

DETERMINATION AND STATEMENT OF REASONS
SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	Thursday, 4 August 2022
DATE OF PANEL DECISION	Monday, 1 August 2022
DATE OF PANEL MEETING	Monday, 27 June 2022
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran and Louise Camenzuli
APOLOGIES	Carlie Ryan
DECLARATIONS OF INTEREST	Ross Fowler: Continuing conflict of interest in matters relating to Wallacia Golf Course.

Papers circulated electronically on 18 July 2022.

MATTER DETERMINED

PPSSWC-144 – Penrith – DA21/0130 at 13 Park Road, Wallacia – Alterations & Additions to Wallacia Country Club (as described in Schedule 1).

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 determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The site the subject of this application is presently used as an 18 hole golf club known as the Wallacia Country Club which for many years has included within its facilities a clubhouse which provides for dining and entertainment of club members and their guests through the Homestead Kitchen Bistro, TAB Facilities, Keno and a bar.

The present DA seeks development consent to make substantial alterations and additions to that clubhouse, construction of a swimming pool and gymnasium building located to the north of the existing clubhouse building, a new bowling green to be added to the club's facilities, associated carparking and access/egress changes, and other works to ancillary infrastructure and services.

On the whole, the planned modernisation and upgrade of the club-house facilities offered from the clubhouse and its associate car-park and landscaping will be positive and acceptable, and will improve its offering of recreation and social facilities, in line with the proposed plans of the new site owner – St John's Park Bowling Club Ltd. As such it is line with the relevant considerations and objectives identified in relation to Planning Priority W3: *"Providing services and social infrastructure to meet people's changing needs"* and Planning Priority W4: *"Fostering healthy, creative, culturally rich and socially connected communities"* in the Western City District Plan.

In substance, the scope of works proposed in this subject application generally accords with the changes to the Wallacia Golf Club building approved by a differently constituted Regional Panel when granting consent

to DA19/0875. The grant of that consent however also approved the conversion of a substantial portion of the 18 hole golf course for use as a cemetery which is not part of this DA.

That consent to DA19/0875 has not yet been implemented and remains inoperative given that its deferred commencement conditions remain unsatisfied. In considering this development application however, the Panel is of the view that the substantive reasoning of the Panel which approved that DA (having regard to the s 4.15 considerations) as they apply to the clubhouse and bowling green portion of the approved development still stand.

In particular, in its assessment of DA 19/0875, the Regional Panel as then constituted considered the following matters as relevant to the clubhouse portion of the development after a site view and a public meeting:

- a) Permissibility of the component parts of the development including the new pool, gym and the new bowling green,
- b) Land contamination matters,
- c) Negative traffic and road works impacts, specifically the impacts of the proposed Park Road intersections on pedestrian safety, on existing property access and egress points, on the efficiency and safety of Park Road, and on local character and trees along Park Road through their required removal,
- d) Considerations under SEPP (Infrastructure) and the input of TfNSW,
- e) Servicing issues related to sewer connection,
- f) Impacts on local character, streetscape and heritage values including from the design of the clubhouse and pool and gym building and related car parking areas, and
- g) Impacts on the locally listed Park Road Heritage Conservation Area.

Ultimately, for the reasons set out in the staff report, the proposal still warrants approval in relation to those considerations. It is consistent with the applicable zoning objectives having regard to the existing development on the site, and the relevant DCP and LEP considerations.

A public meeting was convened by the Panel for this application on 26 April 2022, and the Panel heard from Jane McLuckie on behalf of the Wallacia Progress Committee, who raised issues associated with the continued ability of the facility to meet the Wallacia community's needs, particularly in relation to the present contribution made by the clubhouse to encouraging social interactions and recreational opportunities. On those subjects, the Panel saw no reason why the new gymnasium and pool, bowling green, bistro and bar facilities, would be unacceptable in that regard, and instead it seemed that the renovated facility would encourage recreation and social interaction of the new generations of Wallacia residents under the management of the new not for profit club. It may offer different facilities to the existing offering that regular locals might presently prefer, but that is not a reason for refusing the DA.

The Panel was satisfied that the issue of flooding as relevant to this application had been adequately considered by the Council staff, an issue of understandable concern also raised by one of the residents addressing the public meeting.

An issue of wider concern to the local community is the fate of the golf course. Due to the Club's location adjacent to the Wallacia Township, the golf course has no doubt been an important part of the social and cultural life of many in the community. That issue was addressed by other residents presenting to the public meeting for this DA, and the meeting which preceded the approval of DA 19/0875.

In recent correspondence, the Applicant's planners have advised that the Applicant accepts that the golf clubhouse may for planning purposes be considered to operate at present as ancillary to the golf course. A condition is proposed by the Council staff which would tie the clubhouse as approved to the continued use of the adjacent golf course. Specifically, the condition will require the cessation of the use of the golf clubhouse at any time the broader site ceases to be used as a golf course for a time period greater than 3 months. The Applicant's planner Urbis has confirmed the Applicant's acceptance of and agreement to that condition.

One legal reason that issue is significant is that the site is subject to a split zoning with part of the subject site zoned RU5 Village and part zoned C3 Environmental Management which does not accommodate the proposed uses. The portion of the proposed car park south of the existing Clubhouse along the Park Road frontage and proposed terrace for outdoor gaming is located within the RU5 zone where the Council staff advise correctly those uses are prohibited. The existing Clubhouse building, proposed bowling and putting greens, new Pool/Gymnasium complex are likely to be categorised as “recreation facility (indoor)” and/or “recreation facility (outdoor)” which are prohibited uses in the C3 zone, as is the car park extension to the north and west of the site.

The Panel is however satisfied that those aspects of the development already exist on site and would form part of an “existing use” for the reasons identified in the staff assessment report. One point of difference with the Council report is that the Panel sees the club house as being a facility that has historically only existed as supportive of and ancillary to the golf course and the social activities of golfing community attracted to that course. It is the golf course rather than the club house which is the dominant use. The Panel is mindful in that regard of the reasoning of the Court of Appeal in *Peters v Manly Municipal Council [2007] NSWCA 343* where a similar conclusion was reached in relation to the Manly Golf Club club-house.

The significance of that conclusion is that the Panel is of the view that the golf course use must be continued even in an adapted form, as it is essential to the lawfulness of the continuation and upgrade of the club house and other uses relying on existing use rights.

The Panel notes that the same position was taken when DA 19/0875 was approved, as recorded in this extract from the Panel’s reasons for the determination of that earlier DA:

“Another matter the Panel sees as central to the DA now being considered is that the upgrade and proposed use of the clubhouse has been proposed at all stages as closely associated with a functioning golf course which yields its character for planning purposes. The continuation of a recreation use over the area of the retained portion of the golf course, and its association with the clubhouse, is seen as important to the merits of this DA. The Panel is pleased to see that is proposed as part of this DA, and a condition is imposed requiring that link to be continued.”

The last matter to be considered is the relationship of a consent to this DA to the existing consent to DA 19/0875, and also to a further development consent granted for DA17/1092 by the Land & Environment Court on 11 May 2021 which approves a change of the permitted use of the golf course to a new cemetery with parkland, construct a chapel and other associated buildings, tree removal, landscaping and engineering works (see *Catholic Metropolitan Cemeteries Trust v Penrith City Council [2021] NSWLEC 1225*).

Importantly, the proposed upgrade of the clubhouse was deleted from DA17/1092 by an amendment during the Land & Environment Court proceedings, apparently to remove the issue of the existing uses discussed above.

In relation to that matter the Panel recorded in its reasons for approving DA 19/0875:

“The Panel asked how it was proposed the consent granted by the Land & Environment Court was proposed to interact with that sought from the Panel, with the Panel concluding that it was undesirable to leave two development consents on foot approving similar but different development of the same land. The Panel notes that it has now been resolved between the Applicant and the Council that the development consent granted by the Court must be surrendered before a construction certificate can issue for any development approved by this consent. That would seem to provide an adequate resolution.”

For similar reasons, the Council has recommended that a condition of consent be imposed requiring DA19/0875 to be surrendered if works approved under this subject development application proceed. The Panel would agree, but the condition should also allow as an alternative for the consent to DA19/0875 being modified to be consistent with the consent to this DA which would also remove any issue of

incompatibility, while leaving the cemetery portion of the DA19/0875 consent able to be carried out together with the revised proposal for the club-house.

The same issue would seem to apply to the Land & Environment Court approval for the cemetery for DA17/1092 which applies to the same land as the present DA. While it is possible for two development consents to apply to the same land. In this case, the Applicant has accepted that the clubhouse is to continue to operate as ancillary to the existing golf course (albeit that it seems likely that the golf course is likely to be reduced in size to accommodate the development proposed in DA19/0875). Those two proposals would seem inconsistent, and cannot advance simultaneously.

Notably, DA17/1092 as originally made proposed both a change of use of the site to cemetery and modifications to the clubhouse together in one application. Issues of permissibility were raised in the Court case, but never decided, given that the clubhouse aspect of the DA were removed before the Land & Environment Court determined the DA.

For those reasons, the Panel has unanimously voted to approve the DA with the conditions recommended by the Council staff, but amended to require the surrender or modification of the two earlier consents to remove inconsistency.

As an addendum, correspondence has been received from the Applicant proposing an amendment to the DA to remove the clubhouse from the RU5 zone because it is perceived to be prohibited in that zone. The Council has not agreed to the amendment because of its lateness. However, the amendment is unnecessary. The clubhouse and carpark both have existing use rights provided that they continue to be conducted with the dominant use of golfing club (for the reasons discussed above).

The amendments are not required, and in any event are not agreed to.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments.

- Condition 6 is to be updated as follows:

- 6 Prior to the issue of any Construction Certificate and prior to works commencing at the site (including tree removal), the development consents granted to DA19/0875 and DA17/1092 ~~is~~ are to be surrendered in accordance with Clause 68 of the Environmental Planning and Assessment Regulation 2021, or alternatively modified so as to be consistent with this development consent.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel during the public teleconference. The Panel notes that issues of concern included:

- Impacts on local character and scenic landscapes
- Traffic generation and parking concerns
- Biodiversity and environmental concerns
- Impact on public health
- Amenity impacts
- Permissibility
- Flooding

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

PANEL MEMBERS

A black ink handwritten signature, appearing to be 'JD', enclosed in a rectangular box.

Justin Doyle (Chair)

A black ink handwritten signature, appearing to be 'N. Gurrán', enclosed in a rectangular box.

Nicole Gurrán

A blue ink handwritten signature, appearing to be 'Louise Camenzuli', enclosed in a rectangular box.

Louise Camenzuli

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-144 – Penrith – DA21/0130
2	PROPOSED DEVELOPMENT	Alterations and Additions to Wallacia Country Club, Construction of Indoor Swimming Pool and Gymnasium Building, Bowling Green, Putting Green, Modification and Extension to Car Park, Road Works, Tree Removal, Landscaping Works, Stormwater Drainage Works and Site Servicing Works.
3	STREET ADDRESS	13 Park Road, Wallacia NSW 2745 17 Park Road, Wallacia NSW 2745
4	APPLICANT/OWNER	St John's Park Bowling Club Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Precincts—Western Parkland City) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) ○ Local Environmental Plan 2010 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Development Control Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Supplementary report received: 20 June 2022 • Council Assessment Report: 14 April 2022 • Applicant submission: 29 April 2022 • Written submissions during public exhibition: 22 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Jane McLuckie, James Murray, Bernadeta Cansdell, Heather Davies ○ On behalf of the applicant – David Hoy, Peter O'Meara, Ben Salon, David Marsh • Total number of unique submissions received by way of objection: 22

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site Visit: Monday, 17 February 2020 associated with DA19/0875 Panel members: Justin Doyle (Chair) and Nicole Gurran • Briefing: Friday, 12 November 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Louise Camenzuli ○ <u>Council assessment staff</u>: Kathryn Saunders, Jacqueline Klincke, Robert Walker, Jill Williams • Final briefing to discuss council's recommendation: Tuesday, 26 April 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Louise Camenzuli ○ <u>Council assessment staff</u>: Gavin Cherry, Kathryn Saunders • Final briefing to discuss council's recommendation: Monday, 27 June 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Louise Camenzuli ○ <u>Council assessment staff</u>: Gavin Cherry, Kathryn Saunders ○ <u>DPE</u>: George Dojas
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report