

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC-131
DA Number	DA-2021/187
LGA	Bayside Council
Proposed Development	Demolition of the existing children's pool and shelter; removal of seven (7) trees and construction of three (3) water slides, an outdoor aqua play area; associated building for mechanical servicing and change rooms. The water slides and aqua play area are to operate between the following hours: <ul style="list-style-type: none"> Monday to Friday 3:00pm to 7:00pm; and Saturdays / Sundays & School Holidays 10:00am to 7:00pm
Street Address	2 Myrtle Street, Botany (Lot 1 / DP 1148910)
Owner	The Minister for Public Works, i.e. Crown Lands (Managed by Bayside Council)
Applicant	Bayside Council C/ - Urbis
Date of DA Lodgement	7 May 2021
Number of Submissions	Four (4) unique submissions were received <ul style="list-style-type: none"> Three (3) objecting to the development. One (1) in support of the development.
Recommendation	Approval, subject to conditions.
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	<p>(3) Council related development over \$5 million.</p> <p><i>Development that has a capital investment value of more than \$5 million if—</i></p> <ul style="list-style-type: none"> <i>(a) a council for the area in which the development is to be carried out is the applicant for development consent, or</i> <i>(b) the council is the owner of any land on which the development is to be carried out, or</i> (c) the development is to be carried out by the council, or <i>(d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).</i>
List of all relevant s4.15(1)(a) matters	<p>State Environmental Planning Policy (State and Regional Development) 2011</p> <p>State Environmental Planning Policy (Infrastructure) 2007</p> <p>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</p> <p>State Environmental Planning Policy No. 55 (Remediation of Land)</p> <p>Botany Bay Local Environmental Plan 2013</p> <p>Bayside Local Environmental Plan 2021</p> <p>Botany Bay Development Control Plan 2013</p>
List all documents submitted with this	<p>Acoustic Report, prepared by Resonate</p> <p>Arborist Report, prepared by Sturt Noble Associates</p>

report for the Panel's considerations	Architectural Plans, prepared by CO-OP Civil Plans, prepared by Cracker Jack Consulting Engineers Construction and Operational Waste Management Plan Contamination report, prepared by Douglas Partners Flora and Fauna Assessment Geotechnical report, prepared by Douglas Partners Landscape plans, prepared by Sturt Noble Associates Traffic and Parking Impact Statement, prepared by GTA Consultants Remediation Action Plan, prepared by Douglas Partners Response to Request for Information 1, prepared by Urbis Response to Request for Information 2, prepared by Urbis Response to Request for Information 2 (addendum), prepared by Urbis Offer to enter into a Works In Kind Agreement, Draft Conditions
Clause 4.6 requests	N/A
Summary of key submissions	<ul style="list-style-type: none"> • Traffic and parking impacts • Inconsistency with the Master Plan previously prepared for the site. • Request for alternative facilities, such as an internal pool and gym.
Report prepared by	Brendon Clendenning – Consultant Assessment Planner
Report date	5 November 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

This report considers Development Application No. DA-2021/187 for the demolition of the existing children's pool and shelter; removal of seven (7) trees and construction of three (3) water slides, an outdoor aqua play area; associated building for mechanical servicing and change rooms, at 2 Myrtle Street, Botany (Lot 1 / DP 1148910) also known as the Botany Aquatic Centre. The application requires the determination of the Sydney Eastern City Planning Panel as it is Council related development with a capital investment value of more than \$5 million (*State Environmental Planning Policy (State and Regional Development) 2011, Schedule 7 Clause 3*). Furthermore, in accordance with Council policy, the application has been assessed by an independent town planning consultant.

The site is currently used for a recreation facility (outdoor) and accommodates an outdoor 50 metre, eight lane Olympic swimming pool, a grandstand, a 25-metre lap pool, a children's pool and administration/reception building with a food kiosk. The site is located adjacent to a business park zone, a public park, and railway corridor, and is opposite a medium to high density residential precinct. The site itself is zoned RE1 – Public Recreation under the *Botany Bay Local Environmental Plan 2013* (BBLEP 2013).

This report considers the development against the relevant provisions of section 4.15 of the *Environmental Planning and Assessment Act 1979* and having regard to these provisions the assessment concludes:

- When assessed against the relevant environmental planning instruments pertaining to the subject site, key issues raised within the assessment, including, contamination, acoustic impacts, acid sulfate soils management, stormwater and flooding have been adequately addressed with additional information and plan amendments.
- The BBLEP 2013 was repealed on 26 August 2021, with the gazettal of the *Bayside Local Environmental Plan 2021* (BLEP 2021). As the application was lodged on 7 May 2021 the application has been considered against the relevant local environmental plan at the time of lodgement in accordance with the clause 1.8A of BLEP 2021. While a relevant matter for consideration, the BLEP 2021, does not alter the conclusions of the assessment.
- Issues were raised within the assessment process within regards to traffic and parking, and landscaping, in accordance with the *Botany Bay Development Control Plan 2013* (BBDCP 2013). These issues have been adequately addressed and the proposal is consistent with BBDCP 2013.
- The potential impacts of the proposed development on the natural and built environment have been assessment and determined to be satisfactorily addressed, subject to recommended conditions of consent.

The application was notified to the public in accordance with Council's notification procedures contained within the *Bayside Engagement and Communications Strategy 2019*, and four (4) submissions were received with three (3) of those objecting to the development and (1) one in support. The issues raised in the submissions do not warrant refusal of the application as discussed within this report.

In summary of the above the proposal is generally consistent with the relevant matters for consideration and it is recommended that the application be supported and approved, subject to conditions of consent.

Recommendation

1. That the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority, APPROVE Development Application DA-2021/278 for the 'Demolition of the existing children's pool and shelter; removal of seven (7) trees and construction of three (3) water slides, an outdoor aqua play area; associated building for mechanical servicing and change rooms. The water slides and aqua play area are to operate between the following hours, Monday to Friday 3:00pm to

7:00pm; and Saturdays / Sundays & School Holidays 10:00am to 7:00pm', at 2 Myrtle Street, Botany, pursuant to s4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

2. That the submitter(s) be notified of the Bayside Local Planning Panel's decision

Site Description

The site is legally described as Lot 1 DP 1148910 and known as 2 Myrtle Street, Botany, or the Botany Aquatic Centre. The site is situated to the north of Myrtle Street, east of Booralee Park and is bounded by Botany Rail Line (freight railway line), with the alignment of the rail line defining the arc boundary which wraps the east and north-eastern end of the site. The site has an area of 30,095.9m² and is relatively flat with a minor slope funnelling towards the centre of the site.

The site currently accommodates an outdoor 50 metre, eight lane Olympic swimming pool (located towards the centre of the northern boundary, and oriented north-south), a grandstand (to the west of the Olympic pool), a 25-metre lap pool (east of the Olympic pool), a children's pool (located on the south boundary), administration and reception building with a food kiosk (to the southwestern corner of the site). Plant rooms are located along the northern boundary, and a carpark containing 163 spaces sits along the majority of the western boundary, and also services Booralee Park and associated facilities. The aerial image shown below in **Figure 1** shows the site facilities and surrounding land.

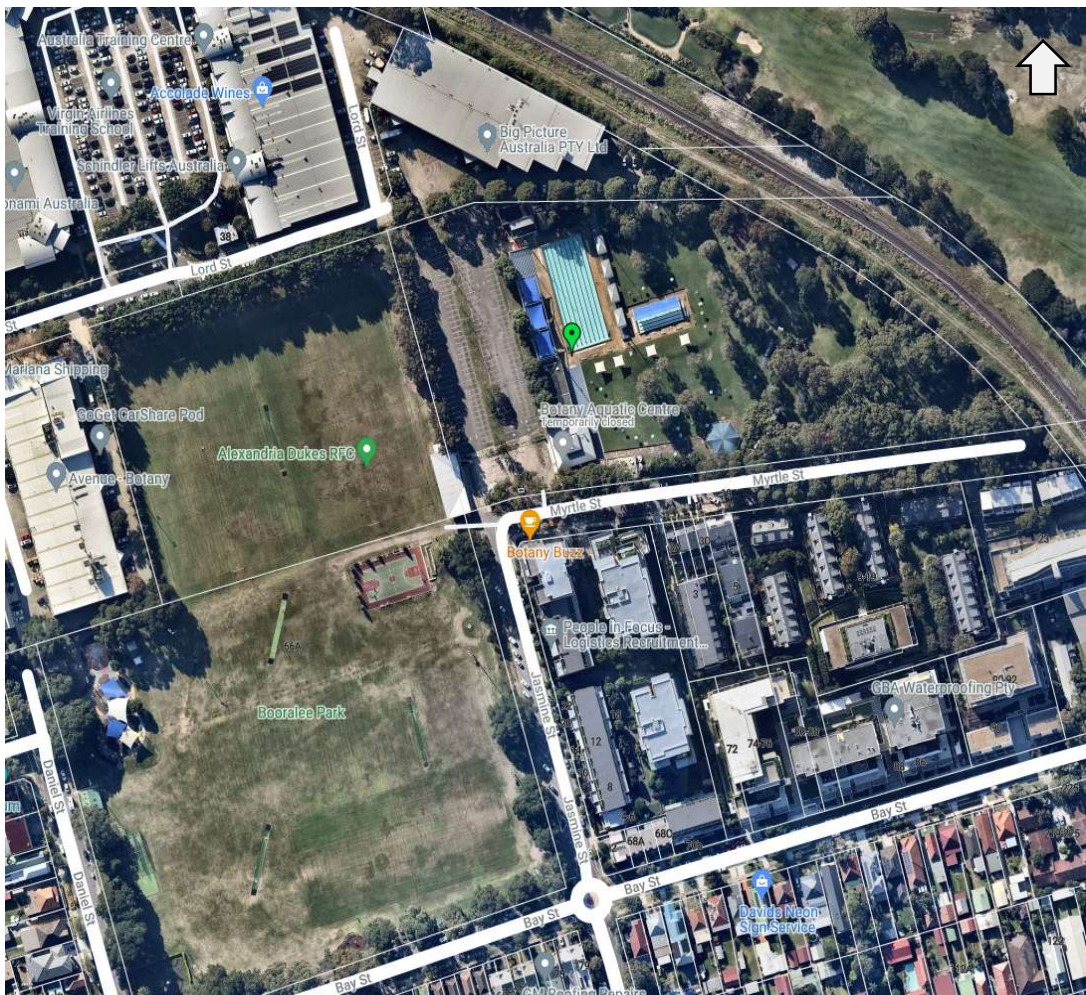


Figure 1: Aerial of site within the local context (Source: Nearmap).

The site is zoned RE1 – Public Recreation under the Botany Bay Local Environmental Plan 2013 (BBLEP 2013), as seen in **Figure 2**, and is situated adjacent to land within the B7 Business Park zone, the R3 Medium Density Residential zone, the RE1 Public Recreation zone and the SP2 Infrastructure (Railway) zone.



Figure 2: Mapping of the sites and surrounding zoning (Source: NSW legislation - BBLEP 2013).

Site context and surrounding development

The site is located within the suburb of Botany within the Bayside Local Government Area. The site is situated approximately 8km south of the Central Business district of Sydney and approximately 1km east of Sydney Airport. Refer to **Figure 3** for approximate location of site in context of greater Sydney.

The surrounding land uses are summarised in the following:

North: North of the site is a mix of business park (office and light industrial) buildings of one (1) to three (3) storeys in height.

East: Bounding the arc boundary of the site is the Botany Rail Line (freight corridor), with Bonnie Doon Golf Club located on the opposite (north-east) side of the freight line. The golf course includes the Botany water reserves which is a heritage item of state significance and is listed as item I2 within BBLEP 2013.

South: The opposite (southern) side of Myrtle Street is characterised by medium and high density residential development, including three (3) storey multi-dwelling housing, and three (3) to six (6) storey residential flat buildings and mixed-use buildings.

West: West of the site is Booralee Park (local heritage item I61 within the BBLEP 2013) which includes playing fields and a basketball court.

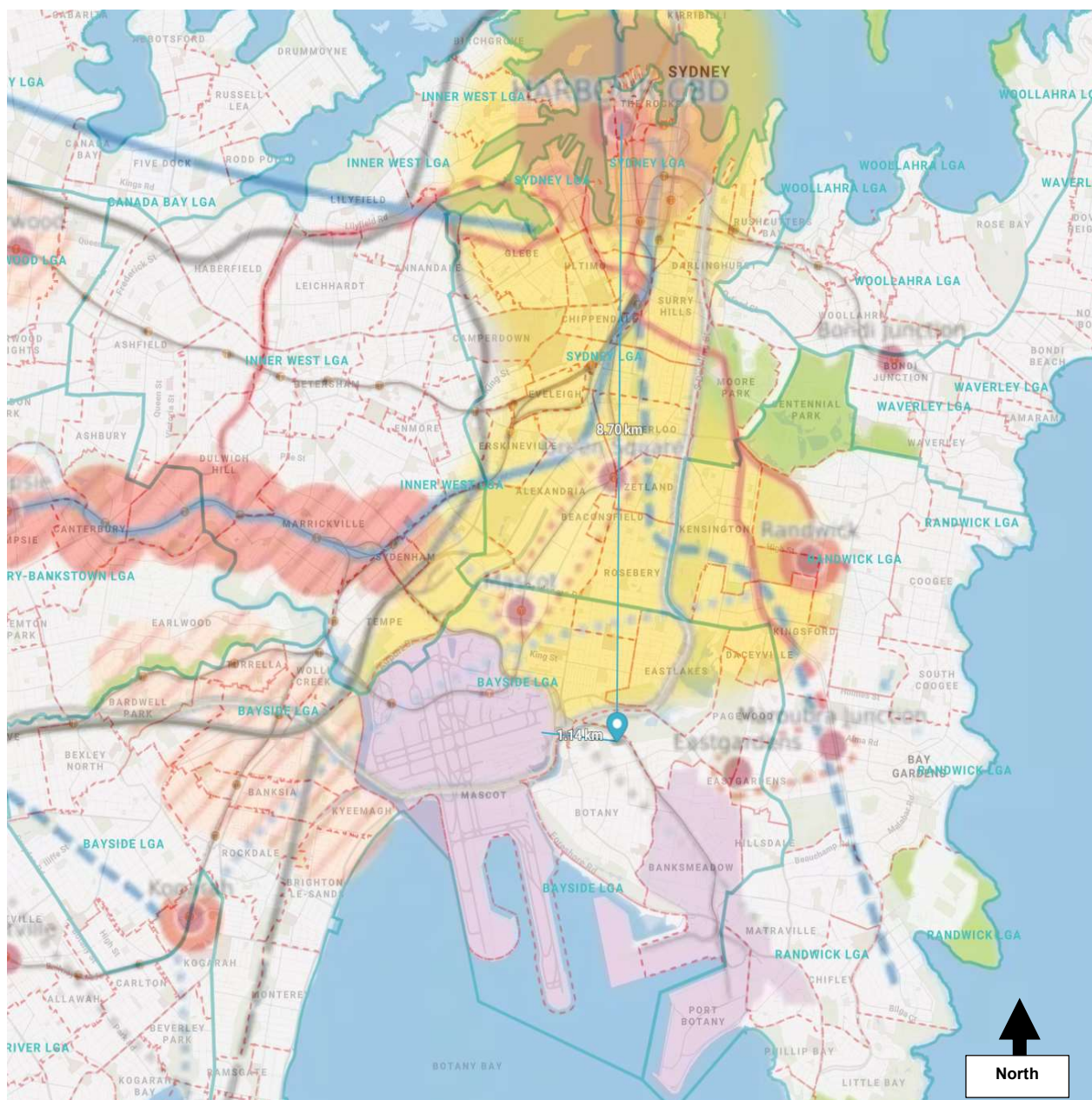


Figure 3: Map of the site in context of greater Sydney and marked to show the distance to Sydney airport and the Sydney CBD (Source: A Metropolis of Three Cities overlaid on the ePlanning Spatial viewer)

Description of Development

The development application seeks consent for the following works:

- Demolition of the existing play equipment towards the southern boundary of the site;
- Removal of seven (7) existing trees;
- Construction of three (3) water slides in the northeast corner of the site with a maximum height of 15.8 metres;
- Construction of an outdoor aqua play area;
- Associated landscaping works;
- Construction of a building for mechanical servicing for the waterslide and change rooms located east of the proposed waterslide;
- Proposed hours of operation of the waterslide to be:

- Monday to Friday 3:00pm to 7:00pm; and
- Saturdays / Sundays & School Holidays 10:00am to 7:00pm.

Application History

17 December 2020

A formal pre-lodgement meeting was held on to discuss the proposal in its draft form. Issues and matters to consider raised in the pre-lodgement meeting include:

- Contamination and SEPP 55
- Objectives of the zone
- Height of buildings for referral to Civil Aviation Safety Authority
- Heritage
- Stormwater
- Parking
- Access and mobility
- Acoustic Report is required
- Landscaping
- Consideration of nearby wetland catchment.
- Waste management
- Geotechnical report required
- Plan of Management

Each of these issues are discussed within the Statement of Environmental Effects that accompanied the development application lodged to Council.

7 May 2021

Subject application lodged to Council.

24 June 2021

Sydney Eastern City Planning Panel briefing.

30 June 2021

Request for amended plans and information send to the applicant, seeking to address the following issues:

- Comments within public submissions.
- Consideration of groundwater contamination.
- Information with respect to acid sulfate soils impacts associated with foundations.
- Further planting and landscaping details.
- Updated Waste Management Plan to account for increased visitation.
- Section plans of the exit pool.
- Stormwater drainage and flooding issues.
- Preparation of a Traffic and Parking Impact Assessment.
- Acoustic Report to account for a higher estimate patronage.
- Details of chemical storage.

7 July 2021

A meeting was held via Microsoft teams to discuss the matters raised in correspondence sent on 30 June 2021.

29 July 2021

Response to the additional information and amended plans to address issues received by Council.

17 September 2021

Second request for additional information from the received documentation to address outstanding and additional matters noted which included:

- Clarification as to whether approval was sought for an aquifer interference activity.
- Request for evidence that clause 49 of the *Environmental Planning and Assessment Regulation 2000* had been satisfied, in relation to Crown Land owner's consent.
- Landscape plans to be consistent with architectural plans and to provide a detailed plant schedule.
- Relocated heat pumps and associated additional works to be considered within Arboricultural Impact Assessment.
- Further information required to substantiate assumptions of Traffic and Parking Impact Statement.
- In line with the point above, further information required to substantiate assumptions of the amended Acoustic Report.

7 October 2021

Amended plans and information received in response to the majority of the issues outlined above.

13 October 2021

Further information received regarding the assumptions within the submitted technical reports.

Referrals:

The application was referred to a number of technical specialists within Council, as well relevant external agencies. The comments received are summarised below.

Internal

Development Engineer / Assets Engineer

Council's Development Engineer provided commentary in relation to stormwater management, traffic and parking, and flood management.

In relation to flooding, the engineer had initially requested that the floor levels be raised above the flood planning level, and that a flood evacuation management plan be provided. However, on review of the applicant's response, the engineer was satisfied that the floor levels need not be raised, given the non-habitable use of the proposed buildings, and that a flood evacuation management plan could be sought via a condition of consent.

In line with feedback from Council's Assets Engineer, the development engineer sought an alternative stormwater management method which would involve the utilisation of sandy soils for infiltration through

a swale or the like, as opposed to the system sought within the original proposal, being an infiltration tunnel and a rehydration core. This request was adopted within amended plans submitted to Council.

No issues were raised with regard to traffic and parking issues, and information submitted throughout the assessment was deemed satisfactory in relation to this issue. A further discussion of parking and traffic matters is provided elsewhere in relation to Part 3A of the BBDCP. The Development Engineer had recommended conditions compliance with relevant Australian Standards. However, as no works are proposed to the car park, the independent assessment has concluded that there is no nexus for these conditions.

The final proposal is supported by both the Development Engineer and Assets Engineer, subject to the remaining recommended conditions.

Environmental Health

Council's Environmental Health Officer reviewed each revision of the Acoustic Report submitted with the application, including the latter report which responded to a request to increase the assumed capacity of the venue.

The final report concludes that"

"Operational noise emissions from the proposed redevelopment were predicted at potentially affected noise sensitive receivers. The predicted operational noise levels have been assessed to comply with the noise criteria provided that the recommendations presented in Section (1) are implemented into the design. The final design is to be reviewed and detailed to meet acoustic amenity objectives of the site and surrounds".

It should be noted that none of the recommendations contained within the report relate to operational matters; the recommendations are limited to minimising noise emissions from plant and equipment.

The initial Acoustic Report was amended to consider patronage of up to 100 people at a time, raised from the figure of 25 people considered in the initial report. To support this patronage, the town planning consultants managing the application for the applicant, Urbis, provided the following commentary, understood to have been prepared by the authors of the Acoustic Report, Resonate:

"It has been advised by Council, as the applicant, that the new aqua play and water slide area expects to draw a peak daily patronage of 400 people adding to the existing peak daily patronage (busiest summer day) of 640 people.

The following assumptions were made in order to determine a reasonable estimation of the average hourly patronage for noise assessment purposes:

- *Approximately a quarter of the peak daily patronage would utilise the facility during a typical hour equating to approximately 250 people. This is considered a reasonable assumption noting:*
 - *This is based on the peak summertime patronage. The typical total patronage throughout the year would likely be less on average.*
 - *The assumption would see the capacity taken up over a four hour period which is more conservative than assuming the total patronage would be spread over the operational hours of the facility (notionally, for noise assessment purposes daytime is assumed to be from 7am to 6pm – a 10 hour time window).*
- *Of the 250 people, the following distribution was assumed:*
 - *100 people would utilise the aqua play and water slides at any one time.*
 - *150 would utilise the existing swimming and recreational facilities.*

- *This was determined based on the proportion of patronage provided by Council, as the applicant.*

The assumptions are therefore appropriate, and no further assessment is required”.

This commentary and the findings of the Acoustic Report were supported, subject to conditions. The Environmental Health Officer had recommended an external peer review of the Acoustic Reporting; however, the independent assessment did not deem that this additional measure was warranted, given the existing use of the site as an aquatic centre (particularly in relation school carnivals held at the pool) and that most significant noise impacts would be expected in the middle of the day, and typically during only the warmer months.

The Environmental Health Officer also sought additional information relating to chemical storage and was satisfied with this response, subject to conditions.

Environmental Scientist

Council's Environmental Scientist reviewed materials submitted with the application relating to geotechnical, contamination and acid sulfate soil matters. The comments in relation to contamination are discussed in relation to SEPP 55, and the comments in relation to acid sulfate soils are discussed in relation to clause 6.1 of BBLEP 2013.

Council's Environmental Scientist had no objections to the proposed development, subject to conditions. The independent assessment concluded that one of these conditions, preventing intensification activities without prior consent from Council, was not warranted, given the Act, and planning instruments made thereunder, are sufficient to control the types of intensification that would require development consent.

Environmental Strategy

No issues raised with the proposal, subject to conditions, noting that:

- The proposal does not occur in an area mapped under State Government Coastal SEPP, with the closest area impacted by the SEPP being approximately 200m north of the proposal site.
- Trees to be removed are to be replaced
- Trees to be retained are to be protected.

Conditions were recommended including for planting species to align with Council policies. However, given a thorough assessment has since been undertaken by Council's Landscape Architect, the independent assessment has concluded that this condition is not required.

Heritage

The subject site is in the vicinity of Botany Water Reserves (State heritage item) and Booralee Park (local heritage item). Council's heritage adviser has reviewed the proposal and is satisfied that the proposal will have no impact to nearby heritage items given a railway line separates the Botany Water Reserves from the site, and that there is a car park located between Booralee Park and the subject site.

Tree Management Officer

The proposal seeks the removal of trees and works within proximity of trees on the site. In the initial referral, no issues were raised with tree removal, and conditions of consent have been imposed for tree protective measures to be implemented during construction.

Following the initial referral, amended plans were received which included water pumps sitting atop a concrete slab, to the west of the plant room. This creates a potential additional incursion into the tree

protection zone of T35 and additional comments from the Tree Management Officer indicated that this is able to be managed by conditions.

Finally, although referred to in the Arborist Report as requiring “further investigation to establish if retention is possible”, T38 and T51 are not mentioned in the conditions. It is therefore recommended that additional conditions be imposed requiring root investigation of T38 and T51, to ensure that the findings of the Arborist Report are properly considered during works.

Landscape Architect

The proposal was accompanied by a landscape plan that was reviewed by Council’s Landscape Architect. It was requested that additional tree planting be provided to the site, both beneath the slides and within the car park. Moreover, additional supporting facilities were sought, such as seating, shades, and drinking fountains. Amended plans were received that provided additional vegetation beneath the slides and with supporting facilities including seating and water fountains.

The planting sought within the car park area, as required by Part 3L of BBDCP 2013, was not provided and the Landscape Architect had recommended that it be required by a condition consent. However, the independent assessment concluded that this was not necessary for the subject application, as discussed elsewhere in relation to Part 3L of BBDCP 2013.

Finally, upon receipt of the amended landscape scheme, the Landscape Architect sought greater detail within the planting schedule, as well as changes to the architectural plans, so as to avoid inconsistencies between architectural and landscape plans. Upon receipt of the requested changes, no further issues were raised, and the application was supported, subject to the remaining recommended conditions.

Waste Management

No issues were raised by Council’s waste management team, with waste management of the aquatic centre expected to be unaffected by the installation of new slides. The independent assessment had initially sought further information on the capacity of the site to accommodate additional waste. However, on review of information provided in response, it is clear that the size of the existing waste area is ample to accommodate any potential additional waste.

External

APA Group

A referral was sent to APA Group in accordance with clause 66C of *State Environmental Planning Policy (Infrastructure) 2007* (“the ISEPP”) as the site is adjacent to a pipeline operated by APA Group. APA Group raised no issues with the proposed development as there is no perceived direct impacts to the pipeline as a result of the development and construction and the use is not for a sensitive land use as defined under AS2885.

Australian Rail Track Corporation (ARTC)

A referral was sent to ARTC in accordance with the ISEPP for works adjacent to a rail corridor. A response was received by ARTC that raised no issues with the development, subject to construction conditions requiring further consultation for any crane use, and that mitigation measures for stormwater and dust be implemented to ensure construction does not affect the rail corridor.

Crown Lands

The site is Crown Land, with Council as the Crown Land managers in accordance with the *Crown Land Management Act 2016*. Section 3.21 prescribes that ‘a council manager is authorised to classify and

manage its dedicated or reserved Crown land as if it were public land within the meaning of the Local Government Act 1993'. Therefore, Council as the land manager are the applicant for the subject development application, and pursuant to clause 49 of the Environmental Planning and Assessment Regulation 2000, may make a Development Application without the need for consent of the Crown, provided a notice of intention to make the application is served upon the Crown for comment prior to lodgement, or a DA notice is published in in a local newspaper and on the public authority's website within 14 days of the DA being made. Note that the referral from Crown Lands had indicated that both of these procedures must be followed, but clause 49(2) clearly indicates that either notice from Council, or public advertisement, will suffice.

Notwithstanding, it is understood that Council both notified Crown Lands ahead of making the application, and that the DA was subject to Council's advertising procedures. On this basis, owner's consent is not required for this development application.

Although owner's consent was not provided, in their response to Council, Crown Lands did not raise any objections to the development.

NSW Police:

A referral was sent to NSW Police for comment, who noted the proposal brings a 'medium' level of crime risk. It was recommended that conditions be implemented for motion sensor lighting, CCTV and design measures, such as the reduction of shrubs/ trees so as to reduce hiding places near waterslides.

The amended landscape plan indicates that the area underneath and surrounding the slides will be densely planted, as sought by Council's Landscape Architect, and would therefore be largely inaccessible. On this basis, and given that the site is to be for wide public use during daytime hours, the benefit provided by the additional landscaping outweighs any potential crime risk associated with concealment, and this recommended measure is not suitable in this instance. The other recommended measures can be incorporated into recommended conditions of consent.

Sydney Airports Corporation Limited (SACL)

The site is located within the SACL notification area and has a height over 7.62 requiring concurrence of SACL. No objections were raised subject to conditions, including for an approval to operate construction equipment (i.e. cranes; the use of which may require further consultation with ARTC) to be obtained prior to commencement of construction. Refer also to further discussion of clause 6.8 of the BBLEP 2013.

Sydney Water

As the development is in proximity to Sydney Water assets, and is likely to increase the demand for water, a referral was sent to Sydney Water, who recommended a condition of consent requiring that a Building Plan Approval be obtained prior to construction. The referral response made no comment on the potential increased demand for water. Despite this, the independent assessment recommends additional conditions are imposed, requiring a compliance certificate under s 73 of the *Sydney Water Act 1994*.

Water NSW and Natural Resource Regulator

An enquiry was made to NSW Water, in order to obtain a general position on the aquifer interference activity. On the advice of NSW Water, an enquiry was subsequently made to the NSW Natural Resource Access Regulator, who provided general information on aquifer interference activities. A comment was also offered which noted that the management and disposal of any contaminated water should be considered in the assessment, given the Botany Sands Groundwater Source is within a contaminated area.

As the application does not seek an integrated development approval pursuant to Division 4.8 of the *Environmental Planning and Assessment Act 1979* (see further discussion below), the general information that was provided is of limited relevance to the assessment, and will be part of the consideration of the aquifer interference activity assessment. Groundwater contamination has been considered as part of the SEPP 55 assessment.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

Division 4.6 - Crown development

Although the subject site is Crown land, Council is expressly excluded from the operation of Division 4.6 of the *Environmental Planning and Assessment Act 1979* by clause 226(1)(a) of the *Environmental Planning and Assessment Regulation 2000*. Therefore, the proposal is not a 'Crown development application'.

Division 4.8 - Integrated development:

As the proposal is not a 'Crown development application' it is not excluded from the operation of the 'integrated development' provisions prescribed by Division 4.8 of the *Environmental Planning and Assessment Act 1979*. Footings associated with the proposal would penetrate the water table as stated in the submitted geotechnical report, prepared by Douglas Partners. The proposal therefore would require an activity approval for aquifer interference, pursuant to section 91 of the *Water Management Act 2000*.

With regard to the decision of Lloyd J in *Maule v Liporoni & Anor* [2002] NSWLEC 25, integrated development provisions are "beneficial and facultative" and were "enacted to overcome delays and duplications where there is more than one consent or approval body for a particular development so that an applicant for consent would not have to go through the whole process again for each application".

In this regard, the applicant has elected to forego the integrated development assessment as part of the subject development application, as they are entitled to do, and therefore a condition has been recommended that the activity approval be obtained prior to works commencing.

S.4.15(1) - Matters for Consideration – General

S.4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (State and Regional Development) 2011

Pursuant to clause 3 of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*, the proposal is regionally significant development, as indicated below:

3 Council related development over \$5 million

Development that has a capital investment value of more than \$5 million if—

- (a) a council for the area in which the development is to be carried out is the applicant for development consent, or*
- (b) the council is the owner of any land on which the development is to be carried out, or*
- (c) the development is to be carried out by the council, or*
- (d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).*

As Council are the managers of the land and the applicant of the subject development application with a capital investment value of \$9.7 million, the proposal requires the determination of the Sydney Eastern City Planning Panel.

State Environmental Planning Policy (Infrastructure) 2007

Relevant provisions of *State Environmental Planning Policy (Infrastructure) 2007* have been considered in the assessment of the development application, and the assessment is summarised below.

Clause	Comment
Clause 66C Development adjacent to pipelines	A referral was sent to APA Group in accordance with this clause. No objections were raised by APA Group in regard to the proximity of the development to the pipeline infrastructure.
Clause 85 – Development adjacent to rail corridors	The subject site is adjacent to the ARTC rail corridor. A referral was sent to ARTC for comment in regard to the proposal in accordance with this clause. No objections to the development were raised by ARTC.
Clause 86 – Excavation in, above, below or adjacent to rail corridors	The proposal does not include excavation greater than 2m within 25m of the rail corridor.
Clause 101 – frontage to a classified road	The subject site does not have frontage to a classified road.
Clause 102 - Impact of road noise or vibration on non-road development	Myrtle Street has an average daily traffic volume of less than 20,000 vehicles per day. As such, clause 102 is not applicable to the development application.
Clause 104 Traffic Generating development	The site is greater than 90m from the nearest classified road (Botany Road). The development does not trigger any of the specified 'traffic generating development' types within column 2 of schedule 3 of the ISEPP. The development is not forecast to generate greater than 200 motor vehicle trips per hour.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The application seeks the removal of seven (7) trees from the site to accommodate the proposed development. The removal of these trees has been documented within the submitted arborist report and the findings of that report have generally been agreed to by Council's Tree Management Officer.

Minor changes with the potential to impact on a tree intended for retention, T35, were not subject to an amended Arborist Report. Amended plans received with the application had introduced a new concrete slab to the west of the plant building, associated with heat pumps. This slab would be likely to create an additional minor incursion into the tree protection zone (TPZ) of T35, being an *Angophora costata*.

The submitted arborist report has initially estimated an incursion into the TPZ of approximately 10%. Council were provided with an email, understood to be from the authors of the Arborist Report, Sturt Noble, which indicates that the heat pumps were well clear of the trees. This appears to be incorrect; however, minor TPZ incursions above 10% are capable of being managed, and Council's Tree Management Officer and Landscape Architect have provided conditions to assist with the management of this incursion.

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 have been considered in the assessment of the development application as recreational uses is a specified land use in clause 7(4). A Contamination Report, prepared by Douglas Partners, accompanied the application and noted that site had at one stage been used as for industrial purposes, and that surrounding land had been used for industrial purposes, as well as market gardens. Further investigation was therefore warranted.

The Contamination Report detailed the remnants of contamination remain on the site to depths of 0.55m to 1.9m below natural ground level and that the contaminants found on the site exceeded human health and ecological levels.

A Phase 3 Remediation Action Plan (RAP) was also prepared by Douglas Partners and accompanied the application, detailing that contamination land on the site will be subject to relocation and encapsulation in parts of the site, including the Splashpad area and external areas of the slide structures (beneath concrete surfaces); the plant room building; and external landscaping (i.e., beneath the slide structures). As a contingency, the RAP requires removal and off-site disposal of any surplus contaminated fill which cannot be relocated under a capping area (i.e., due to volume constraints or from any hot spots of leachable contaminants).

The application has been reviewed by Council's Environmental Scientist who raised concern with works in proximity to the water table, and the potential for leaching of soil impacts or contamination from offsite sources. Although Council's Environmental Scientist had initially sought this to be addressed by condition, a response was requested in the first correspondence sent to the applicant.

In response to the amended documentation, the following response was received.

"The majority of the site requires fill to raise the site level with localised cut for the plant room. Excavation of significant quantities of soil is not required, rather fill is required to reach design levels. The intention is therefore to retain soils within the site where possible and where suitable.

The site suitability conclusion remains the same, that the site can be made suitable for the proposed development subject to proper implementation of the remediation procedures, unexpected finds protocol and completion of the validation assessment detailed in the RAP.

The Remediation Procedure and Sequence has been updated to reflect the adopted remediation approach being:

- 1. Relocation of fill material to capping areas;*
- 2. Delineation and remediation of contamination; and*
- 3. Capping works;*
- 4. Piling; and*

5. Contingency of off-site disposal of fill.

I note, however, that Section 15 – Validation has not been updated to reflect the revised adopted remediation procedure and sequence. This needs to be updated to reflect the revised adopted remediation approach which selects capping as the primary remediation method”.

Considering this, the site can be made suitable for the development and SEPP 55 is satisfied.

Botany Bay Local Environmental Plan 2013

The Botany Bay Local Environmental Plan 2013 (BBLEP) was repealed on 26 August 2021, with the gazettal of the Bayside Local Environmental Plan 2021 (BLEP 2021). As the application was lodged on 7 May 2021, BBLEP 2013 is relevant to the assessment of the application; further discussion on the Bayside Local Environmental Plan 2021 is provided elsewhere.

Relevant clauses are discussed below.

Relevant clauses	Compliance with standard/provision
2.3 Zone RE1 Public Recreation	Yes, see discussion below
4.3 Height of buildings	N/A – site not affected
4.4 Floor space ratio	N/A – site not affected
5.10 Heritage conservation	Yes, see heritage advisor's comments above.
5.21 Flood planning	Yes, see development engineer's comments above.
6.1 Acid Sulfate Soil - Class 4	Yes, see discussion
6.2 Earthworks	Yes, see discussion
6.3 Stormwater Management	Yes, see development engineer's comments above.
6.8 Airspace operations	Yes, see discussion
6.9 Development in areas subject to aircraft noise	Yes

2.3 Zone RE1 Public Recreation

The subject site is zoned RE1 Public Recreation under the LEP 2011. The site is used as a recreation facility (outdoor) and the proposal would be used in conjunction with the existing use. Recreation facility (outdoor) is a permissible form of development with consent within the RE1 zone. Therefore, the proposed development is permissible on the subject site.

The objectives of the zone are listed below:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

The proposal satisfies the objectives of the site by maintaining public open space for recreational purposes and the information provided with the application indicates that impacts on the natural environment will be minimal.

6.1 Acid Sulfate Soil - Class 5

The site is mapped as containing class 4 acid sulfate soils (ASS). An Acid Sulfate Soils Management Plan (ASSMP) prepared by Douglas Partners accompanied the development application.

The ASSMP has been reviewed by Council's Environmental Scientist who had initially concluded that additional information was required.

The additional information provided was reviewed by Council's Environmental Scientist. Acid sulfate soils management is documented within Section 13 and Appendix D of the RAP, and on the review of this information, Council's Environmental Scientist was satisfied that potential acid sulfate soils could be managed, subject to conditions requiring management in accordance with the Acid Sulfate Soils Management Plan.

6.2 Earthworks

The proposal includes earthworks for structural piling and for remediation of the site. The impacts of the earthworks are discussed throughout this report, in relation to contamination, drainage, aquifer interference, and acid sulfate soils. All issues are able to be managed by conditions.

6.8 Airspace operations

The proposed development is affected by the Inner Horizontal Surface of the Obstacle Limitation Surface (OLS), which is set at 51.00 AHD, noting that land on the opposite side of Lord Street is affected by lower surface limits. The proposal is also affected by the 7.62m (25 feet) height limit prescribed by the *Civil Aviation (Buildings Control) Regulations 1988 (C'wealth)*.

The proposed slides have a maximum height of 25.80 AHD or 15.8m. In accordance with the *Civil Aviation (Buildings Control) Regulations 1988*, the 7.62m height limit cannot be exceeded without prior approval of the Civil Aviation Safety Authority. As a consequence, a referral was sent to Sydney Airport Corporation Limited (SACL), and in their function authorised by the Civil Aviation Safety Authority, SACL have indicated that there is no objection to the erection of this development to a maximum height of 26.00 AHD, subject to conditions of consent.

The proposal will not penetrate the prescribed OLS of 51.00 AHD, and does therefore not require further approval under the *Airports Act 1996 (C'wealth)*.

On the basis of the above, the proposal is consistent with this clause.

Bayside Local Environmental Plan 2021

The *Bayside Local Environmental Plan 2021* (BLEP 2021) was gazetted on 27 August 2021. As the application was lodged prior to the gazettal of the plan, the savings provisions within clause 1.8A of BLEP 2021 apply, and specify that the application must be determined as if BLEP 2021 had not commenced.

However, consideration has been given to the BLEP 2021 as summarised below:

Relevant clauses	Compliance with standard/provision
2.3 Zone RE1 Public Recreation	Yes, no changes to the zoning or objectives of the zone
4.3 Height of buildings	N/A – site remains unmapped
4.4 Floor space ratio	N/A – site remains unmapped

Relevant clauses	Compliance with standard/provision
5.10 Heritage conservation	Yes, no changes from BBLEP 2013
5.21 Flood planning	Yes, no changes from BBLEP 2013
6.1 Acid Sulfate Soil - Class 4	Yes, no changes from BBLEP 2013
6.2 Earthworks	Yes, no changes from BBLEP 2013
6.3 Stormwater Management	Yes, no changes from BBLEP 2013
6.7 Airspace operations	Yes, no changes from BBLEP 2013
6.8 Development in areas subject to aircraft noise	Yes, no changes from BBLEP 2013

S.4.15(1)(a)(ii) - Provisions of any Draft Planning Instruments

Draft Bayside Local Environmental Plan 2021

The Draft Bayside Local Environmental Plan 2020 was placed on public exhibition on the 8 April 2020, with the exhibition closing on 1 June 2020. The *Bayside Local Environmental Plan 2021* (BLEP 2021) was subsequently gazetted on 27 August 2021. However, as the application was lodged prior to the gazettal of the plan, the savings provisions within clause 1.8A of BLEP 2021 apply, and the application must be determined as if BLEP 2021 had not commenced.

Despite this, the draft instrument remains relevant, by virtue of s4.15(1)(a)(ii) and was considered in the assessment of the application. The purpose of the plan was largely limited to the consolidation of BBLEP 2013 and *Rockdale Local Environmental Plan 2011*, and as a result there are no changes proposed to provisions that affect the development. The proposed development is therefore consistent with the provisions of the Draft LEP.

S4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application.

Botany Bay Development Control Plan 2013

There are limited provisions within the *Botany Bay Development Control Plan 2013* (BBDGP 2013) which apply to land within the RE1 – Public Recreation zone, or to land used for the purposes of a recreational facility (outdoor). However, relevant general provisions are listed below.

Relevant Parts of the BDCP 2013	Compliance with standard/provision
3A – Car Parking	Yes, refer to discussion below.
3C – Access and Mobility	Yes, refer to discussion below.
3G – Stormwater	Yes, refer to referral comments from Council's Development Engineer
3I – Crime prevention, safety and security.	Yes, see NSW police referral earlier in report.
3J – Development affecting operations at Sydney Airport	Yes, see referral from Sydney Airports (SACL).
3K - Contamination	Yes, See SEPP 55 Discussion

Relevant Parts of the BDCP 2013	Compliance with standard/provision
3L – Landscaping and tree management	Yes, see landscape referral comments and discussion below.
3N Waste minimisation and management	Yes, refer to referral comments from Council's Waste team
8.4 Botany Character Precinct	Yes, see discussion below.

3A – Car Parking

The site provides 163 car spaces which are shared with the adjacent 'recreation facility (outdoor)' known as Booralee Park. The car parking control within BBDCP 2013 specifies a list of parking rates for four selected types of 'recreation facilities (outdoor)'. These includes swimming pools which are to provide a minimum parking rate of 1 space per 10m² of pool area plus 1 space per 2 employees. Neither water slides nor sports fields (i.e., Booralee Park) are among the four listed recreation facilities (outdoor). However, BBDCP 2013 specifies that development applications for other recreation facilities (outdoor) are to be accompanied by a parking assessment based on a survey of similar developments.

The existing pools on site total an area of approximately 1241m², generating a demand of 124 spaces and leaving 39 spaces for staff of the facility and Booralee park users. No information has been provided on staff numbers. A Traffic and Parking Statement was provided which, in consideration of both traffic and parking impacts, concluded that:

"The minor additional demand for 17 parking spaces and 30 new vehicle trips are expected to be readily accommodated within the precinct with little discernible change on current and historical demand in the precinct. The existing adjacent car park could wholly accommodate the additional demand, with surrounding intersections operating well, the same as existing conditions".

The report was reviewed by Council's Development Engineer who has supported the parking and traffic impacts throughout the assessment. However, for additional clarity, the independent assessment had queried the origins of some of the assumptions made within the Statement. Further information was sought on the following:

- *"The Traffic and Parking Impact Statement ('the TPI Statement') considers parking availability on a past hot Australia Day weekend, and a separate day when three cricket matches were being held at Booralee Park. On each day, the TPI Statement notes the impact of each event on parking availability within the Aquatic Centre and nearby streets. However, the TPI Statement does not seek to model the parking impacts in the circumstances where each event occurs concurrently".*
- *"The TPI Statement does not differentiate between visitation associated with the decommissioned slides and the proposed new slides, and no explanation is offered as to why the assessment has not accounted for the possibility of increased popularity associated with the slides".*
- *"The TPI Statement provides a proportionate estimate of the number of teenagers and children who may visit the site, but does not provide the basis for this estimate. Further, although they may represent only a small proportion of visitors, the TPI Statement makes no allowance for any adults without children".*

The correspondence also sought further information on the origins of the assumption that 100 patrons an hour are estimated to visit the site.

The town planning consultants managing the application for the applicant, Urbis, provided the following commentary, understood to have been prepared by the authors of the Traffic and Parking Impact Statement, GTA Consultants:

“The purpose of the assessment was not to consider demands of aquatic centre itself but practically consider demand of the proposed water slides and aqua play area. It is important to note the assessment is structured around whether parking demand generated by the proposed water slides and aqua play area could be accommodated within the aquatic centre car park. The 100 patrons referenced are patrons specifically visiting the proposed water slides and play area, rather than all patrons attending the aquatic facility. It is noted that this anticipated demand aligns with the Acoustic Report.

There is a distinct lack of data available for water slides at aquatic centres. In this regard, surveys of similar centres are typically what you would need to complete to justify the level of patronage/ parking demand expected, however for a range of reasons (social restrictions due to COVID-19, time of year etc.) that has not been possible for last 18 months. GTA Consultants believe that a peak demand for 100 patrons per hour is conservatively high and robust for purpose of the assessment and has been informed by operations at the aquatic centre. We have subsequently broken the 100 patrons down into who those users are and how they travel to the aquatic centre. Given the TPI assesses the demand associated with the water slides and play area only, there is no requirement to make an allowance for adults without children. Notwithstanding, those visiting without children has been covered in the discussion around teenagers/ young adults.

The TPI therefore has provided a conservative estimate and the assessment is appropriate with no further information required”.

On the basis of the above, and the support provided by Council's Development Engineer, the additional parking and traffic impacts are anticipated to be satisfactory.

3C Access and Mobility

Specific requirements for aquatic centres and public swimming pools are listed within Part 3C. The controls relate to access to the site, access in and out of swimming pools, and the provision of disabled parking. The subject application does not require additional parking to be provided or seek any changes to the entry arrangements, either to the site, or in and out of swimming pools. Therefore, no further consideration of the controls of Part 3C is required, noting that the operations of the site would continue to be subject to the requirements of the *Disability Discrimination Act 1992 (C'wealth)*.

3L Landscaping

In their first referral response, Council's Landscape Architect had sought compliance with the following control within Part 3L:

For at-grade car parks 1 tree will be provided for every 5 car spaces so that at least a 50% canopy coverage of the car park at maturity is provided. Car parks will be generously landscaped

The Landscape Architect has also sought further vegetation surrounding the slides in areas where concrete for circulation and maintenance is not required.

Amended plans were received that provided additional vegetation below the slides but did not provide additional vegetation to the carpark.

The existing car park, which serves both the subject site and Booralee Park to the west, currently provides some landscaping between the rows of car parking, but not in quantities sufficient to achieve compliance with this control. The application does not seek changes to the existing car park of any kind.

However, given no further car parking is sought as part of this application, and that the car park serves to provide access to relatively well vegetated public recreation land on either side, the independent assessment concludes that compliance with this provision is not reasonable. The control would be more appropriately applied to commercial uses (especially new uses) where the land is devoid of vegetation. The assessment concludes that no changes to the car park are required in order to accommodate landscaping.

8.4 Botany Character Precinct

The site is identified within the Botany Character Precinct. Listed matters within this part, such as traffic, heritage, contamination, and impacts to the natural environment, have been considered elsewhere within this report.

Referral comments from APA Group and ARTC indicate that there are no undue impacts anticipated on critical infrastructure which passes through the precinct. Moreover, the development is not 'residential intensification', 'sensitive use intensification', or development that will result in increased traffic volumes or access points onto Stephen Road (being a designated Dangerous Goods Route), and the proposal is not expected to impact on operations of Sydney Airport. The proposal is therefore consistent with the Botany Character Precinct.

S.4.15(1)(a)(iv) - Provisions of regulations

Relevant provisions of the regulations, such as clause 49, relating to owner's consent, and clause 226, relating to Crown development applications, have been considered elsewhere within this report. Clause 92 of the Regulations, relating to additional matters that a consent authority must consider, has been consulted and the only relevant provision within clause 92 relates to compliance with Australian Standard AS 2601—1991: *The Demolition of Structures*, and this will be subject to a condition of consent.

S.4.15(1)(b) - Likely Impacts of Development

Potential impacts associated with the proposed development have been discussed in detail within this report and are acceptable as discussed throughout.

S.4.15(1)(c) - Suitability of the site

The development will reinstate and expand upon waterslides that were previously in operation on the site and will complement the existing use of the land for the purposes of an aquatic centre. This use is permitted with consent within the RE1 zone and the assessment has demonstrated that, subject to conditions, the site is suitable to accommodate the development.

S.4.15(1)(d) - Public Submissions

The development was placed on notification for a period of 14 days between 19 May 2021 – 2 June 2021 in accordance with the *Bayside Engagement and Communications Strategy 2019*.

Throughout the notification period, a total of four (4) submissions were received, of which three (3) were objecting to the development, and (1) one was in support of the development. Issues raised in the objections received have been addressed below (note that the submission in support of the application did not provide specific reasons as to why the development was supported).

Issue: Request for alternative facilities, such as an internal pool and gym to provide potential year round access and better community participation.

Comment: Correspondence with the applicant and Council's Property Team during the assessment of the application indicated that this may be considered in later stages of the redevelopment of the site. However this was not feasible at the time of lodgement of the application. Furthermore, there are no planning requirements for aquatic centres to provide indoor or year round access.

Issue: Query relating to whether Council engaged an architect to prepare the design.

Comment: The architectural plans that accompanied the development application have been prepared by CO-OP which is an architectural firm.

Issue: Inconsistency with the Master Plan previously prepared for the site.

Comment: Correspondence with the applicant and Council's Property Team during the assessment of the application indicate that this will be considered in later stages of the redevelopment of the site. Irrespective, Plan of Managements prepared under the *Local Government Act 1919*, and any associated obligations of Council, are not matters for consideration for development applications.

Issue: Traffic and parking impacts from the proposal, noting the absence of a traffic and parking impact assessment.

Comment: A Traffic and Parking Impact Statement was requested by Council and the regional panel and was later provided. This Statement has satisfactorily addressed parking and traffic issues, as discussed elsewhere within this report

S.4.15(1)(e) - Public interest

The proposed development is deemed to be in the public interest as it will facilitate the upgrading of an existing public outdoor recreation facility. This development is for the use of the surrounding community and, having regard to the absence of significant impacts, will aid in providing an improved local service to the public.

Development Contributions

The *City of Botany Bay Section 94A Development Contributions Plan 2016* outlines the requirements for the calculation of developer contributions under s 7.12 of the Act. The plan would capture the subject development and no exemption is provided for Council owned or operated development, or for development that provides a public facility.

Upgrade works to the Botany Aquatic Centre are listed within the works schedule to the plan and the subject proposal seeks consent for part of the works listed within the works schedule. The payable contribution would be 1% of the cost of works, being \$97,561.28.

The applicant has subsequently submitted an offer to enter into a Works In Kind Agreement as permitted by the plan. The value of the works in kind would far exceed the value of the calculated contribution, and Council's Development Contributions Officer has accepted the offer.

The applicant has submitted that:

"A condition of consent requiring a WIK agreement is not deemed necessary in this instance. If the development proceeds, the WIK offer is automatically and necessarily satisfied, and therefore does not need to be covered by a separate agreement between Council and the applicant".

Given the above, it is the position of the independent assessment that there is no utility in making the Works In Kind Agreement, and no condition is recommended requiring Council to enter into this agreement.

Conclusion

Development Application No. DA-2021/187 for the demolition of the existing children's pool and shelter; removal of seven (7) trees and construction of three (3) water slides, an outdoor aqua play area; associated building for mechanical servicing and change rooms, has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and is recommended for approval, subject to conditions of consent.