

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY WESTERN CITY PLANNING PANEL

<b>DATE OF DETERMINATION</b>	23 September 2022
<b>DATE OF PANEL DECISION</b>	23 September 2022
<b>DATE OF PANEL MEETING</b>	10 August 2022
<b>PANEL MEMBERS</b>	Justin Doyle (Chair), Louise Camenzuli, Greg Britton, Peter Harle and Ned Mannoun
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Nathan Hagerty: Has brought a notice of motion to council opposing this development

Papers circulated electronically on 27 July 2022.

#### MATTER DETERMINED

PPSSWC-125 – Liverpool – DA at 1290 Greendale Road, Wallacia – 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 (as described in Schedule 1) and stage 1 of the proposed concept comprising 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.

#### PANEL CONSIDERATION AND DECISION

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

#### Development application

The Panel unanimously determined to uphold the request made under cl 4.6 approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* subject to the conditions recommended and the comments set out below.

#### REASONS FOR THE DECISION

The Panel determined to approve the application taking into account the reasons for the recommendation of approval outlined in the 15 July 2022 Addendum Report which contains the most recent statement of the Council assessment staff's evaluation of the proposal and the most recent assessment by Council's flood engineer completed on 4 July 2022.

For the RU1 zone which applies to the area proposed for the proposed facility, the zoning objectives are directed principally to uses associated with primary industry production and environmental protection and do not assist with the assessment of a cemetery or crematorium, which are both nominated as permissible land use purposes within the RU1 zone. However, in most cases it can be expected that use of a site for a purpose for which it is zoned is consistent with the intended development within that zone, provided of course the design of the project results in acceptable environmental impacts (*BGP Properties Pty Ltd v Lake Macquarie City Council* 138 LGERA 237 at [118]).

The proposed use offers the potential to reduce the substantial long term demand for burial and internment space across Sydney, while finding an economic use for land within the floodplain of the Nepean River (consistent with the Floodplain Development Manual and the Flood Prone Land Policy), which because of its flood affectation and regular flooding is not suitable for many forms of economic development or intensive agriculture.

Cemeteries and Crematoria NSW (CCNSW) being a statutory agency created under the Cemeteries and Crematoria Act 2013 provided a report to Parliament on 19 February 2021 which concluded that all of the existing operational Crown cemeteries in Sydney will exhaust their currently available land in the next 12 (2032) years. Approval of this DA will help to address that shortfall, and is accordingly in the public interest. Notably, on 12 July 2021, a planning proposal by the Council to prohibit cemeteries and crematoria in Wallacia was rejected by the Minister's delegate.

While the land subject to the proposed concept plan is significantly flood affected, the civil design for the proposal has been extensively examined by Liverpool Council's Flood Engineer. The Panel is informed that after careful review Council is generally satisfied that the issues of flood risk can be managed as part of the development, subject to the deferred commencement conditions proposed.

The extensive landscaping and earthworks proposed will screen the proposed development such that it should not result in any unacceptable view impacts. However, the impacts of the separate stages of the development will be the subject of further DA's where the issue of visual impact should be considered in detail in each case. That will ensure that the visual character of the area is not adversely impacted upon.

The higher parts of the site closer to Greendale Road are not proposed to be the subject of substantial development, such that there is not expected to be any significant adverse impact on the native vegetation including Cumberland Plain Woodland (CPW) and River Flat Eucalypt Forest (RFEF) present on the site, or the threatened fauna species detected there. The Panel is cognisant that revegetation forming part of the Vegetation Management Plan (VMP) proposed as part of the DA is planned to result in a net gain of 9.26ha of RFEF and 0.7ha of CPW to mitigate any impacts associated with such clearing as is proposed with the DA.

Liverpool DCP 2008 Part 5: Rural and E3 Zones provides that non-residential uses should comply with a general maximum height of 8.5m. The height of development should also fit in with the surrounding areas, and conserve and protect the rural nature of the area. However, 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 Panel accepts the advice of the Council staff assessment report that in this case the large size of the site, and the fact that with the screening proposed the internal structures will not be significantly visible or intrusive from Greendale Road or surrounding properties, means that the numerical non-compliances will not have significant impacts or compromise the objectives of the DCP standard. Notably, the greatest non-compliances are largely attributable to architectural features of the Chapel and Crematoria including the crematoria stacks which, while high, are isolated points across the extensive area of this site. On balance, the exceedances of the DCP height controls are acceptable.

While the Panel is cautiously prepared to approve the proposed development as a permitted use in the zone, where the Council staff report that the supporting material has addressed the key merit and engineering issues (subject to the recommended conditions) the Panel is conscious that there is no developed or documented expression of the planning policy to be applied to this scenic portion of the alluvial flats adjacent to the Nepean River.

The proposed development is significantly different in appearance to the passive rural uses in the available visual catchment and the bushland across the River. While the Panel is satisfied that the impacts of the proposed cemetery and mausoleum structures can be sufficiently screened in this case, it is concerned that attention should be given to strategic planning for similar sites stretching in both directions up and down the River noting that the presence of threatened fauna has also been detected in and adjacent to the River valley. The precedent of significant cut and fill as proposed with this DA to address flooding impact if duplicated along the River bank has the potential overtime to alter the character of the area. Pressures for development of the area can be expected to increase with the opening of the Western Sydney Aerotropolis.

One matter which arose during the Panel's consideration of the issue of flooding was advice received that Council's flood policy does not take into account the issue of climate change. If that is the case, it is a shortcoming with the policy which should be addressed. Nonetheless, the Panel is satisfied that for this

development the requirement for a 500mm freeboard as per Condition B11 sufficiently guards against the contribution to potential additional flood affectation of the site as climate change progresses, consistent with the position taken by GHD and CSS. In the case of non-habitable building structures, where a freeboard is not required (Condition B10), it would be predicted that some inundation of the floor level/surface level, not exceeding 500mm, could occur within a 100 year planning timeframe. However, the design of these structures is such that the impacts of minor irregular inundation from an exceptional flood event would not be expected to lead to unacceptable risk or damage. Further DA's should take into account climate change, based on the knowledge of climate change available at the time.

## CONDITIONS

The Development Application was approved subject to the conditions, and deferred commencement conditions in the Council Assessment Report.

Minor matters which the Panel directs the Council assessment staff to resolve in the final determination are:

1. In the last sentence, it seems the word used in the draft conditions 'include' is meant to be 'exclude'? That is the passage should read 'Compensatory flood storage shall exclude all passive flood storage within the 1%AEP flood extent and shall exclude any volume of structures such as proposed six mausoleums, bridges, culverts etc below the 1%AEP'.
2. It also seems a further sentence should be added to Condition B8.....'Compensatory flood storage shall exclude the excavated volume below the water table (water table to be shown on the submitted cross sections).'

## CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered the extensive written submissions made during public exhibition and heard from all those wishing to address the Panel. 56 written submissions were made covering a variety of amenity and locational concerns.

In particular, a public meeting was convened by teleconference on 19 April 2022 following which the Panel documented the chief issues raised in its deferral determination. Following the site visit undertaken, and taking into account the supplementary advice received, the Panel's opinions in relation to the issues raised is as follows

- a) Joe Grech spoke as a local resident who had worked on the Warragamba Dam spillway. He was concerned that the flooding data relied upon by the Applicant in its reporting does not in his view sufficiently address backwater flooding after release of water from Warragamba Dam.

*The Panel accepts the Council's advice that this issue has been examined thoroughly by Council's flood engineer, and that the development will satisfactorily address the potential for flooding and the impacts of release of water from Warragamba Dam taking into account the comments made above and subject to the deferred commencement conditions to be imposed.*

- b) Terry Hay and Jan Tibbotts each of 679 Greendale Road addressed a number of amenity concerns about the proposal. They included the cumulative impacts on the local road system from 3 cemeteries which rely on Greendale Road for access as well as increases with increasing development in the South West. Mr Hay was concerned about the proposed flood mitigation works and filling obstructing movement of water during the Duncan's Creek floods and the need to allow for water from dams on land owned by the Leppington Pastoral Company. Ms Tibbotts noted that there were no guidelines to limit the number of cemeteries, but argued that they should not be considered in isolation. She said she expected 75% of traffic from the proposal to be directed through Wallacia Village. She noted that the path of travel to the Wallacia village included stretches of 70km and 50km per hour which she said were not properly allowed for in the Applicant's traffic report, and that blind corners near the site of the proposal created safety risks. She was concerned

that the impact of particle fallout from the crematorium had not been adequately considered, noting that local residents rely on tank water collected from roofs.

*As noted the Panel is satisfied that the issue of flooding has been adequately addressed in the Council's assessment. Council's traffic staff have specifically examined the issue of traffic safety and assure the panel that the proposal meets relevant requirements with specific attention to available site lines and on site road conditions and speed limits. The Panel is also advised that the proposed development will not present any adverse operational issues for the surrounding road network.*

- c) Jacob Gunther of 1300 Greendale Road referred to the existence of what he described as an alluvial soil profile (as contrasted with firmer/stiffer residual clays), and proposed side batters of the detention basin and new fill of steeper than 2H:1V which he said would be at risk of severe erosion during a flood event, particularly when factoring seepage which would destabilise the slopes. He reported evidence of land slips on the opposite side of the river. He felt that the geotechnical issues arising from the DA had not properly been considered in the proposal and the study undertaken was based on incorrect information.



*The Council's flood engineer has advised that risks of erosion during a flood event will be suitably managed, and that the geotechnical reports received which detail core drilling throughout the site (including Bore Hole (BH) 4 was carried out to a depth of 13m) were sufficient to address Mr Gunther's concerns.*

*The Panel takes particular note of the advice that Council's Land Development Engineer has reviewed the proposal and raised no objection subject to standard conditions requiring sediment and erosion control measures during construction. Notably, any retaining structures to be designed and certified by a structural engineer at later stage of the development.*

- d) Margaret Stepniewski spoke on behalf of the Wallacia Progress Association. In addition to some of the issues raised by previous speakers she raised concerns that flood evacuation had not adequately been addressed in the proposal. She said that cumulative traffic impacts could not be properly considered based on the Applicant's studies, which she said relied upon traffic figures from 2014. She said that visual impacts from 38 metre high towers would be considerable and out of character. She was also concerned about air pollution and the effects of air borne particulate matter coming from the proposed crematorium. She said that the proposal conflicted with the content of the Liverpool Land Study and particularly the objectives of protecting agricultural lands.

*The Panel (as noted above) is satisfied by Council staff's advice that issues of traffic risk and potential congestion have been examined closely and found to be suitably addressed by the DA. Visual impacts will be mitigated by screening. The cemetery/ mausoleum is a permitted use in the zone and will not significantly compromise the agricultural potential of the area.*

The Panel considers that concerns raised by the community have been adequately addressed in the assessment reports and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli

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Greg Britton

Handwritten signature of Peter Harle in black ink.

Peter Harle

Handwritten signature of Ned Mannoun in blue ink.

Ned Mannoun

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-125 – Liverpool – DA-1059/202
2	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.
3	STREET ADDRESS	1290 Greendale Road, Wallacia NSW 2745 (Lot 1 DP 776645)
4	APPLICANT/OWNER	MKD Architects Pty Ltd/ Soukutsu Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021;</li> <li>State Environmental Planning Policy (Planning Systems) 2021;</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021;</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>State Environmental Planning Policy (Precincts – Western Parkland City) 2021; and</li> <li>Liverpool Local Environmental Plan (LLEP) 2008</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Liverpool Development Control Plan 2008 (LDCP 2008)</li> <li>Part 1 – General Controls for All Development</li> <li>Part – Development in Rural and E3 Zones</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Consideration of the provisions of the National Construction Code (NCC)</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Supplementary Assessment Report: 15 July 2022</li> <li>Council Assessment Report: 5 April 2022</li> <li>Written submissions during public exhibition: 56 objections (including 49 individual submissions and 7 proformas)</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Joe Grech, Jan Tibbotts, Terry Hay, Jacob Guenther, Margaret Stepniewski - on behalf of the Wallacia Progress Association</li> <li>Council assessment officer – Kevin Kim</li> </ul> </li> </ul> <p>On behalf of the applicant – Carl Salim, Rainer Berg, Antonio Maiolo</p> <ul style="list-style-type: none"> <li>Total number of unique submissions received by way of objection: 56 objections (including 49 individual submissions and 7 proformas)</li> </ul>

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: Friday, 23 April 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Louise Camenzuli, Peter Harle and Wendy Waller</li> <li>○ <u>Council assessment staff</u>: Kevin Kim and George Nehme</li> </ul> </li> <li>• Briefing: Monday, 15 November 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurrán, Louise Camenzuli, Peter Harle and Wendy Waller</li> <li>○ <u>Council assessment staff</u>: Kevin Kim and Brenton Toms</li> </ul> </li> <li>• Public determination meeting: Tuesday, 19 April 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Greg Britton, Louise Camenzuli, Peter Harle and Ned Mannoun</li> <li>○ <u>Council assessment staff</u>: Kevin Kim, David Tetley, Brenton Toms, William Attard, Michael Oliveiro</li> </ul> </li> <li>• Site Inspection: Monday, 23 May 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair) and Greg Britton</li> <li>○ <u>Council assessment staff</u>: Kevin Kim</li> <li>○ <u>Applicant</u>: Tony Maiolo and Sam Achmar</li> </ul> </li> <li>• Briefing: Wednesday, 10 August 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, Greg Britton, Peter Harle and Ned Mannoun</li> <li>○ <u>Council assessment staff</u>: Kevin Kim and Michael Oliveiro</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval, Deferred Commencement
10	DRAFT CONDITIONS	Attached to the Council Assessment Report