

DETERMINATION AND STATEMENT OF REASONS

SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DETERMINATION	19 November 2021
DATE OF PANEL DECISION	19 November 2021
DATE OF PANEL MEETING	18 November 2021
PANEL MEMBERS	Carl Scully (Chair), Chris Wilson, Graham Brown, Michael Sheils, Paul Pappas
APOLOGIES	Jan Murrell
DECLARATIONS OF INTEREST	Michael Nagi and Ed McDougall declared a conflict of interest as they are Councilors at Bayside Council who are the Applicant for this matter. Accordingly, Mr Nagi and Mr McDougall did not participate in the Panel for this matter.

Briefing held by videoconference on 18 November 2021, opened at 8.30am and closed at 9.50am.

MATTER DETERMINED

PPSSEC-131 – Bayside – DA-2021/187 at 2 Myrtle Street, Botany – Botany Aquatic Centre (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the Council Officer's assessment report.

CONDITIONS

The development application was approved subject to the conditions in the Council Officer's assessment report with some minor amendments as agreed.

The Panel determined to delete the following condition:

- **Condition 1** – deleted
- **Condition 18** – amended to read:
18. NSW Police Requirements
 The applicant is required to consider and take into account the recommendations of NSW Police with the exception of 18 b), and k):
 a) Consider motion sensor activated lighting for perimeters and new areas such as the water slides/aqua area when closed.
 b) CCTV cameras should be installed with the ability to remotely monitor/access 24/7.

- c) Consider perimeter alarms and 24/7 security monitoring connected to a remote access 24/7 CCTV system.
- d) Regular maintenance of the site such as checking access points, locks, gaps in fences/barriers, CCTV system/security system etc.
- e) Make sure no items (Bins/large rubbish) that can be used by offenders, to get a boost over any perimeter fences, are present near the boundaries.
- f) Address potential hiding places near the waterslides/aqua area. i.e. cut back shrubs/trees etc.
- g) Report to police promptly any graffiti incidents and remove once police have investigated.
- h) Conduct regular white level inspections of the site and report suspicious activity/findings to police promptly.
- i) Any mailbox/delivery area should be internal and or covered by lighting and CCTV.
- j) Any lockers installed should be in an area covered by CCTV or in an open area inside the vicinity where natural surveillance is present.
- k) Signage should be present throughout warning of CCTV in use and in compliance with the Surveillance Devices Act 2007 (NSW).
- l) Car park should be well lit at night and signage reminding users not to leave valuables in cars.
- m) – x) deleted due to repetition
- y) Sufficient high perimeter fencing should be installed if not already and or adjusted to suit the new waterslides/upgrades of the site.
- z) Little or no cash should be kept on premises.
- aa) Consider installing a high quality safe to store any small amounts of cash kept on site and any staff/business records if not already implemented.
- bb) Comply with all Occupational Health and Safety legislation and requirements.
- cc) The site should have a comprehensive first aid kit and automatic defibrillator in not already installed.
- dd) All staff should be trained in CPR, automatic defibrillator use, first aid and be proficient at rescue swimming.
- ee) During business hours staff should regularly monitor (Lifeguards) all people using the pools, water slides and aqua area.
- ff) CCTV should be available to police promptly when requested and should be retained for a period of 1 month or more if not already implemented.
- gg) Access passes/keys, for general/site entry, should be issued to police in case of emergency or if immediate access is required after hours.
- hh) After hours emergency/security number/s should also be provided to police.
- ii) Take all reasonable measures to ensure you operate a safe business environment and take all reasonable measures to ensure you minimise the risk of crime occurring on site.

In relation to Condition 18 b) three CCTV are to be installed, one at the entrance and two in the grounds of the pool to the satisfaction of Council.

In relation to Condition 18 k) signage should be placed throughout the swimming pool complex warning of CCTV in use to the satisfaction of Council.

- **Condition 19** – amended to read:

19. ARTC Requirements

The Applicant shall

- a) Further consult with ARTC if construction involves the use of cranes that could have the potential to affect the rail corridor or involve any access onto ARTC's land or air space. For these works, a Third-Party Access application needs to be submitted to ARTC; and
- b) implement mitigation measures to ensure that stormwater and dust during construction does affect the rail corridor.

- **Condition 20** – amended to read:

20. Sydney Airport Corporation requirements

The Applicant shall

- a) seek approval from Sydney Airport Corporation to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.
- b) Pursuant to s. 183 of the Airports Act 1996 and Reg 7 of the Airports (Protection of Airspace) Regulations 1996, apply through the Airport to the Secretary of the Department of Infrastructure and Regional Development for approval of the operation ("controlled activity") set out in the Schedule.
- c) provide the Airport an application for approval at least 28 days before commencement of the operation.
- d) not commence without approval and must only proceed in compliance with any conditions imposed on such approval.

It is noted that:

- e) Sydney Airport Corporation has delegated authority from the Secretary to determine "short term" operations (less than 3 months).
- f) The Airport is required to invite submissions from CASA and Airservices regarding the proposed operation.
- g) The Secretary and the Airport, as applicable, may request further information before determining an application.

- **Condition 34** – amended to read:

34. Acoustic Validation Report

The Principal Certifying Authority (PCA) shall not issue an Occupation Certificate until a detailed acoustic validation report of all mechanical plants (ventilation systems, exhaust fans, ventilation fans, pool pumps and other units) meet the Noise Policy for Industry (NSW EPA 2017) as specified in the acoustic report prepared by Resonate Consultants 'Botany Aquatic Centre - Acoustic Report for Development Application' (Ref: S200100RP3 Revision C) dated 21 July 2021 has been carried out.

The acoustic validation report shall include at least the following information:

- the name and qualifications or experience of the person(s) preparing the report
- the project description, including proposed or approved hours of operation
- relevant guideline or policy that has been applied
- results of background and any other noise measurements taken from most noise affected location at the boundary line
- meteorological conditions and other relevant details at the time of the measurements
- details of instruments and methodology used for noise measurements (including reasons for settings and descriptors used, calibration details)
- a site map showing noise sources, measurement locations and potential noise receivers
- noise criteria applied to the project
- noise predictions for the proposed activity
- a comparison of noise predictions against noise criteria
- a discussion of proposed mitigation measures, the noise reduction likely and the feasibility and reasonableness of these measures
- how compliance can be determined practically.

The report shall be prepared by a suitably qualified and experienced acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australia Acoustical Consultants). It shall be submitted to the Principal DA-2021/187 Bayside Council Page 13 of 32 Certifying Authority. All recommendations and/or noise mitigation measures (if applicable) shall be complied with.

- **Condition 53** – amended to read:

53. Remediation Works – Specific RAP/Plan

All remediation work must be carried out in accordance with:






- a) NSW EPA (2020) 'Consultants reporting on contaminated land';
- b) NSW Environment Protection Authority (NSW EPA) guidelines under the Contaminated Land Management Act 1997;
- c) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land; and
- d) The Remediation Action Plan (RAP) (prepared by Douglas Partners, Ref: 201489.01.R.002.Rev1, 21 July 2021) (and any amendments).

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that issues of concern included:

- 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.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and the proposed conditions of approval.

PANEL MEMBERS	
 Carl Scully (Chair)	 Chris Wilson
 Graham Brown	 Michael Sheils
 Paul Pappas	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-131 – Bayside – DA-2021/187
2	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: Monday to Friday 3:00pm to 7:00pm; and Saturdays / Sundays & School Holidays 10:00am to 7:00pm
3	STREET ADDRESS	2 Myrtle Street, Botany
4	APPLICANT/OWNER	Bayside Council C/ - Urbis
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 State Environmental Planning Policy No. 55 (Remediation of Land) Botany Local Environmental Plan 2021 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Botany Bay Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 5 November 2021 Written submissions during public exhibition: 4 Verbal submissions at the public meeting: No public meeting
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 24 June 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Jan Murrell (Chair), Roberta Ryan, Michael Sheils, Paul Pappas <u>Council assessment staff</u>: Pascal Van de Walle <u>Independent planning consultant, on behalf of Council</u>: Brendan Clendenning Site inspection: Panel members (except Chris Wilson) visited the site independently, prior to 18 November 2021 Final briefing to discuss council’s recommendation: 18 November 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Carl Scully (Chair), Chris Wilson, Graham Brown, Michael Sheils, Paul Pappas

		<ul style="list-style-type: none">○ <u>Council assessment staff</u>: Pascal Van de Walle○ <u>Independent planning consultant, on behalf of Council</u>: Brendan Clendenning○ <u>Applicant representatives</u>: Joseph Arnott, Simon Gunasekara, Louise Farrell, Tristan Balogh, Steven Donaghey
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report