

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSEC-313
<b>DA Number</b>	DA-2024/50
<b>LGA</b>	Bayside Council
<b>Proposed Development</b>	Integrated Development - Demolition of existing aquatic centre structures, tree removal and construction of a recreation facility (aquatic centre) including indoor and outdoor swimming pools, leisure facilities, gymnasium, waterslides, splashpad, changerooms, amenities, landscaping, signage, and modifications to existing car park. Operating hours for the Aquatic Centre, swimming pools, splash pad and gym are 5:00am to 10:00pm Monday to Sunday including public holidays, and operating hours for the waterslides are 10:00am to 7:00pm Monday to Sunday including public holidays.
<b>Street Address</b>	2 Myrtle Street, Botany (Lot 1 / DP 1148910)
<b>Owner</b>	The Minister for Public Works, i.e. Crown Lands (Managed by Bayside Council)
<b>Applicant</b>	Bayside Council C/ - Urbis
<b>Date of DA Lodgement</b>	21 March 2024
<b>Number of Submissions</b>	Four (4) in opposition
<b>Recommendation</b>	Approval, subject to conditions.
<b>Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021)</b>	<p><b>(3) Council related development over \$5 million.</b>  <i>Development that has an estimated development cost of more than \$5 million if—</i></p> <p>(a) <i>a council for the area in which the development is to be carried out is the applicant for development consent, or</i></p> <p>(b) <i>the council is the owner of any land on which the development is to be carried out, or</i></p> <p>(c) <b>the development is to be carried out by the council, or</b></p> <p>(d) <i>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></p>
<b>List of all relevant s4.15(1)(a) matters</b>	<p>State Environmental Planning Policy (Planning Systems) 2021</p> <p>State Environmental Planning Policy (Transport and Infrastructure) 2021</p> <p>State Environmental Planning Policy (Biodiversity and Conservation) 2021</p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021</p>

	State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 Bayside Local Environmental Plan 2021 Bayside Development Control Plan 2022	
<b>List all documents submitted with this report for the Panel's considerations</b>	<b>Document</b>	<b>Consultant</b>
	Arboricultural Impact Assessment Report	Sturt Noble
	Acoustic Report	Resonate
	Architectural Plans	CO.OP Studio
	Civil Works Drawings	Creo Consultants
	Detailed Site (Contamination) Investigation	Douglas Partners
	External Lighting Strategy Report	Introba
	Flood Impact Assessment	Rain Consulting
	Geotechnical Investigation	Douglas Partners
	Landscape Plans	Sturt Noble Associates
	Remedial Action Plan and Acid Sulfate Soils Management Plan	Douglas Partners
	Statement of Environmental Effects	Urbis
	Stormwater Management Strategy	Creo Consultants
	Supplementary Site (Contamination) Investigation	Douglas Partners
	Sustainability Management Plan	Introba
	Survey Plan	Project Surveyors
	Traffic Impact Assessment	Stantec
	Letter relating to EV parking	Bayside Council
	Draft Conditions of Consent	Bayside Council
<b>Clause 4.6 requests</b>	N/A	

<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Parking</li> <li>• Tree removal</li> <li>• Construction Impacts</li> <li>• Access</li> </ul>
<b>Report prepared by</b>	Brendon Clendenning – Consultant Assessment Planner Kalinda Li – Consultant Assessment Planner
<b>Report date</b>	3 December 2024

### 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**

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### 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**

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### 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**

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### 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*

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### Conditions

Have draft conditions been provided to the applicant for comment? **Yes - To be provided by 6/12/24**  
*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*

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## Executive Summary

This report considers Development Application No. DA-2024/50 for the demolition of existing structures, tree removal and construction of a recreation facility including indoor and outdoor swimming pools, leisure facilities, gymnasium, adventure waterslides, splashpad, changerooms, amenities, signage, and modifications to existing car park, at 2 Myrtle Street, Botany (Lot 1 / DP 1148910) also known as the Botany Aquatic Centre. The development application also seeks the approval of operating hours for the Aquatic Centre, swimming pools, splash pad and gym at 5:00am to 10:00pm Monday to Sunday including public holidays, and operating hours for the adventure waterslides at 10:00am to 7:00pm Monday to Sunday including public holidays.

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 *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 *Bayside Local Environmental Plan 2021* (BLEP 2021).

The application requires the determination of the Sydney Eastern City Planning Panel (SECPP) as it is Council related development with a capital investment value of more than \$5 million (*State Environmental Planning Policy (Planning Systems) 2021*, Schedule 6, clause 3). Furthermore, in accordance with Council policy, the application has been assessed by an independent town planning consultant; furthermore, whilst not required by Council policy, external consultants have also undertaken the assessment of the stormwater and flooding matters, and partially undertaken the assessment of urban design and heritage matters. It is noted that Bayside Council staff have been involved in both the preparation and assessment of the application. To avoid confusion, any Council staff or consultants involved in the preparation of the application are referred to in this report simply as “the Applicant”.

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 relating to flooding, stormwater drainage, design, contamination, and parking, have been adequately addressed with additional information and plan amendments, or are able to be addressed through recommended conditions of consent.
- 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 from 17 April 2024 to 20 May 2024, which meets the notification requirements of both clause 9B of Schedule 1 of the *Environmental Planning and Assessment Act 1979* (EPAA Act), and the *Bayside Engagement and Communications Strategy 2022-2026*. Four (4) submissions were received and the assessment concludes that 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

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1. That the Sydney Eastern City Planning Panel APPROVE Development Application DA-2024/50 for the ‘demolition of existing aquatic centre structures, tree removal and construction of a recreation facility (aquatic centre) including indoor and outdoor swimming pools, leisure facilities, gymnasium, waterslides, splashpad, changerooms, amenities, landscaping, signage, and modifications to existing car park, with operating hours as nominated within the application, 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 Panel’s decision

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 southern boundary), administration and reception building with a food kiosk (towards 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 site is zoned RE1 – Public Recreation under *Bayside Local Environmental Plan 2021* (BLEP 2021), as seen in **Figure 2**, and is situated adjacent to land within the E3 Productivity Support zone, the R3 Medium Density Residential zone, the RE1 Public Recreation zone and the SP2 Infrastructure (Railway) zone.





**Figure 2: Land Zoning Map with the Site outlined in red (Source: NSW Planning Portal)**

## 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.

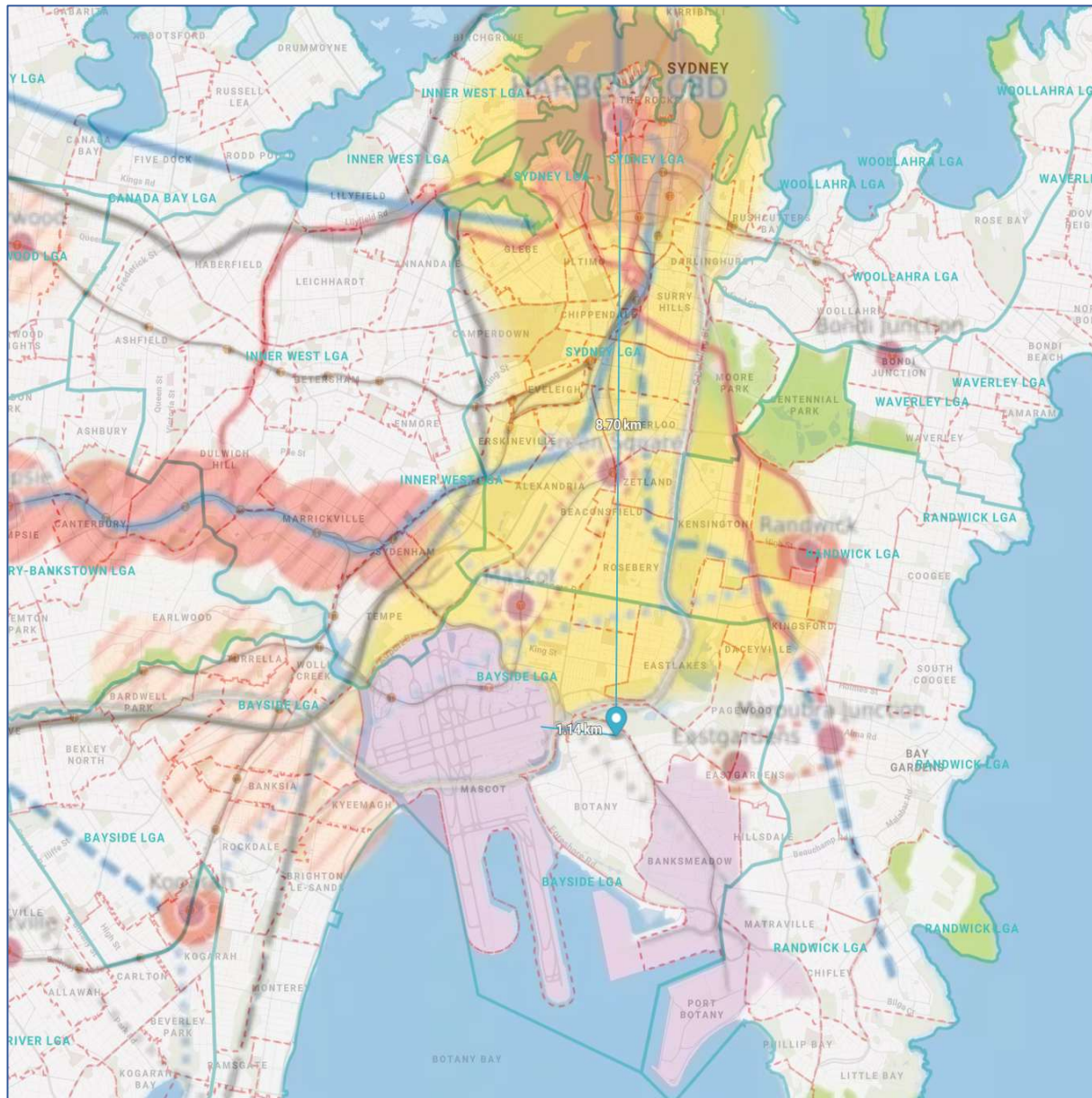
The surrounding land uses are summarised in the following:

**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 I160 within BLEP 2021.

**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 BLEP 2021) 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

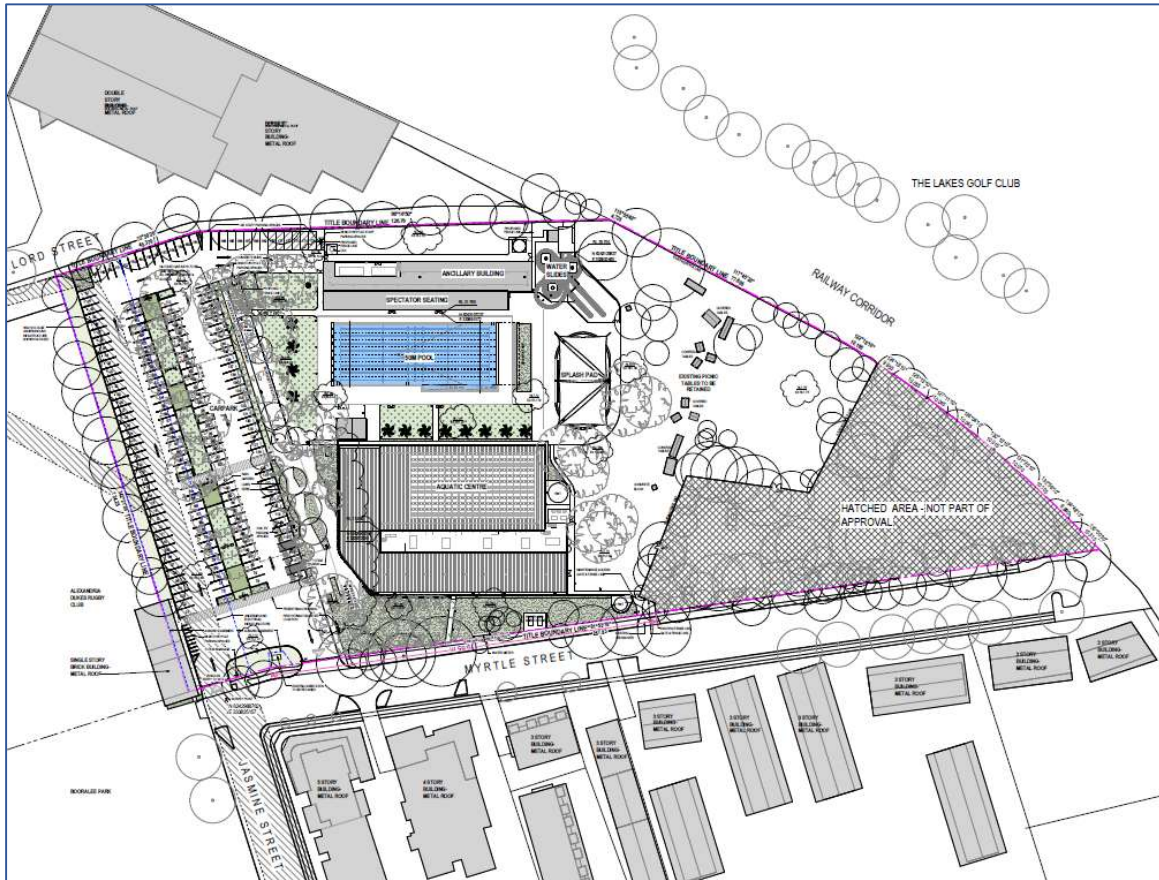
The development application seeks consent for the following works:

- Demolition of existing structures on site, including:
  - Two outdoor swimming pools
  - Grandstand
  - Two-storey brick building to the north
  - Single-storey brick building to the north
  - Metal storage building to the north
  - Single-storey amenities brick building to the south
  - Toddler pool to the south
  - Carpark
  - Shade structure, bench seating, etc

- Removal of twenty-two (22) trees
- Construction of:
  - Indoor aquatic centre building fronting Myrtle Street and the carpark, comprising of a learn to swim / program pool and a 25m lap pool. The building also includes a kiosk, meeting rooms, manager's office, seating, admin area, foyer and reception, change rooms and toilets, gym, multi-function rooms, storage areas, staff rooms, fire pump and main switch rooms.
  - Eight lane 50m outdoor swimming pool towards the northern end of the site, with associated grandstand further to the north.
  - Two water slides in the north-eastern corner of the site with a maximum height of 17.94m, and including ancillary control room and shade structure.
  - Ancillary building attached to the northern side of the grandstand containing various plant and storage space, and amenities.
  - Outdoor splash pad with shade structure located to the east of the outdoor pool.
  - Car park to provide 8 motorcycle parking space, 8 bicycle racks, 175 car parking spaces, inclusive of 4 accessible car spaces, and 2 EV charging parking spaces.
  - New landscaping throughout, including tree planting and rain gardens, the latter of which is proposed within the car park area.
  - New fencing.
  - Installation of two substations.
  - Installation of two rainwater tanks.
  - Installation of business identification and wayfinding signage.
  - New light towers to replace existing lighting.
- Operational hours
  - Aquatic Centre, swimming pools, splash pad and gym – 5:00am to 10:00pm Monday to Sunday including public holidays; and
  - Waterslides – 10:00am to 7:00pm Monday to Sunday including public holidays.

The development works comprise of excavation associated with the construction of the swimming pools, and footings associated with the proposed development would penetrate the water table. Pursuant to Division 4.8 of the EPAA Act, the applicant has sought that the application be treated as integrated development, with approvals required pursuant to the *Water Management Act 2000*.





**Figure 4** Excerpt of Site Plan (Source: CO.OP Studio, Revision D)



**Figure 5** Excerpt of Photomontage – Approach from Jasmine Street (Source: CO.OP Studio)



**Figure 6** Excerpt of Photomontage – View of car park from Jasmine Street, looking north-east  
(Source: CO.OP Studio)



**Figure 7** Excerpt of Photomontage – View Looking North from Myrtle Street (Source: CO.OP Studio)





**Figure 8** Excerpt of Photomontage – View Looking North-West from Myrtle Street  
(Source: CO.OP Studio)



**Figure 9** Excerpt of Photomontage – View of Entry from South-West (Source: CO.OP Studio)



**Figure 10** Excerpt of Photomontage – View of Entry from North (Source: CO.OP Studio)



**Figure 11** Excerpt of Photomontage – View of Entry from West (Source: CO.OP Studio)





*Figure 12 Excerpt of Photomontage – View of Outdoor Pool Concourse from West  
(Source: CO.OP Studio)*

## Site and Application History

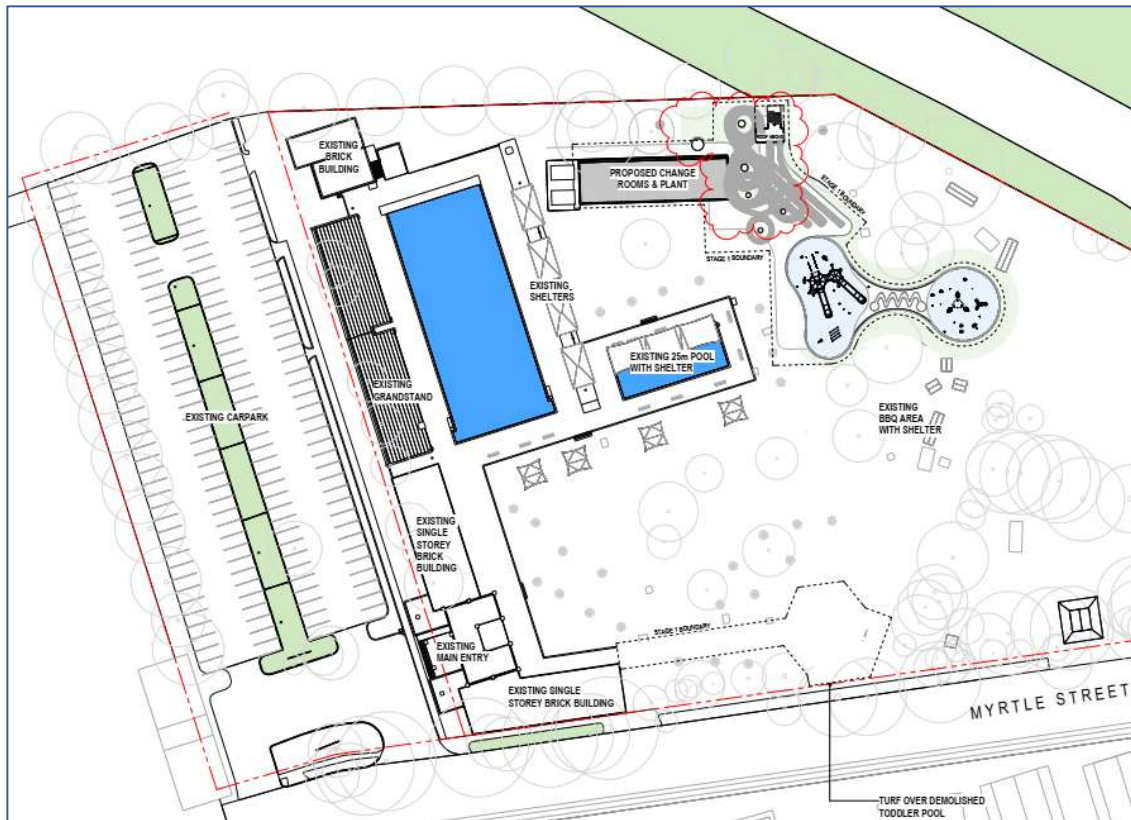
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### Approved Application

On 19 November 2021, the Sydney Eastern City Planning Panel approved a development application 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, as well as an associated building for mechanical servicing and change rooms (DA-2021/187).

The layout of the approved development is shown in the image below.





**Figure 13** Excerpt of Approved Site Plan (DA-2021/187)

Within the approved application, the water slides and splash pad (outdoor aqua play area) are each depicted in relatively similar locations as that currently proposed, with each element being of a greater scale than what is proposed within the subject application. Further, the proposed development seeks to reorient the pools and buildings on the site from the current approximately north-south alignment to an east-west alignment. The existing and approved development contains no indoor aquatic centre or associated gymnasium, with limited works approved towards the Myrtle Street frontage.

## Subject Application

A timeline of the assessment of the subject development application is provided below.

### 29 February 2024

Subject application submitted on the NSW Planning Portal.

### 18 March 2024

The Applicant notified Crown Lands of the development application.

### 21 March 2024

Subject application lodged to Council.

### 11 July 2024

Sydney Eastern City Planning Panel briefing via Microsoft Teams.

## **7 August 2024**

A request for information was sent to the applicant, generally relating to the following issues:

- Issues raised by the public
- Land use in relation to the size of the kiosk and food and drink premises
- Stormwater and drainage
- Contamination
- Architectural plans
- Landscaping details
- Tree removal and planting
- Public domain and urban design
- Traffic and parking
- Crime Prevention through Environmental Design (CPTED)
- Sustainability
- Signage
- Excavation within land adjacent to a rail corridor
- Acoustic impacts
- Lighting strategy
- Conflict of Interest Management Statement
- Owner's Consent
- Further consideration of the aesthetics of the proposal

This correspondence is herein referred to as “the RFI”.

## **15 August 2024**

An addendum request for amended information was sent to the applicant seeking to address further traffic and parking issues.

## **August and October 2024**

Various meetings held between the Applicant and Council staff responsible for carrying out internal referral assessments.

## **20 September 2024**

First meeting between the independent assessment planners and Applicant team.

## **30 September 2024**

Meeting between the Council Contamination Officer and the Applicant team.

## **31 October 2024**

Second meeting between the independent assessment planners and applicant team. RFI response documents were also steadily provided throughout October and November.

## **8 November 2024**

First meeting between the independent assessment engineers and Applicant team.

## **25 November 2024**

Second meeting between the independent assessment engineers and Applicant team.

## **28 November 2024**

Third meeting between the independent assessment engineers and Applicant team.

## Referrals:

The application was referred to a number of technical specialists within Council, as well as consultants engaged by Council to assist with the assessment, and relevant external agencies. The comments received are summarised below (consultants engaged by Council are grouped with internal referrals).

## Internal

### External Stormwater and Flood Engineer

The proposed development was referred to an external consultant engineering firm, Barker Ryan Stewart, in order to review the proposed development against development controls relating to stormwater and flooding (i.e., to carry out the Council assessment functions relating to stormwater and flooding). A number of issues were raised in two lengthy and detailed referral responses. For brevity, the most critical issues are broadly grouped and discussed below.

## Flooding

The site contains flood prone land, and the flood exposure risk is identified as H1 to H2 (with H1 being the least hazardous category and H6 being the most hazardous category). The flooding risk is characterised as 'overland flooding: flood storage and flood fringe'. The image below is taken from Council flood mapping and depicts the flood risk at the site during the 1:100 year event (1% Annual Exceedance Probability).



**Figure 14** Flood risk map 1% Annual Exceedance Probability Flood Map  
taken from Council flood advice letter

The minimum habitable floor level required for the development is 7.94 AHD. The proposed aquatic centre meets this requirement with an FFL of 7.96m AHD. However, the proposed change rooms, plant building room, and pump room in the slides tower is below the required 7.94m AHD and is shown with an FFL of 7.86m AHD. Each of these spaces are non-habitable and conditions are recommended requiring all electrical equipment to sit at 7.94 AHD or higher. Similar conditions are recommended in relation to fencing, building materials, and the like. The pools are in-ground and the edges are generally flush with the surrounding natural ground level, as required by Section 9.5.1 of BDCP 2022.

Amendments were made to the flood modelling in late November and early December, and the following final comments were provided, in support of the development (subject to conditions):

## **Final Design and Analysis**

The OSD system was revised to an 1,800 m<sup>3</sup> tank. A sensitivity analysis revealed the **tailwater level** was the primary determinant of tank size, as flows leaving the site were restricted well below permissible site discharge (PSD) levels set by the pre-developed flows at the discharge point in Myrtle Street. The OSD system effectively functioned as a **flood storage device**, temporarily retaining water until downstream capacity became available.

Since the tank primarily mitigated flood impacts, its sizing was optimized for economic and minimal invasive measures, provided it met Council's **Development Control Plan (DCP)** requirements for no adverse flood effects and the various aspects of the **Local Environmental Plan (LEP)**. Flood modelling using a 740 kL tank indicated compliance, with no adverse flood impacts resulting from the development. Although certain modelling inputs will need refinement, the changes are not expected to significantly alter the required flood storage volume and can be addressed through conditions of approval.

## **Meeting the Objectives of the LEP and DCP**

The proposed development aligns with the objectives of the Local Environmental Plan (LEP) by satisfying the prescriptive requirements outlined in the Development Control Plan (DCP). These requirements have been addressed either through conditions or as part of the Development Application (DA) submission, as detailed above.

*It has been demonstrated through the Flood Impact Assessment that the proposal:*

- *Is compatible with the flood function and behaviour on the land*
- *Will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties*
- *Ensures the safe occupation and efficient evacuation of people during a flood event, without exceeding the capacity of existing evacuation routes in the surrounding area*
- *Incorporates measures to manage risks to life during flood events*
- *Allows development on land that is compatible with the flood function and behaviour of the land, accounting for reasonable projected changes as a result of climate change*
- *Incorporates a flood storage tank and a Flood Management Plan to effectively mitigate flood risks*

*Additionally, the development will not adversely impact the environment, cause avoidable erosion, siltation, or destruction of riparian vegetation, nor reduce the stability of riverbanks or watercourses. Details on how each DCP clause is satisfied are provided in the sections above.*

*The updated stormwater management strategy, incorporating an optimised flood storage tank, is considered to satisfy Council's Local Environmental Plan (LEP) and Development Control Plan (DCP) objectives and incorporates the relevant requirements of the Bayside Technical Specification – Stormwater Management to ensure no adverse impacts to flood conditions while adequately providing for onsite stormwater treatment in regular rainfall events through the use of a stormwater treatment train. The revised design balances compliance with environmental and site constraints, providing a stormwater management and flooding outcome that is practical, effective and offers good value to the community.*

*As such, the proposed flooding and stormwater management measures proposed are supported, subject to conditions which include refinement of the flooding and stormwater models.*

### **Method of stormwater capture**

The site is located within an “absorption area”, per Appendix A of the *Bayside Technical Specification: Stormwater Management* (herein referred to as the “SM Technical Specification”), and defined as an area with typically sandy soils of medium to high permeability.



**Figure 15** Extract from Appendix A – Botany Bay Sand Aquifer, showing areas in orange hatching whereby absorption is preferred over onsite detention (Source: SM Technical Specification)

Section 5 of the SM Technical Specification states that:

*On-site stormwater absorption (also known as on-site retention and infiltration) shall be used as the **FIRST** stormwater disposal method where possible for all developments (except industrial developments), regardless of whether the site falls to or from a public road.*

However, Section 5.2 also states that absorption systems are not permitted if any of the following criteria apply:

- (i) The measured groundwater table level of the site is within 1.5m of existing surface levels.
- (ii) The site is contaminated.
- (iii) The base of the absorption system is within 0.5 metres of the measured groundwater table/rock level.
- (iv) The site is used for an industrial purpose.

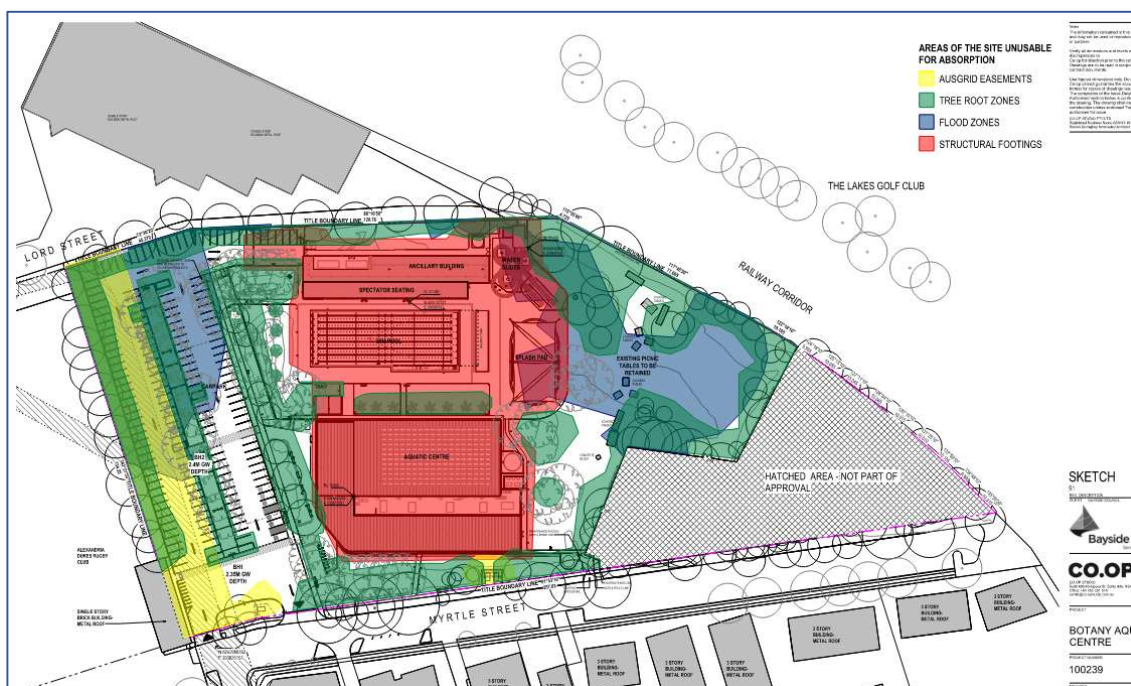
Both (i) and (ii) apply to the site and the application therefore seeks an on-site detention (OSD) system, instead of an absorption system. However, the external engineer noted that the SM Technical Specification provided little guidance on whether these criteria applied in all circumstances, particularly noting that that absorption is the preferred method drainage method at the site, as well as the following:

- The application seeks to remediate the site and upon completion of the remediation works the land would potentially no longer be contaminated.
- Whilst the submitted geotechnical report did identify that two boreholes/tests showed groundwater within 1.5m of the surface levels, their location was concentrated in an area



near the northern boundary of the site, with the 24 other boreholes/tests showing groundwater to be more than 1.5m below the existing site surface levels.

Therefore, to support the absence of an absorption system, the external engineer requested that the applicant provide a plan showing the required area of infiltration for stormwater management, along with appropriate calculations, and subject to various nominated parameters. In response, the applicant provided the plan below:



**Figure 16** Plan provided to depict areas that are unusable for absorption

On 18 November 2024, the following comments were provided in response to the plan above:

*The void type pit spreadsheet calculates the required area for infiltration to be 864 sqm. Based on the constraints map provided, the area of potentially unconstrained land available is 840sqm. Though close, the area of potentially unconstrained land measured does not take into consideration the placement/configuration of the absorption pit nor the unknown full extent of the tree roots that could affect the absorption system.*

*The area determined to be required for infiltration is less than the area of land that looks to be available, and as such there is insufficient area onsite to utilise infiltration. The applicant is to provide OSD and address the following comments*

On this basis, the external engineer provided support for the proposed OSD system.

### **Capacity of stormwater retention**

Section 6 of the SM Technical Specification states as follows.

- *The Permissible Site Discharge (PSD) from the site shall be designed to restrict the discharge to the predeveloped runoff in the “state of nature/greenfield” condition*

*(Predeveloped site must be assumed as 100% pervious (i.e. the site is totally grassed/turfed) for the 20%, 10%, 5%, 2%, and 1% AEP storm events for all typical durations from 10 minutes to 2 hours. The OSD storage volume (SSR) shall be designed to ensure this achieved.*

Put simply, BDCP 2022 requires that an OSD system be designed to cater for a greenfield site, rather than only accounting for the proposed increased built upon area. This control has the effect of significantly increasing the size of the required OSD system.

This requirement is a relatively unusual requirement, and its application is likely aimed at “upzoned” land, for instance, where a group of single dwellings are converted to a high density residential or office use. In these circumstances, the design of the development would reduce (rather than merely maintain) the impact on the stormwater system, and this requirement is proportionate to the development uplift expected in those circumstances.

In relation to the subject development, the requirement is particularly onerous, given the following:

- The site is unusually large and features expansive hardstand areas, including the public car park.
- The facilities associated with the proposed development are largely similar to the existing development on the site (albeit with an expanded offering), and in the absence of any associated development uplift, the control serves as a significant disincentive to improve the site.

The external assessment engineer has agreed that to treat the site as greenfield in the ‘existing case’ is onerous, noting that OSD is fundamentally aimed at controlling downstream impacts, and the proposed OSD design achieves this by properly accounting for additional hardstand (i.e. maintaining the current extent of impact). The assessment has concluded that this rationale above should also be applied to similar developments carried out by private developers (i.e., sites with expansive hardstand areas, where the development involves limited uplift).

### Environmental Health

The initial referral did not raise any objections, subject to conditions in relation to controlling acoustic impacts in accordance with the recommendations of the Acoustic Report and additional recommended conditions of consent.

Despite this, the RFI requested that the applicant to consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2015 and C3 of 3.13 of BDCP 2022 which states that development on land within an ANEF affected area (ANEF 20+) is to be supported by a Noise Impact Assessment demonstrating indoor design sound levels in AS 2021—2000 can be achieved.

The building would be defined as a “public building” within Table 2.1 to AS 2021:2015, which is listed as “conditionally acceptable” when lying between the 20 to 30 ANEF contours. Therefore, it was requested that the acoustic report be updated to account for aircraft noise impacts and to demonstrate that the development is conditionally acceptable and also to account for all potential noise sources, including in relation to the noise generation by waste collection and delivery vehicles.

A revised Acoustic Report was submitted by the applicant. Council’s Environmental Health Officer provided a second referral response which confirmed their concurrence, subject to recommended conditions and acoustic measures outlined in the Acoustic Report. However, further acoustic issues were again raised as part of the independent assessment, including in relation to comments made by the SECPP. These issues were later deemed to be resolved; refer to discussion of Part 3.14 of BDCP 2022.

## Environment

Council's Environment Coordinator reviewed the initial application and provided comments in relation to the following:

- Tree planting to offset tree removal, including off-site tree planting.
- Planting selection to prevent ibis birds from inhabiting the centre.
- Outdoor lighting conditions to minimise impact of light pollution on fauna.
- Tree protection.
- Sediment controls to be put in place.

Each of these comments were adopted within the assessment, with the exception of the first comment suggesting off-site tree planting may be appropriate. The suggestion is understood to be based upon Part 3.8.2 of BBDCP 2022, control C6, which indicates that

*Where Council determines that on-site replacement is not appropriate there is an opportunity for off-site replacement subject to a Deed of Agreement and monetary contribution (as outlined in Council's Fees & Charges) with the Council to facilitate replacement planting on public land.*

It should be noted that the Tree Management Officer had also initially agreed with this required, and had agreed that this could be addressed by a condition of consent; however, the Landscape Architect instead indicated that further information and amendments were required prior to determination.

The independent assessment had concurred with the request of the Landscape Architect, and had concluded that the provision of replacement trees on other Council land, which is broadly allowed by BDCP 2022 (subject to separate Council agreement), is not appropriate in this instance, for the following reasons:

- The control is a last measure where replacement planting has been demonstrated to be constrained.
- The control firstly requires there to be an opportunity for off-site replacement, and no such opportunity was identified.
- The control requires a Deed of Agreement between the Applicant and Council, and there is inherent conflict of interest in relying on this control when the Applicant is also Council.
- Further to the point above, reliance on this provision would provide the Applicant with an opportunity to carry out tree planting that may have already been planned by Council, providing no additional tree planting benefit.

As the application was initially supported by the Environment Team, no further referral was sought upon receipt of further information. With regard to the additional information provided in relation to tree removal, no further issues were raised from Council's Landscape Architect.

## Contamination Officer

Council's Contamination Office provided an assessment of contamination issues, as well as acid sulfate soils. The initial referral concluded that there was insufficient information to determine whether the site and the proposed development were suitable from a contamination perspective. The following information was therefore requested as part of the RFI:

- *An updated Supplementary Site (Contamination) Investigation must include, but not be limited to:*
  - *Clarification on the maximum bulk excavation level (BEL) required for the 50m and 25m pools, as the BEL of the section plans (2.1m bgl) are inconsistent with the Geotechnical Investigation (2.6m bgl);*

- *Deeper borehole soil sampling (of adequate site coverage and depth) that is reflective of the maximum BEL of the 50m and 25m pools, that includes analysis of previously untested natural soils. This is to be undertaken in accordance with the NSW EPA adopted Guidelines under the Contaminated Land Management Act, to identify potential contaminants and risks.*
- *Clear identification of whether soil samples have been collected from fill or natural soils in the results tables.*
- *In the event that the additional testing required above identifies contaminant exceedances of the Site Assessment Criteria that requires additional site remediation, the Remedial Action Plan and its procedures must be updated to reflect the additional information.*

A meeting between Council's contamination officer and the applicant's consultant was undertaken on 30 September 2024 to resolve the matters raised in the RFI letter and issues relating to land contamination. A response letter was subsequently submitted by the Applicant.

The second referral comments provided an assessment of the response documentation submitted by the Applicant, subsurface conditions, acid sulfate soils, contaminated land, and the Remedial Action Plan (RAP). The referral outlined that groundwater is expected to be intercepted during excavation works and that temporary dewatering will be required. The removed groundwater is expected to be pumped into the stormwater drains, subject to confirmation testing and approval.

The initial referral response noted that soils to a maximum depth of 2.0m bgl (below ground level) were tested, and no distinguishment of whether samples were fill or natural were made. However, clarification was made in the response to the RFI, and the correct results were referred to, which indicated that sampling of natural soils did in fact occur and that all exceedances were from the fill. While the depth of soils tested is not reflective of the proposed maximum excavations for the pools, being 2.6m bgl, all natural soil samples were within the Site Assessment Criteria, and as such Council's Contamination Officer confirms that deeper testing would not be necessary.

The RAP submitted by the applicant identified that the on-site treatment followed by on-site re-use and/or off-site disposal as the preferred management option for acid sulfate soils. The RAP also concluded that the site can be made suitable for the proposed recreational development subject to proper implementation of the listed remediation procedures, unexpected finds protocols, and completion of the validation assessment. The RAP will appropriately manage PAH (Polycyclic Aromatic Hydrocarbons) and asbestos contamination. In the contingency event that capping is required, then the development and implementation of a long-term environmental management plan will be necessary.

Council's Contamination Officer confirmed the site is suitable for the proposed open space recreational use and redevelopment and raised no remaining objections to the application subject to the successful implementation of the RAP procedures and management, and compliance with recommended conditions of consent.

### Heritage

The subject site is in the vicinity of Botany Water Reserves (landscape heritage item, I160, of State significance) and Booralee Park (landscape heritage item, I160, of local significance).



**Figure 17: Heritage Map with the Site outlined in red (Source: NSW Planning Portal)**

The proposed development was initially referred to an external Heritage Advisor, Louise Thom, who requested that the tower and water slide be provided with a colour scheme which is recessive and has low reflectivity and low saturation in order to minimise visual impacts on the two adjacent landscape heritage items.

A colour scheme of the proposed development was submitted with the additional information provided by the Applicant. The plans show that the development is to be constructed of grey tones with natural timber with landscaping provided along boundaries to the Botany Water Reserves. The highest structure proposed is that waterslide and tower which has a height of 17.94m and is treated with hues and shades of blues, greens, greys and white. Council's internal Heritage Officer indicated that the colours were complementary and presented a low visual impact to the surrounding areas, particularly noting the distance from areas of key significance. Moreover, the Heritage Officer indicated that the recreational function of the development supports the historic use of the park.

The Botany Water Reserves are expansive and disconnected from the development by the railway line. The boundary planting assists in providing a visual separation from the heritage item. Council's internal Heritage Officer therefore confirmed the proposed aquatic centre redevelopment will not have an adverse heritage impact on the heritage items within its vicinity, and supports the development.

No further conditions have been recommended.

#### Tree Management Officer

The initial Tree Management referral response provided concurrence and supported the development subject to a replacement planting ratio of 2:1, and tree protection measures. The initial



comments included a suggestion that replacement tree planting could be accommodated off-site (refer to earlier discussion of the Environment referral).

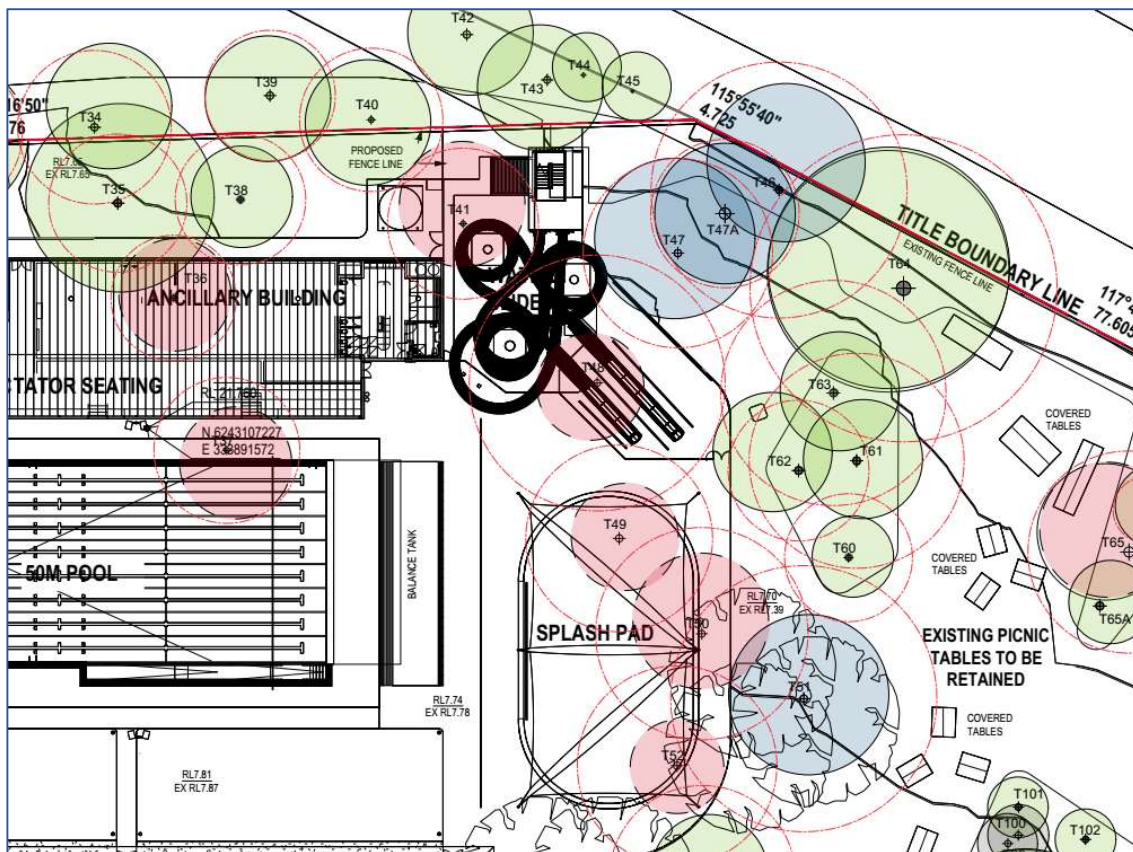
Despite the Tree Management Officer's support for the proposal, further clarification was sought in relation to the following comment from the Arboricultural Impact Assessment Report (AIA):

*Three of these (Tree Nos. 46,47,185A) need to be further assessed by Council and may be able to be retained if they are considered safe.*

An amended AIA was submitted; however, the report did not address this issue, and a further request was made. A third arborist report was then submitted which indicated as follows:

*Four of these (Tree Nos. 46,47,47A and 51) need to be further assessed by Project Arborist and may be able to be retained if they are deemed to be not only safe but also if there is minimal impact to the tree and the tree can continue to thrive and provide amenity.*

The trees in question are shown in blue on the plan extract below.



**Figure 18** Extract from 'Tree Plan 03' attached to the AIA, showing Tree Nos. 46,47,47A and 51 marked in blue (Source: Sturt Noble Arboriculture)

In relation to each of these trees, the Tree Assessment Schedule within Appendix 3 of the AIA states as follows (table summarised for simplicity):

Tree Number	Species	Design Notes
46	<i>Eucalyptus benthamii</i> Camden white gum *1	Wound wood with Chino seepage. Aerial investigation & possible removal
47	<i>Eucalyptus tereticornis</i> Forest Red Gum*1	Major encroachment. Retain subject to root investigation and detail design levels.
47A	<i>Eucalyptus benthamii</i> Camden white gum *1	Poor condition. Retain. Aerial investigation & possible removal
51	<i>Melaleuca quinquenervia</i> Broad-leaved Paperbark	Major encroachment. Investigation and possible removal.

The final Tree Management Officer referral supported the development subject to a replacement planting ratio of 2:1, transplantation of trees numbered 22-33, and tree protection measures. The referral also indicates that the trees marked above “may be removed subject to a further aerial investigation”.

It is not clear why the referral supports the removal subject to an aerial investigation, when the AIA does not explicitly indicate that removal is required for any of these four trees, and requires only that trees 46 and 47A be subject to an aerial (i.e., climbing) investigation. On this basis, the independent assessment has concluded that each of these trees should be retained as part of the works (unless separate approval is granted). If further arboricultural investigations determine that the trees should be removed, then this may be subject to modification application, or alternatively, the Applicant may seek tree removal via a tree removal application, or via the provisions of *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

Other recommended conditions have been included with the list of recommended conditions.

#### Bayside Traffic Development Advisory Committee

The application was referred to the Bayside Traffic Development Advisory Committee (BTDAC) which held a meeting on 8 May 2024. BTDAC recommended the following further information be provided:

- That the bus/coach parking bays be line marked and shown on the plans in compliance with AS2890.2 2018.
- That the traffic impact report be revised to also survey a new aquatic centre to understand the demand for the new aquatic centre and understand if the parking demand is met.
- That additional parking be provided for the new car park extension on the northern section, adjacent to the loading bay for staff.

The Applicant provided a response to the above items which were assessed by Council's Development Engineer, confirming that the updated documentation was satisfactory and did not warrant a re-referral to the BTDAC. Further traffic comments are discussed in the Development Engineer section below.

#### Development Engineer

The Development Engineer provided comments related to traffic and parking only, noting that Stormwater and flooding measures have been assessed by an external consultant engineer. The Development Engineer was also asked to consider conditions that may be required for civil works.

The Development Engineer reiterated the car parking issue raised by the BTDAC and expanded upon the issues raised. These comments came after the issue of the RFI and an addendum request for further information letter was therefore issued to the applicant on 15 August 2024. The issues that were raised are as follows:

- a) *The traffic survey in section 2.6 of the traffic report prepared by Stantec provides insufficient survey data. It is noted that the survey was not completed during the busiest months of an aquatic centre (survey must be undertaken during peak summer periods), water slides were removed for 80% of the surveys and the surveys were of an old aquatic centre at the end of life. Hence, these issues indicate that this survey data is not sufficient to rely on for the traffic and parking assessment, a summer survey needs to be undertaken of a new aquatic centre in a similar locality with a similar offering to the development to understand peak car parking demands.*
- b) *Section 4 of the traffic report indicates the development has a significant shortfall in car parking from the Bayside DCP. The shortfall in car parking has yet to be fully justified. The following issues need to be addressed:*
  - i. *The first principles and empirical assessment for the Outdoor Aquatic Facilities & grandstand shall be further detailed and justified.*
  - ii. *It's not clear how the parking rate for Outdoor Leisure Aquatic Facilities (splash pads and water slides) was determined. A parking assessment of similar water slide & splash pad development is required.*
  - iii. *Further evidence needs to be provided for the parking reductions associated with ancillary/complementary nature of the uses,*
  - iv. *The traffic report must also consider and survey the parking demand of nearby sporting fields & parks.*

Additional information submitted by the applicant in the form of an addendum Traffic Report, and this included additional patronage data, obtained from Council for the Botany Aquatic Centre for the period extending from September 2023 to April 2024. Noting the additional information and the information initially provided, the referral concludes that the number of car parking spaces is satisfactory and that there is no need for a further referral to BTDAC. It is also noted that the proposed number of parking spaces exceeds that approved by DA-2021/187, and the methodology to the parking analysis is based upon the analysis that was accepted in the assessment of that application, and only after amendments were made to account for higher anticipated patronage.

#### Waste Management

Supported, with no conditions recommended.

#### Building Surveyor

No objections, noting that the BCA Report and Access Statement do not rely upon significant deviations from the design proposal.

#### Contributions Planner

The Council Contributions Planner calculated that total contribution of \$624,759.07 was applicable under the *City of Botany Bay S94A Development Contributions Plan 2016*, prepared to enable contributions under section 7.12 of the EPAA Act.

The redevelopment of the Botany Aquatic Centre is listed within the works schedule to the plan, and as part of DA-2021/187, the Applicant had submitted an offer to enter into a works in kind agreement, acknowledging that the value of the proposal exceeded the value of the listing within the schedule (at the time, the listing accounted for upgrade works only).

The Assessment Report associated with DA-2021/187 had concluded that *“there is no utility in making the Works In Kind Agreement, and no condition is recommended requiring Council to enter into this agreement”*. It is also understood that Council have since received advice indicating that it is not possible for Council to constitute both parties within a works in kind agreement.

The effect of section 7.12 of the EPAA Act is to provide the consent authority with the power to impose a condition requiring a contribution; it does not mandate that a contribution be levied on each and every development application. The assessment of this application recommends that no contributions be payable as part of this development, as it will merely serve to create administrative costs as funds are redirected through Council, without having any positive impact on funds available for infrastructure.

### Urban Designer

The application was referred to Council's internal Urban Designer who initially raised issues broadly relating to the following:

- Response to landscape context, particularly the undeveloped area of land located within the eastern part of the site.
- Various circulation issues, including in relation to the main entrance and foyer
- Crime Prevention Through Environmental Design (CPTED) principles.
- Issues with the prominent location of utilities (“back-of-house facilities”), such as rainwater tank.
- Request for lighting strategy.

The initial comments also suggested that the kiosk open towards the car park. However, the independent assessment ultimately concluded that this requirement was not able to be pursued, given that this suggestion may change the land use classification of the *kiosk* to *food and drink premises*, which is a land use that is prohibited in the RE1 zone. Refer also to commentary on clause 5.4 of BLEP 2021.

The majority of the initial comments were included within the RFI; however, the independent assessment had concluded that some of the comments were to be omitted as explained in the following:

- As the undeveloped part of the site is not a public park, the assessment concluded that it was the least prominent of the four edges of the building, and in this respect it was the most appropriate location for utilities. However, the RFI did seek amendments to minimise the prominence of the substations towards Myrtle Street.
- The lighting strategy was provided with the original application, and therefore one was not requested; however, further information was requested as discussed in relation to Part 3.5.10 of BBDCP 2022.
- Comments regarding disability access were not included in the RFI, given that an access report was provided, and that Council's Building Surveyor had indicated that there were no report recommendations requiring significant deviations from the current design proposal.

The amended application was also referred to Council's Urban Designer, who provided further and updated commentary on the application, as summarised as follows:

- Entry improvements had addressed the issues raised previously.
- Continued and additional concerns regarding the location of utilities.
- Request to shift the glass portion of the southern façade (Myrtle Street) further to the east, so as to remove views between Myrtle Street and the edge of the change rooms, and to expand views between Myrtle Street and the eastern end of the gym.
- Recommendation for furniture to be accommodate a diverse range of people.

At the meeting of 31 October 2024, the Applicant provided the following responses:

- Of the four facades of the indoor aquatic centre building, the eastern façade is the least visually prominent and presents to a relatively narrow part of the site. Relocation of the rainwater tank, either underground or elsewhere on the site, would require a drainage system of greater complexity.
- The majority of the frontage is occupied by trees, which are not compatible with substations. The proposed substations are proposed within the only parts of the frontage without tree planting, and to consolidate them would require a wider single area without landscaping.
- The eastern edge of the gym will be associated with the weights room and will be fitted with mirrors, which is not compatible with further glazing.



**Figure 19** Excerpt from General Arrangement Plan showing the portion of the glass façade (shown above green line) and the rainwater tank (marked by pink 'x') of concern to Council's Urban Designer (Source: CO.OP Studio, Revision D, with mark-up)

The independent assessment has concluded that, with the exception of the location of the rainwater tank, the reasons put forward by the Applicant are sufficient such that further design amendments are not warranted (the rainwater tank is discussed below in relation to the Landscape Architect's referral). Further, it is noted that the glass façade at the western end of the development creates only relatively minor privacy impacts to the circulation area around the change rooms, whilst providing natural light to these circulation areas.

Finally, the Council Urban Designer has recommended a footpath upgrade along the length of Myrtle Street. however, this issue is normally within the remit of the Council engineer, who has not recommended a condition requiring the upgrade and who has given reasons for omitting such a condition. There is no information to suggest that the footpath is in need of replacement. In addition, the existing footpath along Myrtle does not serve any further properties to the east, noting further



that footpaths are also available on the southern side of Myrtle Street. On the basis of all of the above, the independent assessment has concluded that a condition requiring an upgrade of the entire length of the Myrtle Street frontage is not warranted.

Council's Urban Designer and Landscape Architect each also provided comments seeking that the 1.4m wide entry footpath, perpendicular to Myrtle Street, be widened to 2.5m to improve pedestrian and cyclist amenity. A condition is recommended requiring this design amendment.

#### Landscape Architect

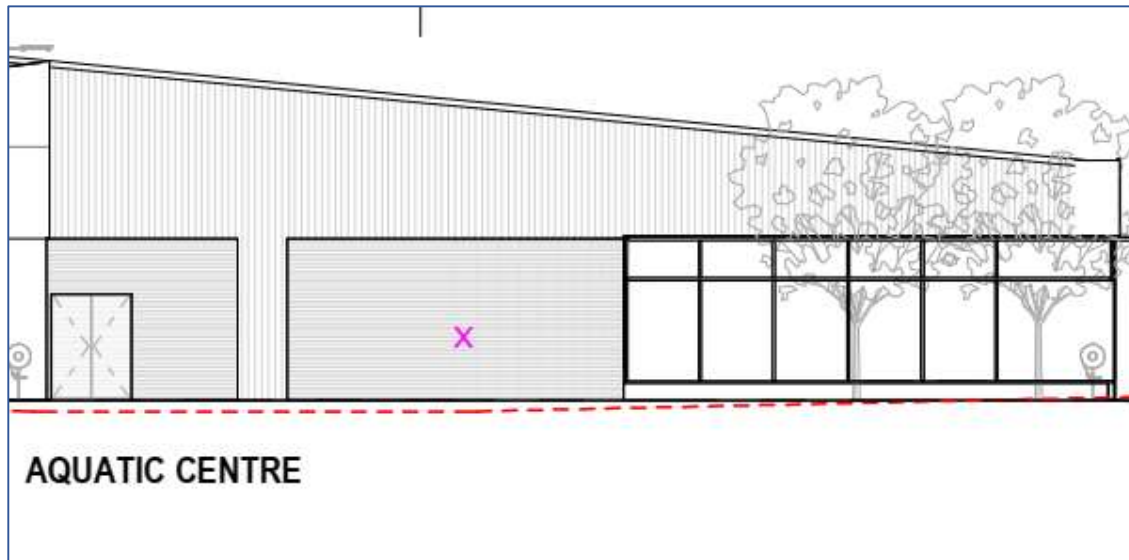
A summary of the initial comments raised by Council's Landscape Officer is shown below:

- Substation – unsuitable location, preferably old substation deleted and consolidate all proposed and existing into one location
- Inconsistent information provided in landscape documentation set
- Seating and furniture – inconsistent palette, not visually attractive and ergonomic
- Fences – detail location, type, material and finishes
- RWT preferred located underground
- Stormwater structures to minimise visual impacts
- Break down large parking area with visual elements such as WSUD elements
- Pervious pavers for certain car parking spaces (refer to image in referral)
- Provide min. 64 canopy trees for canopy loss
- Insufficient information on landscape plans

The final referral indicated that remaining issues were required to be addressed by condition of consent, and these issues are listed as follows:

- The tree nominated within the raingarden areas within the carpark, *Callistemon citrinus*, is not suitable for shading or crime prevention, and the low canopy is not compatible with parked cars. An alternative species, such as *Melaleuca quinquenervia* is required.
- The use of *Corymbia maculata*, within the car park is supported, noting their narrow canopy. However, because of their narrow canopy, they are also required to be complementing with trees containing broader canopies.
- The rainwater tank impedes views towards the between the indoor pool and the landscaped area to the east. The rainwater tank is required to be located underground, with glazing to be expanded to the south in order to improve views towards this land.

The first two suggestions are incorporated into recommended conditions of consent. In relation to the third suggestion, the rainwater tank is shown within **Figure 19** above and **Figure 20** below.



**Figure 20** Excerpt from East Elevation showing the approximate location of the rainwater tank (marked by pink 'x') of concern to Council's Landscape Architect  
(Source: CO.OP Studio, Revision D, with mark-up)

As a basis for these suggestions, the referral points to Part 3.1.2 of BDCP 2021, including its objectives and the following controls:

- C5. Comfortable public places with high-quality public furniture, good shade and interesting outlooks within the public domain and open space shall be provided.*
- C8. Developments are to be designed so that required services and infrastructure (e.g. hydrants) that interface with the public domain are considered and integrated into the built form design at development assessment stage.*

The reasonableness of this suggestion depends on whether land to the east of the aquatic centre building should be affected by controls relating to "open space" and the "public domain", noting that the area is only proposed to be accessible from the paid entry point of the aquatic centre.

For the following reasons, a condition is recommended requiring this design amendments

- The eastern edge of the site contains an expansive area of RE1 zoned land. Therefore, the development not only impacts the labelled confines of the aquatic centre, but also the land within the RE1 zone which adjoins further to the east.
- The required design amendments are relatively minor, and it is recommended that the condition be worded relatively flexibly to enable any further required design resolution.

### External Architect

At the briefing meeting, the SECPP had indicated suggested that the application may require a consideration by the Council Design Review Panel, particularly to consider the aesthetic treatment to the building.

The Bayside Design Review Panel ("the Bayside DRP") Terms of Reference indicate that the Design Review Panel considers the following applications:

**What types of development does the Design Review Panel provide advice on?**

The following types of development must be assessed by the Design Review Panel:

- Residential accommodation that is 3 or more storeys in height; and
- Commercial and industrial buildings that are 3 or more storeys in height; and
- Developments subject to *Clause 6.10 Design Excellence of the Bayside Local Environmental Plan 2021*; and
- *Planning Proposals*; and
- *Draft Development Control Plans*.

Council may also require major development proposals not included above to be referred to the Design Review Panel for advice.

**Figure 21** Extract from Bayside DRP Terms of Reference indicating the types of applications that the Bayside DRP are to consider

The development is not affected by any of the automatic triggers shown within the dot points above. The development is potentially affected by the comment which follows the dot points, indicating that Council *may* require major development proposals to be referred to the Bayside DRP for advice. Council staff have indicated that this provision is typically only relied upon to capture other land uses that are not identified within the first two dot points, but only if the height of the development is 3 storeys or greater. This could include community uses such as a school, child care centre, or place of public worship. On that basis, it was concluded that a referral to the Bayside DRP was not reasonable.

In order to properly respond to the request of the SECPP to receive aesthetic advice, Council (in its assessment function) engaged an independent architect, Paul Walter, of Atlas Urban, to review the design, provide recommendations and provide written commentary on the aesthetics of the proposed development.

The external consultant provided recommendations to the applicant which were adopted in the revised Architectural Plans provided on 24 October 2024. In summary, the external consultant highlighted that the amended external entry sequence, perception of welcome and shelter and internal entry sequence were improved from the original design.

The independent assessment had requested that further comments be provided to more clearly articulate the opinion on the aesthetics of the application. Further comments were provided on 27 November 2024 and an extract of the commentary is provided below:

*The aquatic centre and gymnasium building program make necessary a large, consolidated building, with extensive solid walls. Such a building risks having the appearance of a bland industrial shed. The primary elevations (southwest and west) adopt an unusual and singular aesthetic. This represents a deliberate strategy to overcome this important aesthetic challenge.*

*On the main façade, the white vertically serrated panels run from the building base to the parapet. These serrations taper at the ends emphasizing the datum lines at the top and bottom of the wall. The parapet rises gently over the main entry, emphasizing this part of the building. The horizontal base of the wall sits on a low plinth, which makes-up the level changes in the ground fall.*

*The serrations or pleats create a regular pattern of light and shade, giving texture to these primary elevations, while the walls curve away from the viewer to give an impression of the building as a distinct and memorable 'object'. The main entry and windows are 'carved out' of the main building block, while leaving enough of the body of the building to retain its coherence. The shaded forecourt, with low walls for seating, creates an entry sequence. While the aperture of the main entrance with its deep overhang and warm coloured lining helps to give the sense of welcome.*

*There are two main risks in the aesthetic strategy.*

- 1. Risk of poorly detailed resolution. The design and construction quality will be crucial to ensure the building ages well. Furthermore, the interface between the unusual, serrated elevation and the 'normal' elevations beyond will be challenging. This may be solved with careful detailing and skilled contractors.*
- 2. Risk of creating an aesthetic that is unfamiliar, alienating, or cold. This issue has been the focus of the design review and design modifications since the original DA. The modifications have addressed this issue, while maintaining the architectural language, by creating a greater sense of materiality, welcome and shelter in the main entrance and forecourt.*

## **External Agencies**

### APA Group

The site is located adjacent to land in a pipeline corridor and a referral was sent to APA Group, who indicated that there were no concerns regarding any direct impact on the pipeline, as a result of the development and construction activity.

APA Group indicated that the development is located within the pipeline measurement length (area of consequence), but no objections were raised given the proposal does not represent a sensitive land use as defined under AS2885: "use by members of the community who may be unable to protect themselves from the consequences of a pipeline failure", such as aged care facilities and child care centres.

### Ausgrid

No objections raised subject to the following conditions to be imposed in relation to the following:

- Method of electricity connection
- Supply of electricity
- Proximity to existing network assets
- Activities within or near to the electricity easement

### Australian Rail Track Corporation (ARTC)

The site is located adjacent to land in a rail corridor and a referral was sent to ARTC, who requested that, as part of its assessment, Council consider the following:

- *Development Near Rail Corridors and Busy Roads – Interim Guideline (2008).*  
<https://www.planning.nsw.gov.au/sites/default/files/2023-03/development-near-rail-corridors-and-busyroads-interim-guideline.pdf>.
- Fencing and safety.
- Stormwater impacts, with a condition of consent recommended.
- A comment was provided indicating that excavation exceeding 2m and within 25m of the track would require additional review; however, whilst there is excavation of over 2m require for the pool, it is located comfortably in excess of 25m from the track.

- Further consultation with ARTC may be required for construction that will involve the use of cranes.

These comments were resolved as outlined within the discussion of *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

#### Crown Lands

The application was referred to Crown Lands as the owner of the land. The comments provided by Crown Lands related to procedural matters associated with the responsibilities of the appointed Crown Land Manager, Bayside Council. Crown Lands advised that it is the responsibility of the Council to take into consideration the following:

- the existence of any unresolved land claims under the Aboriginal Land Rights Act 1983;
- Commonwealth and State Native title laws and regulations and its implications on the proposed works;
- whether the proposed development is consistent with the declared purpose of the reserve;
- whether the proposal is consistent with any Plan of Management which may have been adopted for the reserve.

The above matters do not relate to prescribed matters for consideration within s4.15(a) of the EPAA Act, and the comments are understood to simply remind the Applicant of their obligations. However, to assist the SECPP, a consideration of the relevant draft Plan of Management has been made in relation to the consideration of the public interest (s4.15(e)).

#### Department of Climate Change, Energy, the Environment and Water

The proposed development is anticipated to intercept groundwater, and the applicant has sought that the application be treated as integrated development, with approvals required pursuant to the *Water Management Act 2000*. General Terms of Approval were provided for the Aquifer Interference Activity and related Water Supply Work (dewatering).

#### NSW Police:

NSW Police Force provided commentary on the application on 27 June 2024 and did not object to the application, but outlined a number of recommendations to be implemented should the application be approved.

The recommendations included considerations of lighting, CCTV camera systems, storage of hardware/equipment, security alarm systems, passive surveillance, vandalism, emergency evacuation and contact measures, signage and conditions of entry. Some of these recommendations are incorporated as recommended conditions, whereas others are recommended as advisory conditions.

The RFI included a request for a Crime Prevention Through Environmental Design (CPTED) Report. The applicant provided a suitable CPTED Report with the suite of response documents.

#### Sydney Airports Corporation Limited (SACL)

The site location lies within an area defined in schedules of the *Civil Aviation (Buildings Control) Regulations 1988* which limit the height of structures to 7.62 metres above existing ground height, unless prior approval of the Civil Aviation Safety Authority is received.

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, inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

### Sydney Water

The application was referred to Sydney Water, who provided standard conditions of consent. The referral response notes that the advice is not formal approval of Sydney Water servicing requirements, and that these are provided when further applications are made following approval of the application.

### Aboriginal Land Council

The proposal was referred to the Metropolitan Local Aboriginal Land Council. No comments were provided in response.

## **Statutory Considerations**

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### **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* ("the EPAA Act").

### **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 EPAA Act by clause 294(a) of the *Environmental Planning and Assessment Regulation 2021* ("the EPAA Regulation"). 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 EPAA Act. Excavation associated with the construction of the in-ground outdoor swimming pool, and footings associated with the proposal would penetrate the water table as stated in the submitted geotechnical report. The proposal therefore required an activity approval for aquifer interference, pursuant to section 91 of the *Water Management Act 2000*, and a related Water Supply Work (dewatering) approval pursuant to section 90. The applicant has sought that the application be treated as integrated development, and has therefore sought the approvals as part of the application.

The application was initially referred to WaterNSW, who rejected the referral, noting the following:

*"Considering the landholder identified as the Minister for Public Works and proposed pool with potential dewatering requirements, the respective DA's must to be referred to the Department of Climate, Energy, the Environment and Water (DCCEEW) for further consideration."*

The application was then referred to DCCEEW in accordance with this instruction, and DCCEEW provided General Terms of Approval for development requiring approval under s89, 90 or 91 of the *Water Management Act 2000*.

## 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 (Planning Systems) 2021

Pursuant to clause 3 of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, the proposal is regionally significant development, as indicated below:

##### **3 Council related development over \$5 million**

*Development that has an estimated development cost 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 \$68 million, the proposal requires the determination of the SECPP.

It should be noted that although the development is captured by clause 3 as *council-related development*, the application does not meet the similar, but unrelated, definition of a *council-related development application*, as Council is not the consent authority. Further discussion is provided in relation to the matters for consideration within the EPAA Regulation.

#### State Environmental Planning Policy (Transport and Infrastructure) 2021

Relevant provisions of *State Environmental Planning Policy (Transport and Infrastructure) 2021* have been considered in the assessment of the development application, and the assessment is summarised below.

Part 2.3 – Development Controls	
Provision	Comment
<b>Division 5 Electricity transmission or distribution</b>	
<b>Section 2.48 Determination of development applications – other development</b>	<p>The site contains a substation (and the associated easements), and is within 5m of an exposed overhead power line. The property is also affected by 20.115m wide easement for electricity purposes, which spans the western edge of the car park.</p> <p>In accordance with this section, a referral was sent to Ausgrid, who raised no objection to the proposal, subject to conditions.</p>
<b>Division 12A Pipelines and pipeline corridors Subdivision 2 Development adjacent to pipeline corridors</b>	
<b>Section 2.77 Determination of development applications</b>	<p>The site is located adjacent to land in a pipeline corridor and in accordance with this section, a referral was sent to APA Group, who raised no objection to the proposal.</p>

<b>Division 15 Railways Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors—notification and other requirements</b>	
<b>Section 2.98 Development adjacent to rail corridors</b>	The site is located adjacent to land in a rail corridor and in accordance with this section, a referral was sent to ARTC, who raised no objection to the proposal.
<b>Section 2.99 Excavation in, above, below, or adjacent to rail corridors</b>	The proposal does not include excavation greater than 2m within 25m of the rail corridor.
<b>Division 17 Roads and traffic Subdivision 2 Development in or adjacent to road corridors and road reservations</b>	
<b>Section 2.119 Development with frontage to classified road</b>	The subject site does not have a frontage to a classified road.
<b>Section 2.120 Impact of road noise or vibration on non-road development</b>	Myrtle Street has an average daily traffic volume of less than 20,000 vehicles per day. As such, section 2.120 is not applicable to the development application.
<b>Section 2.122 Traffic-generating development</b>	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 1 of schedule 3. The development is not forecast to generate greater than 200 motor vehicle trips per hour.

## **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

### Chapter 2 Vegetation in Non-Rural Areas

The application seeks the removal of 22 trees from the site to accommodate the proposed development. Refer to discussion of comments provided by Council's Tree Management Officer.

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

### Chapter 4 Remediation

The provisions of Chapter 4 have been considered in the assessment of the development application as recreational uses are a specified land use in section 4.6(4). The application is accompanied by a Detailed Site Investigation (DSI), as well as a Remediation Action Plan (RAP).

The assessment concludes that, subject to remediation, the site can be made suitable for the development and section 4.6 of the RH SEPP is satisfied. Refer to comments provided by Council's Contamination Officer.

## **State Environmental Planning Policy (Industry and Employment) 2021 ("IE SEPP")**

The proposal seeks consent for three illuminated signs, and two of the proposed signs are depicted on the plans with indicative text only. The area of each sign is less than 7sqm. Two of the signs are proposed towards the entry and are well removed from Myrtle Street and any neighbouring properties, and represent a small element in the visual perception of the development. The remaining sign is proposed with the garden bed adjacent to the Jasmine Street and Myrtle Street intersection, and it is provided with dimensions of 2.1m wide by 0.8m high.

Having regard to the Assessment Criteria within Schedule 5 of the IE SEPP, the following comments are made:

- The signage is of a relatively modest scale, compatible with the surrounding open space and the low scale of the proposal.
- The signage would not impact on the heritage significance of the nearby heritage items, and would not feature prominently from any neighbouring land.
- The sign proposed within the garden bed does not impact upon any existing or proposed vegetation.
- The illumination of the sign is subject to recommended conditions, intended to prohibit illumination outside of operating hours, and prior to 7am.
- The signage is not expected to impact on pedestrian or vehicular safety.

The assessment concludes that the proposed signage is acceptable.

## **State Environmental Planning Policy (Sustainable Buildings) 2022 (“the SB SEPP”)**

### *Sustainable Design Measures*

Section 3.2 of the SB SEPP states as follows:

- (1) *This Chapter applies to development, other than development for the purposes of residential accommodation, that involves—*
  - (a) *the erection of a new building, if the development has an estimated development cost of \$5 million or more, or*
  - (b) *alterations, enlargement or extension of an existing building, if the development has an estimated development cost of \$10 million or more.*
- (2) *This Chapter does not apply to the following development—*
  - (a) *development that is permitted with or without consent or that is exempt or complying development under—*
    - (i) *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, or*
    - (ii) *State Environmental Planning Policy (Resources and Energy) 2021, Chapter 2, or*
    - (iii) *State Environmental Planning Policy (Transport and Infrastructure) 2021, Chapter 5,*
  - (b) *development on land wholly in any of the following zones—*
    - (i) *Zones RU1, RU2 or RU3,*
    - (ii) *Zone E5,*
    - (iii) *Zone IN3,*
    - (iv) *Zones C1, C2 or C3,*
    - (v) *Zones W1, W2, W3 or W4,*
  - (c) *development for the purposes of residential care facilities.*

Within the initial application package, limited information was provided on the SB SEPP; however, in response to the RFI, a Sustainability Management Plan (SMP) was provided, responding to each of the matters for consideration within s.3.2 of the SB SEPP. A comment on each subsection is provided below, and it is noted that conditions are recommended to strengthen and/or confirm each commitment.

- (a) ***the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials***

The SMP had initially indicated that up to 90% of construction and demolition waste would be diverted from landfill; however, there was no further information to demonstrate how this goal could be achieved. The SMP was amended to indicate that the project would instead aim to recycle those materials that could be recycled using conventional methods, and amendments were made to the waste management plan to detail those materials that would be recycled. The SMP also provides some information on the sustainable selection of construction materials. Conditions are recommended to strengthen the commitments given within the SMP.

**(b) a reduction in peak demand for electricity, including through the use of energy efficient technology**

The SMP indicates as follows:

*The building has set a “fabric-first” efficiency strategy relying on a high performing façade and external shading to minimise heating and cooling peak and annual demands. The project will include design initiatives such as smart lighting controls, heat recovery for HVAC systems, sub-metering with BMS and the provision of substantial PV. The project will also consider the engagement of an Independent Commissioning Agent to ensure all systems and operating optimally*

Further information was sought and the Applicant responded with R-values for walls, and U-values for windows, which each bettered the requirements of Section J of the *Building Code of Australia*. This information was later provided and is able to be incorporated into conditions of consent.

**(c) a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design**

The nature of the use allows for wide open areas and expansive glass facades. This provides opportunities for excellent cross ventilation and natural light, each of which are able to be controlled to suit various weather conditions. The development also provides shading elements to the northern and western facades, which will assist in minimising summer heat gain.

The SMP indicates that light colour roofing sheets will be specified and will have a minimum initial Solar Reflective Index (SRI) of 64. It also again highlights that the high performing façade is a passive design measure that responds to this provision.

**(d) the generation and storage of renewable energy**

The project has incorporated a significant number of photovoltaic (PV) panels and the SMP indicates that provision has also been made in the electrical and structural design for additional PV to be added onto available roof top areas at a later date. The SMP indicates that storage was investigated for the project but given the typically high energy demands of aquatic centre, it was determined that the energy generated on-site would be consumed by the facility and as such the cost benefit of storage was not feasible.

The plans depict an array of 12 rows of panels, with 18 panels in each row, giving a total of 216 panels, and this would likely provide a maximum power generation of approximately 100kW (assuming each panel is able to generate 450W-500W). The SMP does not provide information explaining the expected power generation, but subsequent correspondence has indicated that there are significant energy demands with retaining the temperature of the indoor building at 28 degrees. Notwithstanding the absence of electricity storage, the site provides ample space to add battery storage at a later point in the future, and battery storage is easily retrofitted to existing PV systems. In the meantime, the monitoring of energy consumption will assist in enabling the maximum utilisation of solar power, with any surplus power able to be fed back into the grid.



**(e) the metering and monitoring of energy consumption**

The SMP indicates that check metering will be provided:

- Electrical power, lighting and mechanical services.
- On-site electrical energy generation.
- Water use including; irrigation, pool use and other on-site water use.
- On-site rooftop rainwater harvesting.

**(f) the minimisation of the consumption of potable water**

The SMP indicates that the development provides rainwater tanks to capture water from the building roof and this will be used for WC flushing, concourse/bin room, roof, and grease arrestor washdown, and irrigation demands. The project is also setting minimum WELS ratings to further reduce potable water demands and the landscape design has provided for native and low water use species.

Each of the above measures are recommended to be reinforced through conditions of consent.

**Embodied Emissions**

Section 3.2(2) requires the embodied emissions attributable to the development to be quantified. The SB SEPP does not require any embodied emissions target to be met, only that the embodied emissions are recorded in order to establish targets in the future.

The DPE website indicates that the NABERS Embodied Emissions Tool will be the required format for non-residential reporting; however, in the interim, a NABERS Embodied Emissions Materials Form must be completed. The completed form has been appended to the SMP and meets this requirement.

**Bayside Local Environmental Plan 2021**

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
5.4 Controls relating to miscellaneous permissible uses	Yes, see discussion
5.10 Heritage conservation	Yes, see Heritage referral comments.
5.21 Flood planning	Yes, see discussion in relation to referral comments of External Stormwater and Flood Engineer.
6.1 Acid Sulfate Soil - Class 4	Yes, see discussion
6.2 Earthworks	Yes, see discussion
6.3 Stormwater and water sensitive urban design	Yes, see discussion in relation to referral comments of External Stormwater and Flood Engineer.
6.7 Airspace operations	Yes, see discussion
6.8 Development in areas subject to aircraft noise	Yes, see discussion.
6.11 Essential services	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 (indoor)* and *recreation facility (outdoor)* are permissible forms of development with consent within the RE1 zone. Further, the proposed *kiosk* is also a permissible form of development. 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 acceptable.

### **5.4 Controls relating to miscellaneous permissible uses**

The application includes space marked as a kiosk, and clause 5.4(6) indicates that *"If development for the purposes of a kiosk is permitted under this Plan, the gross floor area must not exceed 30 square metres"*.

The initial submission had included an area labelled as a kiosk which comfortably exceeded 30m<sup>2</sup>. The plans have been amended to depict an area of 28m<sup>2</sup>, which is compliant with this provision. The areas that surround the kiosk are primarily associated with the primary use, being a *recreation facility (outdoor)*, and therefore do not add to the figure labelled on the plans.

### **6.1 Acid sulfate soil - class 4**

The site is mapped as containing class 4 acid sulfate soils. As part of the Detailed Site Investigation, additional boreholes and soil sampling were undertaken to arrive at the following conclusions in relation to acid sulfate soils. The results concluded that:

- Actual ASS (AASS) is present in certain natural soils underlying the site, in particular, in BH3 between depths of 1.9-2.0m below ground level;
- Potential ASS (PASS) is likely to be present in deeper layers of natural soils, particularly the indurated sand; and
- PASS is very likely to reside around, and generally below, the groundwater table, approximately 2m below ground level.

An Acid Sulfate Soils Management Plan (ASSMP) was prepared for the site and was included within the Remedial Action Plan. Additional sampling and analysis of samples was conducted to gain a better understanding of the nature and extent of ASS across the site.

Based on the proposed development, the RAP identified on-site treatment followed by on-site reuse and/or off-site disposal as the preferred management option for ASS, in accordance with the relevant guidelines. The proposed management strategy describes the process for treatment of natural soils suspected to contain PASS. Treatment measures include use of liming rates, neutralisation pads and treatment of soils, alternative treatment area designs, neutralising materials, and verification testing of treated soils.

Council's Contaminated Land Officer has reviewed this documentation and is satisfied that clause 6.1 is addressed satisfactorily.

## **6.2 Earthworks**

The proposal includes earthworks for the purposes of the in-ground swimming pool, structural piling and for remediation of the site, as well as some regrading works, including for the removal of the rock wall along the Myrtle Street frontage. The finished ground levels are depicted on the civil works drawings submitted with the application.

The impacts of the earthworks are discussed throughout this report, in relation to contamination, drainage, aquifer interference, urban design, and acid sulfate soils. All issues are able to be managed by conditions.

## **6.7 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 site 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 are the tallest element of the proposal, and have a maximum height of 25.700 AHD or 17.94m. 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, inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

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.

## **6.8 Development in areas subject to aircraft noise**

Subclause (3)(b) requires the consent authority to consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2015. Additionally, C3 of 3.13 of BDCP 2022 states development on land within an ANEF affected area (ANEF 20+) is to be supported by a Noise Impact Assessment demonstrating indoor design sound levels in AS 2021—2000 can be achieved.

The building would be defined as a “public building” within Table 2.1 to AS 2021:2015, which is listed as “conditionally acceptable” when lying between the 20 to 30 ANEF contours. The amended acoustic report has provided an assessment of aircraft noise, in response to a specific request within the RFI. To mitigate the impacts of aircraft noise, the amended acoustic report has provided minimum acoustic requirements for external wall construction, roof-ceiling construction, and external/glazing doors.

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

There are no draft planning instruments of particular relevance to the proposal.

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

The following Development Control Plan is relevant to this application.

#### Bayside Development Control Plan 2022

There are limited provisions within the *Bayside Development Control Plan 2022* (BDCP 2022) which apply to land within the RE1 – Public Recreation zone, or to land used for the purposes of a recreational facility (outdoor and indoor). However, relevant general provisions are listed below.

Relevant Parts of the BDCP 2022	Provision	Compliance
3 General Development Provisions		
3.1 Site Analysis and Locality	3.1.1 Site Analysis Plan	Yes – a satisfactory site analysis has been provided.
	3.1.2 Interface with Public Domain	No – The development responds appropriately to the majority of controls within this part. The glass façade of the gym is provided to Myrtle Street, various improvements are proposed to fencing along Myrtle Street and to landscaping within the car park. The redesigned entry presents to the car park and Booralee Park. In addition, no further footpath upgrading is recommended.  However, the entry path from Myrtle Street requires widening to promote a high level of pedestrian amenity, and changes are required to improve the visual impacts of the rainwater tank.  Refer also to discussion of comments from Council's Urban Designer, External Architect, Development Engineer, and Landscape Officer.
	3.1.3 Crime Prevention through Environmental Design	Yes – A satisfactory CPTED Report has been provided.
	3.1.5 Views	Yes – The built form does not detract from views to, and from the adjoining and nearby heritage items.
3.2 Design Excellence		Yes – Refer also to discussion of comments from Council's Urban Designer, External Architect, and Landscape Officer.
3.3 Energy and Environmental Sustainability		Yes – refer to consideration of SB SEPP.
3.4 Heritage	3.4.5 Development adjoining or in close proximity to Heritage Items	Yes refer to comments from heritage referrals.
3.5 Transport, Parking and Access	3.5.1 Design of the Parking Facility	Yes – Although the parking facility is not located within the front setback, it is located within a prominent location, viewable across Booralee Park and from surrounding streets. This arrangement is



Relevant Parts of the BDCP 2022	Provision	Compliance
		appropriate, given it maintains the location of the existing car park, which also services Booralee Park. Moreover, tree plantings and raingardens are proposed within the car park, which will improve it's aesthetic.
	3.5.2 Traffic Impact Assessment and Transport Plans	Yes – plan provided. Conditions of consent also recommended to require that Green Travel Plan and Transport Access Guide be provided.
	3.5.3 On-site Car Parking Rates	<p>Refer to discussion of Development Engineer's comments. Parking rates are provided below:</p> <p><b><u>Recreation facilities</u></b></p> <p><b><u>Indoor/outdoor swimming pool</u></b></p> <ul style="list-style-type: none"> <li>1 space / 10m<sup>2</sup> pool area; plus 1 space / 2 employees</li> </ul> <p><b><u>Gymnasium</u></b></p> <p>Within 400m radius of railway station or 200m radius of a public bus stop (minimum frequent two bus routes):</p> <ul style="list-style-type: none"> <li>1 space / 25m<sup>2</sup> GFA</li> </ul> <p>Any other locations:</p> <ul style="list-style-type: none"> <li>1 space / 10m<sup>2</sup> GFA</li> </ul> <p>(Note: A commercial gym for personal fitness is typically defined as a business premises, not a gymnasium)</p> <p><b><u>Recreation facilities (outdoor)</u></b></p> <p><b><u>Outdoor swimming pool</u></b></p> <ul style="list-style-type: none"> <li>1 space / 10m<sup>2</sup> pool area; plus 1 space / 2 employees</li> </ul>
	3.5.4 Bicycle and Motorcycle Parking	<p>Yes – sufficient parking provided and reinforced by conditions. Dedicated end of trip facilities are not necessary, given showers are provided for all users.</p> <p>Required rates shown below:</p> <p>For all other new development with a gross floor area greater than 600m<sup>2</sup>:</p> <ol style="list-style-type: none"> <li>1 bicycle space per 600sqm GFA</li> <li>1 motorcycle space per 15 car spaces</li> <li>End of trip facilities</li> </ol>
	3.5.5 Accessible parking	<p>Yes – sufficient parking provided and reinforced by conditions.</p> <p>Requirement shown below:</p>

Relevant Parts of the BDCP 2022	Provision	Compliance
		<i>In a car parking area containing 6 or greater car parking spaces, one accessible car parking space will be provided for every 50 car parking spaces or part thereof.</i>
	3.5.6 Loading Facilities	Yes – new loading area at the northern end of the site has been designed to accommodate vehicles up to and including a 12.5 metre long heavy rigid vehicle, with swept paths provided.
	3.5.7 Waste collection	Yes – new loading area to be utilised for waste collection.
	3.5.9 New and Emerging Transport and Parking Facilities	No – refer to below discussion of electric vehicle parking.
	3.5.10 Materials, Colours, Lighting, Landscaping, and Signposting	Yes – refer to below discussion of lighting impacts.
3.6 Social Amenity, Accessibility and Adaptable Design	3.6.1 Accessibility	Yes
	3.6.3 Social Impact	Yes – note that a “major recreational facility” requires a Social Impact Assessment, and this does not apply to the proposed development. <i>Recreation facility (major)</i> is defined within BLEP 2021 to include theme parks, sports stadiums, showgrounds, racecourses and motor racing tracks. Aquatic centres are explicitly captured by the term <i>recreation facility (indoor)</i> , which also includes bowling alleys and ice rinks.
3.7 Landscaping, Private Open Space and Biodiversity		Refer to discussion of comments from Council's Landscape Architect. Note that site is unaffected by Biodiversity Values Map.
3.8 Tree Preservation and Vegetation Management		Refer to discussion of comments from Council's Tree Management Officer and Environmental Strategy Team.
3.9 Stormwater Management and Water Sensitive Urban Design		Refer to discussion of comments from Council's External Stormwater and Flood Engineer.
3.10 Flood Prone Land	3.10.7 Development Provisions	Refer to discussion of comments from Council's External Stormwater and Flood Engineer.
3.11 Contamination		Refer to discussion of comments from Council's Contamination Officer.
3.12 Waste Minimisation and Site Facilities		Yes – also see discussion relating to SB SEPP, and noting that the proposal is supported by the Waste Management team.
3.13 Development in Areas Subject to Aircraft Noise and Affected by Sydney Airport's Prescribed Airspace		Yes – aircraft noise considered by amended acoustic report and impacts are acceptable, subject to recommended mitigation measures.
3.14 Noise, Wind, Vibration and Air Quality	Noise and Vibration – General	Yes – refer to discussion below.

Relevant Parts of the BDCP 2022	Provision	Compliance
3.15 Late Night Trading	3.15.1 General Provisions	Yes – the application seeks early morning hours of operation, which are within the ‘night’ period; however, this part of BDCP 2022 is focussed on retail and business premises (primarily those that are licensed) and the impacts of the early morning hours are deemed acceptable.
3.16 Signs and Advertising		Yes – refer to discussion of IE SEPP.
3.18 Utilities and Mechanical Plant	3.18.1 Site Facilities	Yes – also refer to discussion of comments provided by Council’s Urban Designer and Landscape Architect.
<b>6 Non-Residential Development</b>		
6.1 All Non-Residential		Yes
6.2 Retail		Yes (affects kiosk)
<b>7 Specific Places</b>		
7.12 Botany		Yes – the site is identified within the Botany Character Precinct. The proposal responds appropriately to listed matters, such as setbacks and height.

### 3.5.9 – New and Emerging Transport and Parking Facilities – Electric Vehicle (EV) Parking

Commentary on the majority of the relevant controls within Part 3.5 is provided within the Development Engineer’s referral.

In relation to EV parking, Part 3.5.9, ‘New and Emerging Transport and Parking Facilities’, control C7 requires as follows:

*At least 20% of non-residential car parking spaces in development with a total GFA greater than 1000m<sup>2</sup> shall be ‘EV Equipped’. An ‘EV-Equipped’ car space is a car space equipped with EV fast charger that is ready to use on completion of the development. These may be payment operated systems. At minimum, the charger(s) will need to be ‘Level 2’ fast charging charger – three-phase with 11-22kW power or greater as defined by NSW Electric and Hybrid Vehicle Plan.*

Compliance with the control would require a total of 35 EV spaces. Electric vehicle parking is not discussed at length within the Development Engineer’s referral, but was raised within the RFI letter, prior to the referral being received. The Development Engineer’s referral has recommended a condition requiring compliance with the control (i.e., 35 EV charging spaces equipped with Level 2 charging infrastructure).

At the meeting of 31 October 2024, the Applicant indicated that Council has already taken steps towards introducing EV charging spaces within public car parking areas (see for example: [https://haveyoursay.bayside.nsw.gov.au/ev-charging-infrastructure#:~:text=Bayside%20Council%20is%20working%20with,Renewable%20Energy%20Agency%20\(ARENA\)](https://haveyoursay.bayside.nsw.gov.au/ev-charging-infrastructure#:~:text=Bayside%20Council%20is%20working%20with,Renewable%20Energy%20Agency%20(ARENA),)), a pilot installation program, which does not include the subject site), and that the delivery of further EV parking spaces would be provided in response to demand.

The Applicant indicated that these spaces would likely be payment-operated and that if delivered prematurely, their exclusive use for EV vehicles would exclude other drivers and impact on the availability of car parking. Similarly, the SMP provided the following comment:

*While electric vehicle sales represent an increasing proportion of new vehicle sales in Australia, approximately 8% in 2023, electric vehicles presently account for approximately 1% of light vehicles in Australia according to the Electric Vehicle Council of Australia.*

*It is recommended that two spaces are 'EV Charging Equipped' from day of opening on the basis that the expected mix of site visitors would live close by (so short trips to BAC) and short stays. This facilitates the setup, programming and commissioning of EV charging control and management systems, during base build and allowing for additional chargers to be added to the system in a phased manner in response to EV uptake in Australia, community feedback and which maintains the availability of parking spaces for non electric vehicles until such time as they fitted out with charge points.*

The sole objective to the control is “to ensure new buildings provide the infrastructure to support the increased ownership of electric vehicles”. The applicant was advised that the independent assessment the objective suggests that electric vehicle infrastructure is to be provided ahead of demand, rather than in response to demand. In response, the applicant provided a letter from the General Manager of Council, dated 13 November 2024, stating as follows:

*The Botany Aquatic Centre development design documents an additional substation to future proof the facility and will have provision for powering up to 35 EV Charging Stations, as required by Bayside Council's DCP. Council's commitment to delivering charging station for our community is reflected in the significant financial investment that we will be making by installing the substation, including conduits and wiring to facilitate the implementation of the future EV Chargers.*

*Council will install two fully compliant EV Charging spaces for the day of opening and commit to the installation of all EV Charging Stations within 5 years of the date of Occupation Certificate.*

The independent assessment has concluded that this suggestion is appropriate, given that Council is the long-term manager of the land, is reinforcing this commitment to the site through the delivery of the aquatic centre, and is duty-bound to comply with conditions that are recommended for the purposes of complying with Council's controls. Therefore, the assessment recommends that the Development Engineer's suggested condition be amended to require that the additional 33 spaces are delivered either within 5 years of the date of the first occupation certificate, or by the end of 2032, whichever is earlier (noting that the centre is intended to be opened by the end of 2027).

#### 3.5.10 – Materials, Colours, Lighting, Landscaping, and Signposting

The record of the SECP briefing of 11 July 2024 indicates that the Panel required “lighting impacts on adjoining development to be identified”. Part 3.5.10 of BDCP 2022 also requires that consideration of light spill is required.

A Lighting Report was provided with the initial application, and it stated that:

*Residential properties are located on the southern side of the Myrtle Street, opposite the proposed development. The light spill impact from the facility entrance and car park area is anticipated to be negligible and will be assessed at the property boundary in accordance with AS/NZS-4282 requirements. The approximate distance to the properties on the southern side of the aquatic centre is 50 metres.*

The report was later amended in response to the comments of the SECPP. Additional content within the report states as follows:

*As part of the detailed design process prior to construction of the development, a detailed study to demonstrate compliance with AS 4282 shall be undertaken. This shall take into account specific locations and specifications of all external lighting (including decorative building lighting) and the positioning of adjacent residences, roadways, and businesses. In order to control the obtrusive light spill from the development and the potential affects on sensitive viewers, the following measures shall be considered:*

- *Highly controlled optics to illuminate specific areas in place of wide angle 'flood' type luminaires that incorporate little control of the light distribution.*
- *Position luminaires away from boundaries or behind physical obstructions which will assist in controlling the spread of light.*
- *Provide backlight shields and glare reduction hoods as a last resort where other methods are not effective or applicable.*

A condition is recommended requiring compliance with the above.

### 3.14 – Noise, Wind, Vibration and Air Quality

The record of the SECPP briefing of 11 July 2024 indicates that the Panel required “noise and acoustic assessment to include the consideration of noise from aircraft and railway line on the facility, with mitigations to be identified”. Part 3.14 of BDCP 2022 also requires that an acoustic report be submitted for developments that are affected by rail noise.

The adjacent railway line is used for freight only. In response to the SECPP’s comments, an amended acoustic report was provided which indicated that the Botany Goods Line is used for only one rail movement per day. This is not correct; the Botany Goods line was recently duplicated, and documentation associated with the approval (<https://www.planningportal.nsw.gov.au/major-projects/projects/botany-rail-duplication>) indicates that the duplication has increased rail movements past the site from 20 per day to 34 per day.

The Applicant was requested to consult documentation associated with the duplication project, noting that the maximum noise output from each rail passby, as documented in the acoustic reporting for the duplication project, would likely require screening.

The Applicant provided email commentary from an acoustic engineer, indicating that within the NSW EPA *Rail Infrastructure Noise Guideline*, that whilst both the maximum noise output (L<sub>Amax</sub>) and the average noise output (L<sub>Aeq</sub>) are used to determine impacts to residential developments, only the L<sub>Aeq</sub> is used for “other sensitive land uses”. The period over which the L<sub>Aeq</sub> is calculate varies depending on the land use, with a 1 hour period applying to schools, hospitals, and places of worship, and a 15 hour period applying to open space.

The acoustic reporting for the duplication project had applied the 15 hour period to the subject site, and determined that the projected noise impacts would not exceed the prescribed trigger level of 65dBA, and therefore met the relevant standard of the *Rail Infrastructure Noise Guideline* . On that basis, no screening measures were proposed within the duplication project, and for this reason, the assessment concludes that it would be unreasonable to require any further screening as part of the subject development.

Aircraft noise was considered within the amended acoustic report as required by clause 6.8 of BLEP 2021 and mitigation measures have been recommended, including those relating to external wall construction, roof-ceiling construction, and external/glazing doors.



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

##### Matters for consideration

Clause 61-66A of the EPAA Regulation 2021 relate to additional matters that a consent authority must consider. Clause 61 relates to compliance with Australian Standard AS 2601—1991: *The Demolition of Structures*, and this will be subject to a recommended condition of consent.

Clause 66A relates to Council-related development applications, and it requires the consent authority to consider a conflict of interest policy as part of the determining of the application. In addition, Clause 30B requires that a council-related development application be accompanied by either:

- (a) a statement specifying how the council will manage conflicts of interest that may arise in connection with the application because the council is the consent authority (a management strategy), or
- (b) a statement that the council has no management strategy for the application.

However, clause 9B of Schedule 1 of the EPAA Act limits the definition of *council-related development application* to capture only those applications for which Council is the consent authority, and pursuant to s.4.5(b) of the EPAA Act, the regional planning panel is the consent authority for this application. Despite this, the Applicant provided the requisite information that would be required for a *council-related development application*.

At its meeting of 6 December 2023, Council resolved to adopt the draft Managing Conflicts for Council-related Development Applications Policy, and this policy is commensurate with the example given within the *Council-related Development Application Conflict of Interest Guidelines* published by the Department of Planning. This policy classifies the development application as “major” and requires that a management statement be prepared and exhibited on the NSW Planning Portal with the DA. A conflict of interest management statement was provided in response to the request made in the RFI. The statement was not contained within the exhibition material; however, no further notification period was required, given the application is not strictly a *council-related development application*, and further noting that the statement was placed on the Bayside DA Tracker following its submission.

Finally, it is noted that the application was exhibited for period exceeding 28 days, in accordance with the requirements of clause 9B of Schedule 1 of the EPAA Act (this applies to *Council-related development applications*).

##### Other matters

Although outside of the matters for consideration under s4.15(1)(a)(iv) of the EPAA Act, further relevant provisions of the EPAA Regulation are discussed below.

Clause 23 of the *Environmental Planning and Assessment Regulation 2021* states that the consent of the owner of the land is not required for a development application made by a public authority if the applicant gives notice of the application to the owner of the land before the application is made.

The subject site is Crown land, and Council is the appointed Crown land manager. The application was initially accompanied by an owner’s consent form, signed by the General Manager of Bayside Council. No evidence was provided within the original application to indicate that the Applicant had provided notice to Crown Lands prior to lodgement. The RFI had indicated that further clarification was required to confirm whether owner’s consent was required, and if so, whether the consent of the General Manager was sufficient.

On 22 November 2024, the Applicant was able to provide evidence that notice had been given to Crown Lands prior to the lodgement of the application. The notice was given on 18 March 2024, which is after the application was originally submitted on the NSW Planning Portal (29 February 2024), but before the application was lodged/made (21 March 2024). Clause 24(3) of the EPAA Regulation indicates that the application is not lodged until payable fees are paid, and payment was not made until 21 March 2024. Therefore, the notice given to Crown Lands is sufficient such that written owner's consent is not required.

#### **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 seek to provide a new aquatic centre, which is consistent with the longstanding use of the property. 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 34 days between 17 April 2024 – 20 May 2024 in accordance. It is noted that the application was exhibited between 17 April 2024 – 20 May 2024, which exceeds the 28 day period required under clause 9B of Schedule 1 of the EPAA Act (this applies to *Council-related development applications*, which is not strictly applicable to the application; the *Bayside Council Community Engagement and Communications Strategy 2022-2026* requires only a 14 day exhibition period).

Throughout the notification period, a total of four (4) submissions were received, all objecting to the proposal, and/or raising issues with particular aspects of the development. The issues raised are summarised below, with responses provided in relation to each issue.

*Issue: Request for lift access to waterslides.*

Comment: It is a prescribed condition of consent that the development is to comply with the *Building Code of Australia*, including applicable access standards. There are understood to be no standards requiring lift access to waterslides, noting that the Council's Building Surveyor had indicated that the submitted Access Statement does not rely upon significant deviations from the design proposal.

*Issue: Traffic and parking impacts from the proposal, including a suggestion for an upgrade to the carpark and other measures to reduce strain on on-street parking, or to prioritise resident parking.*

Comment: The application seeks to increase parking capacity at the centre, and the traffic and parking impacts are deemed acceptable. Refer to discussion of comments provided by the Council Development Engineer and Bayside Traffic Development Advisory Committee.

*Issue: Acoustic impacts from the proposal, including suggestions to reduce noise impacts, including solid fencing, and siting of waterslides towards the rail line.*

Comment: An acoustic report was submitted with the application; refer to discussion of Part 3.14 of BDCP 2022.

*Issue: Hours of operation, particularly on weekends and public holidays, and associated impacts on noise and residential amenity.*

Comment: The proposed hours of operation for the centre are 5:00am to 10:00pm Monday to Sunday including public holidays, with operating hours for the waterslides being 10:00am to 7:00pm Monday to Sunday including public holidays. The early and late hours, during which many residents are likely to be sleeping, is associated with relatively low demand, and is able to be catered for within the carpark. The car park is ideally located for operation during those sensitive periods, as it does not adjoin residential properties.

Peak demand for the facility is likely to occur on weekends and public holidays, and it would be unreasonable to limit the operating hours of an aquatic centre during those peak periods.

*Issue: Tree retention and impacts to native wildlife and shade, and the potential for tree removal to be a consequence of overdevelopment of the site.*

Comment: The proposal seeks the removal of 22 trees to accommodate the development. However, the proposal seeks a number of landscape improvements, including new landscaping within the car park, and a suitable replacement planting ratio. No concerns were raised from Council's Environment team on impacts on wildlife, and the Environment team recommended that species be selected which discourage ibis from visiting the site, as this may be incompatible with the proposed use.

*Issue: Construction impacts with a request for noisy works to be carried out on weekdays only.*

Comment: Recommended conditions seek to impose Council's standard construction hours which are as follows:

- Monday to Friday 7:00am to 6:00pm
- Saturday 7:00am to 3:00pm
- No Construction to take place on Sundays or Public Holidays.

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

The proposed development is deemed to be in the public interest as it will facilitate the provision of new and improved delivery of local public recreational infrastructure and services. This development is for the use of the surrounding community, including existing and forecasted populations within the Bayside Local Government area and having regard to the absence of significant impacts, will aid in providing an improved local service to the public.

Bayside Council have prepared a generic Crown Land Plan of Management (CLPOM) which is available on Council's website in its draft form, intended to ensure compliance with the *Local Government Act 1993* and *Crown Land Management Act 2016*. It is understood that the CLPOM was recently adopted and now applies to the subject land.

The subject parcel of land is identified in the CLPOM as 'Booralee Park (part)' and is categorised for 'General Community Use', with associated maps confirming that this categorisation applies to the subject site. The categorisation is relatively flexible and relates to public recreation and community welfare, which specifically includes aquatic centres. The proposed development is consistent with the CLPOM.

#### **Development Contributions**

The development is able to be subject to infrastructure contributions under the *City of Botany Bay Section 94A Development Contributions Plan 2016*. The application is proposed to replace the existing Botany Aquatic Centre, and is for the actual delivery of local infrastructure for local services.

It is therefore considered that there is no justification for the payment of local developer contributions. Refer also to discussion of the Contributions Planner referral.

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## Conclusion

Development Application No. DA-2024/50 for the of existing aquatic centre structures, tree removal and construction of a recreation facility (aquatic centre) including indoor and outdoor swimming pools, leisure facilities, gymnasium, waterslides, splashpad, changerooms, amenities, landscaping, signage, and modifications to existing car park, , with operating hours as nominated within the application, 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.