Submission to Sydney East Joint Regional Planning Panel
Shearwater Landing, Greenhills Beach
Staged Residential Subdivision proposed by Breen Property
2012SYE065 - DA12/0476

This submission to the JRPP has been prepared on behalf of the applicant to address particular issues that have been raised in Sutherland Council's assessment report, the Council's Draft Conditions of Consent and a response to the resolutions made in relation to this development application by Sutherland Shire Council at its meeting of 22 October 2012.

PLANNING HISTORY AND CONTEXT

This staged development application is the latest in a long series of steps in the planning process undertaken to enable residential redevelopment of this dilapidated former sand mining and processing site.

After years of discussions with authorities, in September 2008, a joint rezoning proposal was submitted to Sutherland Shire Council by Breen Holdings, Consolidated Development Pty Ltd (now renamed Breen Property and the applicant for this staged development application) and Australand. The proposal involved rezoning 124ha of contiguous beachfront reserve land located on the Kurnell Peninsula, north of Bate Bay Road. The majority of this land, including the subject site, was at the time zoned for industrial purposes. Of the 124ha, 40ha was proposed to be rezoned E2 Environmental Conservation, 51ha rezoned as RE1 Public Recreation and 33ha for residential purposes as E4 Environmental Living.

Australand and Breen also agreed to transfer the 91ha of land proposed to be zoned E2 and RE1 to Council. A VPA was entered into with Council which requires the owners, upon rezoning, to rehabilitate and landscape the 91ha combined site as dedicated parklands. It also requires them to construct, at no cost to Council, new recreation facilities including ten playing fields, three amenities buildings, lighting, car parking, walking trails, cycling tracks and a skate park at a cost of $25 million. In August 2010, the Minister for Planning formally amended SREP 17 (now referred as State Environmental Planning Policy (Kurnell Peninsula) 1989) to give effect to the rezoning.

This staged development application follows the rezoning of 13ha of the Breen owned land for residential purposes (E4). The outcomes of Council's assessment report are expressed in the accompanying draft conditions of consent. In their present form, the Applicant submits that a number of Draft Conditions are unlawful and totally inappropriate.

COUNCIL'S DRAFT CONDITIONS

These draft conditions seek to significantly alter, amongst other things, the proposed road layout, remediation strategy and site contours, as well as seeking to sterilise a number of lots from future residential development. The draft conditions do not specifically approve the overall concept layout and infrastructure concept for the site, arguably the most important component of this staged development application.

Legal Issues

Henry Davis York has provided an opinion in relation to the draft conditions, which is attached to this submission. In summary:

1. Council's draft conditions do not comply with the *Environmental Planning and Assessment Act 1979* (EP&A Act) by failing to approve the development application that was actually lodged, being a staged development application under section 83B of the EP&A Act. Council is obliged to determine the Staged DA in accordance with section 80(1) and 83B of the EP&A Act. It cannot elect not to do so.
2. The draft Deferred Commencement Conditions, in particular, DCC 2(b) and 6 leave for later determination fundamental aspects of the development that would render any consent void for lacking certainty and finality.
3. Deferred Commencement Conditions 1, 2, 3 and 4 require Council approval of revised plans and reports. This is also contrary to the EP&A Act. The combined effect of section 23G of the EP&A Act and clause 95(2) of the EP&A Regulations is that the approval of the revised plans and reports must come back to the JRPP, in its role as the consent authority. The existing delegation of November 2010 does not apply as the application includes development on land owned by the Council (the wetland augmentation works). This breach of the EP&A Act can be rectified by converting certain Deferred Commencement Conditions into standard conditions of consent which can then be considered by Council. Suitably redrafted conditions are contained in the attached Response to Conditions report.

Merit Issues

The following sections briefly address the key issues of the assessment report that are in contention as far as the Applicant is concerned, and the associated draft conditions of consent.

Approval of Concept Proposal

The whole point of a section 83B staged development application is to prepare a concept proposal for a site such that future development applications can be made and approved that are consistent with the concept proposal. The development application was clearly identified as a staged development application which identified the 161 residential lots and road layout and an infrastructure concept. This concept proposal must be approved if consent is to be granted by the JRPP for a staged development application.

Road and Residential Lot Layout (Deferred Consent Condition 2(b))

An appropriately accredited Road Safety Auditor has certified that the access for the proposed lots addressing Bate Bay Road is safe, therefore a change to access arrangements to these lots is not required on safety grounds. The driveway crossings will not unreasonably obstruct or compromise the safe use of the footpath by pedestrians or cyclists, especially bearing in mind the low number of vehicle movements using these five driveways. The number of on-street parking spaces lost on Bate Bay Road is minimal (five at most) and offset by spaces gained on Road 1.

The reconfiguration is not required for residential amenity reasons, in fact it would result in adverse amenity impacts on the affected lots by introducing vehicle access, parking and the like in the north facing rear yards and bringing more traffic down the internal streets and immediately adjacent to other houses. The new rear roadway (off Road 1) would reduce the lot yield, add to the cost of the development with the additional road construction, and is an unnecessary over-engineered solution to a perceived problem that does not objectively exist. The changes contemplated by the deferred commencement condition would require the development to "turn its

back" on the only continuous road frontage to the site, a road frontage that is non-arterial and has a residential character.

However, should the JRPP decide (notwithstanding the Road Safety Auditor's report) that sightlines are an issue, this could be simply managed by the inclusion of a condition requiring the construction of a median strip adjacent to the relevant lots.

Remediation and Earthworks (Deferred Consent Condition 6)

The remediation strategy for the site has been prepared by experts, and signed-off by the accredited independent Site Auditor (Mr Graeme Nyland) and the EPA. It has also subsequently been peer reviewed by an additional accredited site auditor (Mr Chris Jewell) because of the issues raised by Council staff.

The remediation work for the Shearwater Landing site seeks to contain the majority of the on-site fill material so as to avoid the environmental impacts associated with its removal. This work will be undertaken in conjunction with the bulk earthworks to maximise reuse of the suitable existing fill. The resulting landform will blend and match with that of adjoining boundaries to ensure a seamless integration of the site with its surrounds.

The basic concept of the remediation and earthworks strategy is as follows:

- Existing fill will be excavated and sorted.
- Aesthetically unsuitable materials (i.e. bricks, concrete, steel, plastic, terracotta), timber and other organic materials (which may have the potential to generate ammonia in the groundwater and methane gases) and any fragments of fibre cement sheeting will be disposed of to suitably licensed landfills or recycling facilities off-site.
- The remaining fill (less that to be included in the cap) will be compacted to form the recontoured landform.
- A two metre cap of certified suitable clean material will be placed over the compacted fill. A portion of this cap (the lower 0.7 metres) will consist of clean material recovered from the site, and certified as such. The remainder of the cap, the upper portion, will be imported VENM.
- The proportion of the existing fill that the Applicant (and the JRPP as the consent authority) can be assured is suitable to be reused within the lower portion of the cap is 18 percent. This proportion has been calculated through extensive site sampling and modelling, and has been agreed with Council's engineering staff.

The Applicant, its team of environmental engineers and Council officers all acknowledge that there is some uncertainty in the actual proportion of fill that could be reused in the cap. As with every site that contains contamination, this is a result of the fact that not every square metre of soil has been sampled and analysed. However, the site has been sampled and tested in accordance with the EPA's Sampling Guidelines and in a manner approved by the accredited site auditor, Mr Graeme Nyland. The data is therefore robust. With this site, it is necessary to design the development and this includes defining the earthworks, the final landform levels, the drainage system and road and lot layout. This requires a fixed landform level and an estimate of the amount of fill material that can be used in the capping layer that overlays the processed and compacted waste material. It is necessary for this landform to be fixed in the approval so that everything that flows from it can be set, and the impacts accurately assessed. Any changes to the proportion of fill that is to be reused (even if it could be guaranteed, which it cannot) would affect for a start the landform, stormwater and infrastructure services design.

The EPA has reviewed the proposed remediation strategy, considers it acceptable, and has provided General Terms of Approval to be included in the development consent. The EPA is

satisfied that any potential negative impacts can be effectively mitigated through the preparation and implementation of appropriate management plans. The remediation strategy has also been independently peer reviewed by another accredited site auditor, Mr Chris Jewell. His report is attached to this submission.

Proposed Landform

The proposed land form is acceptable on its merits and in terms of its impacts. The reconstituted dune form, its height, slope and general topography are an ideal response to the site, as are the existing levels at the boundaries, and the broader visual context when viewed from the public domain, particularly from the beach. The proposed development seeks to not simply decontaminate the soil, but to remediate the entire landform and restore it as best as reasonably possible to the pre-mining situation. This is consistent with best practice land remediation.

The proposed topography is gently sloping and non-intrusive in the surrounding landscape. The levels are consistent with, but lower than, the non-mined residential area of North Cronulla immediately to the south on the opposite side of Bate Bay Road. This existing residential development to the south establishes the character, height and scale that the planning controls and the subject proposal have consciously sought to respect and continue.

Furthermore, impacts on existing views are limited to four or five houses at the elevated eastern end of Bate Bay Road and where it intersects with Sanderson Street. Such impacts do not arise from the reconstituted landform, (which is lower than the ground levels of those houses) but rather as a result of the future residential development, which can be built to a height of 9 metres (as permitted under the recent SEPP amendment). This is an inevitable consequence of building upon what has been a vacant site for many years.

Clouston Associates have prepared a Visual Impact Assessment that demonstrates how the resulting and final landform will appear after it is re-contoured and housing constructed (even though this staged application does not include the detail of any residential buildings). This assessment shows how the Shearwater Landing Site will be transformed such that:

- Overall the contouring of the site will blend with and match the ground levels at the boundaries with adjoining land to ensure a seamless integration of the site and its surrounds.
- Only one row of dwelling houses will be visible when viewed from the adjoining Wanda Beach Reserve car parking area.
- The southern edge of the site is capable of delivering an attractive streetscape that retains and respects the existing levels of Bate Bay Road.
- The existing dwellings on the corner of Sanderson Street and Bate Bay Road, that are located at a higher ground level, will continue to be more visually prominent on the skyline.

ELECTED COUNCIL RESOLUTIONS

At its Development Assessment and Planning Committee meeting of 22 October 2012, Sutherland Shire Council resolved to make a submission to the JRPP. The submission was made on 24 October, and stated that:

> *Council has serious concerns about the subdivision of the land into six superlots and before any applications are submitted for construction of the infrastructure or further subdivision, the proposal be amended by:*
>
> *(a) Adjusting the lot layout in the vicinity of Bate Bay Road so that less lots gain vehicular access from Bate Bay Road and gain access to internal roads.*

(b) Widening a section of Road No. 1 in the vicinity of its intersection with Road No. 4 to enable cars to safely park in Road No. 1 without obstructing through traffic when visitors park in Road No. 1 to utilise the pedestrian accesses to the beach.

(c) Reducing the slope of the future lots in the northern section of the subdivision (particularly north of Road No. 4) by lowering the elevation of the landform.

(d) Formulating a new remediation strategy for the site that incorporates processing of sufficient material so that a greater volume of material can be utilised in the capping layer and the quantity of material to be imported to the site is reduced.

(e) That Council ask for reduced ground level height on Bate Bay Road so as to reduce the impact on the houses on the southern side of Bate Bay Road.

(f) That on 149 Certificates, information be provided to affected parties in regards to the sporting fields and of the improvements and upgrades.

(g) That a better style of sound barrier and privacy screen be afforded between the school and residences.

These concerns are addressed below.

Bate Bay Road Driveway Access

Cardno undertook a safety assessment of these proposed driveways connecting to Bate Bay Road. This safety assessment was then audited by an IPWEA Accredited Level 3 Road Safety Auditor. The Road safety auditor notes in his letter (submitted to Council on 8 August 2012) that:

> *Australian Standards 2890.1 Figure 3.2 requires a sight distance of 40 metres for domestic property access with a frontage road speed of 50km/h. The sight distances at the proposed locations of the driveway access for Lots 269 – 272 comply*.

Consequently, there is no technical reason for these driveways to be relocated. Further, to do so would result in a residential development that is not as well connected to the existing community. The concept design has focused on ensuring that the new development does not read as a 'gated community', but rather that it is appears as a natural extension of the existing urban form. It is good urban design practice for the new dwellings on the northern side of Bate Bay Road to address and access the street in the same manner as the existing dwellings on the southern side of the road. This completes the streetscape and helps integrate the two neighbourhoods visually.

Widening of Road 1

In considering the suggestion that Road 1 be widened in the vicinity of its intersection with Road 4 to facilitate parking in peak periods, the following should be taken into account:

- The proposed road system provides 161 new on-street parking spaces. This is in addition to off-street parking for residents.
- During the busy days of summer weekends and holidays, (which are for a minority of days in the year) parking is more suitably managed by parking restrictions imposed by Council, rather than by widening local streets to accommodate more parking and minimising the incentive to use public transport.
- Significant consultation has been undertaken with Council staff resulting in extensive design work to ensure that the proposed roads are as far as practicable of minimal carriageway width to reduce speeding. The Council officer's report does not recommend such road widening.

Reducing Slope of Northern Lots

The proposed landform has been designed to blend with the design surface of the neighbouring Australand residential development. The proposed lots in the vicinity of this boundary generally have gentle slopes. These slopes are suitable for the intended use of the land for dwelling house development. Any privacy impacts can be mitigated with standard design and landscaping measures at the development application stage for residential buildings.

New Remediation Strategy

The methodology to be used to remediate the Shearwater Landing site is the result of comprehensive site investigations and a detailed remediation action plan which has been approval by an EPA accredited site auditor. Furthermore, it has been independently peer reviewed by another auditor and it has been accepted by the EPA as an appropriate strategy. The EPA and the site auditors are the appropriate decision makers in relation to remediation strategies, not council officers or others without EPA accreditation.

Every tonne of the 700,000 tonnes of fill material that was introduced on the site over 20 years ago will be excavated, examined, and progressively sorted and re-compacted in layers to achieve the required level of compaction for site-stability. This will be covered by a two metre thick cap of certified clean material. Only the minimum amount of clean fill will be imported onto the site, as environmentally necessary for the cap. All of this will be done under the direction of a registered hygienist, under the purview of the EPA accredited Site Auditor and in accordance with the conditions in a licence issued by the EPA under the *Protection of the Environment Operations Act 1997*.

There are no more sophisticated technologies or processing methods available that can viably remove the range of particle sizes that is required by the site auditor and the EPA to meet the 'clean soil barrier' requirements.

Height of Bate Bay Road Properties

The proposed landform will blend and complement that of adjoining boundaries to ensure a seamless integration of the Site with its surrounds. The existing dwellings on the corner of Sanderson Street and Bate Bay Road, that are located at a higher ground level, will continue to be more visually prominent on the skyline than any future dwellings on the development site, and some of the small number of properties with views across the currently vacant site will continue to have views over, between or around future houses.

S149 Notation in Relation to Possible Future Sporting Field Upgrades

The contents of future s149 certificates are not a matter to be considered in relation to this development application. In any case, it is not appropriate for a s149 certificate to refer to hypothetical future development on land which is currently the Cronulla High School Oval.

Interface with School

The written '*Interface with Cronulla High School*' submission to Council (prepared by JBA and dated 23 August 2012) detailed the proposed measures that will ensure that the future residential development provides an appropriate interface to the neighbouring school in terms of privacy, security and visual impact. (See copy attached)._

CONCLUSION

This site has historically been used for sand mining, sand processing and unconsolidated fill. The proposal aims to restore the original landform. The applicant and its expert consultant team have developed a viable remediation and landform reinstatement solution that is sustainable and meritorious. In particular, the proposed development has the following benefits:

- Remediation of a heavily degraded and contaminated former sand mine, processing operation and landfill site.
- Transformation of the highly altered landscape with an appropriately re-contoured topography that is both naturalistic and elegant in its design.
- A high standard of landscaping of the public domain and open space areas.
- The efficient and economic use of the land for low density housing, consistent with the planning objectives and development standards for the E4 Environmental Living zone.
- A design that encourages integration of the new community with the adjoining residential areas to the south (existing) and north (approved) in a complementary manner.
- Provision of an integrated stormwater and groundwater management system that will deliver improved water quality outcomes to the wider catchment.
- The safe management of traffic to minimise impacts on residents and the school.
- Replacement of the existing heavily weed-infested vegetation on the site with attractively landscaped streets and vegetated slopes within the affected portion of the Lucas Reserve.
- A significant contribution to the Sutherland Shire Council's housing target with the ultimate addition of 161 high amenity housing allotments.

Finally, the approval of this 'shovel-ready' project accords with the State Government's expressed policies of cutting through unnecessary red tape and delivery of desperately needed housing in the Sydney Metropolitan area.