

JRPP No.	2010SYE086
DA No.	LDA 2010/0078
Proposed Development	Subdivision of the site (Cudal reserve) into two lots. Lot 21 is proposed to be dedicated to Council for use as open space. Lot 22 will be used for residential purposes, 22 Henry Street, Ryde (Lot 2 DP 602362)
Applicant:	Sydney Water Corporation
Report By:	PANEL SECRETARIAT

Assessment Report and Recommendation

Referred to the Joint Regional Planning Panel pursuant to section 89(2)(b) of the Environmental Planning and Assessment Act 1979

27 October 2010

1. EXECUTIVE SUMMARY

The Panel Secretariat has reviewed this application for the Regional Panel's consideration, including a consideration of the views of Council and the applicant. Council's resolution to oppose the development application and request that the DA be withdrawn and dedicated by Sydney Water for use as open space is not supported as the site is considered suitable for subdivision. Accordingly it is recommended the DA be approved, subject to conditions.

2. SITE DESCRIPTION

The subject site is located at 22 Henry Street, Ryde, the eastern end of Henry Street and the southern end of Arnold Street. Adjoining the site is low density residential development to the north, south, east and southwest. The west of the site is also generally low density residential dwellings, except for a residential townhouse development immediately to the west.

The site is currently identified as Cudal Reserve and is an area of open space owned by Sydney Water and used as a drainage reserve. 18 trees are located on the site including a 'Sacred Fig' tree in the northern area of the site, located near Arnold Street.

The site is 138 metres long at the eastern boundary, 102 metres long at the western boundary and 68 metres long at the northern and southern boundaries. The total site area is 7,915 m².

3. PROPOSAL

The application seeks consent to subdivide the subject site into two lots. Lot 22 will have an area of 4,713 sqm and is indicated for future residential uses. Lot 21 will have an area of 3,742 sqm and is to be dedicated to City of Ryde Council for use as open space. Lot 21 cannot be developed for residential uses as it is part of an overland flow path.

The application has been lodged with a Site Compatibility Certificate issued by the Director General of the Department of Planning, dated 28 November 2008 (attachment i) which permits the use of Lot 22 for residential purposes.

4. BACKGROUND SUMMARY

- 3 August 2005: Council's Manager - Property Services held a meeting with Sydney Water to discuss potential disposal of Cudal Reserve;
- 4 August 2005: Sydney Water wrote to Council identifying Cudal Reserve as surplus to the needs of Sydney Water and asked if Council was interested in purchasing the land;
- 9 August 2005: Council officers requested a copy of the valuation report for the land from Sydney Water;
- 14 December 2005: Sydney Water provided an estimate of the sale price of the subject land, being \$1.85 million;
- 25 January 2006: Council's Manager – Parks provided a memo stating that the land is not of any strategic recreational value to the City of Ryde as the community is most in need of playing fields;
- 8 February 2006: Council's Manager – Property Services advised Sydney Water that Council will not be progressing its interest in purchasing the land and asked Sydney Water to advise Council of the site's future;
- 28 November 2008: Site Compatibility Certificate is issued to Sydney Water Corporation and applies to Cudal Reserve for use of a portion of the allotment for residential purposes;
- 19 February 2010: Sydney Water wrote to surrounding property owners informing them of their intention to lodge a development application for the subdivision of Cudal Reserve;
- 26 February 2010: Development application is lodged with Ryde City Council (LDA 2010/ 0078);
- 3 March to 1 April 2010: The application was advertised and exhibited as 22 Henry Street, Ryde;
- 14 April to 29 April 2010: The application was re-advertised as 22 Henry Street, Ryde (Cudal Reserve), 66 submissions were received;
- 27 April 2010: Council resolved to require Sydney Water to undertake appropriate community consultation prior to the sale of any of its open space for development;
- 10 June 2010: Sydney Water wrote to Council detailing the extent of community consultation undertaken;
- 5 May 2010: Council made a written request to the applicant to amend the proposed plan of subdivision so that the dedication of Lot 21 to Council is confirmed and that a right of way be created to maintain existing pedestrian access from Arnold Street over Lot 22 to Lot 21 and then to Henry Street;
- 1 June 2010: Ryde Council's Works and Community Committee approved the listing of the Sacred Fig on Council's significant Tree Register'
- 21 June 2010: Council received amended plans showing the dedication of Lot 21 to Council and a right of way of variable width extending around the Sacred Fig and which permits access from Arnold Street over Lot 22 onto Lot 21;
- 17 August 2010: Council's officer prepared an assessment of LDA 2010/0078 recommending approval which went to the elected Council. Council resolved to defer the application and ask Sydney Water to withdrawn the application and to dedicate the land for open space;
- 1 October 2010: Sydney Water referred the application to the Joint Regional Planning Panel;
- 8 October 2010: Sydney Water provided to the Panel Secretariat comments on the draft conditions of consent;
- 19 October 2010: Council resolved to oppose the development application for the subdivision of the proposed site and recommend to the JRPP that the land be handed over to Council for open space.
- Council Officer responded to Sydney Water comments on 21 October 2010;

- The LDA 2010/0078 has been referred to the JRPP as Council has not determined the application in accordance with Clause 80 (1) of the EP & A Act.

5. ENVIRONMENTAL PLANNING INSTRUMENTS

Under the Ryde Local Environmental Plan 2010 the site is zoned SP2 – Infrastructure (WS & DB). The proposal is permissible with consent under this zoning. However, the Ryde LEP 2010 was published on 30 June 2010 and contains a savings provision (clause 1.8A), which states that if a development application was made before the commencement of the Plan, the application must be determined as if the Plan had not commenced. As the DA was lodged on 26 February 2010, it must be determined as if the Ryde LEP 2010 had not commenced.

Therefore under the Ryde Planning Scheme Ordinance the site is zoned 5(a) Special Uses (M.W.S & D.B). Subdivision of the site is permissible with consent from Council. A Site Compatibility Certificate has been issued by the Director General of the Department of Planning and permits the use of a portion of the allotment (4,185 m²) for residential purposes.

The proposed development is generally consistent with:

- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Exempt and Complying Code) 2008
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- City of Ryde Subdivision Code
- State Environmental Planning Policy No 55 - remediation of land

6. CONSULTATION AND PUBLIC EXHIBITION

The proposal was advertised and notified in accordance with DCP 2010, Part 2.1 – Notification of Development Applications. The application was originally notified from 3 March 2010 to 1 April 2010. Due to the notification identifying the subject property as '22 Henry Street, Ryde', the proposal was re-notified from 14 April until 29 April 2010 identifying the site as '22 Henry Street Ryde (Cudal Reserve)'.

A total of 66 submissions were received, 65 objecting to the development. This included two petitions signed by 28 and 32 residents respectively. The issues raised in the submissions and a response is included in pages 61 to 72 of Councils assessment report (Attachment ii).

7. JRPP's STATUTORY ROLE

Section 89(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act) states that a consent authority must not refuse its consent to a Crown development application, except with the approval of the Minister.

Section 89(2)(b) of the Act provides that if a consent authority fails to determine a Crown DA within the prescribed time limit it may be referred by either the applicant or the consent authority to a JRPP.

In this case, given Council's resolution to oppose the development and request the DA be withdrawn and the prescribed time limit, the applicant has referred the application (LDA 2010/0079) to the JRPP for determination.

8 CONSIDERATION OF SECTION 79C(1) OF THE EP&A ACT

Council's officer has undertaken an assessment of the application with regard to the provisions of the EP&A Act and all matters specified under section 79C(1). The impact of the development on the 'Sacred Fig' tree (listed on Councils Significant Tree register) has been considered and the officer considers a condition of deferred commencement to protect the canopy of the tree, including most of the root system. Notwithstanding the Sacred Fig tree the proposal is considered suitable for the site.

Council's officer has recommended that the DA be approved, subject to conditions. The Panel Secretariat considers the Council's assessment report has satisfactorily addressed all issues raised in the submissions and the recommendation to approve is reasonable. The Panel Secretariat's review does not alter or reverse the assessment reports recommendations.

9. POSITION OF EACH PARTY

The views of Council and the applicant are summarised as follows:

City of Ryde Council

Assessment staff

- The assessment report recommends that the application be approved with deferred commencement consent, subject to the applicant giving their concurrence to the draft conditions of consent. The draft conditions of consent for the application be forwarded to Sydney Water Corporation for their acceptance in accordance with Part 4, Division 4 of the Environmental Planning and Assessment Act 1979

Elected representatives

- On the 17 August Ryde Council's committee of the whole resolved that:
 - 'a) that Council defer this application and make representations to the State Government for Sydney Water to withdraw this application and to dedicate the land earmarked for residential use as open space.'*
- Council's Committee of the Whole resolved on the 19 October:
 - 'a) That Council resolve to oppose the development application for the subdivision of Sydney Water land at Cudal Reserve and appoint Councillors Maggio, Pickering and any other Councillors who wish to attend the determination meeting to voice their opposition on behalf of the community to the proposal.*
 - b) That Council recommend to the JRPP that the land be handed over to Council to become open space.'*

Applicant - Sydney Water Corporation

- Sydney Water Corporation requests referral of LDA 2010/0078 to the Joint Regional Planning Panel as the DA has not been determined by Council and it is 70 days since lodgement of the DA.

Sydney Water has provided comments on the draft conditions of consent included with Council's assessment report (attachment iv). Council has also provided the Panel Secretariat with a response to Sydney's water comments (attachment v).

Sydney Water has provided comments on conditions 1a, 2a-b, 4, 5, 6, 7, 8, 9 and the advisory condition. Council does not agree to the changes suggested by Sydney Water for conditions 1a, 6, 8, 9 and the advisory condition.

The disputed conditions are:

- Condition 1a:

This condition requires the plan of subdivision to be amended so that the line of subdivision diverts around the canopy of the Sacred Fig Tree.

- Condition 6:

This condition requires an inter-allotment drainage system to facilitate legal disposal of stormwater from Lot 22 onto Lot 21.

- Condition 8:

This condition requires a works as executed plan of the constructed inter allotment drainage system to be submitted to Council prior to the release of a subdivision certificate.

- Condition 9:

This conditions states that an instrument under Section 88B creating any easements, with Ryde City Council being the authority empowered to release or vary the terms.

- Advisory Condition:

This condition protects the Sacred Fig Tree from any future development on Lot 22. It requires an updated arborist report with any future development application and that the design of the driveway from Arnold Street is to minimise impacts within the tree root zone.

10. DISCUSSION OF PLANNING MERIT

Discussion of subdivision plan

Ryde Council resolved to oppose the subdivision of 22 Henry Street (Cudal Reserve) and recommend that the site be handed over to Council as open space. Council was given the opportunity in 2005 to purchase the site from Sydney Water. However after investigations Council officers responded that the land was not of any strategic recreational value to the City of Ryde as the area was insufficient for use as a playing field, of which the community is most in need. Council staff advised that Council would not be continuing its interest in purchasing the property. Sydney Water plans to dedicate Lot 21 to Council for use as open space, while Lot 22 is indicated for residential development, as per a Site Compatibility Certificate.

The Panel Secretariat considers that the development application for a two-lot subdivision of land for public open space and residential development is a balanced outcome and in the public interest. The proposed subdivision is not likely to have any adverse impacts on the existing built environment or the amenity of the surrounding area. The proposed Lot 22 will produce, through a likely future development application, a residential subdivision that is consistent with the existing subdivision pattern in the area.

Discussion of draft conditions of consent:

The conditions disputed are 1a, 6, 8, 9 and the advisory condition. Sydney Water and Council both agree to changes to draft conditions 2a, 2b, 4, 5 and 7.

A discussion of these conditions follows:

- Condition 1a:

Sydney Water does not agree to the proposed amendment to the line of subdivision to include the canopy of the tree.

Council states that if the site is subdivided as per the plan, this will have significant impacts upon the tree. Council considers that the boundary adjustment would allow adequate space to allow vehicular access to Lot 22.

The Panel Secretariat agrees with Sydney Water that it is unnecessary to alter the subdivision line to follow the tree canopy. The existing listing and future controls that can be imposed by Council in any future development application will ensure the protection of the tree.

The indicative development outcome shows the driveway access from Arnold Street will not be built under the trees canopy. Council will be able to condition development within the 9 metre tree protection zone for any future development application that is submitted.

- Condition 6:

Sydney Water states that this condition should be imposed on any future development approval for Lot 22, as until then there is no change to the stormwater situation.

Council comments that the deletion of this condition is not supported as appropriate and effective drainage infrastructure is required as the proposal seeks to create a new allotment that may be developed at a later date.

The Panel Secretariat agrees with the applicant that as the development application is for subdivision only, this condition is unnecessary as stormwater disposal will remain as is, as the proposal does not seek to develop on the site. It is appropriate for Council to impose this condition on any future development approval on the subdivided lots. The condition should apply to Lot 22.

- Condition 8:

Sydney Water states that this condition should be imposed on any future development approval for Lot 22. Council states that this condition is related to the drainage works provided under condition 6.

Similar to Condition 6, this condition should only apply to Lot 22.

- Condition 9:

Sydney Water have commented that any Section 88B instrument should not automatically make Ryde City Council the only authority empowered to release vary or modify the terms of an easement, positive covenant and restriction on use. The wording should be changed to:

‘The instrument may not be extinguished or altered without prior approval of all parties either burdened or benefited by the easement, positive covenant and restriction on use.’

Council states that this condition is related to the drainage works provided under condition 6 and should not be amended.

The Panel Secretariat agrees with the applicant that the condition is unreasonable and accepts the changes recommended by the applicant.

- Advisory Condition:

Sydney water does not agree to the advisory condition and claim it should be imposed in a future development approval for development on proposed Lot 22, or note it as an advisory condition only and not required for the issue of the subdivision certificate.

Council comment that that condition has been issued as an advisory condition only and it is not required for the issuing of the subdivision certificate. Council recommends the condition remain.

The Panel Secretariat considers that as the condition does not affect the issuing of the subdivision certificate and is for advisory purpose to ensure protection of the 'Sacred Fig' tree from future development on Lot 22, it is reasonable as an advisory note.

The Panel Secretariat has reviewed the development application and its associated documents, the Council Officer's assessment report and the views of the applicant and Council and concludes that the proposal to subdivide the site will produce, in a future application, a residential subdivision that is generally consistent with the existing land uses.

The Panel Secretariat recommends the proposal be approved for the above reasons.

11. RECOMMENDATION

It is recommended that the JRPP:

- (A) **consider** all relevant matters prescribed under the *Environmental Planning and Assessment Act 1979*, as contained in the findings and recommendations of this report;
- (B) **approve** the subdivision application, subject to conditions set out in Schedule 1, pursuant to section 80(1)(a) and section 89 of the *Environmental Planning and Assessment Act 1979*, having considered all relevant matters in accordance with (A) above;

Prepared by:

Endorsed by:

Emily Dickson
Panel Secretariat

Carmel O'Connor
Panel Secretariat

12. ATTACHMENTS

- i) Site Compatibility Certificate dated 28 November 2008
- ii) Council officer's assessment report, dated 2 August 2010
- iii) Minutes of Council meeting, dated 17 August and 19 October 2010
- iv) Applicant's comment(s) on draft conditions of conditions, dated 8 October 2010
- v) Council's comments on draft condition of consent, dated 21 October 2010

SCHEDULE 1

CONDITIONS OF APPROVAL

ATTACHMENT 1 – Proposed Conditions

Part 1 – Conditions Relating to a Deferred Commencement Consent pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979

1. This consent shall not operate until the applicant has submitted to Council an amended plan of subdivision that shows the following:

(a) **Right-of-way:** The right-of-way upon Lot 22 shall be maintained to ensure unencumbered pedestrian access from Arnold Street onto Lot 21 (being the area to be dedicated to Council).

(b) **Dedication of Lot 21:** The plan of subdivision shall retain the dedication of Lot 21 to Council; and

Part 2 – General Conditions of Consent: The following requirements shall apply upon satisfactory completion of the requirements outlined in Part 1 of this consent (above)

1. Except where otherwise provided in this consent, the development is to be carried out in accordance with subdivision plans as endorsed by Council's stamp and support information submitted to Council with Lot 21 dedicated to City of Ryde at no cost.

2. (a) Lot 22 shall not be developed for residential purposes until the applicant has submitted to Council a site investigation report which has determined whether any contaminants are present within the soil and demonstrating that the land is suitable for residential purposes or that the land can be remediated to the extent necessary for that land use; and

(b) If remediation is required then the site shall be remediated to the extent necessary for the proposed use prior to any development taking place.

3. A contribution for the services in Column A and for the amount in Column B shall be made to Council prior to the release of the Subdivision Certificate for registration at the Land and Property Management Authority (LPMA).

A	B
Community & Cultural Facilities	\$3,819.50
Open Space & Recreation Facilities	\$9,402.82
Civic & Urban Improvements	\$3,197.98
Roads & Traffic Management Facilities	\$436.14
Cycleways	\$272.48
Stormwater Management Facilities	\$865.78
Plan Administration	\$73.47
The total contribution is	\$18,068.17

This contribution is a contribution under the provisions of Section 94 of the Environmental Planning and Assessment Act, 1979 as specified in Section 94 Development Contributions Plan 2007 adopted by City of Ryde on 11/12/2007.

The above amount, if not paid within the quarter that the consent is granted, shall be adjusted for inflation by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) on the basis of the contribution rates that are applicable at time of payment.

General Engineering Conditions

4. Inter-allotment Drainage System.

To facilitate legal disposal of stormwater from Lot 22 onto Lot 21, the following shall be implemented at no cost to Council:

(a) The design and construction of an inter-allotment drainage system to facilitate stormwater disposal from lot one into Council's existing underground drainage system located on Lot 21. The inter-allotment drainage system shall be located adjacent and parallel to the southern boundary of Lot 21 and connecting the southwest corner of Lot 22 to Council's existing drainage system traversing Lot 21.

(b) The registration of a 1.2m wide drainage easement over the inter-allotment pipeline in favour of Lot 22.

(c) The design and construction of the inter-allotment pipe line shall ensure it will have capacity to convey 1 in 100 year flow generated from Lot 21 and in accordance with Part 8.2 of Council's Stormwater Management Manual.

5. Provision of Services.

To ensure satisfactory effluent disposal and utility services are available to proposed lot 22, the applicant is required to submit to Council with the application for Subdivision Certificate certificates a s.73 Certificate from Sydney Water indicating reticulated sewer has been made available to each lot .

6. Work as executed plan.

A "Works as Executed" plan of the constructed interallotment drainage system for Lot 22 prepared by a registered surveyor including engineering certification by a chartered civil engineer with NPER registration confirming that the work has been constructed in accordance with the approved plans shall be submitted to Council, prior to release of Subdivision Certificate.

7. 88B Instrument.

The instrument may not be extinguished or altered without prior approval of all parties either burdened or benefited by the easement, positive covenant and restriction on use

ADVISORY CONDITION

Protection of fig tree:

The existing Sacred Fig tree located adjacent to the Arnold Street entrance to the site shall be protected during any future development of Lot 22. An updated arborist's report will need to accompany any future development proposal showing the protection of the tree's root zone and should also outline a construction management plan which includes the supervision of the driveway construction by an arborist. Design of the driveway is to be of a construction that minimises impacts within the root zone of the tree; in this regard engineering design shall be in consultation with a suitably qualified arborist.