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298 April 2022

Mr Justin Doyle
Chair
Sydney Western City Planning Panel

enquiry@planningpanels.nsw.gov.au

Dear Mr Doyle,

PPSSWC-144 - PENRITH - DA21/0130-13 PARK ROAD WALLACIA

I am writing to you on behalf of our client St John's Bowling Club the applicant for the above matter that was considered by the Sydney Western City Planning Panel (SWCPP) at a public meeting on 26 April 2022.

DA21/0130 proposes alterations and additions to the Wallacia Country Club, a new swimming pool and gym complex, new synthetic bowling green, a putting green and alterations and expansion of the existing car park.

By way of background, it is important to note that whilst the scope of works sought under DA21/0130 is for all intents and purposes the same Country Club development to that which Deferred Commencement consent under DA19/0875 was granted by the SWCPP on 31 August 2021, the latter consent also included a 27,000 plot cemetery. In our view any consideration of the below recommendations to the Panel particularly in respect of operating hours and surrendering of consent needs to be cognisant of this fact.

We have prepared the following response to the draft conditions of consent and to the matters discussed in the public meeting. We would like to emphasise that the primary objective of the Applicant is achieve the favourable determination of the DA. As such, if the Panel does not agree with our arguments and suggested alternative conditions, we confirm that the Applicant will accept the draft conditions as currently written.

CONDITION 3 – OPERATING HOURS

Draft Condition 3 provides the approved operating hours for the development and requires that the Wallacia Country Club close at 11pm on Friday and Saturday nights, and that there be no use of the bowling green after 6pm. This is generally consistent with the intended hours of operation as set out in the Statement of Environmental Effects (SEE) accompanying the application, however the preparation of the SEE predated the approval of DA19/0875.

The operating hours approved under DA19/0875 provide for slightly extended hours as outlined below including the use of the bowling green until 7pm, which is of particular benefit during daylight savings. As it is the same country club development and the same site, we think it is reasonable that the

condition relating to operating hours is consistently applied across the two DAs. We therefore request that the Panel amend this condition to reflect the operating hours approved under DA19/0875, vis:

Golf clubhouse -

- *10.00am to 10.00pm Mondays, Tuesdays, Wednesdays, Thursdays and Sundays, and 10.00am to 12.00am Fridays and Saturdays. (i.e. 1 additional hour on Tuesday, Friday, Saturday and Sunday).*
- *Use of the golf clubhouse outdoor terrace at ground and lower ground floor is to cease at 10:00pm, 7 days and terrace doors are to be kept closed after this time. (No change).*
- *Bowling green – Any use of the bowling green is prohibited after 7:00pm, 7 days. (i.e. 1 additional hour).*
- *Community facility (pool and gymnasium building) - 6.00am to 10.00pm, 7 days. (No change)*
- *Entry to the community facility is not to be restricted to club members and is to be open for use by the general public. (No change)*
- *Parking provided on the site is to be open to those visiting the clubhouse, golf course and community facility. (No change)*

CONDITION 6 – SURRENDER CONDITION

Draft condition 6 states:

Prior to the issue of any Construction Certificate and prior to works commencing at the site (including tree removal), Consent no. DA19/0875 is to be surrendered in accordance with Clause 68 of the Environmental Planning and Assessment Regulation 2021.

The development approved by DA19/0875 includes the Nepean Gardens cemetery which is an entirely different element to anything proposed by DA21/0130. In such circumstances there is no need or justification for DA19/0875 to be surrendered as a result of this development.

The scope of works proposed under both DAs could proceed independently, with a modification to DA19/0875 to take out the scope of works relating to the Country Club proposed under DA21/0130. It is within the Panel's power to require such a modification under s4.17(1)(b) and s4.17(5) of the Environmental Planning and Assessment Act 1979 (NSW). We therefore submit that the Panel should remove draft condition 6 and instead impose the suggested alternate draft condition as follows:

Condition X – Modification of DA19/0875

Pursuant to s4.17(1)(b) and s4.17(5) of the Environmental Planning and Assessment Act 1979 (NSW), the consent to DA 2019/0875 shall be modified in accordance with clause 97 of the Environmental Planning and Assessment Regulations 2000 (NSW) prior to the issue of a construction certificate for this consent by adding a new condition 1A as follows:

"1A. Relationship with Consent to DA 2021/0130

Development Consent No. DA 2021/0130 authorises alterations & additions to Wallacia Country Club including internal building alterations to form function rooms & expanded gaming areas & facilities, addition of indoor swimming pool, gymnasium & synthetic bowling green,

expansion & modification of car parking area, road works, tree removal, landscaping works including practice putting green, stormwater drainage works & site servicing works.

This consent to DA 2019/0875 is modified such that no approval is granted for the scope of works approved under the consent to DA 2021/0130.

Where there is an inconsistency between this consent and the consent to DA 2021/0130, then consent to DA 2021/0130 shall prevail to the extent of the inconsistency."

CONDITION 7-CESSATION OF USE CONDITION

Draft Condition 7 states:

The use of the clubhouse is to cease operation at any such time the related golf course ceases operation or closes for a period of more than 3 months (other than for the purposes of maintenance or public health orders).

The operation of the golf course and the Wallacia Country Club are not permissible in the C3 Environmental Management zone and rely on existing use rights. The longstanding operation of the golf course and the existence of the Wallacia Country Club date back to 1932 on the site. Foregoing discussion in the Council assessment report contends that the Clubhouse is ancillary to the Golf Course and cannot exist on its own.

We refute this suggestion and request that the Panel reject this draft condition. The closure of the Country Club is not a practical outcome and this draft condition do not seem to have been fully thought through by Council.

Independent Uses

The existing use rights provisions in the *Environmental Planning and Assessment Regulation* do not require the golf course use to continue to enable the continued operations of the Wallacia Country Club. This is because while both uses are related, they can, and do, function independently, each with its own existing use rights. As was held by the Court of Appeal in *Baulkham Hills Shire Council v O'Donnell* (1990) 69 LGRA 404 at 409-410, "when one use of the land is by reason of its nature and extent capable of being an independent use it is not deprived of that quality because it is "ancillary to", or related to, or interdependent with, another use." Such a determination cannot be made on previous decisions in relation to sporting clubs, rather it is properly a question of fact and degree in all the circumstances of the case.

Anecdotal evidence provided in public submissions made in respect of DA 17/1092 record that the golf course and golf club/clubhouse evolved and were operating as separate, albeit related, enterprises since circa 1930. The same submissions record that the clubhouse has functioned with gaming capabilities since the 1960s. Further, we understand that as golfing use on the site has declined, until the COVID-19 pandemic, use of the Wallacia Country Club as a community hub and gathering point had remained strong. The closure of the golf course, including for its conversion to cemetery, therefore should not remove the validity of the continued use of the Wallacia Country Club on the site.

Ancillary Uses

If the Panel does not agree or accept the categorisation of the Wallacia Country Club as an independent use with its own existing use rights, an alternative is to construe the use as ancillary to the continued use of the site for sporting, recreation and community activities. The Wallacia Country

Club will continue to operate alongside a bowling green, putting green and community facilities including a swimming pool and gym. The determination of DA19/0875 of the Panel appears to have accepted that the bowling green was permissible by way of the existing use rights of the golf course. The Applicant on that development application had submitted that the golf course and bowling green were both types of 'outdoor sporting club greens.' If the Wallacia Country Club is ancillary to the golf course, then it follows that it must also be ancillary to these uses, especially the bowling and putting greens.

If this is a more acceptable approach for the Panel, an alternative draft Condition 7 is therefore proposed linking the operation of the Country Club operation to the continued use of the site for sporting and community activities:

Condition 7

The use of the clubhouse is to cease operation at any such time that all the related golf, bowling and community sporting activities entirely cease operation or close for a period of more than 6 months (other than for the purposes of maintenance, reconfiguration of the golf course or public health orders). If such events occur, the Clubhouse can re-commence operation if any of the related golf activities, bowling and community sporting activities recommence.

Note in this draft condition we have also extended the timeframe in which accompanying sporting and community activities can be closed to six (6) months. This is consistent with the provisions concerning abandonment of existing uses in the *EP&A Act* and accompanying Regulation.

It does not make sense for the Wallacia Country Club building to be upgraded and expanded and then be required to close if a cemetery is developed on the adjacent golf course. Our alternative condition provides for the continued operation of the Wallacia Country Club in conjunction with the sporting, recreation and community uses on the site, which is in the public interest.

As detailed above, if the Panel does not accept any of these submissions on the use of the land and existing use rights, then it is not the intention of the Applicant to displace Council's recommendation for approval and it will accept the Council's cessation of use condition as drafted.

OTHER MATTERS

Relevance of Gaming

As detailed above, the Wallacia Country Club appears to have been operating with gaming machines since the 1960s. While this is relevant to issues raised by the Panel at the public meeting on 26 April 2022, the continued use and keeping of gaming machines are not matters for consideration in the determination of this development application by virtue of section 209 of the *Gaming Machines Act 2001* (NSW). In particular, section 209(3)(b) of that Act prescribes that a consent authority cannot refuse to grant development consent to a club for any reason that relates to the installation, keeping or operation of approved gaming machines in a hotel or on the premises of a club.

Crown Land

Three of the four members of the public who spoke at the public meeting mentioned that the site was Crown Land. While the implications of these submissions are not relevant to the consideration of the development application, we would like to confirm for the record that the land has been contracted for sale to the St Johns Bowling Club, and therefore is no longer Crown Land pursuant to section 1.9(1)(b) of the *Crown Lands Management Act 2016*.

CONCLUSION

We appreciate the opportunity to make this submission and request that you give it due consideration in finalising your determination of the application. We reiterate that the key objective of the Applicant is to receive a favourable determination of the DA. As such, if the Panel does not agree with our suggested alternative conditions, we confirm acceptance of the draft conditions of Council, and request that the matter be determined in accordance with the recommendation for approval in the Council assessment report.

Kind regards,

A handwritten signature in black ink, appearing to read "David Hoy". The signature is fluid and stylized, with a large, sweeping "D" and a long, horizontal stroke at the end.

David Hoy
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