

MEMORANDUM

To: Sydney Western City Planning Panel
From: Jacqueline Klincke, Development Assessment Planner
Date: 17 June 2022

DA21/0130, Panel Reference – PPSSWC-144

Subject: Development Application at 13 & 17 Park Road, Wallacia, for Alterations & Additions to Wallacia Country Club Including Internal Building Alterations to Create Function Rooms and Expanded Gaming Area & Faculties, Addition of Indoor Swimming Pool, Gymnasium & Synthetic Bowling Green, Expansion & Modification of Car Parking Areas, Road and Intersection Works, Tree Removal, Landscaping Works including Practice Putting Green, Stormwater Drainage Works & Site Servicing Works

This memorandum is provided in response to matters raised in the Sydney Western City Planning Panel's (SWCPP) Record of Deferral dated 3 May 2022, in relation to the above-mentioned development application.

List of Attachments:

Appendix A – Council's Assessment Report
Appendix B – SWCPP Record of Deferral
Appendix C – Urbis Submission, Dated 29 April 2022
Appendix D – Council's Preliminary Comments, Dated 23 May 2022
Appendix E – Secondary Urbis Response Letter, Dated 25 May 2022
Appendix F – Applicant's Addendum Noise Statement

At the public meeting held by teleconference on 26 April 2022, the SWCPP unanimously resolved to defer the determination of DA21/0130 – PPSSWC-144 for a short period of time to allow the Applicant additional time to respond to the Panel's Record of Deferral (**Appendix B**). Specifically, the Applicant was to provide:

- a) a more considered submission on the issue of permissibility with accompanying legal advice, and
- b) a detailed discussion on proposed Draft Conditions 3, 6 and 7, which were then to be reviewed and commented on by Council.

The Applicant subsequently provided a finalised submission on 25 May 2022 (**Appendix E**) to address the matters raised in the Panel's Record of Deferral.

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A summary of the matters raised by the Panel in their Record of Deferral, as well as a more detailed response having regard to the Applicant's submission and their supplementary material is provided below.

1. Summary of Record of Deferral Matters

The matters raised by the Panel in its Record of Deferral are summarised below:

- a) The permissibility of the ancillary clubhouse and the proposed gaming extension
- b) The proposed extended hours of operation (Recommended Condition 3)
- c) The Applicant's comments regarding recommended Condition 6 (being the surrender of DA19/0875)
- d) The Applicant's additional advice regarding recommended Condition 7 (being the cessation of the use of the ancillary clubhouse when golf course use ceases)

In relation to (a) the Applicant's submission has not addressed the permissibility matters raised by the Panel. Further legal advice has not been provided.

The Applicant has submitted a response to items (b), (c) and (d). A response is provided below in relation to these three matters.

2. Detailed Review of Record of Deferral Matters

- (a) **Permissibility of Clubhouse and Extension** – An excerpt from the Panel's Record of Deferral included that ...*'Mr Hoy who presented to the Panel for the Applicant made it clear, when making his submissions contesting proposed draft condition of consent number 7 (cessation of use) that the clubhouse was not proposed as ancillary to the golf course, but rather as a separate facility which may operate in its own right'...*

The Panel further raised that the:

... 'proposed terrace and outdoor gaming are located within the RU5 zone where different issues of permissibility may arise'.

The Panel also noted that ...*'In the circumstances, the Panel resolved to defer the determination of the DA to allow the Applicant an opportunity to make a more considered submission on the issue of permissibility under the split zoning affecting the operation....*

Council Response – The matter of permissibility has not been further addressed by the Applicant. The continued use of the clubhouse building is reliant on the

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ongoing operation of the golf course as the golf clubhouse is ancillary to the golf course.

The golf clubhouse is not a dominant or primary use which benefits from an existing use right. The applicant has failed to provide evidence or legal advice to the contrary.

Council records clarify that the golf course commenced around the year 1932 and that a clubhouse *in the form of a tin shed open on two sides* was constructed sometime thereafter.

In addition, no further advice is provided by the Applicant addressing the permissibility of the proposed terrace and outdoor gaming area which extends into the RU5 Village zone.

As the SWCPP is the consent authority and must be satisfied as to the permissibility of the use, the Panel will need to be satisfied as to whether, this part of the proposal is permissible noting also that it represents an expansion of the original footprint.

Council considers that the applicant has not suitably addressed this matter.

(b) Extended Hours of Operation (Condition 3) – An excerpt from the Panel's Record of Deferral included that ... *'The Applicant also raised concern with the proposed draft conditions of consent 3... and advised that it would include in its proposed submission its position in relation to ... these conditions for the Panel's further consideration. Any addendum submission concerning permissibility and the evidence it relies upon'.*

Applicant Comments – Proposed Extended Operating Hours:

A. Golf Clubhouse –

- 10:00am to 10:00pm Mondays, Tuesdays, Wednesdays, Thursdays and Sundays, and 10:00am to 12:00am Fridays and Saturdays
- The 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.

B. Bowling Green – Any use of the bowling green is prohibited after 7:00pm, 7 days.

C. Community Facility (pool and gymnasium building) – 6:00am to 10:00pm, 7 days.

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An Addendum to the Noise Impact Assessment (**Appendix F**) was submitted in support of the proposed extended hours of operation.

Council Response – The proposed extended operating hours results in an additional:

- 1 hour (9:00pm – 10:00pm) for the Clubhouse on Tuesdays and Sundays
- 1 hour (11:00pm – 12:00am) for the Clubhouse on Fridays and Saturdays
- 1 hour (6:00pm – 7:00pm) for the use of the Bowling Green
- 1 hour (9:00pm – 10:00pm) for the Community Facility

These extended hours of operation align with the operating hours approved under DA19/0875. Furthermore, the addendum to the previous Noise Impact Assessment confirms that the extended hours will not result in any increase in noise emissions nor affect the recommendations and conclusions of the report.

Council therefore raises no objections to the proposed extended hours of operation, and amendments to Draft Conditions 1, 3, 37 and 46 can be undertaken to reflect the revised operating hours and reference the Addendum Noise Statement. Recommended Condition 46 can be amended to specifically require the cessation of the Bowling Green use at 7:00pm (originally recommended to be restricted to 6:00pm).

(c) Applicant's Comments to Draft Condition 6 (Surrender of DA19/0875) –

An excerpt from the Panel's Record of Deferral included that ... *The Applicant also raised concern with the proposed draft conditions of consent ... 6 and advised that it would include in its proposed submission its position in relation to ... these conditions for the Panel's further consideration.*

Applicant Comments – *There is no need or justification for DA19/0875 to be surrendered as a result of this development. The development approved by DA19/0875 includes the Nepean Gardens cemetery which is an entirely different element to the scope of work proposed by DA21/0130.*

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. We suggest an 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 DA19/0875 shall be modified in

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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 DA21/0130

Development Consent No. DA21/0130 authorises alterations and additions to Wallacia Country Club including internal building alterations to form function rooms and 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 DA19/0875 is modified such that no approval is granted for the scope of works approved under the consent to DA21/0130.

Where there is an inconsistency between this consent and the consent to DA21/0130, then consent to DA21/0130 shall prevail to the extent of the inconsistency.”

Council Response – Council does not support the proposed Notice of Modification and wording of the alternate condition and does not concur with the Applicant’s position. Development consent DA19/0875 assessed the golf clubhouse as an ancillary use associated with the golf course, which was approved to be retained as a 9-hole course in perpetuity and the development was approved in two Phases being:

Phase 1 – Construction works, tree removal and other activities related to the approved augmentation of the existing golf course from an 18-hole golf course to a 9-hole golf course, alterations and additions to the existing golf clubhouse and ancillary car parking, construction of a bowling green and the construction of the community facility (being the pool and gymnasium building) and associated car park addition, civil and road and intersection works, stormwater, services, fencing, landscaping and regeneration works.

Phase 2 – Construction works, tree and vegetation removal, dam dewatering and other activities related to the cemetery, construction of the ancillary administration building and ancillary chapel and associated civil, road and intersection works, earthworks, stormwater, services, fencing and landscaping and regenerations works.

The scope of modifications now sought by the Application under the proposed Notice of Modification with removal of any works relating to the Clubhouse under DA19/0875, would have implications on numerous conditions imposed under

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DA19/0875 and in addition, may sever the relationship between the golf clubhouse and golf course such that permissibility would need to be further addressed. Such a modification to DA19/0875 would have significant implications on the approved phasing of the development which would likely prevent practical implementation of the altered development.

If the Panel is of a mind to require that a Section 4.55(2) modification application to DA19/0875 be lodged to delete and remove the golf clubhouse alterations and additions, Council would seek that the modification application be required to include:

- A full set of amended plans and reports (including an amended BDAR and civil, golf course layout and landscape plans),
- The nomination of all proposed conditions requiring deletion and amendment which relate specifically to the alterations and additions to the golf clubhouse and associated works, including any reference to associated phasing,
- Amendment to Condition 53 to recalculate the 7.12 Development Contributions with accompanying CIV.

Further, Condition 6 of DA21/0130 would require amendment to require the lodgement and approval of a Section 4.55(2) modification application prior to the commencement of any works which may be approved under DA21/0130.

It is raised for the Panel's consideration that any future application posing such significant modifications may not satisfy the requirements of section 4.55 of the *Environmental Planning and Assessment Act 1979* and a new development application may need to be lodged.

(d) Applicant's Contestation to Draft Condition 7 (Cessation of Clubhouse) –

An excerpt from the Panel's Record of Deferral included that ...'Mr Hoy who presented to the Panel for the Applicant made it clear, when making his submissions contesting proposed draft condition of consent number 7 (cessation of use) that the clubhouse was not proposed as ancillary to the golf course, but rather as a separate facility which may operate in its own right'....

Applicant Comments – *The Applicant has considered this matter further and is willing to accept this condition. Therefore, we confirm that Condition 7 as drafted by Council is accepted by the Applicant without alteration.*

Council Response – Draft Condition 7 was imposed by Council to ensure that the golf clubhouse remains ancillary to the golf course. The golf course benefits from an existing use right. The golf clubhouse is ancillary to the golf course.

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As the SWCPP is the consent authority and must be satisfied as to the permissibility of the use, the Panel will need to be satisfied that Condition 7 is lawful and effective, particularly noting the different land ownerships, separate titles of the land pertaining to both the gold clubhouse and golf course and noting a recent Judgement by the Land and Environment Court on the subject of existing use rights.

For reference, Draft Condition 7 states:

7. 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).

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