

SYDNEY WESTERN CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-125
DA Number	DA-1059/2020
LGA	Liverpool City Council
Proposed Development	Concept DA for the construction of a cemetery, including mausoleums, crematoria, chapel, hall, gatehouse, administration buildings, café, car park, access roads, landscaping, earthworks and flood management works. Stage 1 seeks consent for the demolition of existing structures, bulk excavation and flood mitigation works for the entire site, including construction of 4 pads, construction of Pad 1 access road, administration buildings, crematoria, waste water treatment and car parking.
Street Address	1290 Greendale Road, Wallacia NSW 2745 (Lot 1 DP 776645)
Applicant/Owner	MKD Architects Pty Ltd/ Soukutsu Pty Ltd
Date of DA Lodgement	15 December 2020
Number of Submissions	56 objections (including 49 individual submissions and 7 proformas)
Recommendation	Refusal
Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021	<p>Clause 2 of Schedule 6 - Development with a Capital Investment Value (CIV) of over \$30 million.</p> <p>The CIV of this application as outlined in a detailed cost report by a registered Quantity Surveyor is \$95,829,528 (excluding GST).</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>List all of the relevant environmental planning instruments: s4.15(1)(a)(i)</i> <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Transport and Infrastructure) 2021; ○ State Environmental Planning Policy (Planning Systems) 2021; ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021; ○ State Environmental Planning Policy (Resilience and Hazards) 2021; ○ State Environmental Planning Policy (Precincts – Western Parkland City) 2021; and ○ Liverpool Local Environmental Plan (LLEP) 2008. • <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii)</i> <ul style="list-style-type: none"> ○ No draft Environmental Planning Instruments apply to the site. • <i>List any relevant development control plan: s4.15(1)(a)(iii)</i> <ul style="list-style-type: none"> ○ Liverpool Development Control Plan 2008 (LDCP 2008) <ul style="list-style-type: none"> ▪ Part 1 – General Controls for All Development ▪ Part 5 – Development in Rural and E3 Zones

	<ul style="list-style-type: none"> List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iia) <p>No offer or draft offer to enter into a voluntary planning agreement has been made</p> <ul style="list-style-type: none"> List any relevant regulations: s4.15(1)(a)(iv) <ul style="list-style-type: none"> Consideration of the provisions of the National Construction Code (NCC).
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> Architectural plans Revised Architectural Plans Statement of Environmental Effects DCP Variation Written Justification to Building Height Flood Report Biodiversity Assessment Report (BAR) Stormwater Concept Plans Water and Waste Water Assessment Vegetation Management Plan Contamination and Waterways Constraints Assessment Preliminary and Detailed Site Investigation Reports (PSI & DSI) Wildlife Hazard Review Waste Management Plan Geotechnical Assessment Report Aboriginal Heritage Due Diligence Assessment Traffic Impact Assessment (TIA) Air Quality Assessment Water Sensitive Urban Design: Stormwater Assessment (WSUD) Draft Plan of Management Quantitative Surveyor Report SWCPP – Record of Briefing
Clause 4.6 requests	None
Summary of key submissions	<ul style="list-style-type: none"> Flooding impact Unknown extent of earthworks Unknown building design impacts relating to levels, building footprint and height
Report date	5 April 2022

Summary of s4.15 matters

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

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? e.g. Chapter 4 of SEPP (Resilience and Hazards) 2021, Clause 4.6(4) of the relevant LEP

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 (S7.11EF)?

N/A

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

Conditions

Yes

Have draft conditions been provided to the applicant for comment?

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

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

The Capital Investment Value (CIV) of this application as outlined in a detailed cost report by a registered Quantity Surveyor is \$95,829,528 (excluding GST).

The Sydney Western City Planning Panel is the determining body as the CIV of any value of any future development proposed with the Concept DA and Stage 1 of the development is over \$30 million, pursuant to Schedule 6 of the *State Environmental Planning Policy - SEPP (Planning Systems) 2021*.

1.2 The proposal

The subject Stage 1 DA and the Concept DA are being considered for determination concurrently and if this application is approved, it will provide conditions of the concept DA that are to be met for any future later stages of the overall master plan.

The application seeks consent for a concept DA for the construction of a cemetery to be known as 'River Gardens Cemetery' to be carried out over nine (9) stages, including mausoleums, crematoria, chapel, hall, gatehouse, administration buildings, café, carpark, access roads, landscaping, earthworks and flood management works. Stage 1 of the proposed development, which is the subject of this application, is for the demolition of existing structures, bulk excavation and flood mitigation works for the entire site, construction of 4 x pads and access road for Pad 1 (north eastern side of the site), administration buildings, crematoria, wastewater treatment and car park for Pad 1.

1.3 The site

The subject site is identified as Lot 1 in DP 776645, being 1290 Greendale Road, Wallacia. The site is zoned as RU1 Primary Production, pursuant to the Liverpool Local Environmental Plan (LLEP) 2008.

The site is irregularly shaped with a total area of approximately 734,600m² (approximately 73.46ha). The subject site has a primary frontage of approximately 824m to Greendale Road (to the east) and W1 zoned western rear boundary of approximately 650m, which abuts the Nepean River.

1.4 The issues

The design and planning issues are identified as follows:

i) Flooding Impact

The proposal fails to achieve the objectives and comply with Council's floodplain management requirements specified in the LDCP 2008 and LLEP 2008. Council's flood engineer has raised concerns on a number of issues of the applicant's submission in relation to hydrology, hydraulics and floodway extent and therefore insufficient information has been submitted with the application to determine the full extent of flood impact on the proposed development. Consequently, the proposal fails to respond to the known site constraints in its built form (levels, building footprint and height) and amount of earthworks related to Stage 1 (Pads 1-4) and to enable a detailed and complete assessment of the concept master plan for the site.

This issue that emerged from the referral has been discussed in Section 6.8 (Referrals) of this report and has not been resolved at the time of this report.

ii) Increased building height

Part 5 of LDCP 2008 limits all non-residential buildings to have a maximum building height of 8.5m. The proposal seeks a variation to the maximum building height of 8.5m with an increased building height up to 38m above the ground level. The LDCP 2008 stipulates that *"the above heights (8.5m) are a guide only, and a merit based assessment will occur for all development above 8.5m for a non-residential building"*.

The applicant has submitted a written request for this DCP variation that includes justification for the breach in building height due to the ground level changes and extent of earthworks required as a result of the flood mitigation works.

However, the non-complaint building height of mausoleums, chapel and crematorium cannot be considered and supported at the time of this report for the following reasons:

- The subject application is for the Concept DA and Stage 1 of the development. Importantly, Stage 1 (subject of this application) is proposed to establish the development footprint for the entire site resulting from the proposed bulk excavation and associated flood mitigation works.
- Insufficient information has been submitted with the application whereby Council's Flood Engineer has not completed their review and requested additional information relating to hydrology, hydraulics and floodway extent at pre and post development conditions. This information is required to determine the full extent of flood impact on the subject site and surrounding area.
- As a result of the abovementioned outstanding information to enable a detailed and complete assessment of the Concept DA and Stage 1, it is unclear as to whether the proposal is designed to respond to the known site constraints with flooding in its built form, such as the final levels, building footprint and building height that are subject to further changes to satisfy the flood mitigation works required to facilitate the proposal.
- In the absence of a detailed and complete flood study that conforms with the LDCP 2008, the exact height of buildings as well as footprint and levels (ground levels and ridge levels) cannot be quantified and therefore the DCP variation to the maximum height for mausoleums, chapel and crematorium cannot be considered.
- Despite the limitation of concept DAs, the building envelope and massing of these structures forming part of the Concept DA is critical to set the parameter of the overall

masterplan as the major issues relate to the protection of rural setting and vegetation and site suitability due to the flooding risk and the scale of the development.

1.5 Exhibition of the proposal

The development application was exhibited between 20 January 2021 and 18 February 2021 and it was further extended to 18 March 2021, in accordance with the Liverpool Community Participation Plan. In addition, a community consultation meeting for the interest of local residents was held on 17 June 2021.

Fifty six (56) objections were received and raised the following concerns in relation to the proposed development, raising the following matters:

- Flooding, impact on the Nepean River and surroundings and potential health risk.
- Vehicular access, traffic and parking.
- Compliance with the relevant provisions of Act, EPIs and DCP.
- Suitability of the site.
- Scale, heritage character and rural character of the area and undesirable precedent for the area.
- Air pollution and air quality.
- Environmental impacts and environmental management consideration.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 197 and is recommended for refusal for the reasons provided herein.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is identified as Lot 1 in DP 776645, being 1290 Greendale Road, Wallacia. The site is located within the Western Sydney Priority Growth Area and is zoned as RU1 Primary Production, being located between RU1 Primary Production Area to all sides and Nepean River, which is zoned W1 Natural Waterways along the western boundary being the western most edge of the Liverpool Local Government Area (LGA).

The site is irregularly shaped with a total area of approximately 734,600m² (approximately 73.46ha). The subject site has a primary frontage of approximately 824m to Greendale Road (to the east) and W1 zoned western rear boundary of approximately 650m, which abuts the Nepean River. The site is intersected by Duncan's Creek across the north eastern front portion of the site containing riparian vegetation and fauna habitat. The site also contains approximately 78,800m² (7.88ha) of vegetation communities consisting various planted native vegetation.

Currently the site is largely vacant with a residential dwelling on the north-eastern corner of the site. There are several outbuildings, including a dairy shed, multiple silos and paddocks, which appear to have been for agricultural purposes such as growing crops (oats) and grazing cattle on the site. The site is bounded by similar agricultural sites that contain dwelling houses and ancillary structures on large rural allotments along the Nepean River.

The site benefits from vehicular access from Greendale Road via an unpaved access road which services the existing residential dwelling on the north-eastern corner of the site and continues across Duncan's Creek in the mid-section of the site. The site is only accessible from Greendale Road.

The site is located on the Nepean River flood plain and is affected by flooding from both Nepean River and Duncan's Creek. The site is located among undulating topography that generally slopes towards the west of the site being the Nepean River and has average grades of 5 to 10 degrees. An aerial photograph of the subject site is provided in **Figure 1** below.



Figure 1: Aerial photograph of the Site

2.2 The locality

The subject site is located within the Western Sydney Growth Area and half-way between suburbs Luddenham and Warragamba being approximately 4km to the south of Wallacia. The western boundary of the agricultural lots on this side of Greendale Road border the Nepean River, which provide vegetated buffer to the Wollondilly Council Area on the western side of Nepean River.

The site is located approximately 3.7km directly south of Wallacia Town Centre and 6km west of the Western Sydney Airport – Badgerys Creek Aerotropolis. The road network surrounding the site includes:

- Greendale Road, a two-lane minor collector road (with no kerb and guttering) that runs north-south connecting to Park Road 2km to the northeast of the site and Bringelly Road 12km to the south east of the site;
- Park Road, a two-lane collector road that runs in an east-west direction connecting to The Northern Road and Mulgoa Road;
- The Northern Road, a State Road and north-south arterial road linking between Penrith and Narellan; and

- Bringelly Road, a State Road and arterial road linking between Leppington and The Northern Road and is located approximately 12km to the southeast of the site.

The description of surrounding developments is extracted from the Statement of Environmental Effects (SEE) and summarised in the table below:

Surrounding Development	Land Use
North – 1300 Greendale Rd	<i>The property located directly to the northern boundary contains a deer farm known as ‘Steigerwald Deer’ and includes a single dwelling and associated sheds.</i>
East – 639 Greendale Rd	<i>The property located to the east of the subject site (beyond Greendale Road) contains approximately 120 acres of rural land including a single dwelling and associated sheds / workshop. The workshop located to the rear (east) of the dwelling contains a motorcycle repair shop trading as ‘Shock Treatment’.</i>
South – 1176 Greendale Rd and 46 Vickery Rd	<i>To the south, directly opposite the site, contains two lots of rural land known as No. 45 Vickery Road and No. 1176 Greendale Road. Each lot is accessed off Vickery Road and contains grazing land for cattle including a dwelling and associated implement / storage shed.</i>
West – Nepean River	<i>Immediately to the west of the site is the Nepean River, which extends to south and east of the Sydney Basin. The river flows northward past the site towards Wallacia where it is joined by the Warragamba River. The river continues to flow northward towards Penrith and ultimately converges to the Hawkesbury River at Richmond.</i>

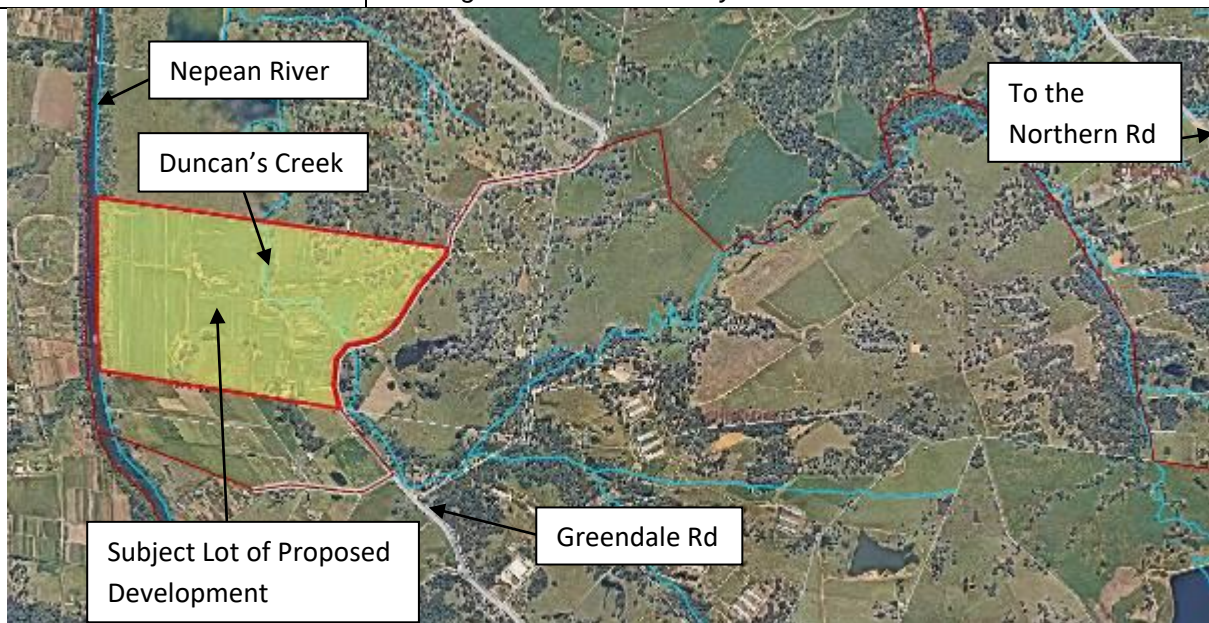


Figure 2: Aerial photograph of the locality

2.3 Site affectations

The subject site has a number of constraints, which are summarised in the table provided below:

Potential Site Constraints:	Site Constraints:
<ul style="list-style-type: none"> • Bushfire 	<ul style="list-style-type: none"> • Bushfire prone.

<ul style="list-style-type: none"> • Flooding • Environmentally Significant Land • Threatened Species/ Flora/ Habitat/ Critical Communities • Aircraft Noise • Flight Paths • Significant Vegetation 	<ul style="list-style-type: none"> • Flood inundation (indicative extent of inundation for 1% AEP and PMF. Flood planning area (1% AEP flood plus 0.5m freeboard). • Environmentally significant land. • Identified on LEP mapping as: <ul style="list-style-type: none"> - containing Environmentally Significant Land - having regional core conservation significance - containing an area of remnant native vegetation • Identified on LEP mapping as containing 2 riparian corridors. • Identified as potentially containing moderate saline soils. • Identified as being of or containing Aboriginal/ cultural heritage. • Affected by Aircraft Noise (20-25 ANEF and 500m buffer of current ANEF contours)
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2.3.1 Bushfire Prone Land

The site is mapped as being bush fire prone. The application was submitted with a Bushfire Protection Assessment, prepared by Travers Bushfire and Ecology, dated November 2020 (REF: 20MKD03B).

The application was referred to the Rural Fire Service (RFS). The RFS has raised an objection to the proposal, subject to conditions as set out in its advice letter dated 3 August 2021.

2.3.2 Flood Affection

The site is located on the Nepean River floodplain and affected by flooding from Nepean River and Duncan Creek. The application was submitted with a Flood Study, prepared by GHD, dated March 2021.

A need has been identified to require further assessment of flood study to determine flood risk for pre and post development conditions and detailed concept design with consideration to flood risk throughout the site. This issue that emerged from the referral has been discussed in Section 6.8 (Referrals) of this report and has not been resolved at the time of this report.

2.3.3 Environmentally Significant Land

The site is mapped as Environmentally Significant Land and is subject to clause 7.6 of the LLEP 2008. Whilst the entire site is 73.46 ha, the amount of native vegetation is estimated at 7.87 ha (relative to the siting of Duncan Creek and the Nepean River), approximately 0.65 ha of this will be directly impacted through the construction of internal roads, buildings and burial areas.

2.3.4 Riparian Corridors

The subject site is bounded by the Nepean River to the west and is intersected by Duncans Creek across the northeastern front portion of the site. The proposed development, particularly any activities in the vicinity of the waterway, is identified as being an Integrated Development which requires approval from the Natural Resources Access Regulator (NRAR) under the Water Management Act 2000. NRAR has reviewed the application and has issued General Terms of Approval.

2.3.5 Heritage

The subject site is identified as potentially containing Aboriginal/ cultural heritage due to proximity of the site to the water bodies. The application has been referred to Council's Heritage advisor who has raised no objection to the proposal, subject to conditions.

2.3.6 Aircraft Noise

The subject site is located within the 140 and 210 AHD Obstacle Limitation Surface (OLS) Map of the SEPP (Precincts – Western Parkland City) 2021 and is located in the 20 ANEC/F (aircraft noise).

3. BACKGROUND

3.1 Timeline of the Assessment

- i) A pre-DA meeting (PL-34/2020) was held on 2 June 2020.
- ii) The subject application (DA-1059/2020) was lodged on 15 December 2020.
- iii) Application was exhibited between 20 January 2021 and 18 February 2021 and it was further extended to 18 March 2021, in accordance with the Liverpool Community Participation Plan. Fifty six (56) submissions were received in relation to the proposed development.
- iv) First additional information letter was sent out to the applicant on 18 February 2021.
- v) Second additional information letter was sent out to the applicant on 5 March 2021.
- vi) Third additional information letter was sent out to the applicant on 19 March 2021.
- vii) Application was briefed with the SWCPP on 23 April 2021.
- viii) Council resolved at the 24 February 2021 meeting to prepare a Planning Proposal to prohibit cemeteries and crematoria in Wallacia.
- ix) Council resolved at the 26 May 2021 meeting to forward the Planning Proposal to prohibit cemeteries and crematoria in Wallacia to the DPIE for a Gateway Determination.
- x) A community consultation meeting for the interest of local residents was held on 17 June 2021.
- xi) The Planning Proposal to prohibit cemeteries and crematoria in Wallacia was rejected by the DPIE on 12 July 2021 for the following reasons:

- *The proposal is inconsistent with the Greater Sydney Region Plan and Western City District Plan, in particular Planning Priority W3 which identifies the need for additional land for burials and cremations in Greater Sydney;*
- *There is insufficient evidence to demonstrate the supply of cemeteries and crematoria will not be impacted;*

- *There is insufficient evidence to demonstrate that cemeteries and crematoria will adversely impact scenic and rural values of Wallacia; and*
- *It will create an undesirable precedent that restricts the land available in Greater Sydney for cemetery and crematoria purposes.*

- xii) Council received additional information and amended architectural plans received on 13 October 2021.
- xiii) Correspondence was sent to the applicant that requested a peer review by a third-party flood engineering consultant due to the issues raised by Council's Flood Engineering section on 12 November 2021.
- xiv) The Application was briefed with the SWCPP for the second time on 15 November 2021.
- xv) Amended flood study issued to the external peer reviewer on 9 December 2021.
- xvi) Peer review by Council's flood consultant completed and additional information regarding the flood study was requested on 24 January 2022.
- xvii) In response to the above, Council received the applicant's response to the findings of the peer reviewer on 4 March 2022.
- xviii) Council's Flood Engineer has reviewed the applicant's response to the peer review and completed their referral on 31 March 2022 requesting further information.

3.2 Related History

Council concurrently had a Planning Proposal with the effect of prohibiting cemeteries and crematoria in Wallacia, lodged with the Department of Planning and Environment (DPIE). This planning proposal was rejected by the DPIE on 12 July 2021.

At the time of the DPIE's decision, Council was informed that *"there is a shortage of burial space as existing major Crown cemeteries will be unable to accommodate new burials within 12 years. As a result, DPIE is proposing changes to the SRD SEPP for larger cemeteries to be considered as State Significant Development (SSD). This would apply to new or expanded cemetery development proposals with at least 20,000 burial plots (2 years' worth of supply)"*.

3.3 Sydney Western City Planning Panel (SWCPP) Briefing

A final SWCPP briefing was conducted on 15 November 2021. For clarity purposes, the key issues raised by the SWCPP and discussed at the meeting are outlined in the table below, along with the applicant's response in the corresponding column:

Sydney Western City Planning Panel (SWCPP) Briefing	
Comments	Response
(b) <i>The substantial size of this proposed facility will require consideration of its likely changes to the character of the area. While the use is currently permissible in the zone, it is unlikely that a facility of this size was anticipated, and the Rural</i>	<p>Applicant's response:</p> <p><i>A key objective of River Gardens Cemetery has been to design a memorial park where burial areas and memorialisation are visually subordinate to the open space character of the site and surrounding area relative to the proposed earthworks.</i></p> <p><i>The site has been designed to respect the existing land</i></p>

<p><i>RU1 zone objectives will need careful assessment together with the public interest under s.4.15. While cemeteries are a traditional use on the outskirts of a rural township, they are rarely seen on this scale involving large buildings.</i></p>	<p><i>uses within the zone via the siting of buildings and associated structures away from site boundaries in accordance with the applicable setback controls.</i></p> <p><i>The more prominent burial structures (i.e. Mausoleums) are located predominantly within the valley floor and out of the direct line of sight of Greendale Road. Vegetation and earthworks are used as screening between areas and from internal and external roads.</i></p> <p><i>Greendale Road will be retained by way of the proposal. Additional planting within the site including native vegetation will be provided in accordance with the Vegetation Management Plan (VMP).</i></p> <p>Council's response:</p> <p>As stated in the 'LEP' section 6.1(e) of the report, the proposal is considered to be inconsistent with the zone objectives relating to minimisation of conflict between different land use and preservation of bushland, wildlife corridors and natural habitat due the outstanding flood issue.</p>
<p><i>(c) Council is to check whether the Coastal SEPP and the Coastal Management Act are triggered, noting the special provisions for constitution for this Panel in that regard.</i></p>	<p>Council's response:</p> <p>It is noted that the site is not located on the Land Application Map of the Coastal SEPP and therefore it is not applicable or relevant to the proposal.</p>
<p><i>(d) The extensive earthworks associated with the flood mitigation would seem to have significant potential to altering the flood characteristics of the locality, particularly if they are used as a precedent on other comparable sites in the area.</i></p> <p><i>It would seem that the cumulative impacts of the earthworks for all stages of the development should be considered as part of the assessment of the Masterplan, not just Stage 1.</i></p> <p><i>It may be that the impacts of the earthworks across the site will have riparian impacts well beyond the distance invoked by the Controlled Activity Approval referral requirements such as to interest NRAR. Such substantial earthworks will need to be justified.</i></p>	<p>Council's response:</p> <p>The full extent of earthworks for flood mitigation and likely alteration of the flood characteristic of the locality are unknown at the time of this report and the proposal cannot be supported at this stage.</p> <p>NRAR has reviewed the application and has issued General Terms of Approval (GTA).</p>

(e) There is no LEP height control, but the DCP height limit of 8.5 metres would ordinarily seem appropriate for a rural location.

This application which proposes a height of well more than double the DCP control would require strong justification, noting that the DCP limit can be varied, but still must remain the "focal point" of the Panel's assessment (Zhang v Canterbury City Council [2001] NSWCA 167, 51 NSWLR 589 noting the changes to the EP&A Act since the Court of Appeal handed down that decision).

The potential for approval of this development to undermine the DCP control on height will also be relevant (see Stockland Development Pty Limited v Manly Council [2004] NSWLEC 472; (2004) 136 LGERA 254). The Panel suggested that the only way to justify the proposed extent of non-compliance is for the Panel to be convinced that the site area and large setbacks render the standard of little relevance.

Applicant's response:

"As previously stated, within the context of the proposed alterations to the levels of the site coupled with landscaped screening the proposed buildings heights are considered acceptable and will not adversely impact the rural setting.

In particular, the more prominent burial types (Mausoleums) will be out of the direct line of sight of Greendale Road and adjoining site boundaries due to their siting at the new valley floor.

Excerpt from the applicant's email correspondence:

*"The heights of the Mausoleum in our calculations are **NOT** 400%. The height of 8.5m under the DCP is from existing NGL to 8.5m, because of the flood mitigation, we are finishing the Mausoleums at RL 75.4, we have various NGL that structures rest on from RL 37.79 to RL 33.42.*

Once these are calculated the 8.5m needs to be deducted to form the height and this will give you the amount which is non-compliant with the guidelines of the DCP.

In relation to the case law that you have referenced, in Zhang, once 12 months trial period was finalised in 2014 the case went back to the LEC NSW and was successful. The DCP was a guide only and not referenced further. Zhang v Canterbury City Council [2004] 10449 of 2004.

In relation to Stockland, the case did not turn on the DCP, but on the LEP that Manly Council had amended for the site with community consultation and the vendor of the site. Point 82 of the judgement is clear on what the case turns on and its focal point is the LEO and how it came about prior to Stockland's purchase of the site.

We note that we respect the DCP and its guidance but due to the flood heights that we must work to it, it is not possible to comply with the DCP.

If we had extended the pads to conceal the structures, then this would not be an issue that is at the front of this discussion. The structures are completely concealed within the property and not visible from surrounding properties.

In the new rezoning of agricultural and surrounding the new Western Sydney Airport, the heights are far more excessive than what we are proposing. These structures within the agricultural zone will dominate the landscape once completed.

This is totally different on our case, as the mausoleums are sited within a valley and protrudes 8.5m on top of the pads which gives an artistic and well-articulated farm/silo

	<p><i>like fell which is intended.</i></p> <p><i>Additionally, we must remember that these stages are in future years anticipated to be some 60 to 90 years away from construction.”</i></p> <p>Council’s response:</p> <p>Insufficient information has been submitted to determine the full extent of flood impact on the site and surroundings. For this reason, the exact amount of cut, fill and flood mitigation works cannot be quantified and likely changes to the building footprint, levels and building heights to consider this DCP variation at the time of this report.</p>
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4. DETAILS OF THE PROPOSAL

The application seeks consent for a concept DA for the construction of a cemetery to be known as ‘River Gardens Cemetery’ to be carried out over nine (9) stages, including mausoleums, crematoria, chapel, hall, gatehouse, administration buildings, café, carpark, access roads, landscaping, earthworks and flood management works. Stage 1 of the proposed development, which is the subject of this application, is for the demolition of existing structures, bulk excavation and flood mitigation works for the entire site, construction of 4 x pads and access road for Pad 1 (north eastern side of the site), administration buildings, crematoria, wastewater treatment and car.

In detail, the proposed development is to be carried out as follows:

Concept DA/ Master Plan

- Construction of a cemetery to be known as ‘River Gardens Cemetery’, including six (6) mausoleums, crematoria, chapel, hall, gatehouse, administration buildings, café/flowerist, on-site parking, access roads and associated on-site parking, bulk earthworks and associated flood management works.
- The proposal is to contain the following burial types over nine (9) stages:
 - Inground burial – 120,000 plots;
 - Six (6) mausoleum buildings – 550,000 plots; and
 - Crematorium walls – 100,000 plots.



Figure 3: Indicative Masterplan



Figure 4: Indicative Landscape Masterplan

Stage 1 – north eastern side of the site (subject of this application)

- Demolition of the existing structures on the site.

- Construction of Pads 1-4 (new landform with raised areas above the 1 in 100 AEP Nepean River floor level, as a result of proposed earthworks). Pad 1 is located east of Duncan's Creek, Pads 2 to 4 are located west of Duncan's Creek. Refer to **Figure 5** below.

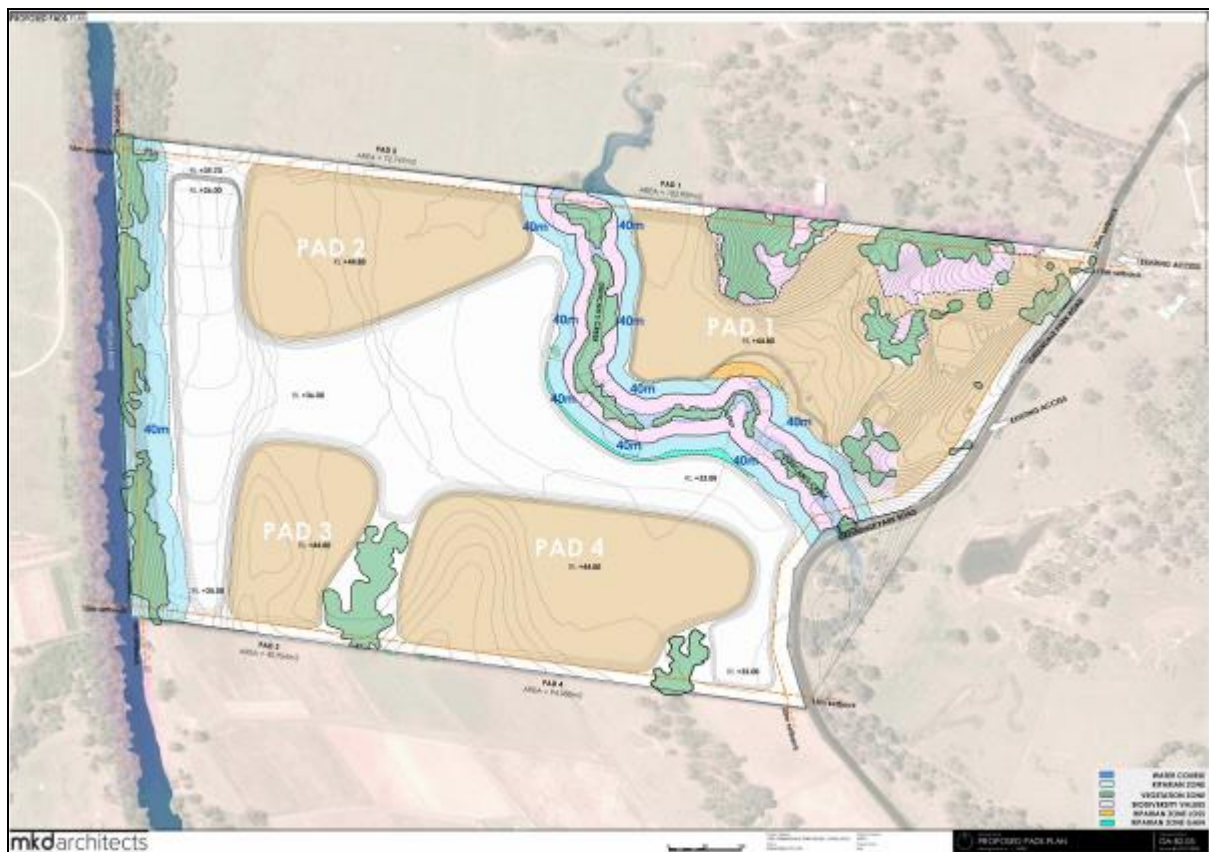


Figure 5: Indicative Pads Plan

- Construction of a slip lane at the Greendale Road Entrance (northeastern side of the Greendale Road frontage) and Pad 1 loop road.
- Construction of Pad 1 car park and 35,000 inground burial plots with landscaping.
- Construction of related services and ancillary structures including flood wall, valley earthworks, on-site wastewater treatment.
- Construction of a Gatehouse (approximately 500m² GFA and 4.4m in height) and administration building (approximately 565m² GFA and 7.2m – 7.9m in height).
- Construction of a Crematorium (approximately 1,000m² GFA and 4.1m – 15.8m (stack chimney) in height). Refer to **Figures 6-8** below.
- Bulk excavation and flood mitigation works (e.g. flood wall, valley earthworks and Pads 1-4) for the entire site.
- The description of earthworks and flood management proposed with the development is extracted from the Statement of Environmental Effects (SEE) and summarised in the table below:

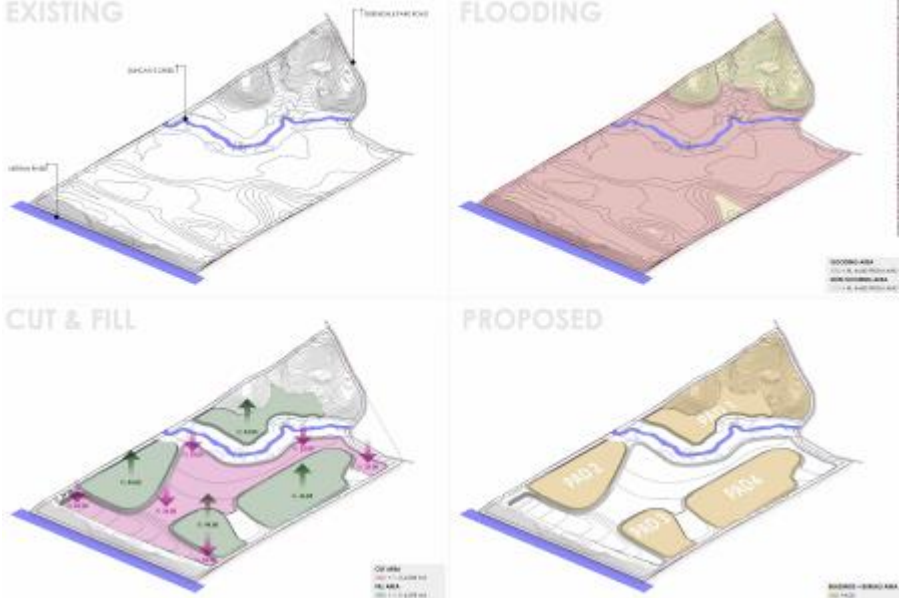
<p>Earthworks</p> <p>New Pads to be formed by substantial cut and fill within the site (fill volumes will be fully services by the cutting volume proposed (cut area = 1,226m³ and fill area - 1,226m³)</p>	<p>Proposed</p>  <p>Pad 1 will comprise inground, traditional burial plots and vertical stacking cremation walls. Pad 1 will also contain ancillary buildings including the chapel, crematorium, gatehouse and function facilities.</p> <p>Pads 2 to 4 will comprise inground, traditional burial plots and vertical stacking cremation walls.</p> <p>To offset the loss of floodplain storage and provide new fill for the pads, the centre of the site will contain an excavated depression area. This area will contain five (5) circular flood proof Mausoleum structures (Type 1).</p> <p>A larger Mausoleum structure is located between Pads 2 and 3 and forms part of a flood wall.</p> <p>The central depressed area (i.e. Valley floor) will accommodate roads, paths and landscaping which are designed to experience minimal damage due to flood inundation.</p>
<p>Flooding/ Stormwater</p>	<p>Proposed</p> <p>The depressed flood compensatory storage has been sized to balance the cut and fill within the site relative to the 1:100 AEP flood event (plus 0.5m) of the Nepean River.</p> <p>All buildings across the site will be sited to meet the minimum levels required for the 1:100 AEP Flood event plus 0.5m (i.e. 45.3 AHD).</p> <p>The Mausoleum between Pads 2 and 3 provides a flood barrier to control and manage overflow of the Nepean River onto the Duncan Creek floodplain. The building will extend from Pads 2 and 3 via the construction of two (2) walls. The walls will have an overflow level of 44.45m AHD.</p> <p>The depressed flood compensatory storage area west of Pad 2 and 3 will be sited to maintain the existing berm to the northern site boundary.</p>



Figure 6: Indicative Staging/ Site Analysis Plan (Stage 1)



Figure 7: Indicative Stage 1 Plan



Figure 8: Perspectives (Administration - Stage 1 and Café/Function – Stage 2 & 3)

Stages 2-9 (subject to future Development Application)

- **Stage 2** - Construction of a Café (approximately 500m² GFA and 7.2m – 7.9m in height. Refer to **Figure 8** above) and chapel (approximately 480m² GFA and 6.1m – 17.81m in height). Refer to **Figure 9** below.
- **Stage 3** - Construction of a Function Hall (approximately 435m² GFA and 7.2m – 7.9m in height). Refer to **Figure 8** above.
- **Stages 4-9** - Construction of six (6) mausoleums, including 5 x Type 1 (5 storey) and 1 x Type 2 (4 storey) (approximately 22.41m – 38m in height).
- Refer to **Figures 9-15** below.



Figure 9: Perspectives (Chapel - Stage 2)



Figure 10: Perspectives (Mausoleum Type 1 - Stages 4-9)



Figure 11: Perspectives (Mausoleum Type 2 - Stages 4-9)



Figure 12: Indicative Stage 2 Plan



Figure 13: Indicative Stage 3 Plan



Figure 14: Indicative Stage 4 Plan

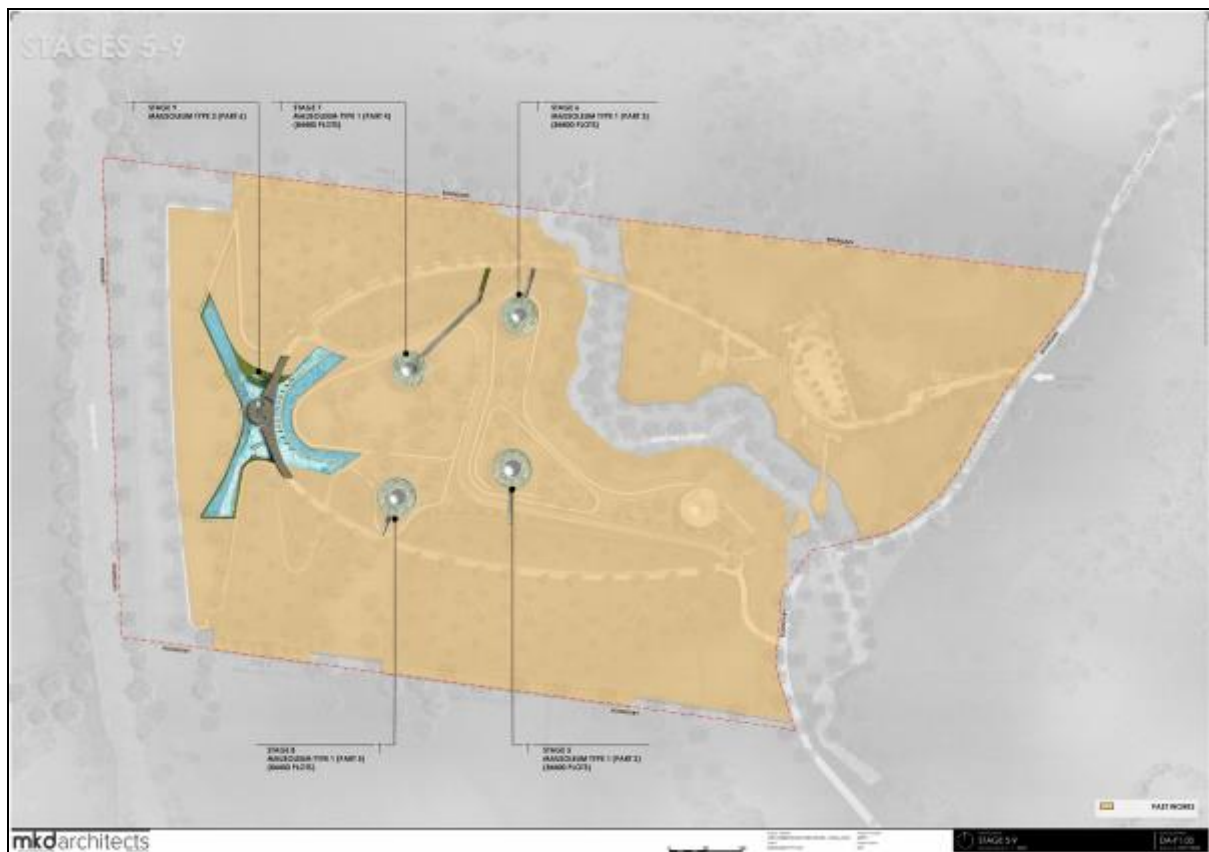


Figure 15: Indicative Stages 5-9 Plan

A summary table of the proposed development (Stages 1-9) and development statistics is provided below:

Element	Proposed	Total
Car Parking <ol style="list-style-type: none"> Administration Function Hall Chapel (place of worship) Café/ Florist Accessible 	<p>Stage 1: Gatehouse (4 spaces + 1 accessible) and Main car park (112 spaces + 13 accessible), and</p> <p>Stage 2: Chapel (7 spaces + 1 accessible) =</p> <p>Total 123 spaces</p>	<p>At-grade parking throughout the site, including gatehouse and main car park for Stage 1.</p> <p>123 (incl. 15 accessible), and potential parallel parking throughout the site at later stages to provide up to 400 to 500 parking spaces (one side of the access road system).</p>
Gross Floor Area	<p>Stage 1 = 500m² (Gatehouse) + 565m² (Administration) + 1,000m² (Crematorium) = 2,065m²</p> <p>Stage 2 = 500m² (Café)</p> <p>Stage 3 = 480m² (Chapel)</p>	<p>Stage 1: = 2,065m²</p> <p>Stage 2-3 = 980m²</p> <p>A total gross floor area of 3,045m² (as shown on the submitted plans) is proposed over 9 stages.</p>
Height of Buildings	Stage 1 = 4.4m (Gatehouse),	--

Element	Proposed	Total
	<p>7.2m-7.9m (Administration) & 4.1m-15.8m (stack) for Crematorium</p> <p>Stage 2 = 7.2m-7.9m (Café) & 6.1m-17.81m (Chapel)</p> <p>Stage 3 = 7.2m-7.9m (Function Hall)</p> <p>Stages 4-9 = 6.1m-17.81m (Mausoleums)</p>	
Number of Burial Plots:	<p>Stage 1: 35,000 (inground)</p> <p>Stage 2: 25,000 (inground)</p> <p>Stage 3: 60,000 (inground) + 50,000 (cremation walls)</p> <p>Stage 4: 84,400 (Mausoleum Type 1)</p> <p>Stage 5: 84,400 (Mausoleum Type 1)</p> <p>Stage 6: 84,400 (Mausoleum Type 1)</p> <p>Stage 7: 84,400 (Mausoleum Type 1)</p> <p>Stage 8: 84,400 (Mausoleum Type 1)</p> <p>Stage 9: 133,000 (Mausoleum Type 2)</p>	A total of 775,00 burial plots are proposed on site over nine (9) stages.
Setbacks	Min. 40m from the top of the bank relating to both Duncan's Creek and Nepean River, Min. 20m from Greendale Rd and Min. 15m from any side boundary.	--
Vehicular Access	<p>Entry: western driveway for ground floor units and western up-ramp for first floor units, and</p> <p>Exit: eastern driveway for ground floor units and eastern down-ramp for first floor units.</p>	--
Operational and Signage Details	No operational and signage details are proposed at this stage and are subject to future DAs	--

Table 1: Summary table (Stages 1-9).

No approval for Stages 2-9 is considered as part of this application; the application solely relates to the overall concept design and Stage 1 of the development. Future Stages 2-9 of the development will be subject to further approval by Council or DPIE (if the intended changes to the SRD SEPP are adopted to consider larger cemeteries as State Significant Development (SSD)).

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- Liverpool Local Environmental Plan (LLEP) 2008

Draft Environmental Planning Instruments (EPI's)

- No draft Environmental Planning Instruments apply to the site.

Development Control Plans

- Liverpool Development Control Plan 2008 (LDCP 2008)
 - Part 1: General Controls for All Development
 - Part 5: Part 5 – Development in Rural and E3 Zones

Contribution Plans

- Liverpool Contributions Plan 2009 does apply to the development.

Other Plans and Policies

- Crime Prevention through Environmental Design (CPTED) principles
- Cemeteries and Crematoria NSW – Strategic Plan 2015-2020

Provisions of Relevant Legislation (Commonwealth and State)

- Airport Act 1996
- Biodiversity Conservation (BC) Act 2016
- Cemeteries and Crematoria Act 2013

5.2 Zoning

The site is zoned RU1 Primary Production zone pursuant to Liverpool Local Environmental Plan (LLEP) 2008 as depicted in **Figure 16** below.

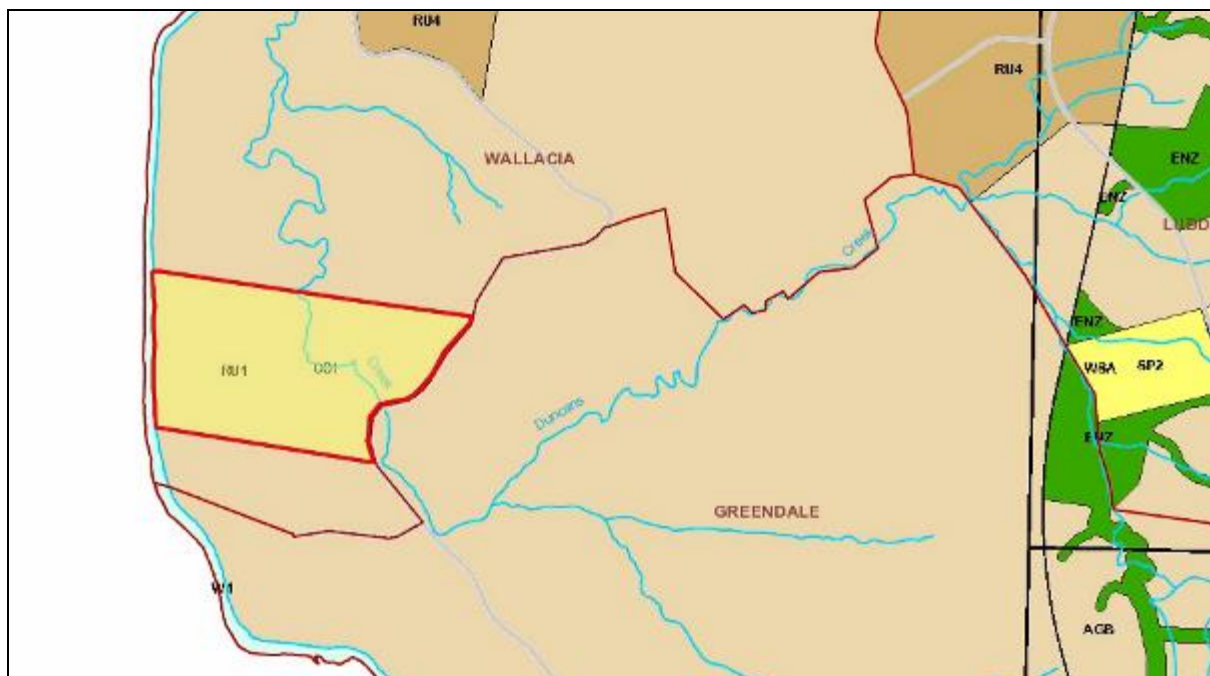


Figure 16. Extract of Liverpool LEP zoning map

5.2 Permissibility

The proposed development would be defined as “Cemetery” and “Crematoria” which are permissible land uses within the RU1 Primary Production zoning. The ancillary structures such as the chapel, café/florist, function hall, administration building, and gatehouse are not proposed to operate independently of the overarching cemetery land use.

5.3 Airports Act 1996

The Airports Act 1996 establishes the regulatory arrangements which apply to airports with regards to the interests of airport users and the general community. Part 12 – Protection of Airspace Around Airports of the Airports Act 1996 is considered applicable and relevant to the development which addresses the requirements of prescribed airspace and activities that result in intrusions into the prescribed airspace (known as controlled activities).

Comments have been obtained from the Western Sydney Airport Corporation, who have raised no objection to the proposal, subject to conditions.

Refer to discussion in section 6.1(d) – SEPP (Precincts – Western Parkland City) 2021 (also known as Aerotropolis SEPP) regarding the prescribed airspace relating to the Western Sydney Airport.

5.4 Biodiversity Conservation (BC) Act 2016

The Biodiversity Conservation Act replaces the related parts of the *Environmental Planning and Assessment Act 1979* in regard to impact assessment of listed threatened species and communities and details the Biodiversity Offsets Scheme that replaces Biobanking.

In relation to impacts upon threatened species and communities, the Biodiversity Assessment Report (BAR) submitted with the Development Application (prepared by Travers Bushfire and Ecology, dated April 2021 (REF: 20MKD03BDAR)) revealed that:

*“In respect of matters required to be considered under the EP&A Act and relating to the species / provisions of the BC Act, Three (3) threatened fauna species White-bellied Sea Eagle (*Haliaeetus leucogaster*), Southern Myotis (*Myotis macropus*), and Eastern Coastal Free-tailed Bat (*Microsomus norfolkensis*), no threatened flora species, and two (2) threatened ecological communities (TECs), Cumberland Plain Woodland (CPW) and Riverflat Eucalypt Forest (RFEF), were recorded within the development footprint.*

The assessment of significant test in accordance with Section 7.3 of the BC Act concluded that the proposal will not have a significant effect on Cumberland Plain Woodland (CPW) and River flat Eucalypt Forest (RFEF) vegetation or other threatened biodiversity.

The proposed clearing of 0.63ha of vegetation (0.16ha PCT 835 (RFEF), 0.26ha PCT 849 (CPW), 0.23ha PCT 850 (CPW)) does not require offsetting under the Biodiversity Offsets Scheme due to the following:

- (1) The proposed clearing is less than the area threshold of 1ha.*
- (2) Clearing of native vegetation as indicated on the mapped Biodiversity Values Map has been avoided.*
- (3) The proposal will not cause a Significant Impact on threatened biodiversity.*
- (4) Furthermore, the revegetation forming part of the Vegetation Management Plan (VMP) will result in a net gain of 9.26ha of RFEF and 0.7ha of CPW to mitigate any impacts associated with clearing.*

The application was referred to Council’s Natural Environment who raised no objection to the proposal, subject to conditions requiring compliance with the works, activities and mitigation measures recommended in the BAR submitted, implementation and monitoring of the VMP, any tree removal to be examined by a qualified ecologist for presence of hollows or native nests of birds, and construction of permanent fences to protect, conserve and limit access to the bushland onsite as indicated in the VMP. Accordingly, no further consideration is required under the BC Act 2016.

5.5 Cemeteries and Crematoria Act 2013

The Act provides a mechanism for the regulation of the interment industry by the NSW Cemeteries Agency. Cemeteries and Crematoria NSW (CCNSW) is a statutory agency created under the Cemeteries and Crematoria Act 2013 to support and regulate cemetery and crematoria operators in NSW.

Cemeteries and Crematoria NSW (CCNSW) has reviewed the application and considered the application satisfactory. The following comments were received in their response:

“CCNSW is not a consent or concurrence authority under the Environmental Planning and Assessment Act 1979. However, CCNSW has reviewed the subject development application and provides comment in broad terms on the demand for interment space in the greater Sydney Region.

On 19 February 2021 the final review report of the Act was tabled in the NSW Parliament.

The review considered supply and demand for burial interments and planning considerations for new cemeteries in the Sydney metro area. The Review projected that all of the existing operational Crown cemeteries in Sydney will exhaust their currently available land in the next 12 (2032) years.

The review also noted key findings of recent previous studies into Sydney cemetery supply and demand. These studies also highlighted that land available for burials in existing cemeteries in Metropolitan Sydney is likely to be exhausted by 2047 with presale of interment rights meaning a need availability of interment rights will exhaust much earlier.

In October 2018, CCNSW released a report it commissioned into the contribution cemeteries make to both environmental and heritage values. The report Cemetery Land Use – Contribution to Environmental and Heritage Values Report may be found [here](#).

The report finds that cemeteries have many heritage, environmental and social values and are in line with current policy direction regarding land use for Sydney, including the Plan for Growing Sydney, the Sydney Green Grid and the Greater Sydney Region Plan. Cemeteries provide multi-functional use of land, both delivering a necessary public service of interment, but also many of the functions of open space that parks achieve including visual values and recreation, preservation of landform, Aboriginal cultural heritage, and protection of ecological communities of flora and fauna and green corridors.

These are in addition to the cultural, (post-European settlement) heritage, touristic and genealogical values particular to cemeteries.

Given this context, CCNSW is supportive of any new cemetery development proposal that is appropriately located which will provide much needed additional interment capacity to meet the future interment needs of the Sydney area”.

As per the above commentary from CCNSW, the proposal is considered to be consistent with the Cemeteries and Crematoria Act 2013.

5.6 Environment Planning and Assessment Act 1979

Section 4.22 Concept development applications – EP&A Act

This application has been submitted pursuant to Section 4.22 of the *Environmental Planning and Assessment 1979*:

- (1) *For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*

Comment: The subject application is concept development application with Stage 1 that sets out concept proposals for the development of the site and this application enables the lodgement of subsequent staged development applications for detailed proposals at a later date.

- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*

Comment: The application includes the first stage and involves future stages as part of the concept development application.

- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*

Comment: The applicant has requested the development application be treated as a concept application.

- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:*
(a) *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
(b) *the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

Comment: It is noted that the granting of consent for a concept development application does not authorise the carrying out of development unless otherwise specified by Section 4.22(4)(a) or (4)(b). This application is a concept development application with no physical works are proposed as part of the Concept. Stage 1 of the development does seek consent for works specific in the proposal description outlined above (See Section 4 of this Report). Subsequent development applications will be required to seek consent to carry out development on the site in Stages 2 to 9. A condition of consent will be included to reflect the requirements of this provision.

- (5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications*

Comment: Noted. An assessment of the likely impacts of the concept development application to the extent it is deemed appropriate under section 4.15 is provided below.

Section 4.46 Integrated Development – EP&A

Water Management Act 2000

As the site is situated within 40 meters of a watercourse, this triggers the integrated development provisions under Section 4.46 of the Environmental Planning and Assessment Act 1979 (Act). A referral was made to the relevant concurrence authority (i.e. Natural Resources Access Regulator (NRAR) under the Water Management Act 2000.

NRAR has reviewed the application and provided General Terms of Approval (GTA) requiring the submission of a controlled activity approval and general requirements: for

design of works and structures; erosion and sediment controls; on-going management and reporting requirements.

Protection of the Environment Operations Act 1997

Schedule 1 of Protection of the Environment Operations (POEO) Act 1997 lists facilities and the thresholds to which the NSW Environment Protection Agency (EPA) would provide a license to.

The EPA NSW has provided the following comments in relation to the application:

“Crematoria does not appear to be listed here (Schedule 1), and such it does not require an EPA licence, so the development is not “integrated”. Therefore, there is no need for council to refer it to the EPA.”.

As per the above commentary from the EPA, the proposal is considered to be consistent with the POEO 1997.

6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters of consideration as prescribed by Section 4.15 of the EP&A Act 1979 and the Environmental Planning and Assessment Regulation 2000 as follows:

6.1 Section 4.15(1)(a)(i) – Any Environmental Planning Instrument

(a) State Environmental Planning Policy (Planning Systems) 2021

The Capital Investment Value (CIV) of this application as outlined in a detailed cost report by a registered Quantity Surveyor is \$95,829,528 (excluding GST). The proposed development is best defined as “Cemetery, Crematoria and Ancillary Structures” within the definitions of the Liverpool Local Environmental Plan 2008 and as a ‘General Development over \$30 million’ under Schedule 6 of the SEPP.

(b) State Environmental Planning Policy (Biodiversity and Conservation) 2021

Clause 4.16 Savings Provision relating to Plans of Management of the SEPP (Biodiversity and Conservation) 2021 states “*A development application for development on land to which this Chapter applies that was lodged and not finally determined before the commencement of this Chapter is to be determined as if this Chapter had not commenced*”. As the Savings Provision only relates to plans of management, the application has been considered under Chapter 4 Koala Habitat Protection 2021 as follows:

Chapter 4 Koala Habitat Protection 2021 (formerly known as SEPP Koala Habitat Protection 2019)

This chapter of the SEPP is applicable and relevant to the development on the basis that the Liverpool LGA is identified in Schedule 2 of the SEPP (Local Government Areas).

The findings and conclusion of the Biodiversity Assessment Report (BAR) submitted with the Development Application (prepared by Travers Bushfire and Ecology, dated April 2021 (REF: 20MKD03BDAR)) noted the following:

“As stated within the Koala Management Protection Guideline – Appendix C – Part B ii), records within this distance should be considered after careful consideration of the broader landscape. With this in mind, the single record is located on the other side of the Nepean River which may be regarded as a considerable barrier to movement, particularly given that no records are otherwise known on the eastern side of the river within 5km. This combined with the distance of the record and the fragmented nature of other habitat on the eastern side of the river between the recorded location and the study area, is sufficient to conclude that the study area is not likely to support Core Koala Habitat, based on records.

A Koala Assessment Report and associated development design criteria will therefore not be required.”

Council's Natural Environment has reviewed the BAR and advises that the proposal will be satisfactory subject to conditions. No further consideration of this SEPP is considered necessary.

Chapter 9 Hawkesbury-Nepean River (Formerly known as SREP Hawkesbury-Nepean River No 20)

The subject land is located within the Hawkesbury Catchment and therefore Chapter 9 of the SEPP applies to the application.

Chapter 9 of the SEPP generally aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

When a consent authority determines a development application, planning principles are to be applied (Part 9.2 Section 9.4). Accordingly, a table summarising the matters for consideration in determining development applications (Section 9.4 and Section 9.5), and compliance with such is provided below.

Clause 9.4 General Planning Considerations	Comment
(a) the aims of this plan,	The plan aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.
(b) the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy	The strategies are applied to this planning assessment in the table under Clause 9.5.
(c) whether there are any feasible alternatives to the development or other proposal concerned	No other feasible alternatives have been provided for assessment.

(d) the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored	A stormwater concept plan and flood study were submitted and reviewed by Council's development and floodplain engineers. The proposal is considered unsatisfactory due to the unresolved flood issue and insufficient information to determine the full extent of flood impact on the proposal and surrounding properties.
Clause 9.5 Specific Planning Policies and Recommended Strategies	Comment
<ul style="list-style-type: none"> - Total catchment management - Environmentally sensitive areas - Water quality - Water quantity - Cultural heritage - Flora and fauna - Riverine scenic quality - Metropolitan strategy 	The concept development application and supporting technical reports (Flood Study, Stormwater Concept plans, Water and Waste Water Assessment, BAR, VMP, Contamination and Waterways Constraints Assessment) have been assessed against these matters by Council's referral officers and peer reviewer. The proposal is considered unsatisfactory due to the unresolved flood issue and insufficient information to determine the full extent of flood impact on the proposal and surrounding properties. See further discussion in referrals assessment (Section 6.8 of this Report).

(c) State Environmental Planning Policy (Resilience and Hazards) 2021

The consolidated SEPP (Resilience and Hazards) 2021 transfers the former SEPPs into chapters of the consolidated SEPP without any amendment to the former SEPPs outlined below (other than renumbering and changes to consequent on the consolidation).

Chapter 2 Coastal Management (formerly known as SEPP (Coastal Management) 2018)

The site is not located on the Land Application Map of the Coastal SEPP and therefore it is not applicable or relevant to the proposal.

Chapter 3 Hazardous and Offensive Development (formerly known as SEPP33)

Chapter 3 of the SEPP prescribes a statutory process associated with the hazardous and offensive development including storage. It is noted that the crematorium will be fuelled by LPG gas tanks. However, storage of above ground LPG will not exceed 10 tonnes to ensure "...the development is not potentially hazardous on the basis of that material, alone" as prescribed in the "NSW Government Hazardous and Offensive Development Application Guidelines – Applying SEPP 33".

Having regard to above, it is considered that the site is consistent with the requirements of Chapter 3 of the SEPP.

Chapter 4 Remediation of Land (formerly known as SEPP55)

The proposal has been assessed under the relevant provisions of this chapter of the SEPP as the proposal is identified as having the potential under the SEPP guidelines to be a site that could be contaminated (agricultural activities, including Above Storage Tanks (ASTs) and chemical storage areas associated with agriculture and potential use of herbicides/pesticides in agricultural fields).

Therefore, under the SEPP guidelines the subject site is identified as a site that could be contaminated.

The objectives of this chapter of the SEPP are:

(1) The object of this Chapter is to provide for a Statewide planning approach to the remediation of contaminated land.

(2) In particular, this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—

(a) by specifying when consent is required, and when it is not required, for a remediation work, and

(b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and

(c) by requiring that a remediation work meet certain standards and notification requirements.

Pursuant to Section 4.6 of Chapter 4 of the SEPP, a consent authority is unable to grant development consent unless it has considered whether the land is contaminated and, if so, whether it is satisfied that the land is suitable in its contaminated state for the purposes for which the development is proposed to be carried out or if remediation is required to make it suitable.

The applicant has provided a Preliminary Site Investigation (PSI - phase 1) and subsequent Detailed Site Investigation (DSI - phase 2) of the site for potential areas of contamination which was undertaken by Trace Environmental and Geotechnical Consultants Australia and peer reviewed by Harwood Environmental Consultants.

The investigation at phase 1 (PSI) identified potential contamination sources including fill materials and petroleum/chemical storage and use that have potential to introduce contaminant to the site.

Further investigation of the site was carried out at phase 2 (DSI) which includes the recommendations to be implemented in demolition works for the site which replicate conditions that would be attached to any consent for the use.

The recommendations of the submitted DSI include:

- *Undertake a Hazardous Materials Building Survey (HMS) for all onsite structures, with any control measures outlined in the HAZMAT survey to be implemented during demolition.*
- *If the onsite dams are to be decommissioned, a suitably qualified Ecologist to be engaged to undertake an Ecological Survey and Dewatering management plan.*
- *The area identified by TP6, which had identified uncontrolled fill material should be assessed, quantified and classified in accordance with the NSW EPA Waste Classification Guidelines. It is likely that this material will need to be removed offsite.*

- *Closing of Data Gap investigation, this will involve assessment of the following:*
 - *Assessment of areas beneath current onsite structures and footprints.*
 - *Assessment of area around the removed septic tank, including any ground water*
- *Any soils requiring removal from the site, as part of future site works, should be classified in accordance with the “Waste Classification Guidelines, Part 1: Classifying Waste” NSW EPA (2014).*

Assessment against Chapter 4 of the SEPP provided in the above documents have been reviewed by Council’s Environmental Health officer, who raised no objection.

Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of Chapter 4. Therefore, it is considered that the subject site is suitable for the proposed development.

(d) State Environmental Planning Policy (SEPP Western Sydney Aerotropolis 2020) (also known as Aerotropolis SEPP)

Clause 4.51 Savings Provision of the consolidated SEPP (Precincts – West Parkland City) 2021 states “A development application for development on land to which this Chapter applies that was lodged and not finally determined before the commencement of this Chapter is to be determined as if this Chapter had not commenced”. As such Chapter 4 of the SEPP (Precincts – West Parkland City) 2021 does not apply to this application.

An assessment of the proposal has been undertaken against the SEPP (Western Sydney Aerotropolis) 2020 as follows:

State Environmental Planning Policy (SEPP Western Sydney Aerotropolis 2020) (also known as Aerotropolis SEPP)

The subject site is not identified as being within the Aerotropolis boundary contained in the SEPP and is located within the 140 and 210 AHD Obstacle Limitation Surface (OLS) Map of the SEPP (Precincts – Western Parkland City) 2021 and is located in the 20 ANEC/F (aircraft noise). Despite of the subject site being outside the Aerotropolis boundary, sections under Part 3 Development controls - Airport safeguards apply to lands outside the Aerotropolis boundary.

The development controls under Part 3 of the Aerotropolis SEPP include controls related to aircraft noise impacts (Clause 19), wind shear and turbulence, wildlife hazards (Clause 21), wind turbines, lighting, air space operations (Clause 24) and public safety.

The application was referred to the airport authority (Western Sydney Airport WSA Co) for review and additional information relating to wildlife hazard assessment and waste management was requested

The applicant has provided a Wildlife Hazard Review (WHR) and additional information to address the matters raised by the WSA Co, which was undertaken by Avisure, dated April 2021 (Rev 2). The WHR identified the following limitations and assumptions:

- *The airport and the surrounding Aerotropolis precincts are not constructed.*
Assumptions are made about wildlife species based on previous survey work on the

WSA site and in its vicinity. The changing landscape during and after development will influence wildlife populations, however the existing information of which species are currently using the site and surrounds are a reasonable guide.

- The cemetery is not constructed. Assumptions are made based on our understanding of the proposed facilities (which are a reference design and may change as detailed design progresses) and the nature of the site's attraction to wildlife.
- The desktop analysis was done without a site visit or field surveys.

The submitted WHR concludes:

"Evaluating how a land use activity, which does not yet exist, contributes to a future airport's strike risk is challenging. Despite this, we are able to extrapolate from existing information the features likely to present a hazard: the availability of water and foraging resources are key, and these wildlife attractions may contribute to WSA's strike risk if not well managed."

To help safeguard WSA against the wildlife strike risk, MKD Architects can apply a range of mitigation options during the design stage, and the cemetery operator can consider a range of retrospective mitigation as required. Monitoring the site once it is operational will determine, with greater accuracy, the level of wildlife activity and its contribution to the airport's strike risk profile.

An ongoing Wildlife Management Plan, prepared prior to cemetery operation, is highly recommended and will help monitor and manage wildlife risks".

The airport authority (Western Sydney Airport) has reviewed the application and considered the application satisfactory. The following comments were received in their response:

"Wildlife Risk Assessment and Management Plan:

A Wildlife Risk Assessment and Management Plan (Plan) should be conditioned as part of any future consent. That plan is to include wildlife monitoring and mitigation requirements.

The plan must address:

- Any waterbodies on the site, including the artificial lagoons
- waste management and
- the proposed landscape plan, including the identification of plant species and management of grassed areas.
- The applicant should be encouraged to consult with WSA Co during the preparation of the Wildlife Management Plan.
- The consent should be conditioned to require the implementation of all monitoring and mitigation measures identified within the plan.

ANEC Contour:

Require a condition that noise sensitive development not be located in the areas subject to the ANEC 20 contour, and that all development is constructed to achieve indoor design sound levels specified in Australian Standard 2021-2015 Acoustics—Aircraft noise intrusion— Building siting and construction.

OLS:

Any controlled activities will require Commonwealth approval under Part 12, Division 4 of the Airports Act 1996."

As per the above conditions from the WSA Co, the proposal is considered to be consistent with the aerotropolis SEPP.

(e) Liverpool Local Environmental Plan 2008

(i) Permissibility

The definition in the land use table for RU1 Primary Production zone in the LLEP 2008 that best fits the proposal is a “Cemetery, Crematoria and Ancillary Structures” which are defined as:

“Cemetery” *a building or place used primarily for the interment of deceased persons or pets or their ashes, whether or not it contains an associated building for conducting memorial services; and*

“Crematoria” *a building or place in which deceased persons or pets are cremated or processed by alkaline hydrolysis, whether or not the building or place contains an associated building for conducting memorial services.* The development is therefore permissible with consent in the RU1 Primary Production zone.

(ii) Objectives of Zone

Objectives of the RU1 Primary Production zone are;

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To ensure that development does not unreasonably increase the demand for public services or public facilities.*
- *To ensure that development does not hinder the development or operation of Western Sydney International (Nancy-Bird Walton) Airport.*
- *To preserve bushland, wildlife corridors and natural habitat.*

The proposal is considered to satisfy the objectives provided under point 1, 3, 5 and 6 above as follows:

- The proposed use is permitted with consent and is the type of use suited to the zone as it involves activities that are preferably separated from primary production, residential and other more sensitive uses.
- In relation to objectives 3, 5 and 6 above, as discussed elsewhere in the report, sufficient information has been submitted with the application in relation to the relevant controls of the SEPP (Precincts – Western Parkland City) 2021/ Aerotropolis SEPP, Biodiversity Assessment, Traffic Assessment and landscape setting of the surrounding area. With appropriate safeguards as recommended by experts, it is unlikely to hinder the establishment of other primary industry enterprises in the area.

However, the proposal is considered to be inconsistent with the zone objectives relating to minimisation of conflict between different land use and preservation of bushland, wildlife

corridors and natural habitat due to insufficient information to determine the full extent of flood impacts on the proposed land use and bushland, wildlife corridors and natural habitat as outlined in the report.

(iii) Principal Development Standards and Provisions

The application has been considered against the relevant provisions and principal development standards of the LLEP 2008, which are listed in the table below. The proposal demonstrates compliance with applicable controls of the LEP.

Clause	Development Standards	Comment
Part 4 Principal Development Standards		
2.7 Demolition	The demolition of a building or work may be carried out only with development consent	<p>Complies</p> <p>Development consent is sought for the demolition of the existing buildings on the development site and forms part of the Stage 1 description for this application.</p> <p>A Waste Management Plan (WMP) has been submitted with the proposal.</p> <p>Demolition will be carried out in accordance with Australian Standard AS-2601 and WorkCover requirements. Conditions of consent can be imposed in this regard,</p>
4.3 Height of Buildings (as per HOB Map)	The site and surrounding area are not subject to Height of Buildings (HOB) control.	<p>Not Applicable</p> <p>No height control is applicable to the site. Accordingly height is not a consideration.</p>
4.4 Floor Space Ratio (as per FSR Map)	The site and surrounding area are not subject to Floor Space Ratio (FSR) control.	<p>Not Applicable</p> <p>No FSR control is applicable to the site. Accordingly FSR is not a consideration.</p>
5.6 Architectural Roof Features	The objective of this clause is to permit variations to maximum building height standards under Clause 4.3 for roof features of visual interest and to ensure that roof features are decorative elements with the majority contained within the maximum building height.	<p>Not Applicable</p> <p>The proposal includes chapel and crematorium features that have architectural roof features (such as vertical stacks and articulated fins) but these elements do not require consideration under this clause.</p>
5.10 Heritage Conservation	Development consent is required for erecting a building on land on which a heritage item is located or that is within a heritage conservation area.	<p>Not Applicable</p> <p>The following extracts are summaries from the SEE submitted with this application:</p> <p><i>'the site is not listed as a heritage</i></p>

		<p>item and is not located within a conservation area.</p> <p><i>With regard to Aboriginal heritage, an assessment of the site was completed by Travers Bushfire and Ecology. The assessment included a field survey and review of previously completed investigations. The report identified that the site contains no areas or sites of indigenous origin or places of potential archaeological interest”.</i></p> <p>Comment: The site is identified as potentially being of or containing Aboriginal cultural heritage.</p> <p>An Aboriginal Heritage Due diligence Assessment prepared by Travers Bushfire & Ecology and dated Nov 2020 (ref: 20MDK03Ab) has been submitted with this application.</p> <p>A referral to Council’s heritage officer did not require further referral to OEH. In addition, Council’s Heritage Officer has provided conditions of consent to manage any unexpected finds relating to heritage.</p>
5.21 Flood Planning	<p>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <p>(a) is compatible with the flood function and behaviour on the land, and</p> <p>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</p> <p>(d) incorporates appropriate</p>	<p>Does not comply</p> <p>The proposal is not supported by Council’s Flood Engineer for the reasons detailed under Section 6.8 (Referrals) of this report.</p> <p>The full extent of earthworks for flood mitigation and likely alteration of the flood characteristic of the locality are unknown at the time of this report.</p>

	<p>measures to manage risk to life in the event of a flood, and</p> <p>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p> <p>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</p> <p>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</p> <p>(b) the intended design and scale of buildings resulting from the development,</p> <p>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</p> <p>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</p>	
7.6 Environmentally Significant Land	Consider impacts of development on environmentally significant land, bed and banks of waterbody, water quality and public access to foreshore.	<p>Acceptable</p> <p>Refer to discussion in Section 6.1(b) SEPP Biodiversity Conservation (BC) Act 2016 of this report.</p> <p>Council's Natural Environment has reviewed the Biodiversity Assessment Report (BAR) and included relevant conditions relating to appropriate protection and mitigation measures throughout the development.</p>
7.9 Foreshore Building Line	Consider impacts of development on the visual environment, the environmental heritage and scenic qualities of the foreshore.	<p>Acceptable</p> <p>No structures are proposed within the Foreshore Building Line (FBL) as part of Stage 1 and concept DA.</p> <p>Any future stage DA near the FBL will be considered against Clause 7.9 of the LLEP 2008.</p>
7.17 Airspace	The objective of this clause is to	Acceptable

operations	<p>protect airspace around airports.</p> <p>The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.</p>	<p>The airport authority (Western Sydney Airport) has reviewed the application and considered the application satisfactory.</p>
7.31 Earthworks	<p>Council to consider matters such as cut and fill, general excavation and drainage for the site.</p>	<p>Unsatisfactory</p> <p>The full extent of earthworks for flood mitigation and likely alteration of the flood characteristic of the locality are unknown at the time of this report.</p> <p>Therefore it is unclear as to whether the proposed earthworks is suitable for the development and cannot be supported at this time.</p>

6.2 Section 4.15(1)(a)(ii) – Any Draft Environmental Planning Instrument

There are no draft Environmental Planning Instruments which apply to the development.

6.3 Section 4.15(1)(a)(iii) – Provisions of any Development Control Plan

(a) Liverpool Development Control Plan (LDCP) 2008

The application has been assessed against the relevant controls of the LDCP 2008, particularly *Part 1 General Controls for all Development and Part 5 Rural and E3 Zones*.

The table below provides an assessment of the proposal against the relevant controls of the LDCP 2008.

Development Control	Proposal	Comment
PART 1 – General Controls for All Development		
2. Tree Preservation	<p>Refer to discussion in Section 5.4 SEPP Biodiversity Conservation (BC) Act 2016 of this report.</p> <p>Council's Natural Environment & Landscaping officer have reviewed the proposal and advised that the proposal will be satisfactory subject to conditions of consent.</p>	Acceptable
3. Landscaping	<p>A Landscape Masterplan prepared by Site Image Landscape Architect and dated Nov 2020 (ref: 8820-4420) has been submitted with this application. The landscape plans detail the existing features, landscape features, relationship between the buildings and</p>	Complies

	<p>landscape features, landscape details near Duncan creeks and Riparian corridor, screening treatments and Stage 1 landscape works.</p> <p>Council's Natural Environment & Landscaping officer have reviewed the proposal and advised that the proposal will be satisfactory subject to conditions of consent.</p>	
4. Bushland and Fauna Habitat Preservation	Refer to discussion in Section 5.4 SEPP Biodiversity Conservation (BC) Act 2016 of this report.	Acceptable
5. Bush Fire Risk	<p>Land on or adjacent to bushfire prone land to comply with RFS requirements.</p> <p>The site is mapped as Bushfire Prone Land and a Bushfire Assessment Report was submitted with the DA. The RFS has provided advice that the proposal is supported subject to attachment of conditions it has provided.</p>	Complies
6. Water Cycle Management	Water management and conservation through the means of retention of stormwater has been assessed as compliant by Council's Land Development Engineer and further, compliance with the stormwater drainage plans and report supplied can be conditioned.	Complies
7. Development Near a Watercourse	NRAR has reviewed the application and provided General Terms of Approval (GTA) requiring the submission of a controlled activity approval and general requirements: for design of works and structures; erosion and sediment controls; on-going management and reporting requirements.	Complies
8. Erosion and Sediment Control	Soil and erosion measures have been reviewed by Council's Land Development Engineer and conditions of consent will be attached to any consent.	Complies
9. Flooding Risk	<p>The proposal is not supported by Council's Flood Engineer for the reasons detailed under Section 6.8 (Referrals) of this report.</p> <p>The full extent of earthworks for flood mitigation and likely alteration of the flood characteristic of the locality are unknown at the time of this report. It is important to note that, Stage 1 (subject of this application) will establish the development footprint for the entire site resultant from the proposed bulk excavation and associated flood mitigation works.</p>	Does not comply
10. Contamination Land Risk	Council's Environmental Health officer has reviewed the application and has raised no objections to the proposed development based on contamination grounds. It is considered that	Can be Conditioned

	the proposed documentation provided by the applicant adequately addresses. It is considered that the site can be made suitable for the intended industrial use, subject to conditions.	
11. Salinity Risk	<p>The site is identified as containing moderate salinity potential.</p> <p>A Geotechnical Assessment Report prepared by JC Geotech P/L and dated Nov 2020 (ref: GR1137.1J Rev 3) has been submitted with this application.</p> <p>Appropriate conditions of consent can be imposed to achieve compliance with this requirement once the Geotechnical Assessment report is revised to align with the flood study that satisfies Council's flood planning requirements.</p>	Can be Conditioned
12. Acid Sulphate Soils	Site is not identified as affected by Acid Sulphate Soils.	Not Applicable
13. Weeds	Site is not affected by Noxious Weeds.	Not Applicable
14. Demolition of Existing Development	<p>Demolition of existing buildings is to comply with the relevant standards.</p> <p>Appropriate conditions of consent can be imposed to achieve compliance with this requirement.</p>	Can be Conditioned
15. On-Site Sewerage Disposal	<p>A Water and Wastewater Assessment prepared by GHD and dated Oct 2020 has been submitted/ Considered more appropriate at a future DA stage.</p> <p>Council's Environmental Health Department have reviewed the application and has requested further information as discussed in the referral 'Section 6.8' of the report.</p>	Unsatisfactory
16. Aboriginal Archaeological Sites	<p>An Aboriginal Heritage Due diligence Assessment prepared by Travers Bushfire & Ecology and dated Nov 2020 (ref: 20MDK03Ab) has been submitted with this application.</p> <p>Council's Heritage officer have reviewed the proposal and advised that the proposal will be satisfactory subject to conditions of consent.</p>	Complies
17. Heritage and Archaeological Sites	Discussed in the LEP compliance table in section 6.1(iii) of this report.	Not Applicable
18. Notification of Applications	The application was notified and advertised in accordance with the EP&A Regulation and Council's policy. Submission have be received with regards to the proposed development, which is detailed in Section 6.8 of this report.	Complies

20. Car-parking and Access	<p>In the absence of criteria for parking provision for Cemetery use in the LDCP 2008 or the <i>TfNSW</i> Development Guidelines, the submitted Traffic Impact Assessment (TIA) prepared by TTPA, dated November 2020 (ref: Rev B) has relied on parking provision at comparable sites (eg. Macquarie Park site).</p> <p>On that basis, the development plans there will be 112 spaces provided in the formal parking area and some 400 to 500 kerbside spaces along the access road system. There will also be large unused areas on the site which could provide for additional parking in the future if there is such a need.</p> <p>It concludes that the provision of 112 space plus the available on-road parking will be more than adequate for Stage 1 of the development while the large vacant areas on the site would be able to accommodate additional formal parking in the future should operational experience indicate this need (e.g in the north eastern part).</p> <p>The application was referred to Council's Traffic Engineer for review who has raised no objection subject to conditions of consent.</p>	Acceptable
21.Subdivision of Land and Buildings	No subdivision is proposed by this application.	Not Applicable
22. Water Conservation	<p>Reuse and recycling of stormwater proposed. Includes a strategy to optimise use of water for site activities.</p> <p>Council's Land Development Engineer has reviewed the proposal and advised that the proposal will be satisfactory subject to conditions of consent.</p>	Complies
23.Energy Conservation	To comply with the relevant provision of the National Construction Code (NCC/BCA).	Acceptable
25.Waste Disposal and Re-Use	<p>A waste management plan submitted, which outlines procedures for demolition, construction and ongoing waste management.</p> <p>Standard conditions to be included in any consent. Further waste management requirements will be required for future stages.</p>	Acceptable
26.Outdoor Advertising	No operational and signage details are proposed at this stage and are subject to future DAs.	Not Applicable
27. Social Impact Statement	Cemeteries and Crematoriums are not identified as development requiring a SIA.	Not Applicable
29. Safety and Security	Appropriate conditions of consent can be imposed to achieve compliance with the Crime Prevention Through Environmental Design	Acceptable

	(CPTED) principles/ Considered more appropriate at a future DA stage.	
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LDCP 2008 Part 5: Rural and E3 Zones

Part 5 Rural and E3 Zones			
Control	Requirement	Proposed	Comment
Site Planning	Buildings shall not be located on ridges or in places where they are too visible from the street.	Stage 1 – proposed building are to be placed on Pad 1 (except for the gatehouse) which is sited below the existing ridgeline. Mausoleums are to be located within the new Valley floor depression, if the earthworks are supported for flood mitigation.	Acceptable (relative to the existing ridgeline)
	Buildings shall be sited to maximise the retention of existing trees.	A Vegetation Management Plan (VMP) has been submitted with this application which results in a total gain of 9.96ha (9.26ha of Riverflat Eucalyptus Forest and 0.7ha of Cumberland Plain woodland) from the proposed clearing of 0.63ha of existing vegetation. Council's Natural Environment has reviewed the VMP and advises that the proposal will be satisfactory subject to conditions.	Acceptable
Building Design, Style and Streetscape	<p><u>Other Non-Residential Uses:</u></p> <p>All non residential uses can have a general maximum height of 8.5m.</p> <p><u>Further Restrictions on Height:</u></p> <p>All development must fit in with the surrounding areas, and conserve and protect the rural nature of the area. Therefore, the above heights are a guide only, and a merit-based assessment will occur for all development above 8.5m for a dwelling, and above 8.5m for a</p>	<p>Stage 1 = 4.4m (Gatehouse) 7.2m-7.9m (Administration) & 4.1m-15.8m (stack) for Crematorium</p> <p>Stage 2 = 7.2m-7.9m (Café) & 6.1m-17.81m (Chapel)</p> <p>Stage 3 = 7.2m-7.9m (Function Hall)</p> <p>Stages 4-9 = 22.41m-38m (Mausoleums)</p> <p>NB: The proposed height above ground relates to new ground levels resultant from the proposed bulk earthworks.</p> <p>Insufficient information has been submitted to determine the full extent of flood impact on the site and surroundings. For this</p>	Not supported See discussion below (1)

	non-residential building.	reason, the exact amount of cut, fill and flood mitigation works cannot be quantified and likely changes to the building footprint, levels and building heights to consider this DCP variation at the time of this report.	
	Materials must complement the rural landscape. Examples include stained timbers, brickwork, mud bricks, metal roofs and similar materials sympathetic to the Australian rural heritage. Highly reflective (shiny) colours are to be avoided for roofs and walls of buildings, including sheds.	A schedule of materials and colours has been submitted with the DA. The materials chosen are suitable for the proposed development. The memorial garden is an outdoor facility so that materials used need to be resilient and able to withstand various weather conditions. Reflective materials are considered to have been avoided.	Complies
	Natural vegetation should be retained in setback to the street.	The landscape has been designed to maximise the retention of existing vegetation as outlined in the BAR and associated Vegetation Management Plan (VMP) submitted with the application. Council's Natural Environment & Landscaping officer has reviewed the proposal and advised that the proposal will be satisfactory subject to conditions.	Acceptable
	Except for driveways, no paved areas or "hard surfaces" are permitted in the front setback. All development should attempt to maintain the existing natural environment.	No development proposed in the front setback area. Sufficient plant screening is proposed along the front setback area of the site. The development is considered to have been designed to maintain the existing natural environmental as much as possible.	Complies
	Buildings shall not be sited that obstruct views and vistas. Any significant natural and built features should be maintained.	The more prominent burial structures (i.e. Mausoleums) are located predominantly within the valley floor and out of the direct line of sight of Greendale Road. Vegetation and earthworks are used as screening between areas and from internal and external roads.	Complies

		As such within the context of the proposed alterations to the levels of the site coupled with landscaped screening the proposed buildings heights are considered acceptable and will not adversely impact the rural setting.	
Amenity and Environmental Impact	<u>Noise</u> Land uses that would create excessive noise will not be permitted. Land uses will be subject to the Protection of the Environment Act 2008.	Council's Environmental Health Department have reviewed the application and have raised no objections to the proposed development based on noise ground as it is considered more appropriate at a future DA stage. Nevertheless noise generated during demolition and construction is to comply with the relevant standards.	Not Applicable
	<u>Air</u> Land uses that would create excessive pollution and odour will not be permitted. Land uses will be subject to the Protection of the Environment Act 2008.	An Air Quality Assessment prepared by GHD and dated May 2021 (ref: 12517741) has been submitted with this application. Council's Environmental Health officer has reviewed the application and has raised a concern relating to the emission during inversion events when operating nighttime (after 6pm). The proposed crematorium will contain 3x cremators. The cremators will be operated in accordance with the relevant cremation permit requirements obtain from Cemeteries and Crematoria NSW and the EPA.	Unsatisfactory. See the 'Referral' section 6.8 of the report
	<u>Water cycle</u> Stormwater and excess water associated with irrigation including nutrient enriched waters generated within the site are to be contained and treated on the site.	A Water Sensitive Urban Design: Stormwater Assessment (WSUD) prepared by GHD and dated Oct 2020 has been submitted with this application. Council's Land Development Engineer has reviewed the proposal and advised that the proposal will be satisfactory subject to conditions of consent.	Acceptable

Site Services	<p><u>Waste management</u></p> <p>Non-residential properties shall provide their own waste management.</p> <p>Non-residential developments should provide details of their waste management system.</p> <p>The storage of the garbage receptacles shall be screened from public view and from adjoining properties.</p>	<p>A waste management plan submitted, which outlines procedures for demolition, construction and ongoing waste management.</p> <p>Standard conditions can be included in any consent addressing waste management requirements on site as part of works and operation.</p>	Acceptable
	<p><u>Sewer</u></p> <p>Applications for development of land where reticulated sewage is not planned to be provided shall be accompanied by an application under S68 of the Local Government Act 1993 for an On Site Sewer System.</p>	<p>A Water and Wastewater Assessment prepared by GHD and dated Oct 2020 has been submitted/ Council's Environmental Health officer has reviewed the application and commented that this matter can be dealt during the section 68 assessment as it requires to be re-designed at a later stage.</p> <p>Standard conditions to be included in any consent.</p>	Can be conditioned
Part 5, Section 9.13 Cemeteries, Crematoriums and Funeral Chapels			
Control	Requirement	Proposed	Comment
Site Suitability	Cemeteries and crematoria must locate on a site with a minimum of 15ha available for burial plots and memorial walls.	The site has an area of 73.46ha with a minimum of 15ha available for burial plots and memorial walls (mausoleums and cremation walls).	Complies
	Cemeteries, Crematoriums and Funeral chapels shall not locate on a road which has a seal width of less than 6m.	<p>Greendale Road, which provides vehicle access to the site, has a seal width of 7m with 1m shoulders.</p> <p>The proposed access road has a minimum 6.0m width with 2.2m kerbside parking and complies with the requirements of AS2890 Austroads.</p> <p>The proposal has been reviewed by Council's Traffic section and</p>	Complies

		has been supported subject to the imposition of recommended conditions to any consent.	
	Burial plots must not be located in areas where the water table is within 3m of the ground surface. If the water table is between 3m and 5m of the ground surface, deep rooted planting will be required in affected areas.	The submitted Geotechnical Assessment Report prepared by JC Geotech P/L and dated Nov 2020 (including borehole analysis) discovered groundwater at a depth of 6.5m to the southwest portion of the site only. Council's Environmental Health officer has reviewed the application and raised no objections to the burial plots in Stage 1.	Acceptable
	Cemeteries should not be located on flood prone land.	The site is located on the Nepean River floodplain and affected by flooding from Nepean River and Duncan Creek. The application was submitted with a Flood Study, prepared by GHD, dated March 2021 in regard to the suitability of the site for the development. As noted earlier, the flood issue has not been resolved at the time of the report.	Unsatisfactory
Setbacks	Buildings and burial plots are to be sited at least 20m from a public street and at least 15m from any side or rear boundary.	<u>Burial plots</u> : Min. 15m to the northern and southern boundaries. Min. 20m from Greendale Road. <u>Mausoleums</u> : Type A: Min. 276m from Greendale Road and Min. 275m from the southern side boundary, Type B: Min. 487m from Greendale Road and Min. 275m from the southern side boundary, Type C: Min. 728m from Greendale Road and Min. 122m from the northern side boundary, Type D: Min. 150m from Greendale Road and Min. 830m from the southern side boundary, and Type A: Min. 600m from Greendale Road and Min. 218m from the southern side boundary. <u>Gatehouse</u> : more than 20m from Greendale Road. <u>Crematorium</u> : Min. 200m from	Complies

		<p>Greendale Road and Min. 100m from the northern side boundary.</p> <p><u>Chapel:</u> Min. 200m from Greendale Road and Min. 100m from the northern side boundary.</p> <p><u>Administration:</u> Min. 150m from Greendale Road and Min. 250m from the northern side boundary.</p>	
Landscaping and Fencing	<p>A berm is to be provided around the property and must be 1m high and 3m wide. Landscaping is to be provided over the top of the berm.</p>	<p>As stated, insufficient information has been received and the proposal will required to be re-designed subsequent to earthworks, including berms as part of landscaping.</p>	Unsatisfactory
	<p>A landscaped buffer zone at least 10m wide must be provided to the side and rear boundaries of the site. The buffer zone shall not be used for parking areas or the like.</p>	<p>The proposal (<i>River Gardens Cemetery</i>) is landscaped and retains a natural buffer up to the side, rear and front boundaries.</p> <p>Council's Natural Environment & Landscaping officer has reviewed the proposal and advised that the proposal will be satisfactory subject to conditions. Additional condition can be imposed to restrict parking on landscaped areas, should the application be approved.</p>	Acceptable
	<p>Any proposed cemetery must have an adequate water supply to ensure the ongoing maintenance of landscaping and to assist in the operation of the site.</p>	<p>Council's Environmental Health officer has reviewed the application and raised no objection. The following comments were made in relation to the irrigation management:</p> <p><i>"According to the proposed layout plan on the report the irrigation management area would primarily be located on Pad 1.</i></p> <p><i>With reference to the Bulk Earthworks & Civil Documents – 1290 Greendale Road, Wallacia (prepared by: Australian Consulting Engineers Pty Ltd, dated: 27 November 2020, ref no.: 200597), Pad 1 has a proposed 5-10m of filling (some areas 15m) with the proposed absorption trench/bed the maximum permissible depth of 550mm and 750mm respectively would be unlikely to impacted by rising groundwater in the event of</i></p>	Acceptable

		<i>a significant rainfall or flooding event and would be accepted”.</i>	
Car Parking and Access	<p>A traffic study is to be included with any development application for a cemetery, crematoria or funeral chapel.</p> <p>This study should determine whether or not a turning lane or slip lane is required to enter the site.</p>	<p>A Traffic Impact Assessment (TIA) and Road Audit Statement prepared by TTPA, dated November 2020 (ref: Rev B) were submitted which relied on parking provision at comparable sites (eg. Macquarie Park site).</p> <p>On that basis, the development plans there will be 112 spaces provided in the formal parking area and some 400 to 500 kerbside spaces along the access road system. There will also be large unused areas on the site which could provide for additional parking in the future if there is such a need.</p> <p>It concludes that the provision of 112 space plus the available on-road parking will be more than adequate for Stage 1 of the development while the large vacant areas on the site would be able to accommodate additional formal parking in the future should operational experience indicate this need (e.g in the north eastern part).</p> <p>The Concept Plan proposes two (2) vehicle access points of Greendale Road to the eastern site boundary.</p> <p>The application was referred to Council’s Traffic Engineer for review who has raised no objection subject to conditions of consent, including their support for the new slip lane from Greendale Road to enable safe access to the site.</p>	Acceptable
Operation	<p>A Plan of Management must be submitted with a Development Application and must include details of the operation of the use.</p>	<p>A Draft Plan of Management (POM) prepared by SJB Planning, dated December 2020 has been submitted with the application.</p> <p>The POM refers to the general hours of operation once the cemetery commences operating and general operation details of the cemetery.</p> <p>The POM should be recognised</p>	Acceptable

		as a working document that should be regularly reviewed and updated as required and subsequent Staged Development.	
	In the case of perpetual burials, the Plan of Management needs to outline how the perpetual care would occur.	The proposed development will be subject to the requirements prescribed by the NSW Cemetery agency including management of operations, interment rights and associated licensing.	Acceptable

DCP Variation (1) – Maximum height for non-residential buildings in RU1 Zone

As mentioned earlier in the report, the proposed chapel, crematorium and mausoleums have building height ranging from 15.8m to 38m, resulting in non-compliance with the maximum height of 8.5m for non-residential buildings in RU1 zone as per LDCP 2008.

The applicant's written request for this DCP variation has been considered and it is concluded that the applicant has shown that the objective of the control has still been met notwithstanding the DCP variation. The following provides an extract of the applicant's written request which explains how the DCP variation is justified:

"The proposed height above ground relates to new ground levels resultant from the proposed bulk earthworks.

Whilst it noted that the Chapel and Crematorium have maximum heights ranging from 15.80m to 17.81m these buildings will be sited below the existing ridgeline to the northeast portion of the site and will be screened by vegetation.

With regard to the 4 to 5 storey Mausoleums, these buildings are predominantly sited centrally within the new Valley floor and will be subsequently screened by the four (4) Pads created via the proposed earthworks. The surrounding pads will be extensively landscaped in accordance with the Vegetation Management Plan.

Within the context of the proposed alterations to the levels of the site coupled with landscaped screening the proposed buildings heights are considered acceptable and will not adversely impact the rural setting.

In particular, the more prominent burial types (Mausoleums) will be out of the direct line of sight of Greendale Road and adjoining site boundaries due to their siting at the new valley floor.

The heights of the Mausoleum in our calculations are NOT 400%. The height of 8.5m under the DCP is from existing NGL to 8.5m, because of the flood mitigation, we are finishing the Mausoleums at RL 75.4, we have various NGL that structures rest on from RL 37.79 to RL 33.42.

Once these are calculated the 8.5m needs to be deducted to form the height and this will give you the amount which is non-compliant with the guidelines of the DCP.

In relation to the case law that you have referenced, in Zhang, once 12 months trial period was finalised in 2014 the case went back to the LEC NSW and was successful. The DCP was a guide only and not referenced further. Zhang v Canterbury City Council [2004] 10449 of 2004.

In relation to Stockland, the case did not turn on the DCP, but on the LEP that Manly Council had amended for the site with community consultation and the vendor of the site. Point 82 of the judgement is clear on what the case turns on and its focal point is the LEO and how it came about prior to Stockland's purchase of the site.

We note that we respect the DCP and its guidance but due to the flood heights that we must work to it, it is not possible to comply with the DCP.

If we had extended the pads to conceal the structures, then this would not be an issue that is at the front of this discussion. The structures are completely concealed within the property and not visible from surrounding properties.

In the new rezoning of agricultural and surrounding the new Western Sydney Airport, the heights are far more excessive than what we are proposing. These structures within the agricultural zone will dominate the landscape once completed.

This is totally different on our case, as the mausoleums are sited within a valley and protrudes 8.5m on top of the pads which gives an artistic and well-articulated farm/silo like feel which is intended.

Additionally, we must remember that these stages are in future years anticipated to be some 60 to 90 years away from construction."

Comment: Council is unable to consider and support the above DCP variation at the time of this report for the following basis:

- The subject application is for the Concept DA and Stage 1 of the development. Importantly, Stage 1 (subject of this application) is proposed to establish the development footprint for the entire site resulting from the proposed bulk excavation and associated flood mitigation works.
- Due to insufficient information has been submitted with the application, Council's Flood Engineer is not supportive of the proposal and has requested additional information relating to hydrology, hydraulics and floodway extent at pre and post development conditions. This information is required to determine the full extent of flood impact on the subject site and surrounding area.

As a result of the abovementioned outstanding information to enable a detailed and complete assessment of the Concept DA and Stage 1, it is unclear as to whether the proposal is designed to respond to the known site constraints with flooding in its built form, such as the final levels, building footprint and building height that are subject to further changes to satisfy the flood mitigation works required to facilitate the proposal.

- In the absence of a detailed and complete flood study that conforms with the LDCP 2008, the exact height of buildings as well as footprint and levels (ground levels and ridge levels) cannot be quantified and therefore the DCP variation to the maximum height for mausoleums, chapel and crematorium cannot be considered at the time of this report.

6.4 Section 4.15(1)(a)(iia) - any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

No offer or draft offer to enter into a voluntary planning agreement has been made.

6.5 Section 4.15(1)(a)(iv) - the regulations

The Environmental Planning and Assessment Regulation 2000 requires the consent authority to consider the provisions of the NCC and the Safety standards for demolition (AS 2601 – 2001). Accordingly, appropriate conditions of consent will be imposed.

6.6 Section 4.15(1)(b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

(a) Natural Environment

The development proposes environmental protection measures that address potential impacts that are likely to arise from the development. These measures are outlined in submitted documentation for the application such as a VMP, Water Sensitive Urban Design (WSUD) assessment, Biodiversity Assessment Report (BAR), Geotechnical Assessment, and drainage plans. Appropriate conditions will be imposed on any consent that requires the development to be carried out in accordance with the submitted documents.

Whilst the amount of native vegetation is estimated at 7.87 ha (relative to the siting of Duncan Creek and the Nepean River) with approximately 0.65 ha of this to be cleared through the construction of internal roads, buildings and burial areas, the revegetation forming part of the Vegetation Management Plan (VMP) will result in a net gain of 9.96ha to mitigate any impacts associated with clearing.

However, the full extent of earthworks and subsequent earthworks, changes to landscaping and associated flood mitigation measures are unknown at this stage.

Therefore, the impacts of the development on the natural environment as submitted with this application is not considered to be acceptable and is not supported.

(b) Built Environment

The full extent of earthworks and subsequent earthworks is unknown at this stage. Consequently, the building footprint, building height and levels are subject to further changes to conform with Council's site planning requirements in a flood prone area.

Therefore, the impacts of the development on the built environment as submitted with this application is not considered to be acceptable and is not supported.

(c) Social Impacts and Economic Impacts

As commented by the CCNSW, there is a need for additional interment capacity to meet the future interment needs of the Sydney area, However there is no positive social benefit to the community by having little regard to the flood impacts on the site and surroundings.

The proposal will provide a positive economic impact arising from the construction of the new facilities for future cemetery operations. The proposal will improve the employment opportunities within the locality, which will encourage economic growth in the area.

6.7 Section 4.15(1)(c) - the suitability of the site for the development

The site is not considered to be suitable for the proposed development for the reasoning provided herein and in particular for the following reason:

- Insufficient information is provided relating to hydrology, hydraulics and floodway extent at pre and post development conditions. Council's flood engineer does not support the proposal in its current form as this information is required to determine the full extent of flood impact on the subject site and surrounding area and therefore the suitability of the site for the development.

6.8 Section 4.15(1)(d) - any submissions made in relation to the development

(a) Internal Referrals

The following comments have been received from Council's Internal Departments:

Department	Response
Building section	No objection, subject to conditions
Land Development Engineer	Approval subject to conditions of consent (concept DA and Stage 1).
Flood Engineer	Not supported – See discussion below
Natural Environment – Landscape Officer	No additional information required
Environmental Health	Not supported – See discussion below
Community Planning	Comments made in relation to site constraints (flooding, earthworks, accessibility, SIA and consideration of submissions received). This has been considered in the DCP section
Traffic and Transport	Approval subject to conditions of consent
Heritage	Approval subject to conditions of consent
Natural resources Planner	Approval subject to conditions of consent

(Flood Engineering Referral)

As mentioned earlier in the report, the submitted flood study was peer reviewed by an external consultant at Council's request in December 2021. As a result of the peer review, the applicant was requested to provide additional information which was received by Council on 4 March 2022 (referred as GHD responses below).

Upon the review of the GHD responses, Council's flood engineer does not support the proposal in its current form and has made the following comments:

“Council has concerns on number of issues of the responses in relation to hydrology, hydraulics and floodway extent as outlined below separately (A. Modelling Assessment). These issues need to be satisfactorily addressed and submit necessary information for Council's review.

Once the mentioned issues are addressed, following steps are proposed to proceed with the DA in relation to floodplain management matters.

1. *Address Council's concerns as mentioned above and submit updated flood information and floodway extent mapping.*
2. *Revise the development footprint and the proposed work to be consistent with the updated flood information and floodway extent. The proposed work shall address and be consistent with Council assessment requirement dated 26/02/2021. Development must be outside the defined floodway extent of both Nepean & Duncan Creek.*

3. *Prepare detailed concept design for the proposal. Undertake flood modelling assessment for the detailed concept design including Stage 1 of the work. The modelling shall include detailed concept design for all works under Stage 1. The modelling assessment shall include all works proposed as part of the development proposals on the high flood risk area. This shall include bulk earth works, flood mitigation works, mausoleum structures, construction pads, internal bridges, administrative buildings etc.*

It is Council's general practice that concept/detailed concept design plans are submitted for assessment of initial assessment of the development applications along with necessary hydrologic/hydraulic modelling assessment for larger subdivision/development proposals.

Current proposal is a major development on complex high flood risk area. Therefore, detailed concept proposals supported with detailed flood modelling is required (prior to CC Stage stage) for the assessment.

A. Modelling Assessment

1. Hydrologic modelling

From GHD responses, it is not clear how increasing of the contributing catchment area and reduction storm losses in the XP-RAFTS model has reduced the original discharges (as detailed in response to item 4). Therefore, there is uncertainty regarding the Duncan Creek floodway extent. Split catchment method generally sees flow increases. Flow reduction could be attributed to updating higher PERN value in the split catchment version than the original model. Hydrologic modelling must be reviewed.

2. Hydraulic model (HEC-RAS model)

From GHD responses, it is noted some of the peer reviewer recommendations were not tested through flood modelling and it indicated those recommendation would be adopted at CC stage modelling. The recommendation not utilised includes adopting recommended Courant factor & full momentum method for HEC-RAS, use of different material types for the catchment & corresponding Manning 'n' values instead use of single Manning 'n' value, blockage factor for hydraulic structures etc.

a) Hydraulic modelling assessment required to be undertaken for detailed concept design of the proposals and submit with the proposal (prior to CC Stage). Model shall use recommended full momentum method, Courant factors, adopt manning 'n' values for different material types in pre & post development scenarios, blockage factor for hydraulic structures, adoption of coincidental flooding in Nepean River and Duncan Creek (5yr Nepean River and 100year Duncan Creek flooding as recommended),

b) Floodway extent and Floodway Flow comparison

It is noted that the floodway extent has been improved. However, updated extent appears to have still underestimated. Floodway extent/calculation must be revised and recommended increase of 0.1m flood level from the encroachment method should not be exceeded.

It appears a significant flood level increase (Fig3 of the response letter) is predicted across the eastern floodplain of the Nepean River (i.e immediately south of the obstruction). This appears to be higher the quoted 0.13 to 0.15m and likely much higher than the nominated 0.1m increase. It appears to be the impact is significant and revised floodway extent is not significantly large. Flood level increase from encroachment method should achieve no more than the recommended 0.1m increase

Table 2 of the response letter indicates that the floodway does not convey 80% of the flow toward central and downstream sections of the site. This again suggests that the floodway is

still being undersized across the site. During larger floods such as the 1%AEP there is potential for backwater influence from the Warragamba River and the more conservative of the two options must be considered in determining flow conveyance through the floodway extent.

Floodway calculation and defining extent must be revised to limit level increase to recommended 0.1m and 80% flow conveyance through the section”.

(Environmental Health)

As mentioned earlier in the report, the submitted information has been reviewed by Council's Environmental Health officer and is not supportive of the application. The following additional information is required for a detailed assessment of the application:

*“Further information is required to address two concerns raised within the report titled 1290 Greendale Road River Gardens Cemetery **Air Quality Assessment** (prepared by Soukutsu Pty Ltd, dated May 2021, ref no.: 12517741);*

1. As the proposed operation of the cremators is expected to run up until 8pm there may be under certain meteorological conditions (formation of a temperature inversion) prevention of emissions from dispersing and pollutants building up under an inversion layer. Given that temperature inversions are likely to occur in night time periods (with respect to the proposed operating hours) and more frequently during winter months the applicant is to provide further comment on the potential impact a temperature inversion would have on the operation of the cremator during the night time period, dispersion of pollutants and potential impacts to receivers at any time the cemetery is accessible;

2. Further comment is required from the applicant to justify whether any ongoing (or periodic) monitoring requirements for pollutants and/or ongoing (or periodic) monitoring requirements for operational parameters of the system are required to ensure the system and its operations meet the design parameters and expected emissions targets adopted and discussed in this report.

*Additionally, further information is required to address the following concerns within the report titled 1290 Greendale Road: **Water and Wastewater assessment report** (prepared by GHD, dated October 2020, ref no.: 12517741):*

1. According to the Statement of Environmental Effects for Development Application 1290 Greendale Road, Wallacia (prepared by SJB Planning, dated: Dec 2020) a combined patron/staff number for all accessible buildings is 1,610 people and the wastewater report estimates 500 guests (assumed to be site visitors, not associated with any building) are using the site daily. A total estimated potential capacity of 2,110 people. Given these figures and design daily wastewater flow based upon the figures in the report, further elaboration and/or justification is needed to demonstrate the appropriateness of using the proposed figure with respect to the total estimated potential capacity of the site including maximum capacity of all accessible buildings at the site;

2. The applicant is to consider the appropriateness of using the Liverpool Weather Station (I.D # 67035) for the purposes of the water balance model, given the subject premises is located in Wallacia and the likely closest weather data recorded would be the Badgerys Creek Station (I.D # 067108), the data shall be readjusted to accommodate, if necessary, for any data differences between the two stations as this may affect the overall sizing and design of the system; and

3. Justify the appropriateness of a water balance model alone, as either the nutrient or water balance could be the limiting factor for an irrigation area and use of both methods is advised

in order to get a higher estimate. Again this may affect the overall sizing and design of the system”.

(b) External Referrals

The following comments have been received from External Authorities:

Agency	Response
Rural Fire Service (RFS) NSW	No objection to the development, subject to conditions
Natural Resources Access Regulator (NRAR)	No objection to the development, subject to GTA
Department of Infrastructure, Regional Development and Cities	Returned – to be referred to Western Sydney Airport to provide relevant input
Western Sydney Airport	No objection, subject to conditions.
Environment Protection Agency (EPA) NSW	No referral or concurrence required as the proposal is not prescribed as a scheduled activity and is not ‘integrated development’.

(c) Notification and Community Consultation

The application was exhibited between 20 January 2021 and 18 February 2021 and it was further extended to 18 March 2021, in accordance with the Liverpool Community Participation Plan. In addition, a community consultation meeting for the interest of local residents was held on 17 June 2021.

Fifty-six (56) submissions were received in relation to the proposed development. These issues raised in the submissions are summarised and discussed below:

Issues	Comment
Flooding/ Impact on Nepean River/ Potential Health Risk	
<ul style="list-style-type: none"> Use of the current flood modelling, accuracy of the flood study submitted and absence of consideration to other flood related matters (1% AEP, 1-100 events, past modelling of the area used, back water inflow from the Warragamba River entering Nepean River, impact of the new Western Sydney Airport on the site, Warragamba Dam overflows, climate change as identified in the Regional flood study in 2019, flood evacuation, flash flooding from Duncans Creek, alteration of natural flow and impact on neighbouring areas, such as Bents Basin Road, NSW Floodplain Development Manual and history of flooding in the area). Adequacy of flood mitigation works proposed and resultant bulk excavation and flood mitigation works having impact on the flood characteristic of the locality. Infrastructure NSW, NSW DPI Office of Water NSW and SES consider Wallacia to be on a flood plain. 	<p>Council’s Flood Engineer has assessed the application and does not support the proposal for the reasons stated in Section 6.8 (Referrals) of this report.</p> <p>It is considered that the site is constrained by flooding and that improved flood mitigation measures are required for the proposal in order to reduce the flood risk for the site and wider community.</p>

<ul style="list-style-type: none"> • Large trees, debris, floodplain topsoil, pollutants, toxin runoff, human remains, caskets, etc being washed away and leeching into the river by flood waters. River erosion by flood waters. • The development is inappropriate as the site is located in a flood plain with long history of flooding. • Disruption of the flood plain. The assessment of the flood modelling should ensure that the development does not alter flood levels or flood velocities for various flood events within the Nepean River. • <i>"Storm water disposal from the Aerotropolis may well increase flood levels in the area."</i> • <i>"I can't imagine in any type of mitigation will prevent major flooding in a 1 in 100 or even a 1 in 20 year flood event. Due to the type of soil substrate, toxic contaminants and potentially bacteria and viruses will seep into the earth and make their way into the Nepean River."</i> • <i>"Local market gardens and tank water used for drinking would be polluted with toxins."</i> • <i>"The farms have licenses to pump water from the Nepean River and have a right to water that has not been contaminated. Cattle also drink water from the river"</i> • <i>"There is a risk of partial collapse of the significant amount of fill (up to 15m) adjacent to the fence line...this would cause damage to the neighbouring property as the material swirls around in a flood and also cause further environmental damage to the surrounding area."</i> • Considerations to the findings of Dr Boyd Dent's report titled "Almost every cemetery has the potential for contamination." 	<p>Council's Environmental Health officer has reviewed the application and has raised no objections to the proposed development based on contamination grounds.</p>
Vehicular access, Traffic and Parking	
<ul style="list-style-type: none"> • This will lead to unnecessary congestion, noise and increased risk of traffic incidents, which will reduce the quality of life currently enjoyed by existing residents. • <i>"The volume of traffic heading to the cemetery will be huge – the developer of the proposed indicated 75% of funeral traffic will proceed</i> 	<p>The application was referred to Council's Traffic Engineering section for review. Council's Traffic Engineering section considers that the surrounding road network has capacity to accommodate the traffic generation from the development.</p>

<p><i>down Park Rd into Wallacia then out onto Greendale Rd. Wallacia is already dealing with increased traffic coming down Silverdale Rd with the urban development going on in the Silverdale/ Warragamba area. This will be exacerbated by the growth of the Aerotropolis and the traffic this new city will generate”.</i></p> <ul style="list-style-type: none"> • The site is located on one of the dangerous sections of Greendale Road, covering a steep hill, curved road and a tight bend at the bottom of the hill crossing Duncans Creek. • The width of the road will NOT accommodate the influx of traffic on the tight bend causing danger. • The infrastructure of public roads (Greendale Road) will not be able to cope with the pressures of a commercial operation as proposed. • Traffic noise, pollution and safety. • <i>“This increased traffic means everyday activities such as Wallacia Public School pickups and drop-offs will be impacted, as well as local recreational activities at the Wallacia Golf Course and the Bowling Club, and the aged residents of the Regal Oaks Retirement Village trying to cross the road”.</i> • <i>“There is also a proposed cemetery at Wallacia Golf Course which will effect traffic flow. A quarry company have approval to bring 250 truck movements per day on this intersection (Mulgoa Road/ Park Road/ Greendale Road). The new Recycling plan with 24 hour operation on Park Road also will generate traffic”.</i> • Need for an upgrade in Greendale Road. • <i>“There is no public transport, no cycleways.”</i> • Increased traffic will negatively impact wildlife in the area. • Parking on landscaped areas and off site. 	<p>In terms of vehicular access and design of the development, Council's Traffic Engineering section supports the development for the following reasons:</p> <p><i>“Traffic and Transport has no objections to this proposed development subject to the requirements of the DCP and Australian Standards, and the intersection treatment of the proposed new access off Greendale Road being CHR(S) as per the Road Safety Audit recommendation including Council's comments on the design including cross section, submitted by the applicant”.</i></p> <p>In regard to car parking provision of the development, Council's Traffic Engineering section raised no objection for the following reasons:</p> <p><i>“The TIA indicates that, in the absence of criteria for parking provision for Cemetery use in Councils DCP or the TfNSW Development Guidelines, it has relied on parking provision at comparable sites. On that basis, the development plans there will be 112 spaces provided in the formal parking area and some 400 to 500 kerbside spaces along the access road system. There will also be large unused areas on the site which could provide for additional parking in the future if there is such a need.</i></p> <p><i>It concludes that the provision of 112 space plus the available on-road parking will be more than adequate for Stage 1 of the development while the large vacant areas on the site would be able to accommodate additional formal parking in the future should operational experience indicate this need (eg in the north eastern part).</i></p> <p><i>Hence, parking provision is considered acceptable”.</i></p> <p>In terms of the impact on the surrounding road network, Council's Traffic Engineering section raised no objection for the following reasons:</p>
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	<p><i>“The TfNSW Guide to traffic generating developments does not have figures on the trip generation of cemeteries. As a result, the TIA has assessed the trip generation of the comparable Macquarie Park Cemetery (approx. 60ha) and Forest Lawn Cemetery to get understanding of the traffic generation of the proposed cemetery.</i></p> <p><i>On that basis, it estimates the traffic generation of the proposed cemetery at some 160 – 180 vehicular trips per hour (vtph) (two way) and concludes that it will not present any adverse operational issues for the surrounding road network, taking into account the low traffic volume on Greendale Road and the fact that the generated traffic will only occur outside the peak period”.</i></p>
Compliance with DCP, LEP and Policy/ Objects of the Act	
<ul style="list-style-type: none"> • The proposal fails to consider and is inconsistent with the objects of the Act. • <i>“the LEP was development years ago...were aware the whole area of Greendale from Wallacia to Dwyer Road was zoned Rural and driving through the area it was plain that the area consisted of almost all farmland. When the LEP was written it took into account the historical graveyards, but the intention never was to disturb the rural nature of the area by constructing commercial crematoria and graveyards.”</i> • Height of mausoleums, function centre (hours of operation), on-site waste management, operation of crematorium, amenity impact on the surrounding area and compliance with LDCP 2008. • Inconsistency with the objectives of RU1 – Primary Production zone. • Intensification of the RU1 Primary Production zone. • It is inconsistent with the Sydney Regional Environmental Plan No 20 Hawkesbury-Nepean River (SREP 20). 	<p>The proposal is considered inconsistent with the objects of the Act relating to the orderly land use, protection of environment and good design and amenity of the built environment due to the outstanding issues that limits the ability to undertake a detailed assessment of the application.</p> <p>The concerns relating to compliance with the relevant provisions of the LEP, DCP and Policies have been discussed in detail in respective sections of this report.</p> <p>As noted earlier, the variation to building height cannot be considered at the time of the report. Further information is required to enable to assess the appropriateness of the building height, operation of the crematoria and ancillary administration building (Stage 1) is required.</p> <p>The proposal is considered inconsistent with the zone objectives in regard to minimising conflict between different land uses and preserving bushland, wild life corridors and natural habitat due the outstanding flood issue with this application.</p>

<ul style="list-style-type: none"> The proposal does not align with the Liverpool Council's Strategic Planning Statement (LSPS) – connected Liverpool 2040 and the Western District Plan which is a guide for implementing the Greater Sydney Commission (GSC) 'A Metropolis of Three Cities' plan. Several aspects of the proposal are inconsistent with the recommendations of 'The 11 hour: Statutory Review of the Cemeteries Crematoria Act 2020.' 	<p>The proposal is considered inconsistent with Chapter 9 of SEPP Biodiversity and Conservation 2021 – Hawkesbury-Nepean River regard to likely impact on the Hawkes-Nepean river system due to the unresolved flood issue.</p> <p>This review is not a statutory instrument.</p>
The Suitability of the Site	
<ul style="list-style-type: none"> <i>"I am not against progress but I am sure there is ample property available away from populated areas that could be used for this project."</i> <i>"Wallacia is a rural village in the agricultural Wallacia Valley – a buffer between the Airport and the Aerotropolis on one side, and the urban growth already committed to in Silverdale. We do not need a huge commercial development of a cemetery being built on our flood plain on the banks of one of Sydney's major rivers."</i> <i>"We are not against planned development but ad hoc developments on totally unsuitable land and contrary to the surrounding area's ambience should not be considered."</i> <i>"That block (extremely flood prone) is not suitable for a cemetery."</i> Bent Basin is a State Park and a major tourist attraction. The site is unsuitable as it is located in the proximity to Bent Basin. <i>"The cemetery is in direct conflict with this already established beautiful tourist spot (Bent Basin State Conservation Area)."</i> Intensification of land use with the proposed development. <i>"Greendale is a quite semi-rural area with septic pump out tanks and no town water. A</i> 	<p>As discussed earlier in the report, the proposed cemetery and crematoriums are permissible land uses within the RU1 Primary Production zoning.</p> <p>The ancillary structures such as the chapel, café/flowerist, function hall, administration building, and gatehouse are not proposed to operate independently of the overarching cemetery land use.</p> <p>Insufficient information is provided relating to hydrology, hydraulics and floodway extent at pre and post development conditions. Council's flood engineer does not support the proposal in its current form as this information is required to determine the full extent of flood impact on the subject site and surrounding area and therefore the suitability of the site for the development.</p> <p>It is considered that the application has failed to demonstrate that the site is suitable for the proposed development on the basis of unknown flood impact and consequent flood mitigation and earth works associated with the proposal.</p>

<p><i>large development, such as this is not suitable for this area. It will put a further strain on the limited number of amenities in the area and in particular the environment and the roads."</i></p> <ul style="list-style-type: none"> • Too many cemeteries in our area – <i>"There are too many (cemeteries proposed and approved) proposed in this area and there are many more suitable areas in the region, where residents are happy to accommodate cemeteries."</i> • <i>"The land has been dairy farming for approx. 100 years. Change of use of this land should not be permitted as it is not suitable with other nearby farming activities."</i> • <i>"It would be better off locating the proposal to a more level location where it would be more cost effective, and not as destructive to the local environment.:"</i> • Strategic planning and contextual considerations informing site suitability. 	
Scale, heritage character and rural character of the area/ Undesirable Precedent for the Area	
<ul style="list-style-type: none"> • <i>"This area also has significant historical importance, the bridge at Wallacia named Blaxland's crossing, as this was the campsite for the explorer's route where Blaxland Lawson and Wentworth's expedition when they crossed the Nepean River."</i> • <i>"A number of local residents have developed delightful farms and it is unfair to put a huge commercial operation adjacent to these rural properties. These development are not in keeping with the Rural Zoning of the area."</i> • <i>"Keep the heritage of the Mulgoa, Wallacia Valle. Commercial operations would kill this."</i> • <i>"Neighbouring property values would drop severely with such an unsavory, human incinerator close by."</i> • Heritage impacts by the proposed development. • <i>"Wallacia is an agricultural community – and the site of the proposed cemetery has been actively farmed for generations. Farms are the heart of Wallacia. An enormous, commercial cemetery is not compatible with the life in our rural community. A cemetery is an unacceptable change of use of the land."</i> 	<p>As discussed earlier in the report, the proposed cemetery and crematoriums are permissible land uses within the RU1 Primary Production zoning.</p> <p>The overall GFA proposed with this application is 3,045m² which equates to 0.4% of the total site area of 73.46ha. The building footprint of the proposal indicates that the buildings are located a minimum 120m from any site boundary and is to be screened with vegetation. Some aspects of the proposal (e.g. building height, footprint and levels) are subject to further changes, if approved, however the scale of the development is considered to be minimal when it is compared to the overall site context and area.</p> <p>The site is not identified as a heritage item nor is located within a heritage conservation area.</p> <p>The application was referred to Council's heritage officer to assess the likely impact on the aboriginal cultural heritage. No objection was raised subject to conditions of consent.</p> <p>There are not controls in the relevant EPIs, DPCs or guidelines that limit the</p>

<ul style="list-style-type: none"> • Social impact on the Wallacia Community – 5 cemeteries approved in the area. • <i>“The development will impact local amenity and rural character which is protected under current zoning. The scale is incongruous with the rural character which is protected by Metropolitan Rural Lands zoning.”</i> 	<p>number of cemeteries in the area. The application is to be assessed on its merit.</p> <p>In terms of landscaped setting, Council's Natural Environment & Landscaping officer have reviewed the proposal and advised that the proposal will be satisfactory subject to conditions of consent.</p>
Air Pollution/ Air Quality	
<ul style="list-style-type: none"> • The air quality impact assessment to demonstrate compliance with the relevant regulation and guidelines. • <i>“Pollution from the crematoria will have serious detrimental effects with many market gardens in the near vicinity being polluted with the vegetable supplying greater Sydney.”</i> • <i>“Health of neighbour is a serious concern, especially those with respiratory conditions.”</i> • Cumulative effect of other Crematoriums approved in the area needs to be considered as well as the Western Sydney International Airport in the assessment of the air quality of the area. • <i>“The air quality around Greendale and surrounding areas is going to be impacted by this development.”</i> • <i>“This proposal does not have an air quality impact assessment.”</i> • <i>“Air quality will be adversely affected: pollutants spewing from the crematorium into the air; increases in number and intensity of respiratory illnesses such as asthma will occur; and increased pollution from massive in road traffic or funerals, memorial days such as birthdays, Christmas etc, added to pollution from trucks and other vehicles servicing the cemetery needs will add to poorer air quality.”</i> 	<p>An Air Quality Assessment prepared by GHD and dated May 2021 (ref: 12517741) has been submitted with this application.</p> <p>Council's Environmental Health officer has reviewed the application and has raised concerns relating to the emission during inversion events when operating night time (after 6pm). As such the proposal is not considered acceptable at this stage. Refer to Section 6.8 'Referrals' section of the report.</p>
Environmental Impacts/ ESL/ Environmental Management Consideration	
<ul style="list-style-type: none"> • <i>“More than 1ha of critically endangered Forest will be cut down. This will disrupt wildlife corridors and will be irreplaceable loss to the Biodiversity of our region.”</i> 	<p>The submitted Biodiversity Assessment Report (BAR) (prepared by Travers Bushfire and Ecology, dated April 2021 (REF:</p>

<ul style="list-style-type: none"> • <i>“Wildlife: Wildlife habitation in the area of this proposal will be affected greatly by the development.”</i> • <i>“The proposed development area contains Cumberland Plain Woodland and Shale Sandston Transition Forest which are both listed as a Critically Endangered Ecological Community. We can’t afford to lose any more of this unique environment and replace it with landscaped gardens of imported trees.”</i> • Loss of critically endangered Cumberland Plain Woodland – <i>“Approx 6% only currently remains. The removal of existing native vegetation and loss of habitat will have a severe and negative impact on both the vegetation and all wildlife that reliant on the native vegetation.”</i> • <i>“Ecology in the area, with the native animals, such as Burrowing Frog losing habitat.”</i> • Environmental Management Considerations. • Comments made on the submitted Geotechnical Assessment Report. 	<p>20MKD03BDAR)) and Vegetation Management Plan (VPM) consider and assess the likely impact on the existing native vegetation and threatened species and communities.</p> <p>The application was referred to Council’s Natural Resources Officer who raised no objection to the proposal, subject to conditions requiring compliance with the works, activities and mitigation measures recommended in the BAR submitted, implementation and monitoring of the VMP, any tree removal to be examined by a qualified ecologist for presence of hollows or native nests of birds, and construction of permanent fences to protect, conserve and limit access to the bushland onsite as indicated in the VMP. As such the proposal is considered acceptable in this regard.</p> <p>A revised Geotechnical report would be required to align with the findings of a revised flood study that satisfies Council’s Flood Engineer requirements.</p>
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NB: The issues raised in the submissions are considered to contain varying degrees of relevance and have been considered in the assessment of the application.

6.9 Section 4.15(1)(e) - the public interest

The proposal is not considered to be desirable or in the public interest, given the extent and nature of the non-compliances with the Liverpool LEP 2008 and Liverpool DCP and inconsistencies with the objects of the Act and SEPP Biodiversity and Conservation (Hawkesbury-Nepean River) 2022..

7. DEVELOPMENT CONTRIBUTIONS

Development contributions do not apply to this development.

8. CONCLUSION

After consideration of the development against section 4.15 of the EP & A Act 1979 and the relevant statutory and policy provisions, the proposal is not considered suitable for the site and is not in the public interest.

In light of the above assessment, the unresolved issues and unreasonable impacts arising from the development are sufficient to warrant a refusal of this application.

9. RECOMMENDATION

That Development Application No. DA-1059/2020 for the concept DA for the construction of

a cemetery to be known as 'River Gardens Cemetery' to be carried out over nine (9) stages, including mausoleums, crematoria, chapel, hall, gatehouse, administration buildings, café, carpark, access roads, landscaping, earthworks and flood management works and Stage 1 DA (Demolition of existing structures, bulk excavation and flood mitigation works for the entire site, construction of 4 x pads and access road for Pad 1, administration buildings, crematoria, wastewater treatment and car park for Pad 1) be refused for the following reasons:

1. The proposed development is considered to be inconsistent with the objects of the Environmental Planning and Assessment Act 1979, as the development does not satisfactorily promote the orderly land use and good design and amenity of the building environment, pursuant to Section 1.3 of the Environmental Planning and Assessment Act 1979.
2. The proposed development is considered to be inconsistent with the aims of the State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 9 Hawkesbury-Nepean River, as the development does not satisfactorily promote improved catchment management and flood management, pursuant to Section 4.15(1)(a)(i), 4.15(1)(b), 4.15(1)(c) & 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.
3. The proposed development is inconsistent with Clauses 5.21 and 7.31 of Liverpool Local Environmental Plan 2008 as it does not satisfactorily address the provisions pursuant to Section 4.15(1)(a)(i), 4.15(1)(b), 4.15(1)(c) & 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.
4. The proposed development is considered to be inconsistent with the zone objectives of Liverpool Local Environmental Plan 2008, pursuant to Section 4.15(1)(a)(i), 4.15(1)(b), 4.15(1)(c) & 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, in terms of the following objectives of RU1 zone:
 - a) To minimise conflict between land uses within this zone and land uses within the adjoining zones, and
 - b) To preserve bushland, wildlife corridors and natural habitat.
5. The proposed development does not comply with the requirements of Liverpool Development Control Plan 2008, pursuant to Section 4.15(1)(a)(iii), 4.15(1)(b), 4.15(1)(c) & 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, in terms of the following:
 - a) Part 1, Section 9 – Flooding Risk and Waste water,
 - b) Part 5 – Building Design, Style and Streetscape (Building Height); and
 - c) Part 5, Section 9.13 – Site Suitability (Flooding Risk).
6. The applicant has provided insufficient information to enable a full assessment of the proposed development pursuant to Section 4.15(1)(a)(i), Section 4.15(1)(a)(iii), 4.15(1)(b), 4.15(1)(c) & 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
7. In the circumstances of the case and for the reasons stated above, approval of the development is not in the public interest Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

10 ATTACHMENTS

- Architectural plans
- Revised Architectural Plans
- Statement of Environmental Effects
- DCP Variation Written Justification to Building Height
- Flood Report
- Biodiversity Assessment Report (BAR)
- Stormwater Concept Plans
- Water and Waste Water Assessment
- Vegetation Management Plan
- Contamination and Waterways Constraints Assessment
- Preliminary and Detailed Site Investigation Reports (PSI & DSI)
- Wildlife Hazard Review
- Waste Management Plan
- Geotechnical Assessment Report
- Aboriginal Heritage Due Diligence Assessment
- Traffic Impact Assessment (TIA)
- Air Quality Assessment
- Water Sensitive Urban Design: Stormwater Assessment (WSUD)
- Draft Plan of Management
- Quantitative Surveyor Report
- SWCPP – Record of Briefing
- Additional Submission (photographs)