA 304. The Court of Appeal found in *Moorebank Recyclers Pty Ltd v Tanlane Pty Ltd* that the scope of Clause 6 of SEPP 55 was confined to the preparation of an environmental planning instrument (EPI). The Court stated that the operation of Section 55 of the Environmental Planning and Assessment Act (EPAA), the making of a planning proposal, or Section 56 of the EPAA the making of a gateway determination, could not properly be described as the preparation of an EPI. As a result, the relocation of former Clause 6 within the Ministerial Directions is an appropriate legislative response.

Sydney Water has not and do not take the point of view that remediation will be required at this stage. As discussed, and in response to the recommendation that a RAP be developed and signed off by the Site Auditor, this is deemed best undertaken by the purchaser prior to construction once the nature of the development is determined. The site's contamination status is well understood and endorsed by the Site Auditor to support development of a RAP once the land is sold and in conjunction with the DA. If Sydney Water were to develop a RAP prior to the exhibition of the Planning Proposal, it would be under a range of assumptions around the nature of the potential development and would be subject to revision. It is for these reasons it has not been completed to date.

Council staff and the CBLPP have based the decision to require a RAP prior to exhibition on the basis of the indicative development shown for illustrative purposes only within the Planning Proposal. Whilst future development of the site could be assumed to be a residential subdivision, the larger parcel may be attractive to a future owner for any purpose permissible within the R2 Low Density Residential zone.

Sydney Water have undertaken sufficient preliminary assessment to determine that the land will require remediation. Sydney Water as a Statutory Corporation are able to deal in land other than the manner indicated by the Office of Environment and Heritage (OEH) There is no intention by Sydney Water to avoid any remediation required and are seeking the flexibility as to the best timing of that work and to avoid additional costs to the underlying value of the site. It is intended to disclose all knowledge of any contamination in a contract for sale. It is likely that this land will be marketed and sold as a single re-zoned parcel. All relevant contamination information will be disclosed in the contract and will legally require the purchaser to provide a RAP and a timeline for that post disposal. The purchaser then will be contractually obliged to remediate the land in addition to meeting any criteria of SEPP 55 and Council.

Sufficient means of ensuring the remediation of the land can be achieved exist either via provisions in the amending LEP provisions, site specific development control Plan provisions and the Part IV approval process of the EPA&A including the application of SEPP 55.

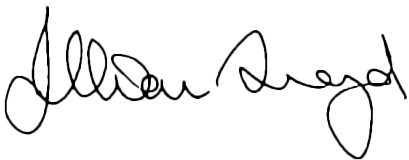
**Conclusion**

We and Sydney Water thank Council for progressing this Planning Proposal and in anticipation of the matter being supported by Council, we ask that the matters raised in this letter be made available to the Gateway Committee to inform and enable the conditions of the Gateway determination be commensurate with the Planning Proposal requirements.

Please contact me should you require any further information.

Yours faithfully

**GLN PLANNING PTY LTD**



**JILLIAN SNEYD  
CONSULTANT TOWN PLANNER**