

<b>JRPP No:</b>	<b>2012SYE065</b>
<b>DA No:</b>	<b>DA12/0476</b>
<b>LGA:</b>	<b>Sutherland Shire</b>
<b>Proposed Development:</b>	<b>Staged Development - Masterplan Layout of 161 Residential Lots, Remediation and Bulk Earthworks; Stage 1: Development Including Initial Development of Three (3) Existing Lots into Six (6) Super Lots, Vegetation Removal, Site Remediation, Bulk Earthworks, Construction of Associated Road and Infrastructure, Augmentation of Existing Wetland Basin Stormwater Treatment Facility, Landscaping and (if required) Installation of Passive Gas Venting System on Part of Don Lucas Reserve</b>
<b>Site/Street Address:</b>	<b>Lot 22 DP 226424, Lot C DP 370539, Lot 115 DP 777967, Lot 116 DP 777967 &amp; Lot 7304 DP 1130200 - 15R Bate Bay Road &amp; 452 Captain Cook Drive, Greenhills Beach and 405-417 Captain Cook Drive &amp; 31 Lindum Road, Kurnell</b>
<b>Applicant:</b>	<b>Breen Property Pty Ltd</b>
<b>Submissions:</b>	<b>11</b>
<b>Recommendation:</b>	<b>Approval</b>
<b>Report By:</b>	<b>Annette Birchall – Environmental Assessment Officer (Planner) Sutherland Shire Council</b>

## **Supplementary Assessment Report and Recommendation**

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### **1.0 EXECUTIVE SUMMARY**

#### **1.1 Reason for Report**

At its Meeting of 7 November 2012 the Joint Regional Planning Panel (JRPP) considered a development application for a staged development including a Masterplan for a residential subdivision, remediation and bulk earthworks and subdivision into six superlots.

At this meeting the JRPP resolved to defer the decision on this application to allow for several issues to be addressed.

The purpose of this report is to:

- Provide the JRPP with a contour plan for the site that is acceptable to Council.
- Provide the JRPP with the appropriate approvals from the Heritage Office, Office of Water and Environment Protection Authority.
- Rationalise the recommended conditions with the requirements of the General Terms of Approval.
- Respond to the applicant's submission on the draft conditions.

## 1.2 Conclusion

The application, in its revised form as recommended by Council, satisfies the resolution of the JRPP and should be approved, subject to the recommended conditions detailed in Appendix 'A'.

## 2.0 BACKGROUND

- At its Meeting of 7 November 2012 the Joint Regional Planning Panel (JRPP) considered a development application for a staged development including a Masterplan for a residential subdivision, remediation and bulk earthworks and subdivision into six superlots. At this meeting the JRPP resolved as follows:
  1. *The Panel resolves unanimously to defer the decision on this application in order to allow the following to take place:*
    - a) *The council's planning assessment officer should indicate, after consulting with the applicant, an acceptable contour plan for the site. This is because the Panel believes that the ridge in the existing proposal is too high and would present an unattractive view.*
    - b) *Lots 101, 102 and 103 should be changed into two lots and can be used for residential.*
    - c) *The approval of the Office of Heritage should be obtained for the amended proposal. The approval of the Office of Water should be obtained.*
    - d) *The council's planning assessment officer should prepare a response to the applicant's submission on the standard draft conditions 7-62.*
    - e) *The council and/or the applicant should refer to the EPA the works the subject of the Engineering Report and Construction Management Plan attached to the Statement of Environmental Effects for confirmation that it complies with the EPA's General Terms of Approval.*
    - f) *The council's planning assessment officer should rationalise the standard conditions and the requirements of the General Terms of Approval to ensure that they are consistent with each other.*
  2. *The Panel accepts that the minimum recovery and re-use rate of the existing fill material should be 18%, however, it acknowledges that the percentage may, on further information, become greater.*
  3. *The Panel accepts that lots 270, 271, 272, 273 and 274 have access from Bate Bay Road.*
- On 15 November 2012 Council officers met with the applicant to discuss changes to proposed levels that would result in a contour plan more acceptable to Council. The existing levels of fill as well as the parameters for reducing visual impact of the proposal were discussed. The applicant undertook to take these parameters into account and prepare a revised contour plan.
- Revised plans were submitted on 18 December 2012.

- An internal meeting was held on 9 January 2013 to discuss the revised landform plan. It was agreed that little had been achieved to address the concerns of the JRPP or the issues discussed with Council.

### 3.0 CHANGES

#### 3.1 Contour plan

The JRPP, in its final decision, resolved that *“the council’s planning assessment officer should indicate, after consulting with the applicant, an acceptable contour plan for the site. This is because the Panel believes that the ridge in the existing proposal is too high and would present an unattractive view.”*

##### 3.1.1 Changes proposed by the applicant

In addressing this matter, a meeting was held with Mr Vella of Breen Holdings. Council's Planning Assessment Officer discussed the parameters that would provide a contour plan for the site acceptable to Council and taking into consideration the reasoning provided by the Panel. In summary, these are as follows:

- The Panel believes that that ridge is too high and results in an unacceptable visual impact. During the meeting with the applicant, it was agreed that to address this, four areas of the development required revision :-
  1. The contours directly adjacent to Bate Bay Road so as to reduce the visual impact as viewed particularly from the eastern end of Bate Bay Road.
  2. The gradient of the site down to the Australand Development to the north-east to reduce the visual impact from this residential development.
  3. The gradient along the eastern boundary and within the Don Lucas Reserve in order to limit the need for a high and lengthy retaining wall within the public reserve and reduce the visual impact of future dwellings from the reserve.
  4. Prevent any further increase in levels adjacent to Cronulla High School.
- It was evident that the Panel felt that the reuse of fill material and setting optimal contours for the site are unrelated and should be treated as such. The Panel was not particularly concerned whether fill material had to be imported or exported, as achieving a satisfactory landform was considered to be the prime objective. This is also the view of Assessment Officer.

As Council does not have the computer models to generate a revised contour plan, it was agreed that the applicant would prepare this plan with consideration of the parameters agreed upon.

The revised contour plan was submitted on 18 December 2012 and on review, it was determined that:

- The ridge had been shortened by moving the 18m contour some 60m south, however, it had not been lowered.
- Some attempt had been made to reduce the height of future dwellings along Bate Bay Road by providing a steeper gradient within the front setback of these lots.

- The 'shortening' of the 18m contour resulted in a reduced gradient of the north-east slope in the middle of the site. However, the gradient on the lower section of this slope had been increased and the 10m contour had been moved even closer to the boundary with Australand's site.
- There had been a token attempt at addressing the interface with the Reserve, but little change was proposed for the steepest section at the southern end, which still requires a large retaining wall;
- The level of the lots directly adjacent to the school remained generally unchanged.

It has also been made clear in the letter accompanying the revised plan that the applicant is still linking the landform to the reuse potential of the existing fill. The applicant wishes to maintain the 18% reuse target and so their revised plan is essentially a rearrangement of fill with no significant reduction. This resulted in the rise of the land adjacent to the Australand development as well as the creation of an awkward smaller ridge line in a westerly direction.

### 3.1.2 Changes proposed by Council's planning assessment officer

Council's planning assessment officer prepared an acceptable contour plan for the site as requested by the Panel. As Council does not have the required computer model to create this plan electronically, the contours have been drawn on the contour plan submitted by the applicant on 18 December 2012. Council proposes the following modifications in this plan (Drawing Number 600201-SK3001 Rev 2).

#### 3.1.2.1 Ridge

The ridge line running parallel with the eastern boundary has been lowered by increasing the gradient of the south-eastern most lots, which allows the ridge to be lowered by some 2m. The gradient of the ridge remains generally unchanged.

While the lowering of the ridge in itself reduces the visual impact of the development, it also greatly improves the site's relationship with each of the site boundaries as detailed below.

The previous landform had been assessed to determine the likelihood of excavation for construction on sloping sites breaching the clean soil cap. While the original landform was found to be acceptable, the revised landform, due to its lower gradients, has an even lower likelihood of this occurring.

#### 3.1.2.2 Bate Bay Road

Generally the contours proposed by the applicant along Bate Bay Road are acceptable. The only change proposed by Council is the moving of the 24m contour to the southern boundary of Lots 267 and 266. As access to these lots is via the internal road, a more rapid 'drop' into these lots from the Sanderson Street corner is feasible and will allow for a lower building platform on these prominent corner lots. The relocation of the 24m contour also assists in the lowering of the ridge, as described above, and providing a more gradual gradient into the Reserve.

#### 3.1.2.3 North-eastern boundary

On their revised plan of 18 December 2012, the applicant proposed to relocate the lower contours closer to the north-eastern boundary. Considering the distance to the

highest point of the site, the raising of the site in this area as well as the steepness of this slope this is considered unnecessary.

As the 14m contour has now been relocated as part of the lowering of the ridge, Council proposes to return the 12m and 10m contours adjacent to the Australand development generally to the location originally presented to the Panel. Some minor amendments to these contours are considered to further improve the resultant landform.

#### 3.1.2.4 Eastern boundary

Contours proposed by Council along the eastern boundary and within the Reserve provide for a more gradual transition to the exiting levels around the buildings in the southern corner and require less fill within the Reserve. This is achieved by reducing the height of ridge as detailed above and by providing a slightly steeper gradient within the rear of the lots adjacent to the Reserve. There is also an improved relationship between the proposed contours and the existing contours within the Reserve.

While some retaining feature may still be required in the vicinity of the existing buildings, a recommended condition of consent requires this to be in the form of a stacked rock wall preferably in two parts to allow vegetation to establish amongst the rock and to minimise the visual impact. The revised contours within the Reserve are also discussed in the Conditions Table (Appendix A).

#### 3.1.2.5 Western boundary

Considering the small distance between the top of Bate Bay Road and the school grounds 18m below, there are few options with regards to contours in this area. The lowering of the ridge has enabled the 12m contour adjacent to the school oval to be relocated further east, which has eliminated the unachievable 2m drop from one side of Road 2 to the other as proposed by the applicant.

The contours running west towards the school buildings are proposed to be generally relocated to their position originally presented to the Panel to remove the new awkward and unnecessary ridgeline proposed on the latest contour plan.

### 3.2 Lots 101, 102 and 103

Lots 101, 102 and 103 have been modified to two residential lots by the applicant as advised by the Panel. This addresses point 1.b) of the Panel's decision of 7 November 2012.

### 3.3 Agency approvals

#### 3.3.1 Office of Heritage

Revised plans received from the applicant were sent to the Office of Heritage. The Council's proposed modifications to the contour plan have also been discussed with Stuart Read from the Heritage Branch. Mr Read understands that neither the revised plans nor Council's modification of these, impact on the Heritage item and is happy to provide revised GTA's.

### 3.3.2 Office of Water

Clause 25 of the Kurnell SEPP notes that *'Council shall not consent to the carrying out of development where ... c) groundwater or surface water is discharged as waste water into bores, unlined pits, channels or excavations, unless arrangement for the proper utilisation and protection of this natural resource have been made that are satisfactory to the Department of Environment, Climate Change and Water.'*

Previously the NSW Office of Water (NOW) has noted that it 'will have requirements that will need to be addressed' with regards to proposed stormwater infiltration provided in the north-western corner of the site. However, NOW are still unclear how the new Aquifer Interference Policy will be applied or how the Policy and the SEPP for Kurnell are likely to interact with regard to groundwater.

At the time of writing, requirements from NOW had not been received.

### 3.3.3 EPA

The EPA has verbally confirmed that their GTA's relate to the works which will require licencing from the EPA. These works are those related to the remediation aspects of the works as detailed in the Remediation Action Plan (RAP).

This being said, the EPA confirms that all documents were considered in producing the GTA's and the requirement for all screening and processing of soil to be undertaken within an enclosed room protects against possible air pollution resulting from soil processing. The applicant has requested the EPA to remove this condition and the EPA is currently assessing the applicant's Air Quality Management Plan.

Works not undertaken as part of the remediation of the site will not be licenced by the EPA. Under the POEO Act 1997, Council is the regulatory authority for any non-licenced activities. Standard conditions of consent are included with regards to site management and include appropriate conditions to protect air quality and manage asbestos.

### 3.4 Access from Bate Bay Road

The draft condition of consent restricting access to Lots 270, 271, 272, 273 and 274 from Bate Bay Road has been removed as directed by the Panel (point 3).

### 3.5 Draft conditions of consent

A response to the applicant's submission on the draft conditions has been provided per condition in table format (**Appendix A**).

The draft conditions and the requirements of the General Terms of Approval have been rationalised to ensure that they are consistent with each other. The revised draft conditions can be found in **Appendix B**.

### 3.6 Reuse of fill material

Point 3 of the Panel's resolution states *'The Panel accepts that the minimum recovery and re-use rate of the existing fill material should be 18%, however, it acknowledges that the percentage may, on further information, become greater.'*

This comment refers to the rate of reuse and does not link the rate of reuse to the revised contour plan as requested in Point 1.a) of the Panel's resolution. Council agrees with the applicant that 18% is the minimum reuse rate that can be guaranteed using the exiting information and parameters.

The Council is also of the view that more than 18% of the existing fill will be suitable for reuse. This will partly depend on the actual contamination levels encountered once site works commence. It will also depend on what methods of screening and processing of the existing fill are employed. A more aggressive process than that described in the Remediation Action Plan is likely to produce more than 18% of suitable fill. This is supported in the report by Chris Jewell (Site Auditor) presented to the Panel at its Meeting on 7 November 2012.

Council's Environmental Science Manager estimates that the revised landform will comprise approximately 70,000 cubic metres less fill. The applicant currently proposes to import 166,000 tonnes of fill onto the site for use as a capping layer (this represents 85% of the total soils needed for the cap). If this 70,000 tonnes were to be recovered from the 430,000 cubic metres of material on site, this would translate to an increase in the recovery rate from the currently proposed 18%, to approximately 30%.

As has been discussed previously, a recovery rate of 30% is considered potentially achievable, but would require some amendment to the proposed Remedial Action Plan. Alternatively, the applicant could stick with the current RAP and remove 70,000 cubic metres from the site. These would be the only additional truck movements caused by the altered landform as there would be no need to import a corresponding amount.

Overall the revised landform provides some significant environmental benefits over the original landform. While the revised landform will require either increased reuse of materials on site (potentially increasing the construction timeframe) or removal of material from site (increasing truck movements) these impacts are expected to be short term compared to the longer term benefits of a more appropriate landform.

#### **4.0 CONCLUSION**

The applicant has addressed the resolution of the JRPP at its Meeting of 7 November 2012.

Following negotiations between Council and the applicant, the final contour plan remains in dispute. The applicant's revised landform is driven by maintaining a very conservative fill reuse rate, whereas Council's preferred landform is driven by achieving satisfactory edge conditions along all boundaries and minimising visual impact.

Subject to the recommended conditions of consent the proposed development is now considered to be worthy of approval.

## 5.0 RECOMMENDATION

That Development Application No. 12/0476 for a Staged Development Including the Masterplan Layout of 161 Residential lots and Stage 1 Works Including the Initial Development of Three (3) Existing Lots Into Six (6) Super Lots, Vegetation Removal, Site Remediation, Bulk Earthworks, Construction of Associated Road and Infrastructure, Augmentation of the Existing Wetland Basin Stormwater Treatment Facility and Landscaping on Lot 22 DP 226424, Lot C DP 370539, Lot 115 DP 777967, Lot 116 DP 777967 and Lot 7304 DP 1130200 (Nos. 15R Bate Bay Road & 452 Captain Cook Drive, Greenhills Beach and Nos. 405-417 Captain Cook Drive & 31 Lindum Road, Kurnell be approved, subject to the draft conditions of consent detailed in **Appendix B** of the Report.