

<b>JRPP No:</b>	<b>2010SYE106</b>
<b>DA No:</b>	<b>DA10/1253</b>
<b>PROPOSED DEVELOPMENT:</b>	Staged Development for Residential Subdivision of Two (2) Lots Into 165 Lots - Stage 1: Approval and Works for 165 Lots - Stage 2: Pedestrian Access to Lucas Reserve Lot 1054 DP 1140838 & Lot 1057 DP 1140838 – 442 & 446 Captain Cook Drive, Kurnell
<b>APPLICANT:</b>	Australand Kurnell Pty Limited
<b>REPORT BY:</b>	Brad Harris Environmental Assessment Officer (Planner) Sutherland Shire Council 9710 0859

## Assessment Report and Recommendation

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### 1.0 EXECUTIVE SUMMARY

#### 1.1 Reason for Report

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, this application is referred to the Joint Regional Planning Panel (JRPP) as the development has a capital investment value of more than \$10,000,000. The application submitted to Council nominates the value of the project as \$15,985,657.

#### 1.2 Proposal

The application is for a Torrens Title subdivision of the subject land into a total of 165 residential lots.

The application is a staged development application under s.83B of the Environmental Planning and Assessment Act, 1979. Under that section a concept proposal for the overall development of the land is presented, with details for certain parts of the proposal to be the subject of subsequent development applications.

Stage 1 of the subject application seeks consent for the residential subdivision of proposed Lot 3 in a subdivision of Lot 1054 in DP 1140838 (consent for this subdivision was granted by Council under DA10/1060 on 16 March 2011). Stage two will involve pedestrian access from the subdivision to Lucas Reserve.

#### 1.3 The Site

The subject land is situated at 442 & 446 Captain Cook Drive, Kurnell. The legal property description is Lot 3 DP 1158488 (DA10/1060) and part Lot 1057 DP1140838.

The subject land is located on the Kurnell Peninsula. The site has frontage to Captain Cook Drive and is located between Bate Bay Road and Lindum Road. Don Lucas Reserve and Wanda Reserve form the western boundary of the site.

The subject land is located within *Zone E4 – Environmental Living* pursuant to the provisions of State Environmental Planning Policy (Kurnell Peninsula) 1989. The proposed development, being a subdivision, is a permissible land use with development consent pursuant to Clause 10 of the SEPP.

#### 1.4 The Issues

The main issues identified are as follows:

- Stormwater management.
- Traffic impacts.
- Extent of land filling.
- Relationship to bushfire prone land.
- Impact on adjacent heritage sites.
- Lot size and configuration.

#### 1.5 Conclusion

Following detailed assessment of the proposed development, the current application is considered worthy of support, subject to minor amendments and the conditions.

## **2.0 DESCRIPTION OF PROPOSAL**

The application is for a Torrens Title subdivision of the subject land into a total of 165 residential lots.

The application is a staged development application under s.83B of the Environmental Planning and Assessment Act, 1979. Under that section a concept proposal for the overall development of the land is presented, with details for certain parts of the proposal to be the subject of subsequent development applications.

Stage 1 of the subject application seeks consent for the residential subdivision of proposed Lot 3 in a subdivision of Lot 1054 in DP 1140838 (consent for this subdivision was granted by Council under DA10/1060 on 16 March 2011) and includes construction of roads, drainage and landscape works. Stage 2 will involve pedestrian access from the subdivision to Lucas Reserve. Details of the pedestrian access will be provided in a subsequent development application.

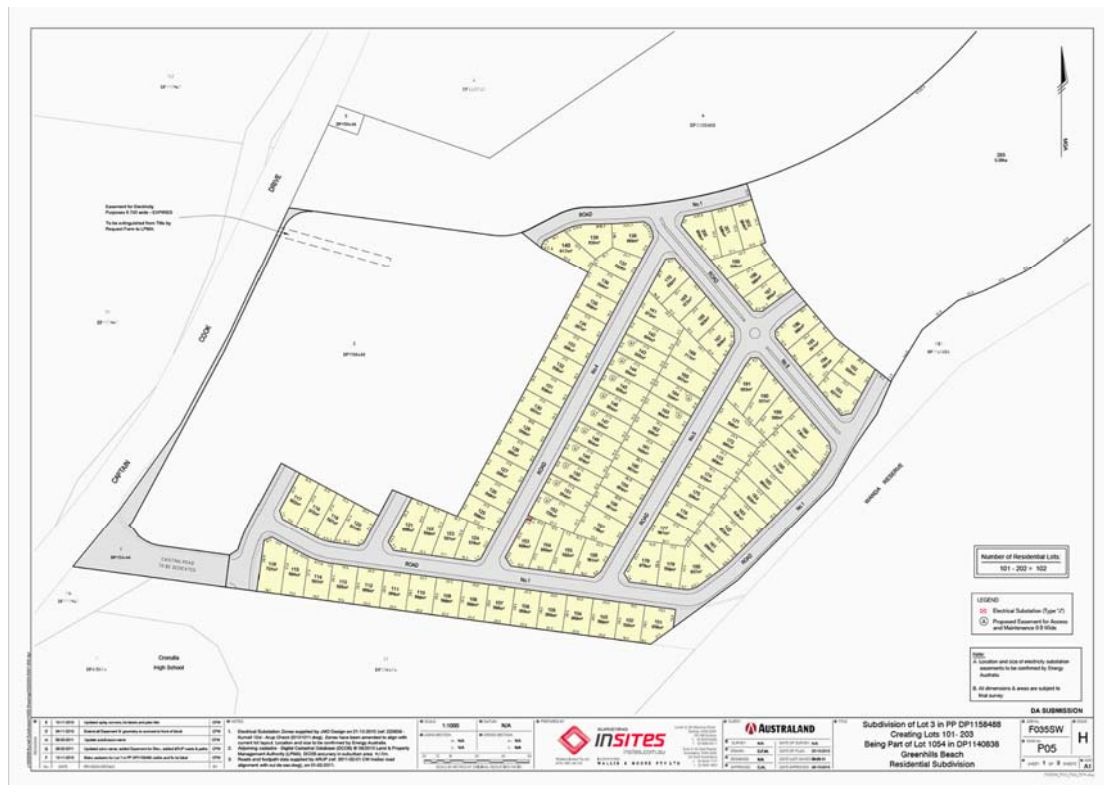


Figure 1: Proposed Subdivision Layout (southern part of site)

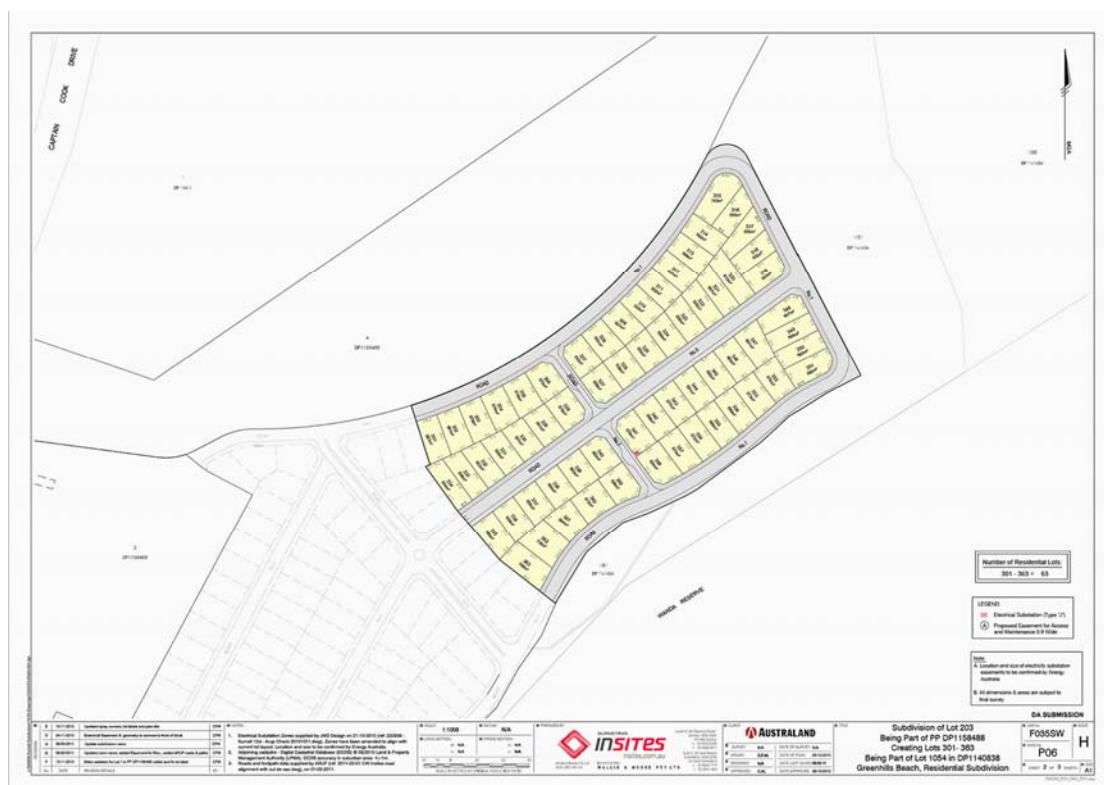


Figure 2: Proposed Subdivision Layout (northern part of site)

### 3.0 SITE DESCRIPTION AND LOCALITY

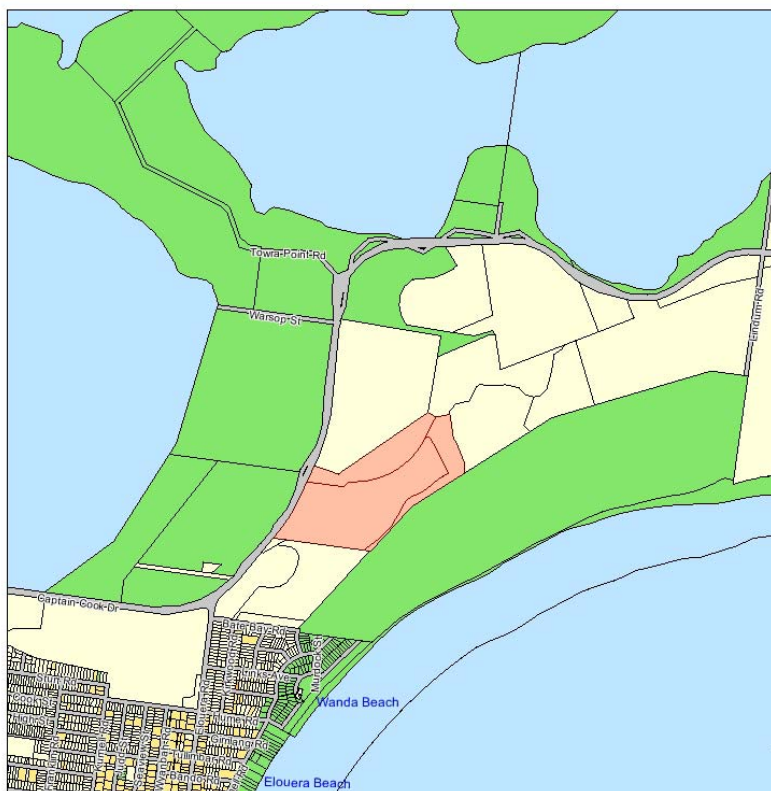
The subject land is located at 442 and 446 Captain Cook Drive, Kurnell. Currently the site is vacant, having being filled and levelled in preparation for the previously approved industrial subdivision.

The site has a frontage of 367 metres to Captain Cook Drive.

The site has a total area of 18.519ha. This is comprised of Lot 3 (the residential component), which has an area of 13.97ha and Lot 1057 (open space) having an area of 4.549ha.

The site is relatively flat from the Captain Cook Drive frontage to the rear of Lot 3, where the land rises steeply to Wanda Reserve. Beyond Wanda Reserve to the east is a stretch of beach north of Wanda Beach and known as Green Hills Beach.

The street scene in the immediate vicinity of the subject land is characterised by a mixture of land uses. Directly adjoining the site to the east is a heritage listed sand dune, which forms part of the Cronulla Sand Dune, and Wanda Beach Coastal Landscape to the east and south of the site. To the north of the site is Cronulla Sewage Treatment Plant and to the west (opposite Captain Cook Drive) is the Towra Point Wetlands, which form part of Woollooware Bay.



**SUBJECT SITE**

**Figure 3. Locality Plan**



**Figure 4. Aerial Photograph**

## **4.0 BACKGROUND**

A history of the development proposal is as follows:

- An industrial subdivision of the subject site was approved by the Land and Environment Court on 23 January 2004. This consent created 25 lots. A further consent granted by Council in December 2005 (DA00/1547) approved a 54 lot Industrial subdivision.
- On 3 June 2010 a Voluntary Planning Agreement (VPA) was entered into between the applicant, Breen Holdings Pty Limited (an adjoining land owner) and Sutherland Shire Council.
- On 27 August 2010 the land was rezoned from 7(b) Special Development Zone to Zone E4 – Environmental Living to facilitate residential development.
- On 16 March 2011 Council granted development consent for the subdivision of the Australand site (Lots 1054 and 1058 DP 1140838) into four (4) lots and one (1) road lot. That subdivision creates the lots that are proposed to be subdivided under the subject development application
- Prior to lodgement of the subject development application several meetings were held between the applicant and Council officers to discuss the proposal and the various stages of the proposed overall subdivision to achieve the residential development of the land in accordance with the Voluntary Planning Agreement between Council, Australand Pty Limited and Breen Holdings Pty Limited.

- The current application was submitted on 7 December 2010.
- The application was placed on exhibition, with the last date for public submissions being 20 January 2011. Nine (9) submissions were received.
- An Information Session was held on 12 January 2011 and eight (8) people attended.
- On 13 December 2010 a letter was sent to the applicant outlining various concerns regarding the proposal (both the subject development application and DA10/1060 upon which the subject application relies) and requesting the applicant to provide clarification of certain matters and additional information. The issues raised were:
  - The unsatisfactory/unsafe location of the intersection between Entry Road and Road 2 (DA10/1060)
  - Additional information to determine the appropriateness of the existing roundabout on Captain Cook Drive to service access to a residential subdivision.
  - A revised design of the Captain Cook Drive frontage to delete the need for a retaining wall and to reduce future maintenance burden on Council in respect of the frontage works. (DA10/1060)
  - Detail in respect of the stormwater discharge over Captain Cook Drive and various related issues including clarification of the necessity to fill the site to the extent proposed (max RL 7.0 AHD).
- Amended plans were lodged on 21 January 2011.
- On 24 January 2011 these plans were forwarded to various Council officers for comment. The amended plans reduced the height and length of the retaining wall, reduced the gradient of the landscaped batter and removed the intersection of Road 1 and the Entry Road by providing a cul-de-sac at the southern end of Road 1 and showed a detailed landscape treatment between the cu-de-sac and the Captain Cook Drive Roundabout. (DA10/1060)
- On 24 February 2011 a further meeting with the applicant and its consultants was held having regard to various concerns still held by Council's Engineering Division. These concerned the design philosophy adopted for the stormwater design and the road layout proposed. The various aspects of the proposal discussed at this meeting will be referred to under the respective headings in the "Assessment" section of this report.
- On 1 March 2011 the applicant and its traffic consultant met with Council staff to clarify issues discussed at the above meeting and undertook to provide additional information to satisfy Council's Traffic Manager in regard to the capacity of the roundabout on Captain Cook Drive. The additional information was provided and Council's Traffic Manager advised



on 3 March 2011 that he had no objections in relation to the operating capacity of the Captain Cook Drive roundabout to service the proposed subdivision, however some concerns remain in respect of various aspects of the road pattern and some intersections.

- On 2 March 2011 final amended engineering plans were submitted in respect of DA10/1060. These plans are relevant to the subject application as they set proposed site levels based on stormwater designs, which rely on draining the proposed lots to the existing stormwater detention pond (Pond 6) previously approved under the industrial subdivision consent granted by the Land and Environment Court.

## 5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application or after a request from Council, the applicant has provided adequate information to enable an assessment of this application. It should be noted that the application also includes a SEPP 1 Objection requesting a variation to the front building line for buildings within Zone E4 Environmental Living. This Objection is considered to be irrelevant to the current application as it does not include the construction of any dwellings. This matter will be addressed in more detail later in this report.

## 6.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2006 (SSDCP 2006).

Sixty two (62) adjoining or affected owners were notified of the proposal and nine (9) submissions were received as a result. Submissions were received from the following properties:

Address	Date of Letter/s	Issues
49 Kirkwood Road Cronulla	19 January 2011	3, 5, 7 and 10
1 John Davey Avenue Cronulla	20 January 2011	10, 17 and 18
35 Mitchell Road Cronulla	19 January 2011	2, 4, 5, 6, 7 and 16
2 John Davey Avenue Cronulla	19 January 2011	1, 2, 3, 4, 5 and 6
PO Box 2016 Woollooware ( <i>President Cronulla Dunes and Wetlands Protection Alliance</i> )	16 January 2011	1, 2, 3, 6, 7, 8, 9, 10, 11 and 12

3 Sanderson Street Cronulla	20 January 2011	1, 2 and 10
PO Box 165 Cronulla (Chairman North Cronulla Precinct Committee)	19 January 2011	1, 3, 4, 5, 6, 7, 9, 10, 13, 14 and 15
2/11 Bando Road Cronulla	20 January 2011	2, 3, 4, 5, 6, 7 and 10
5 Kirkwood Road Cronulla	20 January 2011	10

The issues raised in these submissions are as follows:

#### 6.1 Issue 1 – Traffic/Parking/Road Design

Some submissions express the view that roads within the subdivision appear to be too narrow and that unsafe conditions may be created for traffic. They also raised concern that inadequate parking is provided within the subdivision.

Comment: This matter is addressed below in the “Assessment” section of this report.

#### 6.2 Issue 2 – Heritage Impacts

The subject site is in proximity of a number of heritage items listed in SEPP (Kurnell Peninsula) 1989. These are the sand dune to the north of the site, the reserve to the east (Wanda Reserve) and Towra Point Nature Reserve and Quibray Bay to the west.

The proposed residential subdivision is not considered to have any adverse impacts on the heritage nature of the adjoining sites. The SEPP does not contain any provisions requiring referral of the application to NSW Heritage and the recent rezoning of the site to residential indicates that there are no concerns in relation to the heritage impact of residential development as opposed to industrial development.

#### 6.3 Issue 3 – Restriction on Ownership of Domestic Animals

Many objectors are concerned that the inevitable introduction of domestic animals such as cats and dogs within residential development will have an adverse impact on native fauna in the vicinity of the Towra Point Wetlands.

Council’s Environmental Scientist has made the following comment in respect of pet ownership:

*“Regarding pet ownership on the Australand site, the Plan of Management (PoM) for the adjoining dune prohibits dogs, horses and other domestic animals from the dune and surrounds, therefore restricting dogs from areas of indigenous vegetation is consistent with the Plan of Management for the area. Similarly cats are not allowed in the adjoining vegetation under the PoM. There are some off leash*



*areas on Wanda beach so restricting dogs to the access tracks between the property and the beach would be necessary”.*

This is considered to be a valid concern and it is therefore appropriate to control the impact of domestic animals by the imposition of a condition of consent (Condition No. 5) via a restriction on individual property titles. The recommended restriction is that a maximum of two (2) cats and two (2) dogs are kept on any individual property and that they are appropriately restrained to minimise potential impacts on native fauna in this particularly environmentally sensitive location.

#### 6.4 Issue 4 – Underground Pool and Garages

Concerns have been raised that due to the location of the watertable, underground garages and in-ground swimming pools should not be permitted.

Comment: The development application is for subdivision only and does not include the construction of any dwellings. It is the developer’s intention to have a degree of control over future housing by requiring future land owners to comply with a set of Design Guidelines. These have been submitted with the application for consideration by Council.

The Design Guidelines do not make any specific mention of basement car parking or swimming pools. In relation to car parking, it is unlikely due to the flat terrain, that basement garages would be proposed. These, along with swimming pools would be assessed on their merits in accordance with a range of development controls in place under the provisions of the SEPP.

Further comments in relation to the proposed Design Guidelines will be made in the “Assessment” section of this report.

#### 6.5 Issue 5 – Pedestrian Access

Concern has been raised in relation to two (2) aspects of pedestrian access. Firstly, some submissions are concerned regarding the potential impact of pedestrian access points to the adjacent foreshore areas to the east of the site. Secondly, concern is raised regarding the lack of defined pedestrian access ways to the future recreational facilities (playing fields and skate park) to be provided to the north of the site under the provisions of the VPA.

Comment: The development application is a staged development application under s.83B of the Environmental Planning and Assessment Act, 1979. Under that section a concept proposal for the overall development of the land is presented, with details for certain parts of the proposal to be the subject of subsequent development applications.

Stage 1 of the subject application seeks consent for the residential subdivision consisting of 165 residential lots. Stage 2 will involve pedestrian access from the subdivision to Lucas Reserve.

The scope of this development application is to assess the principle of providing access to the foreshore areas and to approve the location of those points. A further development application will be submitted to enable

assessment of the exact nature of the pedestrian access points and to ensure that these are constructed in a fashion which results in minimal environmental impacts.

A total of three (3) pedestrian access points are proposed. These are equally spaced along the south-eastern boundary of the site.

The locations of the access points are considered appropriate and as mentioned above, the detail of the means of access and the method of construction to minimise environmental impacts will be the subject of a future development application.

#### 6.6 Issue 6 – Stormwater

Some submissions raise potential impacts on the wetlands from stormwater runoff as an issue. They also state that the same strict controls that were imposed on the previous industrial subdivision should also be applied to the subject proposal for residential subdivision.

Comment: This matter is addressed below in the “Assessment” section of this report.

#### 6.7 Issue 7 – Flooding

Some concerns are raised in submissions regarding the site being flood affected.

Comment: Council’s stormwater manager has considered the proposal and whilst initially considering that further studies would need to be done, has now accepted that the applicant’s modelling and stormwater design is adequate. The proposed levels are considered to satisfy State Government policies in relation to anticipated sea level rise associated with climate change.

#### 6.8 Issue 8 – Aircraft Noise

Aircraft noise has been raised as a concern and put forward as a reason why residential development should not be permitted on the site.

Comment: The issue of aircraft noise was assessed as part of the rezoning of the land. As the site does not fall within the 20 ANEF (Australian Noise Exposure Factor) associated with Kingsford Smith Airport, residential use is considered acceptable.

#### 6.9 Issue 9 – Suburb Name

Concern is raised by some residents that the applicant seems to be implying a change in suburb name for the proposed development.

Comment: Whilst the applicant is seeking a unique new suburb name for the subdivision, this does not form part of the application and is not a matter for the Panel. Any change of suburb name will require the approval the Geographical Names Board following consideration by Council.

#### 6.10 Issue 10 – Design of Captain Cook Drive Roundabout

Concern is raised regarding the capacity of the existing roundabout on Captain Cook Drive and whether it will need to be upgraded to serve the proposed development and the future development of the adjoining Breen site.

Comment: This matter is addressed below in the “Assessment” section of this report under the heading ‘Traffic’.

#### 6.11 Issue 11 – Proximity to Cronulla Sewage Treatment Plant

The site is adjacent to Cronulla Sewage Treatment Plant and some submissions raise this as an issue for future residents.

Comment: The issue of odour impact from the Cronulla STP has been previously addressed as part of the rezoning process. There is no requirement for consideration of the issue in relation to the subject development application.

#### 6.12 Issue 12 – Impact on Green and Golden Bell Frog

Concern has been raised that residential development will have an impact on the population of the Green and Golden Bell Frog.

Comment: The existence of the endangered Green and Golden Bell Frog was a significant issue when the original industrial subdivision application was submitted. This was subject to detailed planning of the stormwater drainage system and retention of ponds to ensure the habitat of the frogs was retained and enhanced. This was the subject of detailed conditions of consent imposed by the Land and Environment Court.

The subject application is in effect no different in terms of the impact on the Green and Golden Bell Frog than the industrial development. The stormwater drainage system remains essentially the same and it is considered that there will be no additional threats on the viability of the frog population as a result of the current residential subdivision proposal.

#### 6.13 Issue 13 – Fragmented Nature of Development Applications

Concern has been raised regarding the number of separate development applications for the site and the implication appears to be that it is the developer’s intention to confuse residents and Council as to the overall intentions for the development of the land.

Comment: The applicant has been ‘up front’ in explaining why a number of separate development applications have been lodged. Principally this has been to avoid the requirement under State Environmental Planning Policy No. 71 Coastal Development for the preparation of a Master Plan, something that is considered unnecessary due to the existence of the VPA and recent rezoning of the land, which fully canvassed the suitability of the site for residential development.

The current application is a staged application and provided schematic information regarding pedestrian access to the foreshore area, which will receive detailed consideration as part of a future development application.

Land further to the south of the subject site has also been rezoned to E4 Environmental Living in conjunction with the VPA. This land is in separate ownership (Breen Holding Pty Limited) and will be subject to a separate development application, possibly for determination by the JRPP.

#### 6.14 Issue 14 – Inadequate Exhibition Period

Concern has been raised regarding the fact that the application was lodged just prior to Christmas and the holiday period provided inadequate time for residents to review the proposal and lodge submissions.

Comment: Council has no control over the timing of lodgement of development applications. The application was notified in accordance with the administrative provisions of Sutherland Shire Development Control Plan 2006. In accordance with Council policy the exhibition period was extended to allow for public holidays. In addition, every effort was made to accommodate late submissions.

#### 6.15 Issue 15 – Controls on Land Filling

Concerns have been raised about the filling of the land, although no specific reasons for such concerns were given.

Comment: Additional filling of the land is required to achieve adequate site levels to account for sea level rise and to achieve the required 1% grade to allow roads to drain to the existing wetland/stormwater management facility.

The application indicates that an additional 80,000 cubic metres of clean fill will be imported to raise the site so that the lowest level of the site will be 5m AHD. The site works will take between 12-18 months to complete and filling will take place over a 9-12 month period. This would involve approximately four (4) truck movements per hour (30-40 truck movements per day). The extent of truck movements is not considered likely to result in any measurable impact on traffic flows in Captain Cook Drive.

#### 6.16 Issue 16 – Potential Conflict of Interest

Some submissions raise concern that a Councillor who forms part of the JRPP was on Council at the time when the rezoning proposal was supported. It is considered that this is a potential conflict of interest and that this Councillor should not sit on the Panel when it considers the subject application.

Comment: This is not an assessment issue and the objectors who raised this issue have been advised by Council staff to express their concerns directly to the JRPP.

#### 6.17 Issue 17 – Impact on Birdlife

No detail in relation to this concern was expressed in the submissions.

Comment: It is unsure as to what aspect of the proposal is considered likely by objectors to impact on birdlife, as the site is currently devoid of vegetation, other than the strip of land along the Captain Cook Drive. Although there will be some vegetation removal in this area to construct a mound and retaining wall, there will be overall increase in the amount of vegetation on the site by virtue of the street planting and site landscaping carried out by each property owner as part of the development of each individual lot in the subdivision.

It is considered that the proposal will not have any detrimental impact on birdlife in the locality.

## 7.0 STATUTORY CONSIDERATIONS

The subject land is located within *Zone E4 – Environmental Living* pursuant to the provisions of State Environmental Planning Policy (Kurnell Peninsula) 1989. The proposed development, being a subdivision, is a permissible land use with development consent pursuant to Clause 10 of the SEPP.

The following Environmental Planning Instruments (EPIs), Development Control Plans (DCPs), Codes or Policies are relevant to this application:

- State Environmental Planning Policy No. 1 – Development Standards (SEPP 1)
- State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)
- State Environmental Planning Policy (Kurnell Peninsula) 1989.

## 8.0 STATEMENT OF COMPLIANCE

The statement of compliance below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

Standard/Control	Required	Proposed	Complies? (% Variation)
<b>State Environmental Planning Policy (Kurnell Peninsula) 1989</b>			
Clause 20A(3)(map) Min. Lot Area	Min. 550m <sup>2</sup>	Lot sizes range from 553m <sup>2</sup> to 743m <sup>2</sup>	Yes

## 9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

### 9.1. Rural Fire Service

The Rural Fire Service (RFS) is, at the time of preparing this report, yet to provide a formal response to Council's referral. This delay seems to be the result of an administrative error in which the subject referral was thought to

have been responded to concurrently with the previous development application for the Stage 1 works on the site (DA10/1060).

In an email received on 25 March 2011 the RFS advised as follows:

*“...the RFS is relatively happy with the layout submitted, one concern however relates to the proposed Asset Protection Zones (APZs). Whilst it is noted that the land to the immediate south of the site has been subject to subdivision and is likely to be developed, the current situation requires a 15m APZ to the southern boundary of the site. The application does not consider how this APZ will be provided until such time as the land to the south is redeveloped. Without this temporary APZ, Lots 101 and 102 would be subject to a high level of bushfire risk.”*

The RFS have undertaken to provide a formal response and this will be presented to the JRPP as soon as it is received. The draft conditions of consent provided with this report include a standard condition requiring any requirements specified by an Integrated Development Authority (in this case the RFS) to be met at Construction Certificate stage.

## 9.2. Engineering

Council's Engineering Division has undertaken an assessment of the application and advised that, subject to suitable conditions of development consent, no objection is raised to the proposal. Conditions have been imposed to address matters specifically in relation to the provision of on-street parking. These conditions are highlighted in the “Assessment” section of this report under the heading ‘Traffic’.

## 9.3. Traffic

Council's Traffic and Transport Manager has reviewed the application and provided the following comments:

*“Further to my previous comments, I am now satisfied that the single roundabout will adequately cater for traffic generated from the proposed Australand and Breen subdivisions with additional capacity for future growth along Captain Cook Drive in the short to long term future.*

*With regard to the Australand subdivision and its internal road network, I still have some concerns with some of the design aspects, these being:*

- The proposed reduced road carriageway widths with parking on only one side of the road will potentially create enforcement and ongoing maintenance issues for Council. It is considered that under the proposed arrangements, the public road system will lack flexibility with regard to seasonal parking demands associated with use of the adjacent open space areas and also changing demographics associated with resident and resident visitor parking (eg: families with teenagers).*
- The geometry of the intersection of both legs of road 1 and the main entry road remains a concern (note also proposed connection to Breen's land). From a logical planning perspective, it would be*

*preferable to create a single roundabout controlled intersection that services the entry from Captain Cook Drive both legs of Road 1, and access to the Breen's site. I'm not sure why this was not incorporated by Australand in their subdivision design other than it may impact on residential yield. Similarly it is also felt that best practice in intersection design has been compromised by the geometry of both the intersections of roads 1, 4 and 6, and roads 1 and 3 in order to obtain optimum yield of residential lots.*

- *Closer consideration will need to be given to placement of trees at and on approach to each intersection with respect to provision of adequate sight distances”.*

Comment: Comments on traffic matters will be provided under the “Assessment” section of this report.

#### 9.4. Stormwater/Flooding

Council's Stormwater Manager has undertaken an assessment of the application and following an explanation of the design philosophy adopted by the applicant's hydraulics consultants (at the meeting held on 24 February 2011), has no objections to the proposal in terms of fill levels and stormwater issues.

### **10.0 ASSESSMENT**

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

#### 10.1 Statutory Planning

##### 10.1.1 Background

Previous consents granted by the Land and Environment Court enabled the development of the subject site for industrial purposes. Subsequent discussions with Council led to a joint rezoning proposal which included a Voluntary Planning Agreement (VPA) between Australand Kurnell Pty Limited, Breen Holdings Pty Limited and Sutherland Shire Council.

The VPA secured rehabilitation of approximately 124 hectares of land on the Kurnell Peninsula that had previously been subject to sand mining and was executed on 3 June 2010.

The subject land was rezoned to E4 – Environmental Living on 27 August 2010, enabling the subject site to be developed for residential purposes.

##### 10.1.2 State Environmental Planning Policy (Kurnell Peninsula) 1989

The land is zoned E4 - Environmental Living under the provisions of SEPP (Kurnell Peninsula) 1989. There is no adopted development control plan in force.



The matters under SEPP (Kurnell Peninsula) 1989 that are considered relevant to the subject proposal are as follows:

Clause 21- Consideration of environmental effect—protection of wetlands

- (1) The Council shall not consent to the carrying out of development on any land to which this Policy applies if the development, in the opinion of the Council, is likely to have a significant adverse impact on the long term viability of the wetland areas or any ecosystem or species within the wetland areas.*

Comment:

Council's Environmental Science & Policy Manager/Principal Environmental Scientist has assessed the proposal and is of the view that the proposal does not represent any change to the approved industrial subdivision in terms of impact on the wetlands. The environmental issues associated with stormwater treatment were analysed in detail during the Land and Environment Court case that granted consent to the industrial subdivision. This resulted in the establishment of a system of ponds to store and treat stormwater runoff to prevent any disposal of pollutants into the natural ecosystem.

There is no change to the Court approved stormwater system as part of the subject application and accordingly no concerns are raised in relation to the protection of the wetlands.

Clause 20F - Groundwater vulnerability

- (3) In assessing a development application for land to which this clause applies, the Council must consider any potential adverse impact the proposed development is likely to have on the following:*
- (a) the characteristics of groundwater present in the locality,*
  - (b) the risk of groundwater contamination,*
  - (c) groundwater dependent ecosystems.*
- (4) Development consent must not be granted to development on land to which this clause applies unless the Council is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid any adverse environmental impact, or*
  - (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

Council's Environmental Science & Policy Manager/Principal Environmental Scientist, in conjunction with relevant staff within Council's Engineering Division, assessed the proposal and considers that the proposal does not represent any potential impact on groundwater.

10.1.3 State Environmental Planning Policy No. 71 – Coastal Protection

As eluded to earlier in this report, under Clause 18(1)(a) of State Environmental Planning Policy No. 71 – Coastal Protection a master plan is

required prior to granting a subdivision consent for land within a residential zone if part or all of the land is within a sensitive coastal location.

As the subject application is a 'staged' development application, S83C(2), together with Schedule 6 Clause 98 of the Environmental Planning and Assessment Act 1979, removes the requirement for a separate master plan or waiver from the Minister under Clause 18(2) of SEPP 71 – Coastal Protection.

Notwithstanding the above, the application is subject to the assessment provisions of SEPP 71 and the consent authority must take into consideration certain matters outlined in the SEPP.

The relevant aims of the policy in relation to the subject development proposal are as follows:

- a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*
- (e) to ensure that the visual amenity of the coast is protected, and*
- (f) to protect and preserve beach environments and beach amenity, and*
- (g) to protect and preserve native coastal vegetation, and*
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and*
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- (l) to encourage a strategic approach to coastal management.*

In addition, the following matters for consideration contained within Clause 8 of the SEPP are particularly relevant to the assessment and determination of this application:

- (a) the aims of this Policy set out in clause 2,*
- (b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*
- (c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

- (d) the suitability of development given its type, location and design and its relationship with the surrounding area,*
- (e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*
- (f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*
- (g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*
- (i) existing wildlife corridors and the impact of development on these corridors,*
- (l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*
- (m) likely impacts of development on the water quality of coastal waterbodies,*
- (n) the conservation and preservation of items of heritage, archaeological or historic significance,*
- (p) only in cases in which a development application in relation to proposed development is determined:*
  - (i) the cumulative impacts of the proposed development on the environment, and*
  - (ii) measures to ensure that water and energy usage by the proposed development is efficient.*

Comment:

The proposal has been assessed against the relevant aims of the Policy and Heads of Consideration contained therein and it is considered that the proposal is not inconsistent with the policy.

10.1.4 State Environmental Planning Policy (Major Projects) 2005

Clause 6 of SEPP (Major Projects) 2005 declares development that, in the opinion of the Minister, is development of a certain specified kind to be a project to which Part 3A of the Act applies. Clause 1 of Schedule 2 of SEPP (Major Projects) 2005 identifies subdivision for residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location) into more than 100 lots a kind of development to which Part 3A applies.

The subject application will not result in the creation of more than 100 lots wholly or partly within the sensitive coastal location (nor will any future subdivision applications on the Australand site) and therefore the proposal is not a Major Project as defined by the SEPP.

10.2 Visual Impact

Visual impact concerns regarding the treatment of Captain Cook Drive have been addressed in the approval of DA10/1060.

The raising of site levels has the consequence of raising the platform of future dwellings that are likely to be visible from Captain Cook Drive and from adjoining open space areas. However, the visual impact of dwellings is considered less than that of the industrial development that would have been the result if Australand were to proceed with the approved industrial subdivision of the land. Residential development will result in a far greater amount of open space and landscaped area than the industrial development of the land and therefore a reduced visual impact will result when viewed from adjacent public spaces.

### 10.3 Traffic

The proposed subdivision seeks consent for 165 residential lots. A total of approximately 450 lots are expected to be created on the Australand site and the adjacent Breen Holdings site.

It is appropriate when considering the subject application to consider the impact of future traffic flows on Captain Cook Drive and the adequacy of the existing roundabout at the entry to the new residential subdivision.

A report on the implications of future residential development of the land was submitted as part of the rezoning application. The report, prepared by Colston Budd Hunt and Kafes P/L, stated in its conclusion that:

*“3.20 In summary, the main points relating to the traffic effects of the proposed rezoning are:-*

*(i) The proposed development would strengthen demand for existing public transport services;*

*....*

*(iii) access would be via the existing roundabout on Captain Cook Drive;*

*...*

*(v) the proposed residential subdivision would generate some two thirds of the peak hour traffic of the proposed industrial park;*

*(vi) the surrounding road network will be able to cater for the traffic generated by the proposed development;*

*...*

*viii) the proposed residential subdivision is unlikely to affect emergency evacuation procedures.”*

The traffic report submitted with the current application was also prepared by Colston Budd Hunt and Kafes P/L. The report is similar in its conclusions to those listed above, adding that “the internal road design is considered appropriate” and “the number of trucks using Captain Cook Drive will be reduced when land fill operations cease in the next 7 to 10 years”.

Notwithstanding the conclusions of the traffic report, a number of concerns were expressed by Council’s Engineering Division in relation to traffic issues. These included the capacity of the existing Captain Cook Drive roundabout to service the proposed subdivision and the residential subdivision of the

adjacent site to the south owned by Breen Holdings Pty Limited and future growth in traffic volumes along Captain Cook Drive.

Other concerns were related to internal design issues such as intersections and road geometry and parking.

Following the meeting with the applicant on 24 February 2011 a further meeting between Council's Traffic and Transport Manager and the applicant's traffic consultant, Colston Budd Hunt & Kafes was held on 1 March 2011. The purpose of the meeting was to clarify the above concerns.

In relation to the Captain Cook Drive roundabout, it is noted that this was designed and constructed by Australand as part of the previous industrial subdivision approval. However, following its construction it was considered to be operating unsafely in respect to the speeds at which trucks were using the roundabout. The decision was taken by Council to reconfigure the roundabout from two (2) lanes to one (1) lane.

The concern expressed by Council's Traffic and Transport Manager is whether the residential subdivision of the Australand site in conjunction with the adjacent Breen site and the additional traffic generating uses to the north of the site to be constructed under the terms of the VPA, would render the single lane roundabout sufficient to cater for the additional traffic.

Accordingly, the applicant was requested to provide additional modelling to 'factor in' additional land uses to satisfy Council's Traffic and Transport Manager that the existing roundabout would operate within acceptable limits, not only when the Australand subdivision was complete but also when the Breen land was developed in addition to the playing fields and skate park further north along Captain Cook Drive in accordance with the VPA.

This additional information was subsequently provided and Council's Traffic and Transport Manager has advised that he is satisfied that no upgrade works are required to the roundabout access to the site.

In relation to the internal road layout, it was accepted that the design proposed was constrained to some degree by the shape and orientation of the site. It was also partly driven by the design philosophy of the applicant, who desires an outcome which provides future residents with a series of landscape 'vistas' (being the heritage dune and pond system) as they drive through the subdivision.

However, the following issues in relation to the actual subdivision layout remained as a concern to Council's Traffic and Transport Manager who advised:

*“• The proposed reduced road carriageway widths with parking on only one side of the road will potentially create enforcement and ongoing maintenance issues for Council. It is considered that under the proposed arrangements, the public road system will lack flexibility with regard to seasonal parking demands associated with use of the adjacent open space areas and also*

*changing demographics associated with resident and resident visitor parking (eg: families with teenagers).*

- *The geometry of the intersection of both legs of road 1 and the main entry road remains a concern (note also proposed connection to Breen's land). From a logical planning perspective, it would be preferable to create a single roundabout controlled intersection that services the entry from Captain Cook Drive both legs of Road 1, and access to Breen's site. I'm not sure why this was not incorporated by Australand in their subdivision design other than it may impact on residential yield. Similarly it is also felt that best practice in intersection design has been compromised by the geometry of both the intersections of roads 1, 4 and 6, and roads 1 and 3 in order to obtain optimum yield of residential lots.*
- *Closer consideration will need to be given to placement of trees at and on approach to each intersection with respect to provision of adequate sight distances."*

Comment:

In relation to the above matters raised by Council's Traffic and Transport Manager, the following comments are made:

Given the relatively low traffic volumes expected within the subdivision it is not considered that any significant redesign of the internal layout is warranted. The applicant has agreed to some minor amendments in terms of road treatments such as a mountable roundabout at the intersection of Road No. 5 and Round No. 1 to prevent traffic from reaching unacceptable speeds along Road No. 1. These amendments have been incorporated in revised plans.

*Road Widths/Parking*

Chapter 7 of SSDCP 2006 provides that new roads shall comply with the following widths:

Public Roads	Minimum Reserve Width (m)	Minimum Carriageway width (m)	Footpath Reserve Width (m)	Max no. dwellings served
Minor Cul-de-sac (<6 sites)	12.5	5.5	3.5	20
Minor local street	14.5	7.5	3.5	75
Local Street	16.0	9.0	3.5	150
Collector and distributor	18.0	11.0	3.5	>150
Perimeter	20m	9.0	Variable	N/A

**Table: Clause 2.b.14 Additional Controls for Subdivisions creating New Public Roads**

Whilst it should be acknowledged that SSDCP 2006 does not apply to the subject site it can be used as a reasonable guide as to what standards are consistently used for residential subdivisions within Sutherland Shire generally and is reflective of community expectations for the design of residential subdivisions.

The DCP does not provide any specific parking requirements for subdivisions as the required road widths are considered to allow for an appropriate level of kerbside parking within the various categories of roads which are required to have minimum carriageway and footpath widths.

The road reserve widths proposed in the subdivision are generally in accordance with the standards adopted by Council in SSDCP 2006.

Some minor relaxation of these standards can be accepted on the basis that the subdivision is relatively self-contained with little through traffic.

The applicant's decision to provide parking on only one side of roads within the subdivision is considered to have some merit particularly as the provision of street trees and guide posts within the carriageway will produce a pleasant streetscape and reduce traffic speeds through the subdivision. However, the benefits of this design philosophy need to be balanced against the practical aspects providing a suitable level of on-street parking to cater for the day-to-day needs of residents of the estate and their visitors.

The provision of formalised parking bays between planting beds/trees within the road reserve has the effect of reducing the opportunities for parking within the street as compared with a more traditional approach which either provides for two passing lanes and two kerbside parking 'lanes' or, at a minimum, the ability to informally park on both sides of narrower streets by mounting the kerb with one wheel.

The roads of concern to Council's Engineering Division in terms of parking provision are Roads 3, 4 and 5 in addition to the perimeter road being Road No.1. In terms of Roads 3, 4 and 5 (Road 3 is commenced in the current proposal and will be completed in a future stage of the development) concern has been expressed that there will be a shortage of parking for residents and visitors in those streets. In respect of Road 1 there is a view that some parking provision should be made for the public using the adjacent open space being Wanda Reserve and Greenhills Beach.

Council's Traffic and Transport Manager has recommended that a condition be imposed requiring Roads 3, 4 and 5 (the primary internal roads within the subdivision) to provide parking on both sides. To achieve this without requiring a major redesign of the lot layout, Council's Assessment Engineer has suggested the reduction of the parking 'lane' from 2.5m to 2.1m (the minimum required under AS2890.1), the reduction of trafficable lanes to 3.0m. This option would leave 2.8m for the verges.

The applicant has indicated that this option is unacceptable as a minimum of 3.5m wide verge is required for all the required services and also because it is contrary to the design objectives of the subdivision.

In assessing the likely need for parking within the subdivision, it is considered most dwellings will incorporate double garages which, together with a 6m building setback (in accordance with the Kurnell SEPP), will provide for a potential to park three (3), or potentially, four (4) cars on each lot. The



indented parking bays provided by the application in roads 3, 4 and 5 effectively provide one additional space for each dwelling fronting those roads. This is considered to be sufficient to meet the day-to-day parking needs of residents and their visitors. It is recognised that there will be occasions where residents hold functions where additional visitors will place a strain on street parking, but this is an infrequent occurrence and one which is experienced in any residential subdivision regardless of the availability of street parking.

To provide for the option of allowing some informal street parking whilst not significantly affecting the applicant's design it is proposed to impose a design change condition (Condition 20) which will require 9m wide carriageways, 2.1m wide parking lane on one side of the road and roll kerb on the other side of the road which will allow for informal parking on that side of the road without affecting two way traffic movement.

In relation to seasonal parking demands associated with the use of the adjacent open space areas, it is considered that some on-street parking should be catered for in Road 1 adjacent to Wanda Reserve on the south-eastern boundary of the site. This location has the potential to attract non-residents to the site as the new subdivision will create a closer access point to the reserve and beach than is currently available from other public places.

The proposal takes advantage of the natural public assets in the locality by providing future residents with direct access to Wanda Reserve. The roads are proposed to be dedicated as public roads (as opposed to private roads in a community title). As the maintenance burden will be borne by the community, it is reasonable that the benefit of access to Wanda Reserve also be enjoyed by the community through a modest amount of street parking.

Having regard to this, it is considered appropriate that the subject application allow for some informal on-street parking on Road 1 adjacent to Wanda Reserve where sufficient space is available. The informal provision of some parking opportunities is considered preferable to formalising a specific number of spaces which has the potential to be detrimental to the amenity of the residential environment by encouraging a heavy demand for parking by non-resident members of the community such as football teams who train on the heritage due and adjacent foreshore areas.

To facilitate the above, a 'design change' condition (Condition 20) is proposed, which requires a roll kerb to be provided in Road 1 adjacent to Wanda Reserve. This will not affect the proposed lot layout.

#### Road Geometry

Some aspects of the proposed road layout are considered less than optimal and warrant reconsideration. In particular it is considered appropriate that a roundabout be provided at the intersection of the main entry road from Captain Cook Drive and its intersection with Road 1 particularly when the adjacent Breen land is developed.

Currently it is proposed to provide a “T” Intersection at this point. This intersection is considered satisfactory to serve the current proposal. However, when it becomes the point of access to the future subdivision of Breen’s land to the south the volume of traffic using the intersection will require it to be upgraded to a roundabout. This will be a matter for further consideration when the Breen land is developed.

#### Sight Distance

The concern regarding sight distances at some intersections has been addressed by a ‘design change’ condition (Condition 20) to ensure compliance with AUSROADS.

#### 10.4 Stormwater/Flooding

Stormwater discharge from the site has essentially been established by previous development consents for the industrial subdivision (DA00/1547). It comprises a lake (Pond 6) that will directly recharge the ground water system. The operating level of Pond 6 would be the level of the water table, estimated to be in the range of 1.3m AHD to around 1.8m AHD. Pond 6 will have a surface area of approximately 1.5ha and an average volume of approximately 22ML with an average depth of 1.5m.

Stormwater treatment includes macrophyte zones, sediment basins and stormwater quality improvement devices to capture litter and oils.

At the meeting held on 24 February the design philosophy for the stormwater system was discussed at length and the information provided by the applicant’s consultants in relation to the implications of the State Government’s Climate Change Policies was accepted by Council’s Stormwater Manager and Manager Infrastructure Planning & Services Manager. In summary the meeting confirmed:

- No spill from Pond 6 or the weir in a 1 in 100 year event.
- Weir height will be RL 4.5.
- Minimum house finished floor levels (FFL) will be 500mm above the 1:100 year flows in the streets.
- Confirmed platform level RL 4.5 (min).

All issues in relation to stormwater design and site filling to ensure flood free lots have been addressed to the satisfaction of Council’s Engineering Services Division.

#### 10.5 Design Guidelines

The application includes Design Guidelines prepared by the applicant to ensure future dwellings constructed within the subdivision meet a specific set of criteria designed to encourage high quality dwelling design and amenity.

The Design Guidelines address matters such as site planning, building form, private open space, setbacks, articulation of walls, building materials and architectural design. The applicant intends to establish a Design Review

Panel who will 'approve' plans prior to them formally being submitted to Council for development consent.

The process of dealing with development applications for future dwellings is not considered to form part of the subject application, which is for subdivision only. However, the establishment of Design Guidelines for future dwellings is supported by Council. Following a full review of the Guidelines by Council's Architect, it is intended to prepare a report to Council with the intention of adopting them as a formal policy to be used in the assessment of future dwellings.

It should also be noted that the applicant submitted a State Environmental Planning Policy No.1 Objection with the development application seeking a 'blanket' variation to the 6m front building setback that applies to the E4 Environmental Living Zone under the Kurnell SEPP. The Objection seeks to allow building elements (but not habitable rooms or living areas) to extend 1m beyond the front setback for a maximum distance of 50% of the building frontage. The objection seeks to encourage a greater façade articulation for dwellings and contribute to an overall higher design standard.

As stated above, the current proposal is for subdivision only and does not include the erection of any dwellings. Whilst the Objection may have some merit, it is considered that it should be submitted for consideration by Council in conjunction with individual development applications for dwellings when they are lodged at a future date.

## **11.0 SECTION 94 CONTRIBUTIONS**

Contributions under s.94 of the Environmental Planning and Assessment are not applicable to the proposal having regard to the provisions of the Voluntary Planning Agreement applying to the development of the land under which Australand will construct community facilities on other land in its ownership at Kurnell prior to dedicating the land to Council.

## **12.0 DECLARATION OF AFFILIATION**

There was no declaration of affiliation, gifts or political donations noted on the development application form submitted with this application.

## **13.0 CONCLUSION**

The proposed development is for a subdivision creating 165 Torrens Title residential lots at 442 and 446 Captain Cook Drive, Kurnell.

The subject land is located within *Zone E4 - Environmental Living* pursuant to the provisions of State Environmental Planning Policy (Kurnell Peninsula) 1989. The proposed development, being a subdivision, is a permissible land use within the zone with development consent.

In response to public exhibition nine (9) submissions were received. The matters raised in these submissions have been dealt with by design changes

or conditions of consent where appropriate. Other design change conditions have been recommended to address deficiencies in the road layout and to make provision for some informal on-street parking opportunities centrally within the estate and on south eastern perimeter to cater for anticipated demand having regard to the proximity of the subdivision to regional recreation areas.

The application has been assessed having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 and the provisions of State Environmental Planning Policy (Kurnell Peninsula) 1989 and all relevant Council DCPs, Codes and Policies. Following detailed assessment it is considered that Development Application No. 10/1253 may be supported for the reasons outlined in this report.

#### **14.0 RECOMMENDATION**

That Development Application No. 10/1253 for a Staged Development for Residential Subdivision of Two (2) Lots into 166 Lots - Stage 1: Approval and Works for 165 Lots - Stage 2: Pedestrian Access to Lucas Reserve at Lot 1054 DP 1140838 and Lot 1057 DP 1140838 (Nos. 442 and 446) Captain Cook Drive, Kurnell be approved, subject to the draft conditions of consent detailed in Appendix "A" of the Report.