

**SYDNEY NORTH REGIONAL PLANNING PANEL
COUNCIL ASSESSMENT REPORT**

Panel Reference	PPSSNH-47
DA Number	DA2019/1190
LGA	Northern Beaches Council
Proposed Development	Construction of a Centre of Excellence and formalizing of 3,000 seats at Brookvale Oval
Street Address	Lot 1 DP 784268, Lot 1 DP 114027, Lot B DP966128, Lot 6 DP 785409, Pittwater Road, Brookvale
Applicant	Manly Warringah Sea Eagles Ltd
Owner	Northern Beaches Council
Date of DA lodgement	25 October 2019
Number of submissions	Twenty-five (25)
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Council related development over \$5 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy No. 64 – Advertising and Signage • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Warringah Local Environmental Plan 2011 (WLEP 2011) • Warringah Development Control Plan 2011 (WDCP)
List of all documents submitted with this report for the Panel's consideration	Attachment 1 – Conditions of Consent Attachment 2 – Architectural Plans
Report by	Geoff Goodyer, planning consultant, Symons Goodyer Pty Ltd
Report date	15 July 2020

Summary of s4.15 matters

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

Yes

Legislative clause 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 summarized in the Executive Summary of the assessment report?	Yes
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?	N/A
Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions Conditions (s94EF)?	Not Applicable
<i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	
Conditions	
Have draft conditions been provided to the applicant for comment?	Yes
<i>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</i>	

Executive Summary

The proposal is for demolition works and the construction of a building containing a Centre of Excellence for the Manly Warringah Sea Eagles rugby league football club, the formalization of seating for approximately 3,000 spectators and public amenities at the northern end of the existing Brookvale Oval with associated landscape and stormwater management works.

The Building contains two levels. The lower level provides public toilets, an entry foyer, team change rooms and toilets, gymnasium and rehabilitation pool areas, a flexible education space, plant and store rooms.

The upper level provides offices, board room, meeting rooms, study, theatrette, breakout area, premium seating area, toilets, plant and store rooms.

Below the building is a player lobby and tunnel access to the playing field.

The centre of Excellence building measures approximately 108m long x 16.9m deep. It has a height of 8.7m - 10.3m relative to the northern ground level and 11.9m relative to the level of the playing field.

Tiered seating for 3,000 spectators is proposed. The proposal includes a canopy over the seating area extending out from the top of the Centre of Excellence building. An open framing structure above the canopy holds it up. The framing structure has a maximum height of approximately 12.4m - 14.0m relative to the northern ground level and 15.6m relative to the level of the playing field.

There are two principle issues with regards to the assessment of the proposal:

Firstly, does the proposal satisfy the requirements of Section 35 of the Local Government Act 1993, which requires that the use and management of community land be in accordance with the relevant plan of management (in this case, the Brookvale Park Plan of Management).

Secondly, is the removal of 11 heritage-listed trees and the impact of the building on the adjoining public open space as a result of the siting of the Centre of Excellence building behind the grandstand at the northern end of the playing field of such significance as to warrant refusal of the application.

The proposed development has been assessed against the relevant matters for consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979, including likely impacts, the suitability of the site for the development and the public interest, and the proposed development is considered inappropriate.

Consequently, this report concludes that the development proposal is inconsistent with the relevant plan of management for the use and management of the community land and has unacceptable impacts with regards to the heritage significance of the site and the use of adjoining public open space. This report recommends that consent be refused to this application in accordance with reasons provided at the conclusion of the report.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (ie: this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SITE DESCRIPTION

The subject site is located on the northern side of Pittwater Road, Brookvale. It is legally identified as Lot 1 DP 784268, Lot 1 DP 114027, Lot B DP966128 and Lot 6 DP 785409. The site is bounded by Pittwater Road to the south, Alfred Road to the west and Pine Avenue to the east. The site slopes gently down from north to south, with a total fall of approximately 4.8 metres and an average gradient of approximately 1 in 60.

The site area is approximately 4.6 hectares.



Figure 1 – Site Map

The site is occupied by a sportsground known as Brookvale Oval located on the southern portion of the site, a formal car parking area on the corner of Alfred Street and Pittwater Road, and open space on the remainder of the site. The sportsground has grandstands on its western and southern sides and spectator hills on its northern and eastern sides. There are other related structures on the site such as ticket offices, toilets and a scoreboard.

Adjoining the site to the north is public open space that forms a “village green”, a children’s play area and a child care centre. To the east, north and west of the site is residential development comprising a mix of dwelling types including dwelling houses, multi dwelling housing and residential flat buildings. Opposite the site to the east on Alfred Road is St Augustine’s College. To the south of the site extending to the east on Pittwater Road is commercial development that forms part of the Brookvale commercial area.

Located within the site are a group of trees which are listed together as an item of heritage significance. The following photograph shows eleven trees, on the right hand side of the photo, that are proposed to be removed by the proposal:



Photo 1 – Site

RELEVANT BACKGROUND

Brookvale Park was officially opened in 1911. The majority of the site consisted of four allotments fronting Pittwater Road, one of which was purchased by Council in 1911 and another resumed as Crown land and placed under Council's control in 1911. The other two allotments were allowed by the owner to be used for public recreation purposes and subsequently sold to Council in 1929. Over subsequent years pavilions and other structures were installed and an oval-shaped racetrack constructed. Fencing and tree planting was carried out.

In 1947 the Manly Sea Eagles commenced use of Brookvale Oval as their home ground. Land at the northern end of the site was purchased by Council in 1950. The unmade Federal Parade incorporated into the site in 1963 and purchased by Council in 1966.

In 1971 Brookvale Oval was converted to a rectangular shape. Concrete grandstands were built in 1971 and 1979 and the original grandstand and agricultural show buildings were removed. In 1995 an additional grandstand was constructed.

The most recent development consents relating to the site are:

- DA2017/0599, issued 27 September 2017, for a new scoreboard.
- DA2016/1200, issued 7 February 2017, for business identification signage.
- Mod2016/0022, issued 14 March 2016, to provide for three National Rugby League games per year on Thursday nights.
- DA2011/0544, issued 10 October 2011, modified 5 March 2013, for extensions to the Jane Try grandstand and installation of on-site detention tanks.

In 2010 Council undertook extensive consultation regarding development options and funding issues at redevelop Brookvale Oval. Options focussed on the development of the Pittwater Road frontage of the site for mixed use development of 7 to 15 storeys in height to provide funding of \$13 million to \$60 million for the development of additional grandstand seating of 600 to 7,700 seats comprising an eastern grandstand in combination with options of redevelopment of the southern and western grandstands. Funding options related to the development options ranged from a shortfall of \$44.1 million to a surplus of \$8.9 million.

Subsequently, Council published "*Securing Brookvale's Future*" in 2011 which summarised the findings of the consultation and listed the following key findings:

- Brookvale Park is an important focal point for the community
- Green space is highly valued by local residents
- Brookvale Oval should remain the home of the Sea Eagles, and be more accessible and actively used by the community
- Facilities need to be upgraded to be fit-for-purpose
- Upgrade costs should not be funded by ratepayers

Work continued and on 11 November 2013 Council published "*Securing the Future of Brookvale Oval*". Recommendations of this report included:

- Approach State and Federal Government for grant funding of at least \$45 million to provide \$30 million to fund the upgrade works (to build a new eastern stand only) and

\$15 million to fund ongoing renewals in perpetuity by placing funds in a trust account to generate interest to fund renewals.

- Prepare a costed staged development plan as a basis for seeking grant funding which identifies upgrade works - to include a new eastern stand to provide additional covered seats for 8,000 spectators and community space underneath (which could be leasable for educational purposes or accessible for community use) and renewal works – as required.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to construct a new grandstand and centre of excellence on the northern end of Brookvale Oval.

The following works are proposed:

Demolition of some existing structures and removal of trees within the footprint of proposed works.

Construction of a building containing two levels ("Centre of Excellence"). The lower level provides public toilets, an entry foyer, team change rooms and toilets, gymnasium and rehabilitation pool areas, a flexible education space, plant and store rooms.

The upper level provides offices, board room, meeting rooms, study, theatrette, breakout area, premium seating area, toilets, plant and store rooms.

Below the building is a player lobby and tunnel access to the playing field.

The building measures approximately 108m long x 16.9m deep. It has a height of 8.7m - 10.3m relative to the northern ground level and 11.9m relative to the level of the playing field.

Tiered seating for 3,000 spectators is proposed, to replace existing capacity for 3,000 spectators on the northern spectator hill. The proposal includes a canopy over the seating area extending out from the top of the Centre of Excellence building. An open framing structure above the canopy holds it up. The framing structure has a maximum height of approximately 12.4m - 14.0m relative to the northern ground level and 15.6m relative to the level of the playing field.

Hours of operation for the Centre of Excellence will be 7.00am – 10.00pm Mon-Fri (including public holidays). On typical non-game days the building will be occupied by 50 staff and 36 players.

Approximately 425m² of new landscaping will be provided.

Fifteen car parking spaces along Alfred Road frontage of the site are to be formalised.

The existing scoreboard at the northern end of the site is to be relocated to the north east corner of the site.

The proposal includes signage, comprising:

14 x identification signs
9 x amenities signs

5 x branding signs
1 x ribbon board

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the EPAA are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for recreational purposes for an extended period of time. The proposed development retains the recreational use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	See discussion on “Warringah Development Control Plan 2011” in this report.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, enable Council to request additional information in relation to a development application. Additional information was requested by letter dated 31 January 2020 and additional information received by letter dated 24 March 2020. Further additional information was requested by letter dated 6 May 2020 and additional information received by letter dated 18 May 2020.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause may be addressed via a condition of consent, should the application be approved.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause may be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 98(1)(b)</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98(1)(a)</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent, should the application be approved.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Environmental Planning Instruments section in this report.</p> <p>(ii) Social Impact The proposed development will have a positive social impact in the locality by providing improved spectator seating at a major public sporting venue.</p> <p>(iii) Economic Impact The proposed development will have a positive economic impact through the creation of local employment during construction and in the ongoing use of the building.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered to be unsuitable for the proposed development, as discussed below.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	<p>The proposal provides the following elements in the public interest:</p> <ul style="list-style-type: none"> • Provision of upgraded seating for 3,000 spectators at a major public sporting venue at no cost to the local Council (funding provided by \$30million of grants from the State and Federal governments and \$600,000 from MWSE). • A 60m² meeting/education room available to the public for hire at rates established by Council and for the provision of community programs by MWSE. • Access to training facilities for elite athletes on a scholarship program, although no details are available at this time. <p>The following elements of the proposal are not considered to be in the public interest:</p> <ul style="list-style-type: none"> • The removal of 11 x heritage-listed trees within the building platform of the proposed development. • The impact of the development on the landscape value and use of the adjacent “village green” as public open space. • The use of public land, classified as “community” land, for the purposes of administration offices, albeit for an organization that runs a major local sporting team. <p>On balance, it is considered that the removal of the heritage-listed trees and the impact on the adjacent “village green” is such that the proposal is not in the public interest.</p>

EXISTING USE RIGHTS

Existing use rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS

The subject application was notified to surrounding and nearby properties in accordance with the EPA Regulation 2000 and Warringah Development Control Plan 2011.

In response, Council received twenty-five submissions, from the following people:

Name:	Address:
Mr Peter Caristo	42 Alfred Road BROOKVALE NSW 2100
Mr Kevin Milner	10 Alfred Road BROOKVALE NSW 2100
Mr Chris Bateman	9 Hall Road HORNSBY NSW 2077
Mr David Bradley	94 Bennett Street CURL CURL NSW 2096
Mr Ben Nercessia	21 Gilles Crescent BEACON HILL NSW 2100
Mr Gary Ellis	89 Crown Road QUEENSCLIFF NSW 2096
Mr Robert Stevenson	30 Coles Road FRESHWATER NSW 2096
Mr Ryan Winter	31 Maxwell Parade FRENCHS FOREST NSW 2086
Mr Christopher Whitehead	18/68 Elizabeth Bay Road ELIZABETH BAY NSW 2011
Mr Peter Thomas	31 Cotentin Road BELROSE NSW 2085
Mr Frank Valentino	14 Waratah Parade NARRAWEENA NSW 2099
Mr Michael Ball	7 Liston Circuit CASTLE HILL NSW 2154
Mr Damien Nobrega	5 Dakota Place RABY NSW 2566
Mr James Cameron	26 Birch Crescent EAST CORRIMAL NSW 2518
Mr Luke Batman	No address supplied
Mr Chris Ghaly	No address supplied
Mr Victor Wilson	15 Ocean Street HERVEY BAY QLD 4655
Mr Robbie Anstiss	11 Costa Place FRENCHS FOREST NSW 2086
Mr Luke Monda	10 Carrington Street NORTH STRATHFIELD NSW 2137
Mr Victor Tapatas	39 Waratah Street BEXLEY NSW 2207
Mr Brian Ty Smith	15 Bando Street GUNNEDAH NSW 2380
Mr David Freriechs	4 Gordon Road LONG JETTY NSW 2261
Mr Ian McIntosh	80 Tims Lane BROKEN HEAD NSW 2438
Ms Helen Szabados	No address supplied
Mr Geoff Ferris	96A Carawa Road CROMER NSW 2099

Twenty-three of the submissions were in favour of the development. The other submissions raised the following issues:

Traffic and parking

Concern is raised that the proposal will result in car parking in a dangerous and illegal manor on Alfred Road and create a traffic hazard.

Comment: The issue of traffic, access and safety is addressed in the comments of Council's Traffic Engineer, who raises no objections subject to conditions of consent. The proposal includes works to formalise 15 car spaces for use in association with the proposed Centre of Excellence and Council's Traffic Engineer has included conditions of consent in this regard, should this application be approved. The proposal also includes a Green Travel Plan to maximise the use of alternate modes of transport and the site is well serviced by public transport. This issue has not been given determining weight.

Reduction in area for public exercise

Concern is raised that the proposal will make it difficult to people to walk a circuit of the oval.

Comment: Access around the oval will remain available but will involve the use of stairs to descend from the concourse level at the northern end to the pedestrian level on the eastern and western sides of the oval. This issue has not been given determining weight.

Money generated from the proposal needs to go back into maintenance of the stadium

Concern is raised that the proposal needs to result in a sustainable financial outcome for the maintenance of the site.

Comment: The financial details of the agreement between Council, as landowner, and MWSE are commercial in confidence and have not been provided to the author of this report. The future maintenance of the ground is a matter between Council and MWSE and not considered to be a matter that has determining weight for this development application.

Liquor licence

Objects to the possible future granting of a liquor licence for the grandstand and Centre of Excellence

Comment: The proposal does not involve the granting of a liquor licence. Any future application would be treated on its merits under the appropriate legislation. This concern has not been given determining weight.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal referrals

Referral officer	Comments	Consent recommended
Building assessment	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of conditions of approval.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>	Yes, subject to condition
Development engineer	TTW (the applicant's hydraulic engineering consultants) have now provided updated engineering drawings detailing the provision of an upgraded 900mm diameter council stormwater line	Yes, subject to conditions

Referral officer	Comments	Consent recommended
	<p>to cater for a 1 in 20-year AEP storm event. Events in excess of the 20-year event will be handled by an overland flow path structure that runs through the development site.</p> <p>Additionally, an inlet structure 6m x 1.2m is to be provided to ensure all upstream overland flow is captured by the new 900mm RCP line in the 1 in 20-year AEP event.</p> <p>Also, the stormwater inlet pit in Federal Parade is to be upgraded to capture more upstream overland flow.</p> <p>The DRAINS model for the stormwater line upgrade has been reviewed and is satisfactory.</p> <p>No objections to the proposed development subject to conditions.</p>	
Environmental Health – Commercial Use	<p>The application for Centre of Excellence includes the construction and operation of a number of pools/spas that are considered to be public swimming pools and spa pools. Public pools and spa pools are regulated under Public Health Act 2010 and Public Health Regulation 2012. The requirements of the relevant legislation need to be considered during the design, construction and operation of the facility in order to protect public health due to associated risks with Public pools and spa pools.</p> <p>The plans for the Centre of Excellence also include medical and rehab rooms.</p> <p>No objections subject to conditions</p>	Yes, subject to conditions
Environmental Health – Contaminated Lands	<p>Contamination Report entitled Stage 1 and Stage 2 Environmental Site Assessment for Proposed Brookvale Oval Redevelopment (Ref: E32596BDrpt) prepared by JK Environments Pty Ltd and dated 10 October 2019. The report identified the following:</p> <ul style="list-style-type: none"> Proposed car park extension site found to be suitable from a contamination view point. Asbestos including friable asbestos found to be above the above the human health Site Assessment Criteria at the location of the proposed Centre of Excellence and Grandstand site; 	Yes, subject to conditions

Referral officer	Comments	Consent recommended
	<ul style="list-style-type: none"> • Data gaps identified with an additional site area associated with a proposed realignment of an existing stormwater line located in the north and east of the site. These areas did not form part of the assessment the report recommends further assessment of these areas; and • That based on the proposed method of earthworks the preferred remedial approach would include capping of the asbestos impacted soils across the entire development footprint. <p>The report recommended that the proposed Centre of Excellence and grandstand site can be made suitable for the proposed development provided that the following is implemented:</p> <ul style="list-style-type: none"> • The data gaps are addressed; • A Remedial Action Plan (RAP) and Asbestos Management Plan (AMP) are prepared; • A Validation Report is prepared on completion of the remediation works; and • In the event capping and containment method of remediation is adopted that long-term Environmental Management Plan be prepared for the site. <p>No objections subject to conditions</p>	
Environmental Health – Industrial Use	<p>Acoustic assessment prepared by Pulse Acoustic Consultancy Pty Ltd (Report Reference: Brookvale Oval Redevelopment – Noise Impact Assessment 21 October 2019). Assessment makes recommendations for the acoustic treatment of plant and plant rooms in order to reduce noise to neighbouring receivers.</p> <p>No objections subject to conditions</p>	Yes, subject to conditions
Heritage	<p>The proposal has been referred to Heritage as it contains a heritage item: I132 - Brushbox and Camphor Laurel Trees surrounding Brookvale Park - Pine Avenue, Alfred Street, unmade section of Federal Parade and Pittwater Road (near Pine Street intersection).</p> <p>Details of the item as contained in the Warringah heritage inventory is as follows:</p> <p><u>Statement of significance:</u></p> <p>The mixed and single species Inter-war period row plantations form a more or less contiguous</p>	No

Referral officer	Comments	Consent recommended
	<p>greenbelt around this sportsground. The multi-stemmed mature Brush Box (<i>Lophostemon confertus</i>) and Camphor Laurels (<i>Cinnamomum camphora</i>) retain a high level of visual integrity. The trees with their inter-locking canopies and substantial scale create a strong visual foil and distinctive sense of place.</p> <p>The trees have local significance in terms of their long association with development of the site as a showground, a park and sportsground. They share important links with the local area's cultural and social history, particularly the local school and may have been established as a WWI commemorative grove. The thematic approach is typical of Sydney's public planting schemes in the early twentieth century.</p> <p><u>Physical description:</u></p> <p>The single row plantations of mature Brush Box (<i>Lophostemon confertus</i>) and Camphor Laurels (<i>Cinnamomum camphora</i>) form a more or less contiguous green-belt around this sportsground. Originally planted at approximately 6 metres centres within the boundary fence of Brookvale Park, these evergreen trees are now located outside the sportsground boundary along the Pine Avenue and Alfred Road frontages. The northern row of Brush Box (23 No.) is still within the boundary fence.</p> <p>The Alfred Road plantation (40 No.) is also comprised of a single species row of Brush Box and extends from Pittwater Road to Federal Parade. This row includes younger infill/ replacement planting. The Pine Avenue plantation includes both Camphor Laurels (17 No. - dominant) and Brush Box (6 No.). The short row of Brush Box (4 No.) in Pittwater Road (near Pine Avenue intersection) are part of the original scheme.</p> <p><u>Consideration of Application:</u></p> <p>The proposal seeks consent for the construction of a new grandstand and centre of excellence on the northern edge of Brookvale Oval. The proposal includes the removal of 11 heritage listed brush box trees, and proposes to replace them with 7 brush boxes and 4 tuckeroos.</p>	

Referral officer	Comments	Consent recommended
	<p>The brush boxes are large trees that form part of the defined formal planting line around 3 sides of Brookvale Oval along with the Camphor Laurels. The trees are both of heritage significance and visual significance due to their size and important canopy coverage in an area of known low coverage. The heritage significance of the trees is enhanced by the easily read and defined planting line. Gaps in the northern line are noticeable, but they do not interrupt the legibility of the line or its significance, nor do they justify the removal of the remaining trees.</p> <p>Photographic evidence from the Mayne-Wilson & Associates' <i>Heritage Report on Brookvale Park</i> (2005) indicates that the gaps in northern line are apparent by 1933 (pg. 14) and are most likely deliberate due to existing buildings or for access purposes. The aerial photo from 1951 (pg. 17) reinforces that these gaps have been established on the site for decades. It is further noted that the northern planting line shows the historical extent of Brookvale Park before the resumption of Federal Parade and its shift to the north. This provides physical evidence of the development and enlargement of the broader park over time.</p> <p>The heritage significance and importance of these trees cannot be understated. While the park has been used for recreational purposes since 1911, over time its focus and facilities have changed.</p> <p>However, as noted in the 2005 report, '<i>The only fabric of heritage significance are the cultural plantings (mostly Brush Box trees around the eastern and western boundaries of the park, and along the northern boundaries of the rugby field</i>'. As the only remaining fabric of heritage significance, all efforts must be made to ensure their retention and protection.</p> <p>Turning to the proposed tree replacement planting option, it is considered to be a poor attempt to offset the loss of the heritage significant trees and is not acceptable. The proposed location of the 7 new brush boxes is impacted and constricted by the pedestrian ramp/access area and proposed sewerage and stormwater lines. The trees would never be able to grow to a sufficient size to match</p>	

Referral officer	Comments	Consent recommended
	<p>the existing trees proposed for removal. Additionally, these trees are located behind a retained group of brush boxes and would not contribute to the re-establishment of the defined formal planting line. Further, these plantings would likely be removed by any future development of the eastern grandstand.</p> <p>The 4 tuckeroos proposed for in the Village Green would also not grow to a sufficient size to match the brush boxes, nor would they contribute to the important defined heritage tree line. A 'one for one' approach is also not acceptable for the replacement of heritage significant and visually important trees, given potential losses while trees establish themselves.</p> <p>The proposal has also not considered key actions of the <i>Brookvale Oval Plan of Management 2002</i> (PoM). The plan catered for eventual development of the eastern and northern stands, However Action 53 specifically requires investigation and justification for their development, and for this to be provided in any development application. There has been no consideration of the eastern end in the proposal. Given the larger width and length of the eastern side, it would be considered possible to accommodate all the desired facilities on this side without having to remove any of the heritage trees in this area along Pine Street.</p> <p>It is considered that there is the potential to further explore additional design options that retain the heritage listed trees. This could include the construction of a basement level on the northern side, reallocation of spaces and a shrinking of the building width. An option exploring a reduction in the size of the area behind the dead ball line on the southern end and shifting the entire field down should also be considered. It is noted that the proposal has already included this for the northern end and adopting a similar approach on the southern end would give additional space to construct the grandstand and retain the heritage listed trees.</p> <p>There are also some further actions in the PoM that have not been addressed including:</p>	

Referral officer	Comments	Consent recommended
	<ul style="list-style-type: none"> • Action 47 to investigate the heritage significance of the two northern ticket booths • Action 75 to retain mature trees on Alfred Street, Pine Street and Federal Parade. <p>Concerns are also raised in relation to the proposed stormwater and sewerage piping lines. Heritage would suggest that the proposed lines be amended to exit the site between trees 59 and 60 on the Pine Street frontage, given the larger gap here between plantings.</p> <p>The proposed concrete ramp on the eastern end of the northern grandstand is also likely to heavily impact upon the structural root zone of tree 35, as will the proposed waste storage area. The proposed construction method for pier and beam construction as detailed in the arborist report is considered unlikely to be feasible in this area given the proposed concrete ramp. The design approach in this area should be reviewed to minimize impacts upon tree 35. Additionally, the proposed waste storage area should be moved to minimize impacts upon trees 35 and 34.</p> <p>The design of the additional 15 car parking spaces on Alfred Road should also be revised to minimize impacts upon the heritage trees. The outward facing spaces should be removed. Any parking loss can be compensated by extending the car park to the north along the fence line.</p> <p>Heritage does not object to the external design or presentation of the northern grandstand, only its location.</p> <p>However, Heritage cannot support the proposal given the impact of the loss of the trees on the heritage significance of the overall item, the inadequacy of the tree replacement plan and the failure to address key actions of the <i>Brookvale Oval Plan of Management</i> 2002.</p> <p><u>Recommendation</u></p> <p>Heritage cannot support the proposal due to the adverse impact on the overall heritage item.</p> <p>There are potential design solutions that should be furthered explored that will allow for the</p>	

Referral officer	Comments	Consent recommended
	<p>construction of the required facilities while still retaining the heritage significant trees, such as construction on the eastern end of the field.</p> <p>Therefore, Heritage recommends refusal of the application.</p>	
Landscape	<p><u>Additional information comment 22/05/2020</u></p> <p>Additional information from the applicant in response to issues raised by Council are noted.</p> <p>No amendments to the previously reviewed landscape plans are proposed. Previous comment regarding that aspect are still relevant.</p> <p>The additional information did however include additional information regarding stormwater design which impacts on existing and proposed landscape features.</p> <p><u>1. Impacts of Stormwater Works on Heritage Listed Trees</u></p> <p>Concern is raised with regard to the impacts on trees proposed for retention adjacent to the stormwater works shown on the Storm Water and Site Works Concept Plan Dwg No. C05-2 A prepared by TTW.</p> <p>Review of the proposed works in accordance with AS4970-2009 <i>Protection of trees on development sites</i> indicates Significant impacts on Trees T47, T48 and T49 which would render them unsuitable for retention. Fig. 1 below indicates the Tree Protection Zone (Red dash circle) and Structural Root Zone (Black dash circle) overlaid on to the stormwater drawing.</p> <p>Based on the TPZ of each tree as identified in the applicant's Arborist report, the following impacts have been calculated.</p> <ul style="list-style-type: none"> • T47: TPZ radius 7.9m; TPZ area 196m²; Works incursion 74m² = 38% of TPZ • T48: TPZ radius 9.2m; TPZ area 266m²; Works incursion 125m² = 47% of TPZ • T49: TPZ radius 10.9m; TPZ area 373m²; Works incursion 74m² = 37% of TPZ 	No

Referral officer	Comments	Consent recommended
	<p>These impacts are considered too great to enable retention of trees T47. 48 and 49.</p> <p><u>2. Proposed Tree Planting</u></p> <p>Concern is raised regarding the proposed tree planting along the northern side of the building in consideration of the details indicated on the stormwater plan.</p> <p>The plan indicates that the bio-swale requires 2 retaining walls to be constructed in the garden area. This is not reflected on the Landscape Plan, which indicates a wider garden bed with trees centrally located. Concern is raised therefore as to the viability of the trees proposed for the area, their ability to grow in terms of soil volume availability and elevated moisture levels and impacts on the retaining walls over time caused by tree growth. These may be able to be addressed, however the detail provided on the stormwater plan highlights the extended impact of the development on heritage trees and raised questions as to the ability to provide a suitable replacement planting scheme to offset the loss of significant community assets if the proposed is to be approved.</p> <p><u>3. Swept Path Analysis</u></p> <p>A drawing has been provided indicating the swept path for waste service truck to access the site (Fig 2 below). Several trees (including one heritage listed tree) are close to the routes indicated and it is unclear if additional hard paving areas are required to accommodate the trucks. It is likely that additional pruning would be required and there is potential for ongoing trunk damage given the close proximity of the tracked path to the tree trunks. The existing entry arrangement is indicated on Photo 1 below. This may be able to be addressed through further information, however the plan again highlights the ongoing impact of the development on the existing trees.</p> <p><u>Additional information comment 24/04/2020</u></p> <p>Updated plans and report submitted by the applicant are noted.</p>	

Referral officer	Comments	Consent recommended
	<p>The plans indicate that the trees referred to in the original referral comments are still to be removed.</p> <p>An updated Landscape Plan has been provided (though the original landscape plan is still included in the amended drawing set as well).</p> <p>The Landscape Plan indicates replanting of small trees between the building and the footpath to the north to compensate for the removal of the local heritage listed <i>Lophostemon conferta</i> (Brush Box Trees) which will be required to be removed to accommodate the new building.</p> <p>It is clear that the trees indicated for removal will need to be removed to accommodate the building as designed, along with significant impacts to other trees as detailed in the previous referral comments below. Retention of the trees is not an option in the design as presented.</p> <p>The amended Heritage Impact Assessment notes that the trees have cultural significance, having been established around the park for at least eighty years.</p> <p>Removal of the trees is still not supported from a cultural landscape perspective and, as previously commented, are significant enough to be a material constraint on development. Other options appear to be available either in alternate locations or even via removal of the existing mound to enable construction of facilities below the existing ground levels rather than over the mound as is proposed.</p> <p>However, if the proposal is to be supported, replacement of the trees with the same species capable of maintaining the integrity of the heritage item, being a ring of trees around the park, should form part of the development and therefore be factored into the development budget. This is achievable via planting of <i>L. confeta</i> between the building and path to the north with the relocation or undergrounding of the power line that currently passes over this area.</p> <p>However, if the proposal is to be approved as presented, conditions have been provided to ensure tree protection and proposed landscaping is undertaken.</p>	

Referral officer	Comments	Consent recommended
Parks, Reserves and Foreshores	<p>Concern over the Council/public costs associated with the anticipated annual maintenance cost increase to maintain a suitable playing field surface following construction of the Centre of Excellence is removed, subject to an agreement for the Manly Warringah Sea Eagles to assume management of the ongoing maintenance of the Brookvale Oval playing field surface.</p> <p>Access for delivery of materials from Pine Avenue shall only be permitted on Saturday, and is subject to an application and approval for Working on Reserves permit, and conditions of consent that public access is not impacted within the northern park and Brookvale Pre-School. Access from Pine Avenue is suggested by the applicant for instances where the vehicles may be too large and would potentially damage existing mature trees along Federal Parade.</p> <p>A Dilapidation Report shall be submitted to Council to record the pre-existing condition of Council assets at the commencement of works should damage occur from delivery vehicles and activity.</p> <p>Given the above resolutions and imposition of conditions of consent to protect Council's public assets, no further objections are raised from Parks Assets referral team.</p> <p>Concern remains on the benefit for the community of the proposal to locate a grandstand at the northern end of the playing field, facing south. The grandstand location does not provide optimal viewing of games for the spectator nor does it necessarily provide shelter from southerly winds and rain.</p> <p>The proposal is therefore supported.</p>	Yes, subject to conditions
Strategic planning	<p><u>Draft Brookvale Structure Plan</u></p> <p>The planning proposal is broadly consistent with the Draft Brookvale Structure Plan which recognises Brookvale Park as an open space asset providing a major community and recreational destination.</p> <p><u>Local Strategic Planning Statements</u></p> <p>This proposal is also broadly consistent with 'Towards 2040 Draft Local Strategic Planning</p>	Yes

Referral officer	Comments	Consent recommended
	<p>Statements', particularly Priority 24 – 'Brookvale as an employment and innovation centre' which specifically mentions this proposed 'centre of excellence.</p> <p><u>Plan of Management</u></p> <p>This proposal is broadly consistent with the vision and objectives of the Brookvale Plan of Management, particularly 'to develop the Brookvale Sportsground into a multipurpose and high standard event facility which is strategically planned and managed". However, the proposal to remove long established heritage listed trees and replace them with a reduced number of younger and smaller species trees is inconsistent with objectives to acknowledge the history and culture of Brookvale Park and to ensure an ongoing commitment to the environment.</p> <p><u>Tree canopy</u></p> <p>The reduction of established tree canopy in Brookvale Park undermines the distinct green identity that Brookvale Park provides to the Draft Brookvale Structure Plan area and its role as a green destination. Additionally, this reduction in tree coverage is inconsistent with priority 5 and priority 24 in the 'Towards 2040 Draft Local Strategic Planning Statements' which includes a principle to 'enhance tree canopy and provide green links to Brookvale Park, Warringah mall and the B-line'. Brookvale experiences the highest level of urban heat island effect with more than 9 degrees from the baseline and is the largest precinct to experience that level on the Northern Beaches, so preserving tree canopy is critical for supporting the future liveability of Brookvale.</p> <p><u>Parking</u></p> <p>The proposal intends to utilise the existing parking for the site located in the south west corner with capacity for 45 vehicles with an additional 15 new parking spaces to be formalised in the overflow car parking area. The Draft Brookvale Structure Plan identifies on-street parking issues and congestion as an issue, particularly for Brookvale East. This has been identified as a strategic intent to 'maintain an appropriate level of access to public parking</p>	

Referral officer	Comments	Consent recommended
	<p>facilities to support business and community needs. The concern is that the existing users of parking on this site will be displaced, by users of this development, further impacting congestion issues in surrounding streets and in East Brookvale</p> <p>The proposal is therefore supported.</p>	
Traffic Engineering	<p><u>Further comments 7/7/2020</u></p> <p>Recommended conditions:</p> <p><i>27 Motorcycle parking provision</i></p> <p><i>The applicant shall provide 9 motorcycle parking spaces in compliance with the Australian Standards AS2890.1:2004.</i></p> <p><i>Reason: To provide adequate motorcycle parking spaces for the staff and patrons (DACTRCPC2)</i></p> <p><i>28 Bicycle parking provision</i></p> <p><i>The applicant shall provide 13 high to medium security level bicycle spaces to comply with Council's DCP requirements.</i></p> <p><i>Reason: To comply with Council's DCP. (DACTRCPC3)</i></p> <p>The condition 27 has specified the requirements for 9 motorbike spaces, and the spaces are to be in compliance with Australian standards. The number of spaces was based on the traffic report and the minimum size of a motorcycle parking space is 2.5 m by 1.2 m in accordance with Australian Standards and they are to be line-marked.</p> <p>Regarding the condition 28, applying the Warringah DCP, Recreation Facility (indoor, outdoor, or major) minimum bicycle parking requirements, the requirements for 50 staff and 36 patrons during non-game days will be 13 high – medium security level bicycle spaces and 1 high – low security level spaces (can rely on the existing bike racks on Alfred St for this one).</p> <p>In accordance with the Austroad classification, high security level means fully enclosed individual lockers and medium security level means lockable,</p>	Yes, subject to conditions

Referral officer	Comments	Consent recommended
	<p>enclosure, shelter or compound fitter with class 3 facilities where cyclists are responsible for locking their bicycle within the communal enclosure.</p> <p>The conditions were imposed based on the applicant's response indicating that they would be able to provide the required motorbike and bicycle spaces and as per the traffic management guidance to condition them accordingly.</p> <p>[Assessing Officer's comment: It is considered that there is an appropriate nexus between the proposed development and the need to provide bicycle and motorcycle parking in accordance with WDCP2011.</p> <p>The provision of these spaces will occupy a significant area within the building (for the bicycle parking) and outside of the building (for the motorcycle parking). There appears to be room available within the building and on the site but the details of the location of these spaces is not specified.</p> <p>The lack of satisfactory bicycle and motorcycle parking is considered to be a determinative matter and is included as a reason for refusal in the recommendation of this assessment report. If, however, the application is to be approved it is considered that "deferred commencement" conditions of consent are appropriate to ensure that the location of the bicycle and motorcycle parking is to the satisfaction of Council, and a condition to this effect is included in Attachment 1.]</p> <p><u>Further comments 2/7/2020</u></p> <p>Building appropriate infrastructure for walking and cycling needs and to promote active travel to / from the site is considered vital. In respect with the diagram provided, the provision of wider footpath around the site will also improve the walkability around the Oval considering the high volume of pedestrians during the game days.</p> <p>I reiterate that the condition of condition requiring the construction of shared path around the site will be achievable and does not require any tree or parking removal.</p>	

Referral officer	Comments	Consent recommended
	<p>Reviewing the information provided by the applicant regarding the bike path along Federal Parade, we concur with the provision of shared path through the park using the existing concrete path. The existing path appears to be adequately wide, and would only require appropriate line-marking and signposting in accordance with the relevant guideline.</p> <p>In order to provide shared path along Alfred Road, the existing concrete footpath has to be widened to minimum of 2.5m. It appears that there is a reasonable room between the trees and the edge of the existing concrete path allowing for the widening to accommodate the 2.5 wide shared path, however if the arborist statement indicates any impact on the trees, the parking spaces could be slightly relocated towards the street to accommodate the widening of the existing path.</p> <p>Please note that the provision of connected shared path all around the site is to be ensured. This includes the connected shared path along Federal Parade and Alfred Road as well as widening of a short section of footpath on Pittwater Road to provide a continuous shared path along Pittwater Road.</p> <p>[Assessing Officer's comment: To be a valid condition of consent there needs to be a nexus between the proposed development and the condition to be imposed. In this case it is considered that there is insufficient nexus between the additional bicycle traffic generated by the proposal and the need for a shared cycleway. Any such shared cycleway would be shared by the wider community and funding for such a facility is more appropriately generated by a development levy under Section 7.12 of the EPA Act 1979. A condition in this regard is included in Attachment 1 to this assessment report.]</p> <p><u>Comments 17/6/2020</u></p> <p>Council acknowledges and accepts the comments provided in the Urbis response dated 18 May 2020, subject to the following:</p>	

Referral officer	Comments	Consent recommended
	<ul style="list-style-type: none"> • The Applicant shall prepare a Green Travel Plan to promote the modal shift figures adopted as part of the original report • The applicant shall provide additional motor bike and bicycle parking to comply with Council's DCP requirements. • The applicant shall be required to provide a boom-gate to restrict access to the proposed car park to staff/players only during non-game days, and unrestricted access on game days and non-school days. <p>Therefore, the proposal can be supported subject to conditions.</p>	
Urban design	<p>The applicant should address the following issues:</p> <ol style="list-style-type: none"> 1. The feasibility study provided does not consider the eastern side hill slope seating section of the site as a logical location for the new proposal – where cutting down of 11 mature heritage trees and encroachment into the football pitch area will not be an issue as the eastern side area is wider and longer than the northern side. Both sides have been identified by the management plan as sites for future developments. 2. The community benefits delivered by locating the grandstand on the eastern side far outweighs the northern side: <ol style="list-style-type: none"> a. As a football game viewing position, the eastern side grandstand will be a more vantage location. b. It is also closer to Pittwater Road which is the main transport corridor for public access and egress. c. It will also have minimal impact on the village green which is a highly used community space. d. Mature trees will not have to be cut down thereby reducing the existing tree canopy coverage required to reduce urban heat island effect. Brookvale is already considered having a low tree canopy coverage currently being an industrial area. 3. The proposed built form can generally be supported with the planning layout and proposed material finishes but not in the current location. 	No

Referral officer	Comments	Consent recommended
Waste	The applicant has provided suitable responses to Waste Management concerns. No objections subject to conditions.	Yes, subject to conditions

External referrals

Referral Body External	Comments	Consent Recommended
Ausgrid	The proposal was referred to Ausgrid. No response has been received within the 21-day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.	N/A
NSW Police	The proposal was referred to NSW Police. A follow up enquiry was sent to NSW Police on 10 January 2020. No response has been received as at the date of preparation of this assessment report. It is assumed that no objections are raised and no conditions are recommended.	N/A

LOCAL GOVERNMENT ACT 1993

Local Government Act 1993

The site is classified as “*community land*” under the *Local Government Act 1993* (“LG Act”).

Section 36(1) of the LG Act requires the preparation of a Plan of Management for all community land. The Brookvale Park Plan of Management (“BPPoM”) applies to the land.

Section 36(3)(a) of the LG Act provides that the BPPoM must categorise the land. The area covered by the BPPoM has been categorised as containing land within the sportsground, park and general community use categories. The proposed development is on land categorised as sportsground, as shown in the following extract from the BPPoM:



LEGEND

Site boundary



Park



Sportsground



General Community Use



100m

Section 35 of the LG Act requires that the land be used and managed in accordance with the relevant Plan of Management.

Part 5.2 of the BPPoM contains the following vision statement:

To develop and manage Brookvale Park in such a way that a harmonious balance is achieved in its use as both a regional sporting/event facility and neighbourhood park. This is to be attained through the ongoing involvement of the community and considering stakeholders needs.

Part 5.7 of the BPPoM provides Action Tables for the management of Brookvale Park. The Tables include the following relevant actions:

Parking and Traffic (under Performance Target 10)

34. *Develop a major event traffic and parking strategic plan. Any guidelines should be included into the "Hire Guidelines" as noted in Action 17 and reviewed every two years to ensure they are effective and relevant. The plan should take into account Actions 30 – 32 and consider all values expressed during the development of this Plan of Management. Action 33 should be carried out prior to this action. See Action 47 in relation to future development.*

Use of the Sportsground (under Performance Target 17)

46. *Permit and encourage the hiring and use of the sportsground and ancillary facilities. The purpose is to be compatible and appropriate to this facility without unduly disturbing other park users and surrounding residents.*

Compatible uses are seen as anything which is sporting, cultural, musical, promotional, commercial, recreational and educational and is generally able to fit into the confines of the sportsground area.

Development Proposals (under Performance Target 18)

47. *All developments in Section 6 are permissible during the life of this Plan of Management. The protection of all the stated community values in regard to Brookvale Park is imperative. Therefore consideration is to be given to all actions noted in this Plan which directly relate to a development or the process of considering a development proposal.*

Action 34 (develop a major traffic and parking strategic plan) should be carried out prior to any development which is proposed to significantly increase the number of visitors to Brookvale Sportsground, eg stand developments.

An investigation into the heritage value of the two northern ticket boxes is to be carried out prior to their removal. If the heritage value is found to be significant then possible alternatives are to be investigated for their retention or adaptive reuse.

53. *Investigate and research the need for the development of the proposed South East Link Stand, Eastern Stand and Northern Stand. The investigation should take into account the implication such a development would have on the whole of Brookvale Park and the surrounding residents.*

The investigation is to recommend which development is most suitable, ie the South East Link Stand with the Eastern Stand or the Northern Stand. This must include extensive community consultation and research into the impact of the development.

A detailed report is to be prepared and Council must approve any further investigation, planning and research on this action.

Council should be satisfied that this development is viable, will not unduly impact on the neighbourhood and is necessary to the ongoing success of Brookvale Park.

The development may include the provision of covered seats, hospitality areas, amenities, player change rooms and storage areas.

Should the South East Link Stand and Eastern Stand be preferable then a new entry gateway is to be incorporated into the development and the existing entrance way is to

be removed and the area appropriately landscaped as per Action 35. Development of the Eastern Stand is not authorised to extend into the land categorised as park and may need to take up some of the existing hill for it to be constructed.

Should the Northern Stand be preferable the development should consider incorporating the existing northern ticket boxes and turnstile. The existing northern ticket boxes and turnstiles are to be removed if incorporated into the Northern Stand development.

54. *Retain a grassed spectator area at Brookvale Sportsground. The area retained will be dependent on the investigation as described in Action 53. Either the northern end of the ground or the Eastern Hill is to be retained for event patrons to enjoy.*

Part 6 of the BPPoM includes a Table listing new buildings and facilities authorised for Brookvale Park, relevantly including:

New Building / Facility	Land Category	Purpose and use	Location	Current or proposed tenant	Authorised scale of development	Lease/Licence Authorisation	Purpose of developments
New Northern Stand *	SG	Spectator facilities and seating	Northern side of the sportsground	Included as part of any hire agreement including MWRLC.	The complete development of the facility is authorised according to all conditions and actions as stated in Performance Target 17. Development may include covered seating, hospitality areas, amenities and change rooms and is to be of similar scale and height as the existing stands.	Authorisations A, C and E2	To increase formal seating and other facilities required in a major sporting and event facility.

* Development of new South-East Link Stand and Eastern Stand or Northern Stand is dependent on the investigation as described within Action 53. The investigation is to determine the most appropriate development, if any, and this Plan only authorises the development of either the South-East Link and Eastern Stands or the Northern Stand. A grassed spectator area is to be retained.

Since the BPPoM was adopted in September 2002 there have been some relevant changes of context and further work done.

With regards to Action 34, a major event traffic and parking strategic plan has not been prepared. Individual traffic management plans are submitted for the Brookvale Show and for MWSE home games, specifying controls such as barricades and areas for coach parking.

The reference in Action 47 to “*all developments in Section 6 are permissible for the life of this Plan of Management*” reflected the planning controls that applied at that time under Warringah Local Environmental Plan 2000, which did not specify permissible and prohibited development but permitted all development permitted by a Plan of Management on land zoned for public recreation. This situation changed with the introduction of Warringah Local Environmental Plan 2011 which prescribes permissible and prohibited development within the RE1 Public Recreation zone.

One of the northern ticket boxes referred to in Action 47 (the western-most) has been removed. The other ticket box is proposed to be removed by this development. This issue has been addressed in the Applicant’s revised Heritage Impact Statement (20.3.2020). It appears that it was constructed in the 1970’s and has no heritage value. Council’s Heritage Officer has raised no objections to its removal.

The Council undertook extensive planning and public consultation in the period from 2010 to 2013, summarised above in the “Relevant Background” section of this assessment report. This resulted in the “*Securing Brookvale’s Future*” report in 2011 and the “*Securing the Future of Brookvale Oval*” report in 2013. However, this work did not resolve how to continue to maintain and improve the sporting facility at Brookvale Oval. They highlight the extent to which, in the absence of other funding sources, development of part of the land would be required to generate sufficient funds for the development of Brookvale Oval, being of a scale of 7 storeys to 15 storeys (which is considerably more intense than existing development in Brookvale which is generally 1 storey to 4 storeys in height).

Whilst the work undertaken from 2010 to 2013 does not precisely reflect the work foreshadowed in Action 53 it shows that considerable investigations were undertaken to establish a means by which Brookvale Oval could be upgraded.

The question to be asked is whether the proposal satisfies the requirement of section 35(1) of the LG Act that “***community land is to be used and managed in accordance with the... the plan of management applying to the land***”?

In the regard the author of this assessment report is unaware of any legal precedent that would cast light on how this provision is to be interpreted and has therefore adopted a “plain-English” reading of the language.

In my opinion the proposal has not been developed in accordance with the BPPoM. The major event traffic and parking strategy, a prerequisite under Actions 34 and 47, has not been prepared and major events are handled in accordance with protocols established for each event rather than an overall strategy that would then inform a development proposal.

The proposal has not been developed following the process prescribed by Action 53. It has not been informed by a study demonstrating the need for the northern stand (or the eastern or south-eastern stand). Rather, it has been assumed that such a grandstand and Centre of Excellence is an appropriate outcome.

There has not been a “*detailed report*” regarding “*further investigation, planning and research*” on the proposal.

The community consultation has not been undertaken in the manner prescribed by Action 53. It is acknowledged that the applicant consulted locally in September and October 2019 (see Appendix T of the Statement of Environmental Effects), immediately prior to the submission

of the development application on 25 October 2019. The community consultation was not to develop a scheme, as envisaged by Action 53, but was with regards to the adopted proposal.

The decision of the applicant to provide the Centre of Excellence at the northern end of the site has been made to facilitate future redevelopment into a 20,000-seat stadium that provides for no grassed area, as required by Action 54.

In summary, it is considered that the proposed development has not satisfied the requirements of section 35 of the Local Government Act 1993 and that this issue is determinative. The issue is one of the reasons for refusal included in the recommendation of this assessment report.

ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 – Remediation of Land and draft SEPP

Clause 7 (1) of SEPP 55 requires the Consent Authority to:

- (a) consider whether land is contaminated; and
- (b) if the land is contaminated, be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out; and
- (c) if remediation required, be satisfied that the land will be remediated before it is used for the proposed purpose.

The application includes a Stage 1 and Stage 2 Environmental Site Assessment by JK Environments. Methodology included a review of site history records, a site inspection, soil sampling from 40 boreholes and groundwater sampling from three monitoring wells. Potential contamination sources were identified as imported fill material, use of pesticides and hazardous building materials.

Field fill samples identified fibrous asbestos and asbestos fines exceeding the human health Site Assessment Criteria in two samples. The source of the contamination is friable asbestos likely to be associated with the importation of fill material used to create the spectator hill.

Other contaminants including Polycyclic Aromatic Hydrocarbons and Total Recoverable Hydrocarbons were identified in the fill soil samples above the human health Site Assessment Criteria. However, further analysis, statistical calculations and review of the results suggested that the risk of exposure was low and does not warrant further consideration/remediation in this regard.

The report relevantly concluded:

Based on the findings of the assessment, JKE are of the opinion that the proposed Centre of Excellence and grandstand site can be made suitable for the proposed development provided the following is implemented:

- *The data gaps identified in Section 10.4 are addressed. This can be done prior to commencement of remediation works and the requirements for this work are to be outlined in the Remediation Action Plan (RAP);*
- *A RAP and Asbestos Management Plan (AMP) are prepared;*
- *A Validation Report is prepared on completion of the remediation works; and*
- *A long-term Environmental Management Plan (EMP) is prepared at the completion of remediation and validations works, in the event that the capping and containment approached to remediation is adopted.*

Council's Environmental Health Officer – Contamination has reviewed the documentation and raises no objections subject to conditions.

On the basis of the above, the consent authority can address the matters in clause 7(1) listed above as follows:

- consideration has been given to whether the land is contaminated, and some contamination has been found; and
- the land will be suitable following remediation for the proposed purposes; and
- subject to appropriate conditions, as recommended by Council's Environmental Health Officer – Contamination, the land will be remediated before it is used for the proposed purpose.

The draft SEPP updates guidelines with regards to land contamination and remediation but does not raise any additional matters for consideration that are relevant to the proposed development.

SEPP 64 – Advertising and Signage

The proposal includes the erection of signage on the Centre of Excellence and on the grandstand. The signage comprises:

14 x identification signs
 9 x amenities signs
 5 x branding signs
 1 x ribbon board

The majority of these signs do not fall within the ambit of SEPP 64. The identification signs comprise such things as signs identifying the ticket office, the car park entrance, the numbering of seating bays, etc. The amenities signs identify, for example, if toilets are male, female or disabled. As such, these signs do not require assessment under SEPP 64.

The documentation submitted with the development application does not provide dimensions of the proposed signs and the applicant has not provided them despite a request to do so. Consequently, the following assessment is based on the information shown on the architectural drawings provided with the application. The application included at Appendix N a signage strategy which includes diagrammatic representations of the proposed signs, but these are not to scale and are not considered to be suitable for assessment purposes.

Similarly, the applicant has not specified if the signs will be illuminated or unilluminated but has requested that *"it would be good to have flexibility to illuminate in the future as per typical lighting illumination guidelines and curfews"*. In these circumstances the proposal has been assessed as providing signs that are not illuminated.

Conditions are recommended specifying the dimensions of proposed signs (as scaled from the architectural plans) and that they are not to be illuminated so as to provide certainty.

The proposed signs that require assessment under SEPP 64 are as follows:

- West elevation (EBR.101): Wall sign measuring 3600mm x 700mm reading “[Sponsor Name] Centre of Excellence”.
- East elevation (EBR.102): Wall sign measuring 3600mm x 700mm reading “[Sponsor Name] Centre of Excellence” and MWSE logo measuring 2400mm x 2200mm.
- South elevation (EBR.103): Building identification sign: Wall sign measuring 18500mm x 500mm reading “[Honorific Name] Stand”.
- South elevation (EBR.G01): Business identification sign: Wall sign measuring 1800mm x 900mm reading “Sea Eagles”.
- North elevation (EBR.104): Business identification sign: Wall sign measuring 3000mm x 1400mm reading “Sea Eagles”.

The proposal includes indicative information of ribbon board signs but states that the extent of these signs is to be confirmed. These signs are not shown on the architectural drawings. As such these signs have not been included in the assessment of the proposal and a condition is recommended that these signs not be approved due to a lack of certainty as to what is proposed.

The proposed building identification sign (EBR.103) and the proposed business identification signs (EBR.G01 and EBR.104) do not require assessment under Part 3 of SEPP 64 (clause 9(1) of SEPP 64) but require assessment against the objectives of the policy and the assessment criteria in Schedule 1 of SEPP 64 (clause 8 of SEPP 64). The other signs (EBR.101 and EBR.102) require assessment under the objectives of the policy, Part 3 and Schedule 1.

The signs are considered to be consistent with the objectives in clause 3(1) of SEPP 64 because they are considered to be consistent with the amenity and visual character of the area, provide effective communication and are of a high-quality design and finish.

The relevant matters in Part 3 of the policy applying to signs EBR.101 and EBR.102 are:

- *Clause 13 Matters for consideration:* The signs satisfy the relevant matters for consideration because they are consistent with the objectives of the policy and with Schedule 1 of the policy.
- *Clause 14 Duration of consents:* Limits the duration of a consent to 15 years (or such lesser period as specified by the consent authority). There is no reason to specify a lesser period in this case. A condition is recommended limiting approval to these signs to 15 years.
- *Clause 17 Advertisements greater than 20 square metres of higher than 8 metres above ground:* Applies to signs with an area greater than 20m² or a height greater than 8m above ground level. The signs are less than 20m² in area. Sign EBR.101 is a maximum of 6m above ground level. Sign EBR.102 has a maximum height of 9.5m above ground level. Sign EBR.102 satisfies the requirements of clause 17 of the policy: an assessment under Schedule 1 of the policy has been provided by the applicant, the application was

notified appropriately (Schedule 1 of the EPA Act 1979) and notification of the sign to the RMS is not required.

- *Clause 18 Advertisements greater than 20 square metres and within 250 metres of, and visible from, a classified road:* Does not apply to the signs because they are not visible from a classified road.
- *22 Wall advertisements:* Limits wall advertisements to only one per building elevation – the proposal complies with this requirement. The signs also satisfy the criteria with regards to integration into the design of the building, maximum size, protrusion from the wall, and location.

The signs are considered to satisfy the assessment criteria in Schedule 1 of the policy:

- *Character of the area:* The signs are consistent with the character of the area.
- *Special areas:* The signs do not detract from the open space area that they are located in.
- *Views and vistas:* The signs are considered to be of an appropriate scale proportion and form and contribute to the visual interest of the area. They do not result in visual clutter or protrude above the building. They do not require ongoing vegetation management.
- *Site and building:* The signs are in scale with the building to which they are attached.
- *Associated devices and logos with advertisements and advertising structures:* The logos, where applicable, are designed as an integral part of the signs.
- *Illumination:* The signs are not proposed to be illuminated.
- *Safety:* The signs do not reduce safety of any public road, pedestrians or bicyclists.

In summary, the proposed signs satisfy the requirements of SEPP 64 subject to conditions as recommended.

SEPP (Building Sustainability Index: BASIX) 2004

The proposal is not “BASIX affected development” as defined in the Environmental Planning and Assessment Regulation 2000. Consequently, there is no requirement for a BASIX Certificate and SEPPBASIX does not apply to the proposal.

SEPP (Infrastructure) 2007

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

The proposal was referred to Ausgrid but no comments were received during the statutory 21-day period so it can be assumed that no objections are raised.

Clause 101(2) requires the consent authority to be satisfied of the following matters for sites that front a classified road, such as the subject site:

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The proposal has been reviewed by Council's Traffic Engineer who is satisfied with the traffic access and safety of the proposal and with the provision of car parking, subject to appropriate conditions. The proposal is not considered to be a type sensitive to traffic noise or vehicle emissions for the purposes of clause 101(2)(c).

Clause 104 and Schedule 3 of SEPP Infrastructure requires certain traffic generating development to be referred to the RMS for comment. The proposal does not fall within a category identified in Schedule 3 as requiring referral to the RMS.

SEPP (State and Regional Development) 2011

Clause 20 of SEPP (State and Regional Development) 2011 prescribes that certain development, listed in Schedule 7 of the SEPP, is declared to be regionally significant development. Schedule 7 of the SEPP includes Council related development that has a Capital Investment Value of more than \$5 million.

The proposal has a Capital Investment Value of \$26,830,000, being the estimated cost of works less GST. It is Council related development. Consequently, the proposal is declared to be regionally significant development.

The consequence of this is that the Northern Sydney Regional Planning Panel is the consent authority for this development application pursuant to section 4.5(b) of the *Environmental Planning and Assessment Act 1979*.

SEPP (Vegetation in Non-Rural Areas) 2017

Vegetation is prescribed under Part E1 of WDCP 2011 for the purposes of SEPP (Vegetation in Non-Rural Areas) 2017. The proposal involves the removal of 11 heritage-listed trees within the footprint of the building.

Relevantly, clause 10(3) of SEPP Vegetation in Non-Rural Areas provides that a permit:

Cannot allow the clearing of vegetation –

(a) that is or forms part of a heritage item or that is within a heritage conservation area...

unless the council is satisfied that the proposed activity –

(d) would not adversely affect the heritage significance of the heritage item.

Council's Heritage Officer has identified that the removal of the 11 heritage-listed trees will adversely affect the significance of the heritage item, for the reasons detailed above in the quoted referral comments.

In these circumstances it is considered that the proposal does not satisfy the requirements of clause 10(3) of SEPP Vegetation in Non-Rural Areas. This matter has been given determining weight in the assessment of the application.

Local Environment Plans (LEP's)

Warringah Local Environmental Plan 2011 (WLEP 2011)

Consideration of proposal against Warringah Local Environment Plan 2011:

Definition of proposed development: (ref. WLEP 2011 Dictionary)	Recreation facility (major)
Zone:	RE1 Public Recreation
Permitted with Consent or Prohibited:	Permissible with development consent

Objectives of the Zone
<ul style="list-style-type: none">• 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.• To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.• To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
<p>The development is considered to be consistent with some, but not all, of the relevant objectives of the zone for the following reasons:</p> <ul style="list-style-type: none">• The proposal enables the land to continue to be used for public open space purposes.• The proposal complements the range of recreational settings within the Northern Beaches area by enhancing the use of Brookvale Oval as a major sporting venue. The Centre of Excellence is considered to be compatible with this use.• The proposal does not enhance the natural environment because of the unnecessary removal of eleven heritage-listed trees and the impact on the recreational use of the adjacent "village green".

Objectives of the Zone
<ul style="list-style-type: none"> The proposal does not protect the cultural values of the land because of the removal of eleven heritage-listed trees. The proposal damages the cultural and natural environment values of the land because of the unnecessary removal of eleven heritage-listed trees.

Principal Development Standards:			
Standard	Permitted	Proposed	Complies
None applicable	-	-	-

Compliance Assessment

Clause	Compliance with Requirements
2.7 Development requires consent	Yes
5.10 Heritage conservation	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone RE1 Public Recreation

The application was submitted on the basis of the development comprising a *recreation area (indoor)* being the Centre of Excellence and a *recreation area (major)* being the grandstand, both of which are permissible uses within the RE1 Public Recreation zone. The applicant also submitted that the proposal was for a *recreation area (major)*, with the Centre of Excellence facility being ancillary to that purpose.

The relevant definitions in WLEP 2011 are:

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

recreation facility (major) means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes theme parks, sports stadiums, showgrounds, racecourses and motor racing tracks.

The applicant was invited to respond to a contention that the upper floor of the Centre of Excellence building, described in the Statement of Environmental Effects as “*administration*

office space”, comprised “office premises” as defined in WLEP 2011 and was a prohibited use. The definition of “office premises” in WLEP 2011 is:

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

The applicant’s response was to characterise the office use of the development as an ancillary component of the centre of excellence facility. The applicant drew attention to the Court’s judgement in *Toner Design Pty Ltd v Newcastle City Council* [2013] NSWCA 410, in particular:

“... for a development to be ‘ancillary to’ another development it must not merely coexist with, but must serve the purposes of, the other development ...”, and... “the concept of ‘ancillary to’ involves matters of size and scale”.

The judgement goes on to say “Thus, two developments each of which was of significant scale in its own right might not demonstrate the relevant relationship of one being dominant and the other being subservient thereto.”

In this regard, the applicant stated that the gross floor area used for administration offices is 528m² or 13.6% of the total gross floor area of the centre of excellence facility. The size of the administration office area is an indicator that the offices are ancillary to the other uses within the building.

The office uses are not located separately from other uses within the building, such as would indicate a separate use. The upper floor of the centre of excellence facility also contains offices for coaching staff which is clearly linked to the use of the oval as a sporting venue.

The upper level also contains a theatre and breakout area, boardroom and meeting rooms. These areas serve multiple purposes, being available for training purposes, for hosting the premium seating area on game days, for meetings of MWSE executive, training and administrative staff, etc.

Consideration has also been given to the decision of the High Court of Australia in *Shire of Perth v O’Keefe* [1964] HCA 37 in which the Court found that identifying the purpose of a development was “not to be approached through a meticulous examination of the details of processes or activities, or through a precise cataloguing of individual items of goods dealt in, but by asking what, according to ordinary terminology, is the appropriate designation of the purpose being served by the use of the premises.”

The administration offices are for MWSE which is primarily related to the promotion and management of a professional rugby league team and the game of rugby league. The underlying purpose of the administration office area is considered to be to support the other uses within the building and the ongoing operation of MWSE.

In *Foodbarn Pty Limited v Solicitor-General* (1976) 32 LGRA 157, Glass JA (Samuels and Hutley JJA concurring) said (at 161):

It may be deduced that where a part of the premises is used for a purpose which is subordinate to the purpose which inspires the use of another part, it is legitimate to disregard the former and to treat the dominant purpose as that for which the whole is being used. Doubtless the same principle would apply where the dominant and servient purposes both relate to the whole and not to separate parts.

Where the whole of the premises is used for two or more purposes none of which subserves the others, it is, in my opinion, irrelevant to inquire which of the multiple purposes is dominant. If any one purpose operating in a way which is independent and not merely incidental to other purposes is prohibited, it is immaterial that it may be overshadowed by the others whether in terms of income generated, space occupied or ratio of staff engaged. The ordinance is nonetheless being disobeyed.

The situation with the proposed administration offices is one where it subserves the other uses. This is not a case where distinctions need to be drawn in terms of whether one use is independent to the other as the uses are intertwined with each other. This is not a case where the administration offices would be considered to be a separate and prohibited use applying the principles in Foodbarn quote above.

In summary, it is considered that the scale, design and nature of the area used for administration offices is such that it is an ancillary use to the other uses within the centre of excellence facility and to the use of the development as a *recreation area (major)* and is, therefore, permissible with development consent.

Clause 5.10 – Heritage conservation

Clause 5.10(4) of WLEP 2011 requires that the consent authority must, before granting consent to development in respect of a heritage item, consider the effect of the proposed development on the heritage significance of the item concerned.

The proposal involves the removal of 11 heritage-listed trees. The impact of the proposal on the significance of this heritage item is discussed in detail in the referral comments from Council's Heritage Officer quoted above.

Those comments are concurred with. In particular, the eastern side of Brookvale Oval provides a suitable location for the proposed Centre of Excellence without having an impact on any heritage-listed trees. The construction of a grandstand at the northern end of Brookvale Oval can be achieved without having an impact on any heritage-listed trees.

In these circumstances, the impact of the proposal on the heritage significance of the trees proposed to be removed is considered to be determinative of the development application and has been included as a reason for refusal in the recommendation of this report.

Clause 6.1 Acid sulfate soils

The site is not identified as being within a Class 1 to Class 5 area on the Acid Sulfate Soils Map. Under clause 6.1 no further investigation is required.

It is noted that a Stage 1 and Stage 2 Environmental Site Assessment by JK Environments that identifies that neither potential nor actual acid sulfate soils are likely to be present on the site or disturbed during the development and that, in these circumstances, an acid sulfate soils management plan is not considered to be necessary.

Clause 6.2 – Earthworks

The proposal involves ancillary earthworks related to the proposed construction of the Centre of Excellence and grandstand.

Clause 6.2(3) of WLEP 2011 requires that the consent authority must consider the following matters before granting development consent for earthworks:

- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*

Comment: The application is accompanied by a Geotechnical and Hydrogeological Investigation by JK Geotechnics and detailed stormwater engineering design by TTW Engineering. These documents have been reviewed by Council's technical officers and found to be satisfactory subject to conditions and are considered to satisfactorily address potential detrimental effect on drainage patterns and soil stability.

- (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*

Comment: The proposed development complements the likely future use of Brookvale Oval as a major sporting facility.

- (c) *the quality of the fill or the soil to be excavated, or both,*

Comment: No fill is to be imported. The Stage 1 and Stage 2 Environmental Site Investigation by JK Environments that has been submitted with the development application identifies fibrous asbestos in two bulk field samples and asbestos fines in three fill samples, likely to be associated with the previous importation of fill material used to create the spectator hill. The report concludes that the site can be made suitable for the proposed development subject to the preparation and implementation of a Remediation Action Plan during works and an Environmental Management Plan at the completion of the works.

- (d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*

Comment: The effect of the proposed development, with regards to earthworks, are considered to be acceptable subject to appropriate construction management which may be addressed by conditions of consent, should the application be approved.

- (e) *the source of any fill material and the destination of any excavated material,*

Comment: No fill is to be imported. Excavated material will be disposed of in accordance with the Construction Management Plan and can be satisfactorily addressed by conditions of consent, should the application be approved.

- (f) *the likelihood of disturbing relics,*

Comment: Given the historical uses of the site it is unlikely that any relics will be disturbed.

- (g) *the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Comment: Subject to appropriate controls during construction the proposed earthworks are unlikely to have an adverse impact on any watercourse, drinking water catchment or environmentally sensitive area. This matter can be satisfactorily addressed by conditions of consent, should the application be approved.

Clause 6.3 – Flood planning

Clause 6.3(3) of WLEP 2011 provides that development consent must not be granted unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

In this regard, detailed hydrological plans and reports have been prepared by TTW Engineers. These have been amended a number of times following concerns raised by Council's Development Engineers. The proposal now incorporates upgraded works with the capacity to accommodate flows from a 1 in 20-year event with an overland flow path provided to cater for flows above that level.

Council's Development Engineer now raises no objection to the proposal subject to conditions. Having reviewed this advice it is considered that the proposal satisfies the matters for consideration in clause 6.3(3) of WLEP 2011 listed above.

Clause 6.4 – Development on sloping land

The site is located within Area A on the Landslip Risk Map. Clause 6.4(3) requires that development consent must not be granted to the development unless the consent authority be satisfied that:

- (a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*

Comment: The application is accompanied by a Geotechnical and Hydrogeological Investigation by JK Geotechnics. The report includes recommendation to be addressed during the construction phase of the project. Testing of earthworks during and after construction are important to the long-term successful performance of floor slabs and pavements. The report has been reviewed by Council's technical officers and is considered to satisfactorily address the issue of the risk associated with landslides.

- (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*

Comment: The application is accompanied by a Geotechnical and Hydrogeological Investigation by JK Geotechnics and detailed stormwater engineering design by TTW Engineering. These documents have been reviewed by Council's technical officers and found to be satisfactory subject to conditions and are considered to satisfactorily address potential detrimental impacts because of stormwater discharge.

(c) *the development will not impact on or affect the existing subsurface flow conditions*

Comment: The application is accompanied by a Geotechnical and Hydrogeological Investigation by JK Geotechnics and detailed stormwater engineering design by TTW Engineering. These documents have been reviewed by Council's technical officers and found to be satisfactory subject to conditions and are considered to satisfactorily address potential impacts on subsurface flow conditions.

Warringah Development Control Plan 2011 (WDCP 2011)

Built form controls

Built form control	Requirement	Proposed	Complies?
B1 Wall height	Not applicable	~9.0m	N/A
B2 Number of storeys	Not applicable	Generally 2 storeys 3 storeys over player lobby	N/A
B3 Side boundary envelope	Not applicable	Not applicable	N/A
B4 Merit assessment of side boundary setbacks	Not applicable	Not applicable	N/A
B5 Side boundary setbacks	Not applicable	Not applicable	N/A
B6 Merit assessment of side boundary setbacks	Not applicable	Not applicable	N/A
B7 Front boundary setbacks	Not applicable	Not applicable	N/A
B8 Merit assessment of front boundary setbacks	Not applicable	Not applicable	N/A
B9 Rear boundary setbacks	Not applicable	Not applicable	N/A
B10 Merit assessment of rear boundary setbacks	Not applicable	Not applicable	N/A
B14 Main roads setback	Not applicable	Not applicable	N/A
D1 Landscaped open space and bushland setting	Not applicable	Not applicable	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, access and safety	Yes	Yes
C3 Parking facilities	No	No
C3(A) Bicycle parking and end of trip facilities	No	No
C4 Stormwater	Yes	Yes
C5 Erosion and sedimentation	Yes	Yes
C7 Excavation and landfill	Yes	Yes
C8 Demolition and construction	Yes	Yes
C9 Waste management	Yes	Yes
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D6 Access to sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building bulk	No	No
D10 Building colours and materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and reflection	Yes	Yes
D14 Site facilities	Yes	Yes
D16 Swimming pools and spas	Yes	Yes
D18 Accessibility and adaptability	Yes	Yes
D20 Safety and security	Yes	Yes
D21 Provision and location of utility services	Yes	Yes
D22 Conservation of energy and water	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of trees or bushland vegetation	No	No
E10 Landslip risk	Yes	Yes
E11 Flood prone land	Yes	Yes

Detailed Assessment

C2 Traffic, access and safety

The application includes a Traffic Impact Assessment report by TTW Engineers.

Council's Traffic Engineer has reviewed the proposal and, after initially raising concerns, is now satisfied that the proposal provides sufficient car parking, subject to conditions including the implementation of a Green Travel Plan.

Council's Traffic Engineer has also recommended the imposition of a condition requiring the construction of a shared path on Federal Parade and Alfred Road in accordance with Council's Bike Plan. In this regard it is considered that the demand for a shared bike path is not generated by the proposed development but is generated more generally by development within the locality. Consequently, if this development were to be approved it is recommended that there not be a condition requiring the provision of a shared path as there is insufficient nexus between the requirements of the condition and the demand generated by the proposed development.

C3 Parking facilities

The proposal includes provision of 60 car parking spaces, comprising 45 existing spaces on Alfred Road plus the formalisation of an additional 15 spaces on Alfred Road.

Council's Traffic Engineer has reviewed the proposal and, after initially raising concerns, is now satisfied that the proposal provides sufficient car parking, subject to conditions including the provision of additional motor bike and bicycle parking, and the installation of a boom gate to restrict access to the car parking area to staff and players only on non-game days and unrestricted access on game days and non-school days.

As discussed above with regards to the Traffic Engineering referral comments, the proposal does not include motorcycle parking and this is considered to be a determinative issue. The provision of motorcycle parking would have impacts that require assessment to ensure that they are located to the satisfaction of Council. If this application is to be approved then this matter may be addressed by a “deferred commencement” condition of consent (as included in Attachment 1 to this assessment report).

C3(A) Bicycle parking and end of trip facilities

The Statement of Environmental Effects states that there is existing bicycle parking at the Alfred Road entrance to Brookvale Oval. No other details are provided and there is none shown on the submitted drawings.

The Table to Part C3(A) of WDCP 2011 requires the provision of 1 bicycle medium/high security level space per 4 employees plus 1 per 1500 spectators for major recreation facilities.

The proposal replaces the existing northern hill with a 3,000-seat grandstand but there is no nett increase in the number of spectators so no demand generated for bicycle parking for the grandstand.

The Statement of Environmental Effects does not specify the number of employees within the Centre of Excellence. The Traffic Impact assessment by TTW Engineers states that *“During typical non-game day use it is anticipated that 50 staff and 36 players will be using the facility”*. It is considered that peak usage will be greater than this as the Centre of Excellence contains 63 office workstations, 14 performance analysis workstations, 8 study workstations, theatre with seating for 77 persons, plus boardrooms, meeting rooms and breakout rooms on the upper level, together with the gymnasium, rehabilitation pool, education space with seating for 24 persons, and workstations for 6 HP staff on the ground floor level.

As discussed above with regards to the Traffic Engineering referral comments, the proposal does not include bicycle parking and this is considered to be a determinative issue. The provision of bicycle parking would have impacts that require assessment to ensure that they are located to the satisfaction of Council. If this application is to be approved then this matter may be addressed by a “deferred commencement” condition of consent (as included in Attachment 1 to this assessment report).

D9 Building bulk

Part D9 of WDCP 2011 provides a series of requirements to reduce the apparent bulk of buildings and to achieve the following objectives:

- *To encourage good design and innovative architecture to improve the urban environment.*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

The proposal is considered to be inconsistent with the provisions of Part D9 because of the length (108m) and height (10m) of the building as seen from the adjacent village green, and the proximity of the building to the village green.

In this regard, it is recognised that the function of the building expresses itself in the built form that is proposed. However, the siting of the building behind the grandstand at the northern end of the site is such that the area is constrained with regards to providing setbacks and landscaping to reduce the perceived bulk of building when viewed from the village green.

Impacts with regards to the bulk and scale of the building when viewed from the village green may be mitigated through the provision of trees that are of a greater scale than are proposed between the building and the village green. This may be achieved by undergrounding existing electricity infrastructure and planting a different tree species, and conditions to this effect are included in Attachment 1 to this assessment report. Such an approach is included in the comments of Council's Heritage Officer (although the Heritage Officer recommends that the proposal be refused due to its heritage impacts).

D20 Safety and security

The proposal was referred to NSW Police for comment. At the time of preparation of this assessment report no response has been received.

D23 Signs

The proposal includes a number of wall signs, as described above in relation to SEPP 64 – Advertising and Signage. The signs relevant to assessment under Part D23 of WDCP 2011 are:

- West elevation (EBR.101): Wall sign measuring 3600mm x 700mm reading “[Sponsor Name] Centre of Excellence”.
- East elevation (EBR.102): Wall sign measuring 3600mm x 700mm reading “[Sponsor Name] Centre of Excellence” and MWSE logo measuring 2400mm x 2200mm.
- South elevation (EBR.103): Building identification sign: Wall sign measuring 18500mm x 500mm reading “[Honorific Name] Stand”.
- South elevation (EBR.G01): Business identification sign: Wall sign measuring 1800mm x 900mm reading “Sea Eagles”.
- North elevation (EBR.104): Business identification sign: Wall sign measuring 3000mm x 1400mm reading “Sea Eagles”.

Part D23 provides the following requirements for wall signs:

- *Shall not extend within 200mm of the top and sides of the wall.*

Comment: All signs are more than 200mm from the top and sides of the walls.

- *Shall not cover any window or architectural projections;*

Comment: The proposed signs do not cover any windows or architectural projections.

- *Must be of a size and shape that relates to the architectural design of the building to which it is attached;*

Comment: The proposed signs satisfy this requirement.

- *Where illuminated, shall not be less than 2.7 metres above the existing natural ground level ground;*

Comment: As discussed above, insufficient detail has been provided with regards to illumination of the signs and, consequently, if approved, a condition of consent is recommended to provide that the signs are not illuminated.

- *Shall not project more than 300mm from the wall.*

Comment: All signs project less than 300mm from the walls.

In summary, the proposed signs satisfy the requirements of Part D23 of WDCP 2011.

E1 Preservation of trees or bushland vegetation

The proposal involves the removal of 11 trees which are part of a group of trees that are listed as a heritage item.

The proposal is considered to be inconsistent with the following provisions of Part E1 of WDCP 2011:

6. *Development is to be sited and designed to minimise the impact on remnant native vegetation, including canopy trees and understorey vegetation, and on remnant native ground cover species.*
8. *Development must also avoid any impact on trees on public land.*

The proposal is considered to be inconsistent with the following objectives of Part E1 of WDCP 2011:

- *To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.*

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

POLICY CONTROLS

Northern Beaches Section 7.12 Contribution Plan 2019

Part 2.5 of the Northern Beaches Section 7.12 Contributions Plan 2019 provides:

This plan DOES NOT apply to the following types of development:

Local infrastructure identified in this plan to be carried out by or on behalf of any public authority including the Council (e.g. if a community facility includes commercial/ retail

floorspace then the commercial/retail floorspace of the development will, based on that component's cost of works, be subject to the levy).

The proposed development is not local infrastructure identified in the Contributions Plan. As such, it is not exempt from the payment of a levy under the Contributions Plan.

The contribution payable is equal to 1% of the cost of development, ie: \$295,130. A condition of consent is included in Attachment 1 to this effect, if the development application is to be approved.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- Local Government Act 1993
- State Environmental Planning Policy No. 55 – Remediation of Land and draft SEPP;
- State Environmental Planning Policy No. 64 – Advertising and Signage;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (State and Regional Development) 2011;
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;
- Warringah Local Environment Plan 2011;
- Warringah Development Control Plan 2011;
- Northern Beaches Section 7.12 Contributions Plan 2019; and
- Codes and Policies of Council.

The proposal faces two principle hurdles:

1. Satisfying the requirements of section 35 of the Local Government Act 1993. In this regard, the site is categorised as “community land” and must be used and managed in accordance with the plan of management applying to the land, ie: the Brookvale Park Plan of Management. For the reasons detailed in this assessment report it is considered that the proposal has been developed in a way that is not in accordance with the BPPoM. In other words, the Council has not undertaken the relevant studies, planning and community consultation as prescribed by the BPPoM before the formulation of the proposal.
2. The proposal seeks to provide the Centre of Excellence behind the northern grandstand when there is sufficient room for its location on the eastern side of the oval. As a result, it involves the removal of 11 heritage-listed trees. The impact on the trees could be avoided by siting the Centre of Excellence on the eastern side of the oval. The removal of the trees is not permitted under clause 10(3) of SEPP (Vegetation in Non-Rural Areas) 2017, which relates to trees that form part of a heritage item. The trees are also valuable because of their inherent landscape significance and their contribution to the amenity of the adjacent village green. The siting of the Centre of Excellence behind the northern grandstand has a further negative impact on the amenity of the adjacent village green due to its bulk and scale.

In addition, the provision of satisfactory motorcycle and bicycle parking has not been addressed in the application (although this deficiency could be addressed by “deferred commencement” conditions of consent).

Accordingly, the application is recommended for refusal.

RECOMMENDATION

That Council as the consent authority REFUSE Development Consent to Development Application No. DA2019/1190 for the construction of a Centre of Excellence and formalizing of 3,000 seats at Brookvale Oval at Lot 1 DP 784268, Lot 1 DP 114027, Lot B DP966128, Lot 6 DP 785409, Pittwater Road, BROOKVALE for the following reasons:

1. Pursuant to Section 35 of the Local Government Act 1993 the proposal involves the use and management of community land otherwise than in accordance with the plan of management applying to the land (ie: the Brookvale Park Plan of Management).
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development fails to satisfy the requirements of clause 10(3) of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 as it involves the clearing of vegetation that forms part of a heritage item is not of a minor nature or for the maintenance of the heritage item, and will have an adverse impact on the heritage significance of the heritage item.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be inconsistent with the objectives of the RE1 Public Recreation zone of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development will have a negative impact on the heritage significance of a heritage item as a result of the removal of eleven trees that form part of a heritage item and is inconsistent with the provisions of clause 5.10(4) of the Warringah Local Environmental Plan 2011.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan 2011 in that insufficient motorcycle parking has been provided for the development.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause C3(A) Bicycle Parking and End of Trip Facilities of the Warringah Development Control Plan 2011 in that insufficient bicycle parking has been provided for the development.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan 2011.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause E1 Preservation of Trees and Bushland Vegetation of the Warringah Development Control Plan 2011.

9. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site of the Centre of Excellence behind the proposed northern grandstand is considered to be unsuitable due to its impact on existing vegetation, the heritage significance of a heritage item, and the amenity of the adjacent village green.
10. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.