

SWCPP Ref. No.:	PPSSWC - 45
DA No.:	DA19/0875
PROPOSED DEVELOPMENT:	Change of Use of Part of Existing Golf Course to Cemetery including 27,000 Burial Plots, Chapel and Administration Building, Internal Roads, New Parking and Amended Access from Park Road, Reconfiguration of Golf Course to 9 Holes, New Pool, Gym, Putting and Bowling Greens and Alterations and Additions to Wallacia Golf Club, Tree Removal and Landscaping, Fencing, Civil and Stormwater Works and New Intersection Works along Park Road and Subdivision - Lot 4 DP 18701, Lot 3 DP 18701, Lot 2 DP 1254545, Lot 1 DP 1254545, 17 Park Road, WALLACIA NSW 2745 13 Park Road, WALLACIA NSW 2745 37 Park Road, WALLACIA NSW 2745
APPLICANT:	Catholic Cemeteries Board C/- Urbis
REPORT BY:	Kathryn Saunders, Senior Development Assessment Planner, Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of a development application for the change of use of a portion of an existing 18-hole golf course to a 9-hole golf course and use as a cemetery for 27,000 full body burial plots including ancillary chapel and cemetery administration buildings, internal roads and pathways, and alterations and additions to an existing golf clubhouse, a new bowling green, construction of a new pool and gym building, alterations and additions to surface car parking, new site landscaping, tree and vegetation removal, civil and earthworks including dam dewatering, stormwater and drainage works, and road and intersection works to Park Road including tree removal within the road verge.

The submitted Statement of Environmental Effects includes that the life span of the cemetery will be approximately 100 years and that the proposal includes the permanent retention of the amended 9-hole golf course on the site, which will be leased back to the operator of the clubhouse component, being St Johns Park Bowling Club (SJPBC).

The subject site is made up of four allotments known as 13, 17, 19, and 37 Park Road, Wallacia and currently contains an 18-hole golf course and golf clubhouse with ancillary workshop and hardstand car parking, dams, trees and vegetation. Jerrys Creek runs north-south across the western end of the 42ha site, and is a tributary of the nearby Nepean River. A communications tower is also located on the site.

The site is subject to three zonings. The majority of the site, inclusive of the existing golf clubhouse and golf course is zoned E3 Environmental Management. The existing hardstand and carpark south of the existing clubhouse building is zoned RU5 Village along with the adjacent two lots known as 17 and 19 Park Road, Wallacia. A narrow section of the site's frontage to Park Road is zoned SP2 Infrastructure (Classified Road) and is identified for road widening.

Under Penrith Local Environmental Plan 2010, use of the identified part of the site as *cemetery* is permissible in the E3 Environmental Management zone, with consent. The use of the land for the purposes of a golf course and clubhouse are prohibited in the zone, however the existing golf course use and clubhouse building benefit from an

existing use right as defined under the Act. There is evidence to suggest that the golf course and clubhouse have operated since about the 1930's. Although the onus is on the applicant to demonstrate existing use rights, it is acknowledged that the existing use rights are most appropriately characterised as a golf course and clubhouse (associated with the use of the golf course). The applicant however has not characterised the existing use in this manner, and that has consequences for assessing the proposed additional uses on the land for the purposes of a pool, gymnasium and bowling green. The applicant asserts that the characterisation of the existing use is *recreation facility (outdoor)*, and therefore a bowling green falls within that definition, and is associated with the existing use right of recreation facility (outdoor). Having regard to the approach taken in *Shire of Perth v O'Keefe* (1964) 110 CLR 529 and followed in *Jojenji Investments Pty Ltd v Mosman Municipal Council* [2015] NSWCA 147, it is not correct to say (as the applicant does) that there are existing use rights for the purposes of *recreation facility (outdoor)*.

The alterations to the existing golf course and golf clubhouse can be supported having regard to the ability to alter an existing use as detailed in the Regulations. The expansion of the clubhouse is regarded as an intensification to the existing use, and the extension will be located on the land to which the existing use applies. That is, the proposed extension will be located on the existing carpark. The existing carpark is associated with the existing use rights, and therefore the land upon which the carpark is located enjoys the existing use rights.

As detailed in this report, the applicant has not properly characterised the basis for the lawful use of the land for the additional purposes of a pool, gymnasium and the new bowling green and as such permissibility of these uses is not established.

The applicant asserts that the pool and gym building is best characterised as a *community facility*, although it is not understood that this is 'best fit' and the definition of community facility is not satisfied. Again the onus is on the applicant to persuade the determining body of the characterisation of the existing use rights, and also the characterisation of the proposed uses. The applicant has not properly characterised the existing used rights, and therefore that extends to an erroneous approach to characterising the proposed uses of a pool, gymnasium and bowling green.

Key issues identified for the proposed development and site include:

- Permissibility of the component parts of the development including the new pool, gym and the new bowling green,
- Land contamination matters,
- Insufficient information is provided as to how the uses of golf course and cemetery will address safety at the interface boundary (i.e. protection from ball strike), and how this may impact biodiversity values (noting the existence of significant bat species).
- Impacts of the development on biodiversity values and potential for Serious and Irreversible Impacts (SAIL),
- Credit reduction under the Biodiversity Conservation Act 2016 requested and not supported,
- 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,
- Considerations under SEPP (Infrastructure) and need for TfNSW concurrence,
- Inadequate response related to sustainability,
- Servicing issues related to sewer connection,
- 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
- Impacts on the locally listed Park Road Heritage Conservation Area.

The application was reviewed by Council's specialist officers in relation to the technical aspects of the proposal with no significant objections being raised from the relevant officers in relation to public health, building code compliance, stormwater design and waterways. The application was briefed to Council's Access Committee and matters raised were addressed through the provision of additional information and an Access Plan.

In relation to land contamination, it is noted that the submitted Remediation Action Plan (RAP) does not include investigations related to land being the subject of proposed road works and intersection upgrades. In discussions with Council's environmental management team it is concluded that the remaining contamination issues could be resolved through an amended RAP which addresses the data gaps and that this could be managed through a Deferred Commencement condition, although such a condition is not included as the application is recommended for Refusal based on other matters.

The application was accompanied by a series of archaeological, heritage and Aboriginal archaeological and cultural heritage assessments and reports. Whilst it is noted that some additional reports remain outstanding, the assessments in relation to works internal to the site are acceptable and the impacts on heritage, archaeology and Aboriginal cultural heritage, could be managed appropriately through conditions which reference the report recommendations.

Documentation submitted with the application does not adequately address the impact of road and intersection works and the resultant tree removal on Park Road. Significant and mature gum trees are proposed to be removed and the trees form part of a listed heritage conservation area (Schedule 5 PLEP - HC6) and are highly contributory to streetscape, heritage and local character. Additionally, the trees and road works near the golf clubhouse are located in an identified Gateway location under the Penrith Development Control Plan 2014, and are also identified on Council's Protection of Scenic Character and Landscape Values map and subject to Clause 7.5 of Penrith Local Environmental Plan 2010 - and in this respect, the proposal cannot be supported due to negative heritage and landscape impacts and on local character grounds.

The extent of earthworks required and the proposed finished levels in relation to natural ground level, related to the car parking areas near the clubhouse and pool/gym building, are not adequately identified on the plans, and could result in permanent and unsatisfactory impact on local character, amenity and heritage values, if not properly considered.

It is apparent that in assessing the suitability of the scale of the cemetery in the context of a local village centre with significant and identified scenic, historical and landscape values and through the matters raised in submissions, that views of the cemetery should be carefully considered in its design. It is not ascertained through the submitted documents, that the locations of landscaping elements such as screening buffers, setbacks and tree stands within the cemetery, will be effectual in limiting and filtering long range or broad views which would allow the scale of the cemetery and the height of the chapel (>12.5m) to be less apparent - and mitigate identified negative and unsupportable social, local character and scenic quality impacts.

The site contains mapped vegetation and the application was submitted with a Biodiversity Development Assessment Report (BDAR) which raises the potential for Serious and Irreversible Impacts (SAIL) in relation to Cumberland Plain Woodland (CPW). As per the requirement under clause 7.16 of the Biodiversity Conservation Act 2016, the consent authority must refuse to grant consent in the case of an application if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values. Further information requested on this issue does not confirm if SAIL in relation to CPW is or isn't likely. Further, amended plans and reports do not correlate in relation to areas impacted by works (road works, recent amendments to hole 1 and sewer servicing works).

The BDAR identifies that the Biodiversity Offset Scheme applies. The applicant is seeking reduced credits in relation to planted CPW, which is not supported.

Sydney Water has advised that there is insufficient capacity in the network in relation to sewer connection and the application is therefore unsupportable in relation to Clause 7.7 of PLEP.

TfNSW has not issued their General Terms of Approval (GTAs) and are considering additional material provided by

the applicant. A meeting is scheduled between Council and TfNSW in early December to discuss supportable alternative access and intersection arrangements, and it is envisaged that details of the meeting will be provided to the applicant for their consideration. Significant objections were raised by Council's traffic engineers in relation to the impacts of road and intersection works on Park Road, Driver Avenue, and in relation to impacts on private access driveways, and owing to unsupportable safety issues. Road works will result in the removal of significant and mature trees along the Park Road approach to the Wallacia village - with some of those trees being part of the Park Road Conservation Area. The proposal is found to be unsupportable having regard to SEPP (Infrastructure).

The application is identified as being integrated as the proposal requires approval from Transport for NSW under the Roads Act 1993; from the National Resources Access Regulator (NRAR) under the Water Management Act 2000; and from the Rural Fire Service (RFS) under the Rural Fires Act 1997 as the site is bush fire prone. The application was referred to each of these three State agencies. NRAR has provided their General Terms of Approval, as has the RFS who has additionally provided a Bush Fire Safety Authority.

The application has been notified to adjoining properties and was advertised and exhibited between 17 January and 28 February 2020 in accordance with relevant legislation. A total of 411 individual submissions were received, including 93 individual submissions and two (2) separate pro-forma style submissions totalling 325 submissions.

The submissions against the proposal raise various issues including negative traffic, stormwater and water contamination issues, groundwater and flooding impacts, negative social, character and heritage impacts, loss of the golf course, impacts of increased gaming and impacts on scenic values, views and vistas. Submissions raised in support of the proposal include that the proposal will provide additional burial capacity for all faiths and that metropolitan cemetery capacity is limited for all faiths. Submissions in support of the proposal included those from industry and commercial operators and included a submission in support of the proposal from Cemeteries & Crematoria NSW.

The application was briefed to the SWCPP on 17 February 2020. Matters raised for further consideration included impacts on biodiversity and ecology, social impacts, ground water considerations, visual impacts long term, the permissibility of the various components of the proposal, the status of Council's Planning Proposal, which is under consideration by the Department of Planning, Infrastructure and Environment, the status of the current Class 1 merit appeal and confirmation as to whether the application is Regional development under SEPP (State and Regional Development).

Consideration of the above matters is provided throughout this report.

DA19/0875 is to be determined by the SWCPP as the development has a combined Capital Investment Value (CIV) of \$25,121,459 million with the component parts stated as being a *community facility* and clubhouse alterations being >\$5 million, and thus the proposal is Regionally significant development under Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for Refusal for the reasoning provided herein.

Related History

Development Application DA17/1092

This DA proposed a cemetery for 88,000 burial plots across the whole of the site, in three stages which would have resulted in the cessation of golfing at the site and the conversion of the altered golf clubhouse to a function centre. The proposal included a chapel and administration building and included a crematorium designed into the chapel building. The DA was a Crown application and was referred to the Minister. The Minister requested that the Department undertake an assessment and pass recommendation to the Independent Planning Commission.

The IPC directed the SWCPP, who were the consent authority to Refuse the application. The proposal does not include the pool and gymnasium building, bowling green and related infrastructure. The DA is now the subject of a Class 1 merit appeal in the NSW Land and Environment Court and has been amended to remove the crematorium component. A hearing date is set for March 2021.

Planning Proposal

Council currently has a Planning Proposal which would have the effect of prohibiting cemeteries and crematoria in the Mulgoa Valley and parts of Wallacia, lodged with the Department, which has not received Gateway determination. Written advice from the Department dated 9 September 2019, states that the proposal cannot progress until the Greater Sydney Commission has reviewed its findings and made a recommendation to the Premier in relation to the strategic planning considerations for the provision of new cemeteries.

Site & Surrounds

The Site is approximately 42 ha in area and comprises of four allotments known as 13, 17, 19 and 37 Park Road, Wallacia. The Lots are legally described as Lot 1 in DP 1254545, Lot 4 in DP 18701, Lot 3 in DP 18701 and Lot 2 in DP 1254545 respectively.

The site currently contains the Panthers Wallacia Golf Course, a golf clubhouse building with carpark and a golf course maintenance shed. A number of constructed dams and ponds exist across the site which is also traversed by Jerrys Creek spanning north-south across the eastern third of the site, which is a tributary of the nearby Nepean River located approximately 370 meters to the east. The site contains trees and vegetation which has been reserved in areas between the golf holes with some concentrated areas of trees and vegetation around dams, Jerrys Creek, the site boundaries and in areas with steep terrain.

The site also contains a small fenced area which contains a communications tower. The site is undulating and contains hills and valleys.

The site shares a part of its western boundary with a locally listed heritage item known as Wallacia Hotel at 1590-1594 Mulgoa Road, Wallacia (Item no. 325, Schedule 5 of PLEP) and shares a part of its southern boundary with a locally listed heritage item known as St Andrew's Anglican Church at 25 Park Road, Wallacia (Item no. 326, Schedule 5 of PLEP). The area of the clubhouse southern carpark and driveway shares its western boundary with a locally listed archaeological site known as Luddenham Homestead site at 1-9 Park Road (Item no. A849).

The site shares its western boundary with a locally listed heritage conservation area being the Mulgoa Road Conservation Area (HCA5) and is opposite the locally listed Park Road Conservation Area (HCA6). Other locally listed heritage items in the site's vicinity include Wallacia Public School at 1573-1585 Mulgoa Road (Item no. 852) and Wallacia Post Office at 1589 Mulgoa Road (Item no. 851). Nearby Greendale Road contains a number of other locally listed heritage items.

Wallacia is a low density small rural village, with the township positioned north-south, aligned with Mulgoa and Greendale Roads and spanning east-west aligned with Park Road. The Site is located on the northern side of Park Road with a combined frontage to Park Road of approximately 922 metres and is of a sufficient scale, relative to the village, whereby it spans from the village centre near the intersection of Park Road and Greendale/Mulgoa Road, to the eastern village outskirts near the intersection of Park Road and James Street.

Commercial uses are located along the western boundary of the site and have frontage to Mulgoa Road, close to the intersection with Park Road. The site also shares a large portion of its western boundary with the rear yards of single residential dwellings which also have frontage to Mulgoa Road.

A seniors housing development is located on the southern side of Park Road at the intersection with Greendale Road. A small subdivision of residential allotments is located in the area south of Park Road and east of nearby Crossman Reserve, with streets named in recognition of the golf course, such as Driver Avenue, Green Street, Eagle Street, Lark Place and Golfview Drive.

Larger rural land holdings are located to the north and north-east of the site which contain agricultural uses such as market gardens. Wallacia Public School, a service station, Wallacia Caravan Park and the heritage listed post office are all located a short distance from the western end of the site.

The site is approximately 18 km south of the Penrith CBD and is 3 km west of the village of Luddenham. The site of the Western Sydney International Nancy Bird Walton Airport is approximately 5 km to the south-east with access off The Northern Road and Elizabeth Drive. Warragamba Dam is approximately 4.5 kms to the south-west.

Proposal

The development application proposes the change of use of part of an existing golf course to a cemetery, road and intersection work on Park Road, alterations and additions to an existing golf clubhouse, the addition of a pool and gymnasium building, and a two lot Torrens title subdivision. The submitted Statement of Environmental Effects includes that the life span of the cemetery will be approximately 100 years and that the proposal includes the permanent retention of a 9-hole golf course on the site, which will be leased back to the operator of the clubhouse component, being St Johns Park Bowling Club.

The component parts of the proposal incorporate the following:

Nepean Gardens Component

- Change of use of part of the existing golf course into a cemetery known as 'Nepean Gardens' with a capacity of 27,000 full-body burial plots in addition to ash internments with an internment capacity lasting over 100 years,
- Construction of a 12.62m high chapel building with basement and ancillary refrigerated holding room with seating for 75-100 people,
- Construction of a single storey cemetery administration building including staff areas, meeting rooms, plant machinery areas and public amenities,
- Shared use of an existing staff maintenance workshop and six ancillary car parking spaces,
- Provision of formal car parking for 50 cars and provision of additional kerb side shoulder car parking throughout the site,
- New internal roads and two new intersections onto Park Road for general cemetery access and staff only service access, including tree and vegetation removal along the southern side of Park Road,
- Alterations to the layout of the existing 18-hole golf course and reduction in scale to a 9-hole golf course and associated earthworks, tree and vegetation removal (465 trees to be removed),
- Landscaping of the site including new tree planting and installation of a small pond,
- Select tree and vegetation removal across the site and dam dewatering,
- Installation of an electrical substation, and
- Civil works, earthworks and benching related to provision of burial areas, paths and roads, building pads, car parking, memorialisation guides and stormwater.

Three types of memorials are proposed to be available, ranging in height up to 1.5m.

Golf Clubhouse, Pool and Gymnasium Works

- Amended clubhouse entry and exit road works including works along the southern side of Park Road and to Driver Avenue including tree and vegetation removal,
- Alterations and additions to the existing golf clubhouse including changes to golf pro-store, expanded gaming, kitchen and dining areas, function rooms, various facade and internal additions and alterations,
- Expansion of existing clubhouse surface car parking and related tree and vegetation removal,
- Addition of a synthetic bowling green,
- Addition of practice putting green, and
- Addition of putting course and practice area to the east of the new bowling green.

Pool and Gym Complex

- New swimming pool and gymnasium complex,
- Related services, civil, stormwater and infrastructure works, and
- Landscaping of the area.

It is included that the pool and gym will be operated as a community facility and will be open to all members of the community and not restricted to club members.

Hours of Operation

- Chapel = 8.00am to 6.00pm seven days,
- Cemetery administration building = 6.00am to 6.00pm seven days,
- Cemetery grounds = 24 hours, seven days,
- Clubhouse (Wallacia Country Club) = 10.00am to 10.00pm Monday, Wednesday and Thursday, 10.00am to 9.00pm Tuesday and Sunday, 10.00am to 12.00am Friday and 9.00am to 12.00am Saturday,
- Golfing = sunrise to sunset seven days, consistent with current operations, and
- Pool and gym complex = 6.30am to 9.00pm seven days.

Subdivision

- Torrens title subdivision of Lot 2 in DP 1108408 (42.73 ha) into two allotments. Proposed Lot 1 being 21.36 ha in area, and proposed Lot 2 (eastern end) being 21.37 ha in area. The cemetery component of the development is to be located on proposed Lot 2, being the eastern end of the site. The augmented 9-hole golf course is proposed to be located on proposed Lot 1.

Tree Removal and Site Regeneration and Riparian Management Works

A total of 465 trees are proposed to be removed (excluding trees within the verge along Park Road). The proposal includes re-vegetation and new tree planting works and is accompanied by a Vegetation Management Plan which details that the re-vegetation and riparian management proposed will include:

- 1,206 new canopy trees,
- 1,854 new sub-canopy trees,
- 8,570 shrubs/vines and
- 303,000 ground covers/sedges/rushes.

Retention of 9-Hole Golf Course

The submitted Statement of Environmental Effects states that the golf clubhouse component of the site being Lot 1 in DP 1108408 will be purchased by St Johns Park Bowling Club (SJPBC) and that the augmented 9-hole golf course located on Lot 2, will be leased back to SJPBC as part of a long term lease. The SEE also states that *'this DA is characterised by the following "big moves":...The permanent retention of a golf course with enhanced club facilities...'*.

The SEE states on page ii of the Executive Summary, that *'...together with an enhanced registered club [the development] will significantly support the long term viability of the golfing facilities'*.

Image (below): Masterplan of the proposal (Source: Urbis Statement of Environmental Effects)



Source: Florence Jaquet Landscape Architect – Landscape Masterplan

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Vegetation in non-rural areas) 2017
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016

Under this Act, **Biodiversity values** means:

- (a) *vegetation integrity*—being the degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near natural state,
- (b) *habitat suitability*—being the degree to which the habitat needs of threatened species are present at a particular site,
- (c) *biodiversity values, or biodiversity-related values, prescribed by the regulations.*

Clause 6.12 Biodiversity development assessment report

Clause 6.12 *Biodiversity development assessment report* (BDAR), of the Biodiversity Conservation Act 2016 sets out that a BDAR is a report by an accredited person in relation to proposed development or activity that would be authorised by a planning approval, or proposed clearing that would be authorised by a vegetation clearing approval, that -

- (a) *assesses in accordance with the biodiversity assessment method the biodiversity values of the land*

subject to the proposed development, activity or clearing, and

(b) assesses in accordance with that method the impact of proposed development, activity or clearing on the biodiversity values of that land, and

(c) sets out the measures that the proponent of the proposed development, activity or clearing proposes to take to avoid or minimise the impact of the proposed development, activity or clearing, and

(d) specifies in accordance with that method the number and class of biodiversity credits that are required to be retired to offset the residual impacts on biodiversity values of the actions to which the biodiversity offsets scheme applies.

A BDAR accompanied the development application and was prepared by Travers Bushfire and Ecology, dated 10 December 2019, Ref 18CMCT02. The date of the BDAR is satisfactory and is dated and accompanied the application within 14 days of lodgment, being 11 December 2019, in satisfaction of clause 6.15(1) and (2). The BDAR was prepared by an Accredited Assessor (BAAS17085)

Part 7

Part 7 of the Biodiversity Conservation Act 2016 relates to *Biodiversity assessment and approvals under Planning Act*. Clause 7.7(2) requires that if the proposed development is likely to significantly affect threatened species, the application for development consent is to be accompanied by a biodiversity development assessment report (BDAR) - as detailed above, the application is submitted with a BDAR.

Clause 7.12 Concurrence of Environment Agency Head if a Minister is not consent authority under Part 4 or determining authority under Part 5

Clause 7.12 requires that the *'consent authority is not to grant development consent if the development is likely to significantly affect threatened species, unless the consent authority has obtained the concurrence of the Environmental Agency Head. However, concurrence is not required if -*

(a) the application for development consent is accompanied by a biodiversity development assessment report in accordance with Division 2, and

(b) in a case in which the biodiversity offsets scheme applies to the impacts of the development—the conditions of the consent require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of at least the number and class specified in the report.

As noted above, a BDAR has been submitted. Refer to the discussion below in relation to offsets.

Clause 7.13 Development other than State significant development or infrastructure

Clause 7.13(2) states that the consent authority, when determining in accordance with the EP&A Act any such application, is to take into consideration under that Act the likely impact of the proposed development on biodiversity values as assessed in the BDAR. The clause includes that the *'consent authority may (but is not required to) further consider under that Act the likely impact of the proposed development on biodiversity values'*.

Clause 7.13(3) requires that should the consent authority grant consent ...*'and the biodiversity offset scheme applies to the proposed development, the conditions of the consent must require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of the number and class specified in the report (subject to subsection (4)). The residual impact is the impact after the measures that are required to be carried out by the terms of conditions of the consent to avoid or minimise the impact on biodiversity values of the proposed development (being measures on which the report was based)'*.

Subsection (4) states that *'the consent authority may reduce or increase the number of biodiversity credits that would otherwise be required to be retired if the consent authority determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed development'*. Subsection (4) requires that the consent authority must give reasons for a decision to reduce

or increase the number of biodiversity credits.

Subsection (5) requires that a condition to retire biodiversity credits is required to be complied with before any development is carried out that would impact on biodiversity values. Credits can be retired in a staged approach for concept and staged developments. Subsection (6) confirms that the matters for consideration in relation to impacts on biodiversity values or the ability to require more or less credits to be retired is not limited by this section.

Clause 7.16 Proposed development or activity that has serious and irreversible impacts on biodiversity values

Serious and irreversible impacts (SAIL) on biodiversity values means ...'*serious and irreversible impacts on biodiversity values as determined under section 6.5 that would remain after the measures proposed to be taken to avoid or minimise the impact on biodiversity values of the proposed development or activity*'. The consent authority **must refuse** to grant consent in the case of an application under Part 4 if it is of the opinion that the proposed development is likely to have SAIL on biodiversity values.

Recorded Species and Communities

The submitted BDAR has been reviewed and the following is noted:

- Six threatened fauna species were recorded (all bat species).
- No threatened flora species were recorded.
- Two threatened ecological communities were recorded.

The BDAR states that the development will see the impact of 3.95 ha of native vegetation, which includes impacts to the following communities:

Plant Community Type (PCT) 835 Forrest Red Gum (0.53 ha), PTC 850 Grey Box - Cumberland Plain Woodland (CPW) (0.45 ha), and planted native vegetation (2.28 ha impacted).

Hollows and bats flying out of hollows were recorded and the report makes recommendations for the removal and retention of hollows and the installation of new nesting boxes, and the methodology as to how this would be undertaken and by whom, in terms of expertise. These recommendations are included in the Travers VMP.

The BDAR does not address the safety impacts of the two uses of golf course and cemetery and how cemetery users will be protected from ball strike, and the impacts of possible netting installation on the identified bat populations at the site.

Serious and Irreversible Impacts

The Report states that '*The assessment of serious and irreversible impacts are set out under Section 6.7.2 of the BC Reg 2017 to guide the determining authority on this decision. These principles have been reviewed and assessed in Appendices 2 & 3. It is considered that the proposal may constitute serious and irreversible impacts on CPW*' (p.ii).

Section 4.1.3 of the Report states that '*The additional impact assessment provision for TECs are outlines under Section 10.2.2 of the BAM (2017) and have been applied to the recorded CPW within Appendix 3. As a result of this assessment it is considered that the impact on CPW of 1.12 ha may constitute SAIL*' (p.53).

Threatened Ecological Communities (National) - Recommendation for Referral to Australian Government Minister for the Environment

The proposed development was considered in the BDAR to have a potentially significant impact on Cumberland Plain Shale Woodland and Shale-Gravel Transition Forrest (CPSW) and it was recommended that a referral by the proponent was to be issued to the Australian Government Minister for the Environment.

The applicant has not advised as to whether the proposal has been referred to the Minister.

Biodiversity Offsets Scheme and Biodiversity Assessment Method Calculator - Credit Costs

The report confirms that biodiversity offsets are required under the Biodiversity Offsets Scheme (BOS). The Biodiversity Assessment Method (BAM) Calculator was utilised to generate the applicable 'credits' required to be 'transferred' or purchased to allow the proposal to proceed. A total of 88 ecosystem credits, and 214 species credits were calculated, resulting in a total cost of \$3,975,372.44 (ecosystem and species credits costs). The report confirms that the rates generated can be subject to refinement on application.

Request for Credit Reduction

The Report states that (in accordance with Section 7.13(4) of the Act as detailed above) the consent authority may reduce credit requirements. The report requests a credit reduction and states that ...*'The planted native vegetation has been assigned to PTC 850, which is treated as CPW in the BAM-C. We recommend that this is an approved strategy to accurately account for impacts to the planted native vegetation within the site. Consequently we estimate that the credit requirements for PTC 850 could be reduced to 33 credits (\$1,308,925.83), which would further reduce the total ecosystem credit cost to \$1,614,842.42'*. The report includes justification for the request to reduce credits including that the CPW is planted and that re-vegetation and replanting is significant.

Request for Additional Information and SAI

Council's biodiversity officer issued a request for information (RFI) in relation to various matters. A response was provided in letter dated 30 November 2020 by EcoLogical. The letter states that they have re-assessed impacts and reduced the areas impacted and credits are reduced to 68 (from 88). Minimal detail is provided in relation to the Travers position that SAI is a potential, owing to the impacted CPW.

EcoLogical utilised the BAM-C 2020 and do not comment further on a request for reduction in credits for planted native vegetation and state that ...*'the vegetation is part of a mosaic that includes remnant vegetation and therefor cannot be excluded from the assessment'*. In this respect, Council does not support a credit reduction.

It is noted that EcoLogical were not the author of the BDAR and the response is based on the original Travers investigations, and primary site data. The reduced credits are not supported as the area that is reported to be reduced is not explained and excludes works in the road reserve outside the site boundaries at the western end of the site (near Driver Avenue). Further, and as noted in this assessment report, biodiversity values of areas within the road reserve which are impacted by the proposed road and intersection works are not included in the BDAR or other ecological or tree reports.

The Travers BDAR states that *'It is considered that the proposal may constitute serious and irreversible impacts on CPW'* and also states that *'The additional impact assessment provision for TECs are outlined under Section 10.2.2 of the BAM (2017) and have been applied to the recorded CPW within Appendix 3. As a result of this assessment it is considered that the impact on CPW of 1.12 ha may constitute SAI'* (p. 53).

As per the requirement under Section 7.16 of the the Biodiversity Conservation Act 2016, the consent authority must refuse to grant consent in the case of an application if it is of the opinion that the proposed development is *likely* to have serious and irreversible impacts on biodiversity values. Whether the development will *likely* result in SAI should be further clarified and is not explained in the EcoLogical response - in relation to CPW.

• **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for this application as the proposal is identified a regionally significant development under the provisions of State Environmental Planning Policy

(State and Regional Development) 2011.

Documents submitted with the application identify that the proposal has a combined Capital Investment Value of \$25,121,459.00.

The applicant has provided details which identify that the component part, which the applicant states is defined as **community facility**, being the gym, pool and associated car parking, will have a CIV > \$5 million and is thus *Private infrastructure and community facilities over \$5 million* under *Schedule 7 Regionally significant development* under State Environmental Planning Policy (State and Regional Development) 2011.

The applicant, being Urbis, state in the submitted Statement of Environmental Effects, that the application has been prepared on behalf of Catholic Cemeteries Board (CCB) and St Johns Park Bowling Club (SJPBC) and that CCB is a not-for-profit organisation and is not a crown cemetery operator under the Cemeteries and Crematoria Act 2013, and therefore the proposal is not a Crown application.

It is noted however that the owner of the land is Catholic Metropolitan Cemeteries Trust (CMCT), a crown cemetery operator.

- **Section 4.14 - Bushfire prone land assessment**

The development has been assessed in accordance with the matters for consideration under Section 4.14 (Consultation and development consent—certain bush fire prone land) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following points are made.

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 December 2019 (REF: A18CMCT02BF). The document states that it has been prepared in accordance with the pre-release version of the Planning for Bushfire Protection 2018 document (PBP), and notes that the application must be referred to the NSW Rural Fire Service (RFS).

The document states that the assessment found that bushfire can potentially affect the proposed buildings, resulting in possible ember and radiant heat attack. The report notes that the bushfire risk posed to the buildings will be reduced to an acceptable level of risk as an appropriate combination of bushfire protection measures can be applied to the development in accordance with PBP.

On compliance with the PBP document the report states the following:

'The assessment has concluded that the proposed development will provide compliance with Planning for Bush Fire Protection (PBP) 2018 with the following proposed alternative solutions:

- *Road carriageway widths of 6.5m (two-way) for all roads. Perimeter road standards have not been applied, based on the proposed use (Class 9b building), low occupancy numbers, low overall bushfire risk and road design which provides adequate access opportunities for emergency services.*

- *The proposed buildings will be provided with hydrants in accordance with the relevant Australian Standard. Hydrants are not proposed to be installed within the remainder of the road system.*

- *The bushfire attack assessment has been undertaken and will be applied in accordance with PBP 2018 with an alternative solution approach undertaken for the chapel (based on upslope topography).'*

Schedule 1 of the report identifies Inner Protection Areas (IPAs) of 37m-47m for the facades of the proposed

chapel building, 15m to all facades of the proposed administration building, and IPAs of 80m for the proposed pool and gym building.

In accordance with Section 4.14(1)(a) and (b) of the Act, the consent authority can be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the Regulations) of the document entitled Planning for Bushfire Protection, that are relevant to the development.

The application was referred to the Rural Fire Service (RFS). The RFS has issued General Terms of Approval under Division 4.8 of the Environmental Planning and Assessment Act 1979, and a Bush Fire Safety Authority, under Section 100B of the Rural Fires Act 1997, subject to conditions as set out in its advice letter dated 25 March 2020 (DA20200119000233-Original-1).

Amended plans were re-notified to the RFS and in its response letter dated 9 November 2020 (ref. no. DA20200119000233-CL55-1) the RFS re-issued their General Terms of Approval and Bush Fire Safety Authority.

Should consent be granted, a condition of consent is recommended to be included to require compliance with the RFS General Terms of Approval and Bush Fire Safety Authority.

The proposal is acceptable having regard to Section 4.14 of the EP&A Act.

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration.

- **Section 4.46 - Integrated development**

The development has also been assessed in accordance with the matters for consideration under Section 4.46 of the Environmental Planning and Assessment Act 1979. The application has been referred to the NSW Rural Fire Service (RFS), Transport for NSW and the National Resources Access Regulator (NRAR).

The NSW Rural Fire Service and NRAR have issues their GTAs.

TfNSW has not issued their General Terms of Approval (GTAs) and are considering additional material provided by the applicant.

- **Section 7.12 - Developer Contributions**

Contributions payable under the Penrith City Council Section 7.12 Citywide Development Contributions Plan are payable for the proposed development. The plan was adopted by Council on 27 July 2020, and was effective from 24 August 2020. The following contributions apply.

A 1% levy applies to development which has a cost of works of greater than \$200,000.

$\$25,121,459.00 \times 1\% = \$251,215.00$

A condition of consent is not recommended to be imposed as the application is recommended for Refusal, based on other matters.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Infrastructure) 2007

The subject site has a southern frontage to Park Road of approximately 1 km. A narrow section of the frontage of the site to Park Road is identified as being zoned SP2 Infrastructure (Classified Road), under PLEP and is identified for future road widening. Park Road is a Classified road and as such, the proposed development was referred to TfNSW for their concurrence under the provisions of State Environmental Planning Policy (Infrastructure) 2007 and the Roads Act 1993.

The development application proposes alterations to an existing driveway to the clubhouse from Park Road, at the western end of the site and the addition of a new cemetery access driveway and intersection on the northern side of Park Road, at the eastern end of the site. The driveway, road and intersection works include:

Clubhouse entry/exit intersection

- The installation of a westbound right hand turning lane on Park Road providing access to the clubhouse carpark,
- Alterations to the overall width and alignment of Park Road in this location,
- Alterations to the intersection of Driver Avenue and Park Road (opposite the clubhouse entry) including the introduction of works to restrict northbound traffic movements on Driver Avenue to be left turn only onto Park Road, and left turn into Driver Avenue from Park Road,
- Installation of a 1.2m wide pedestrian pavement along the clubhouse carpark street frontage to Park Road, and
- Tree and vegetation removal to facilitate road works and required TfNSW clearances on the southern side of Park Road.

Cemetery road and intersection

- The installation of a westbound right hand turning lane on Park Road providing public access to the cemetery, its chapel and administration buildings,
- Alterations to the overall width and alignment of Park Road in this location, and
- Tree and vegetation removal to facilitate road works and required TfNSW road clearances on the southern side of Park Road.

Existing golf course workshop

No works are proposed in relation to the existing arrangements for access and egress to and from Park Road related to the golf course workshop, which will be shared as a cemetery workshop.

Property access alterations

- The proposed road and intersection works will alter existing vehicle access and egress availability for vehicle movements to and from the seniors housing development at 2 Park Road, and for residents at 16 and 21 Park Road, and will also result in a right out only (eastbound) egress for visitors to the Wallacia Christian Church at 23-25 Park Road, and
- Works related to the proposed cemetery entry, at the eastern end of the site will alter access/egress arrangements to a residential lot at 76 Park Road, Wallacia.

Clause 100 Development on proposed classified road

This clause requires that consent for development for any of the following purposes on land reserved for the purposes of a classified road (but before the land is declared to be a classified road) may be granted only with the concurrence of the CEO of TfNSW.

...(b) development with a capital investment value greater than \$185,000.

The clause sets out matters for TfNSW to take into consideration in its issuance of concurrence and requires the consent authority to provide a copy of the determination to TfNSW within 7 days after the

determination is made. The application was referred to TfNSW as detailed further below. Also, it is a recommendation of this report that all State agencies be advised of the determination.

Clause 101 Development with frontage to classified road

The objectives of this clause are:

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

The clause includes at (2) that *'The consent authority must not grant consent to development on land that has frontage to a classified road unless it is satisfied that -*

- (a) where practical and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of-*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road'.*

The proposal was referred to TfNSW in February 2020. In its response dated 27 March 2020, TfNSW requested additional information related to various aspects of the proposal to which the applicant provided a response.

In its subsequent letter dated 30 October 2020, TfNSW requested further additional information related to the widening of Park Road, proposed future intersection treatments and the alterations to Driver Avenue. TfNSW raised that the widening of Park Road will reduce the 3m required clearance to mature trees adjacent to Driver Avenue, and that swept paths were required. TfNSW also raised that the first aisle in the golf clubhouse carpark is located too close to the access from Park Road and that this was to be amended.

Additional information was provided to TfNSW and to date, TfNSW has not issued their GTAs. It is also noted that the matters raised in the TfNSW letter dated 30 October 2020, have been responded to by the applicant - with the exception of impacts on trees and vegetation. TfNSW have been provided with a copy of the matters raised by Council's traffic engineer.

A meeting has been arranged between TfNSW and Council's traffic engineers in early December 2020, to discuss potential acceptable alternative access arrangements, the results of which will be conveyed to the applicant for their consideration.

Council's traffic engineer has reviewed the proposal and is not supportive of the application noting the following matters:

- A 2m wide shoulder is proposed at some widening sections. AustRoads best practice is 3m wide shoulders both sides to accommodate a 3m clear zone, breakdown and service vehicle stopping for cars and trucks.
- The proposed right turn bay into the clubhouse driveway will be fronting Driver Avenue and there is a proposed No Right Turn (NRT) from Driver Avenue, however there would be issues with a Right Turn

(RT) in from Park Road to Driver Avenue, in conflict with the Park Road RT bay traffic. Therefore, Driver Avenue should be Left In/Left Out only which further restricts access. Council raises that there should then be a centre median to better control the NRT in.

- The proposed NRT out at Driver Avenue and possibly the need for NRT in at Driver Avenue will require a Traffic Management Plan (TMP) and consultation with residents in the Driver Avenue precinct who will be impacted by restrictions to access, that may not eventually be accepted by the community or Council or TfNSW. In this regard, the TMP and community consultation needs to be undertaken, prior to any approvals or conditions.
- The plans include a 2m wide footpath adjacent to the south-bound Park Road through lane opposite the cemetery access but this should be a 3m shoulder.
- The road widening will impact on the large gum trees each side of Driver Avenue, particularly with the extra widening for shoulders and so they would most likely need to be removed to allow sight lines from the side road and 3m clear zones from the through lane.
- Other gum trees would need to be removed along the southern side of Park Road due to the widening for the cemetery access, for the required 3m clear zones.
- Conflict is anticipated related to the pedestrian refuge on Park Road and turning traffic from the clubhouse driveway.
- The intersection treatment plans have short diverge tapers for through traffic and not fully developed painted separation medians at the right turn bay diverge and need to show at least 12.5m heavy vehicle turn paths at the access and Driver Avenue. These could be conditioned to be addressed to TfNSW and Council's satisfaction prior to Construction Certificate issue - although no conditions are yet recommended owing to other matters raised.
- Issues of conflict between service and waste collection vehicles reversing in the carpark exist, although it is noted that completion and compliance with a plan of management could cover these arrangements.

An assessment has been undertaken of the proposed development having regard to the clause objectives and the matters under clause 101(2)(a)-(c), and it is assessed that the proposal does not comply with the objective at (a) and the matters for consideration at (2)(b)(i) and (iii) of the Policy.

Clause 104 Traffic generating development

The proposal is identified as being traffic generating development under Schedule 3 of the Policy. As detailed above, the proposal was referred to TfNSW and concurrence has not yet been granted.

Sub-clause (3) states that *'Before determining a development application for development to which this clause applies, the consent authority must -*

(a) give written notice of the application to RMS within 7 days after the application is made, and

(b) take into consideration -

(i) any submissions that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, RMS advises that it will not be making a submission), and

(ii) the accessibility of the site concerned, including-

(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and

(iii) any potential traffic safety, road congestion or parking implications of the development'.

With regard to (b)(ii) and (iii) above, the applicant has not liaised with the local bus company(s) to enquire as to whether there is opportunity for a bus route and stop near the cemetery entry along Park Road or within the cemetery, which would assist in providing access to the site for those arriving or departing on public transport.

No pedestrian access to the cemetery is available via a paved walkway and the cemetery entry is approximately 650m from the clubhouse. No nearby train service is available (the nearest is Penrith), and the local bus route which stops in Wallacia, being the 795 - Warragamba to Penrith, does not travel along Park Road and in this respect, the site can only be accessed by private vehicle. Traffic, parking and safety impacts of the proposal remain unsupportable as detailed above.

Sub-clause (4) requires the consent authority to provide a copy of the determination to the RMS within 7 days after the determination is made. This aspect forms part of the recommendations of this report.

The proposal cannot be supported having regard to the matters for consideration by the consent authority under the Policy and as the concurrence of TfNSW to the proposal have not been provided. Further, the development proposal is recommended for Refusal based on other matters - including the impacts of road widening on mature trees which are considered to be significant and contribute to the local character of the Wallacia village and to local amenity and habitat.

Additionally, and as detailed elsewhere in this report, insufficient information has been provided in relation to the significance of the trees and vegetation in terms of biodiversity, in that the trees required to be removed are not included in any tree or biodiversity development assessment report (BDAR). The areas for civil works within the road reserve have not been included in the contamination assessments (refer to discussion under SEPP 55). In discussions with Council's environmental management team it is concluded that the remaining contamination issues could be resolved through an amended RAP which addressed the data gaps and that this could be managed through a Deferred Commencement condition, although such a condition is not recommended as the application is recommended for Refusal based on other matters.

State Environmental Planning Policy (State and Regional Development) 2011

In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for this application as the proposal is identified a regionally significant development under the provisions of State Environmental Planning Policy (State and Regional Development) 2011.

Documents submitted with the application identify that the proposal has a combined Capital Investment Value of \$23,376,658.00.

The applicant has provided details which identify that the component part, which the applicant states is defined as **community facility**, being the gym, pool and associated car parking, will have a CIV > \$5 million and is thus *Private infrastructure and community facilities over \$5 million* under *Schedule 7 Regionally significant development* under State Environmental Planning Policy (State and Regional Development) 2011.

The applicant, being Urbis, state in the submitted Statement of Environmental Effects, that the application has been prepared on behalf of Catholic Cemeteries Board (CCB) and St Johns Park Bowling Club (SJPBC) and that CCB is a not-for-profit organisation and is not a crown cemetery operator under the Cemeteries and Crematoria Act 2013, and therefore the proposal is not a Crown application.

State Environmental Planning Policy (Vegetation in non-rural areas) 2017

The aims of the Policy included under clause 3 include:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

The Policy applies to the City of Penrith and applies to the RU5 Village, E3 Environmental Management and SP2 Infrastructure (Classified Road) zones under PLEP 2010.

If proposed clearing of native vegetation is not associated with development (i.e. not for a purpose requiring development consent) and the proposed area of clearing exceeds the area clearing threshold, or vegetation is identified on the Biodiversity Values Map, then approval is required from the Native Vegetation Panel. As the clearing is associated with a development proposal which requires development consent, additional approval from the Native Vegetation Panel is not required.

The site is identified on the Biodiversity Values Map and a Biodiversity Development Assessment Report has been submitted.

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

An assessment of the development proposal has been undertaken against State Environmental Planning Policy (Western Sydney Aerotropolis) 2020. Compliance with specific clauses is included below.

The subject site is not identified as being within the Aerotropolis boundary and is located to the west of the Agribusiness precinct within the greater Metropolitan Rural Area (MRA). Although the subject site is outside the Aerotropolis boundary, clauses under Part 3 *Development controls - Airport safeguards* apply to lands outside the Aerotropolis boundary. The development controls under Part 3 include controls related to aircraft noise impacts, wind shear and turbulence, wildlife hazards, wind turbines, lighting, air space operations and public safety.

Notwithstanding the above, the saving provisions at clause 53 clarify that a development application for development on land to which this Policy applies that was lodged and not finally determined before the commencement of this Policy is to be determined as if this Policy has not commenced. As the application was lodged prior to the coming into force of the Policy, the SEPP is not a consideration for assessment.

State Environmental Planning Policy No 55—Remediation of Land

An assessment has been undertaken of the proposal against relevant criteria within State Environmental Planning Policy No. 55—Remediation of Land. Details of the assessment are outlined below.

An updated Detailed Site Investigation (DSI) prepared by Martens and Associates, report number 1706171JR07V02, dated 12 November 2020 was provided to Council following Council's initial review advice. The DSI has included the analysis of samples taken from an additional 32 test pits. The results showed that there were areas of the site contaminated with bonded asbestos containing material in AEC 16 (fill mounds between the 3rd and 7th tee) and AEC 17 (stockpiled fill just to the west of the maintenance shed). It is noted that AEC16 is located in an area subject to the proposed development (roughly where the chapel building will be located). The DSI recommended a Remediation Action Plan (RAP) be prepared.

Subsequently, a draft RAP prepared by Martens and Associates, report number 1706171JR08V01, was submitted.

Council's environmental management team reviewed the RAP and note that it identifies the two areas requiring remediation due to the presence of bonded asbestos containing material in the fill. The preferred remediation approach is for excavation and off-site disposal. The proposed validation methodology (which includes raking and visual observation looking for suspected ACM in excavated areas, plus the assessment of land surrounding AEC 16 and 17 to further delineate the potentially contaminated area has been remediated/validated) is satisfactory.

Council's environmental management team note that previously, it was not appreciated that the application included the proposed road widening works at the entry to the cemetery and the works at the upgraded entry to the Clubhouse - noting also that the extent of works has been re-defined as the assessment was undertaken.

These areas have not been assessed for suitability and the need for remediation ascertained within the reports. These areas need to be included in the assessment to determine site suitability prior to determination of the application. Should remediation be required in these areas, these need to be included in the RAP. Alternatively, and it is noted that the approach is not best practice and is not preferred, the existing RAP could be amended to include the two entrance/road widening areas in Section 4 - Data Gap Closure, of the RAP, with a similar methodology to address the data gaps provided.

Additional information in relation to the proposed Dam Dewatering Plan prepared by Warren Smith and Partners, Document No. 5936001-WS+P-CS-TN-0001, dated 29 July 2020, was requested and included a water quality assessment and dam dewatering contingency plan. A Water Quality Assessment was provided and although a dam dewatering contingency plan has not been provided, this aspect could be required as a condition of consent.

As the application is recommended for refusal based on other matters, amendments or clarification in relation to the above has not been requested and the application remains unsatisfactory having regard to the matters for consideration, in particular clause 7, under SEPP 55.

State Environmental Planning Policy No 64—Advertising and Signage

The development proposal does not include any signage or advertising. It is noted that existing signage within the front setback including pole signage does not have consent and as such the applicant has been advised that any future application will need to address this aspect.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposal against the relevant provisions of Sydney Regional

Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997) as detailed below.

Aims of the Plan

The aim of the plan under clause 3 of the Policy is *'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'*.

Jerrys Creek which is a tributary of the Nepean River bisects the western end of the site in a north-south direction. Land in close proximity to Jerrys Creek, and pockets of land in the central part of the site, along small sections of the site's frontage to Park Road, and within the north-eastern corner of the site, are identified on the submitted Vegetation Management Plan, prepared by Travers, as being Native Vegetation Restoration Areas. These areas also contain other waterways.

It is assessed that the impacts on waterways resulting from the development proposal, and which relate to its construction and ongoing use, can be managed satisfactorily through the imposition of conditions of consent and by the proposed stormwater works, landscaping, water sensitive urban design plan and strategy and through the civil works.

Information has been provided in relation to the existence of ground water and in relation to flooding. Documents and plans indicate that burial plots will be located in areas which will not be impacted by a 1 in 100 year flood and which have been identified as having high ground water. Plans indicate stormwater can be managed in an acceptable manner and Council's development engineer has not raised objections to the development proposal in this regard.

Refer to discussions elsewhere in this report in relation to biodiversity and site contamination.

Clause 4 and 5 - Considerations

Clause 4 of the Policy states that *'The general planning consideration set out in clause 5, and the specific planning policies and related recommended strategies set out in clause 6 which are applicable to the proposed development, must be taken into consideration:*

- (a) by a consent authority determining an application for consent to the carrying out of development on land to which this plan applies, and*
- (b) by a person, company, public authority or a company State owned corporation proposing to carry out development which does not require development consent.'*

Clause 5 of the Policy contains the general planning considerations which are:

- (a) the aim of this plan,*
- (b) the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy [Action plan], and*
- (c) whether there are any feasible alternatives to the development or other proposal concerned, and*
- (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.*

In relation to the matters listed above, the following is noted:

- In relation to sub-clause 5(a), the proposed development is assessed to be compatible with the aims of the Policy, as detailed above.
- In relation to sub-clause 5(b), the Action Plan notes that the Hawkesbury-Nepean catchment is of national significance and that its catchment supplies 97% of the reticulated water for 4.13 million people living in Sydney (2001). The Action Plan notes that groundwater is an important resource as part of the

catchment and that vegetation management and re-vegetation play important roles in waterway health. Section 6 of the Plan relates to biodiversity and states that '*conservation and restoration of native biodiversity needs to be actively encouraged and supported across the landscape as a whole, as an integral element of all property planning*'. As the development proposes to protect, maintain and expand specific areas of the site, including mapped waterways, the proposal is considered to support the strategies of the action plan.

Various plans and reports provide an assessment of the significance of trees and vegetation on the site and recommend the provision of nest boxes and the retention of areas of Cumberland Plain Woodland and areas adjacent to mapped waterways, and in this respect the proposal is considered satisfactory when assessed against the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy.

- In relation to sub-clause 5(c), it is considered that alternatives have been explored by the applicant through their liaison with Council, and the modified plans are the applicant's final response to environmental impacts raised thus far and in response to the identified constraints of the site.

- In relation to sub-clause 5(d), it is assessed that should the proposal be supported, the impacts on waterways of the various parts of the development could be managed through the imposition of conditions of consent.

Clause 6 Specific planning policies and recommendations

Clause 6 sets out the specific planning policies and recommended strategies for the Plan and includes policies and strategies related to:

- Total catchment management
- Environmentally sensitive areas
- Water quality
- Water quantity
- Cultural heritage
- Flora and fauna
- Riverine scenic quality
- Agriculture/aquaculture and fishing
- Rural residential development
- Urban development
- Recreation and tourism
- Metropolitan Strategy

The proposal and accompanying technical reports have been assessed against the above matters and the proposal is acceptable in this regard.

The application is considered to be satisfactory having regard to the Policy. Notwithstanding, the application is recommended for Refusal based on other matters.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.6 Subdivision - consent requirements	Complies
Clause 4.1 - Minimum subdivision lot size	Complies - See discussion
Clause 4.2 Rural Subdivision	N/A
Clause 4.3 Height of buildings	N/A
Clause 4.4 Floor Space Ratio	N/A
Clause 5.1 Relevant acquisition authority	Complies
Clause 5.10 Heritage conservation	Does not comply - See discussion
Clause 7.1 Earthworks	Does not comply - See discussion
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.3 Development on natural resources sensitive land	Does not comply - See discussion
Clause 7.4 Sustainable development	Does not comply - See discussion
Clause 7.5 Protection of scenic character and landscape values	Does not comply - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Does not comply - See discussion
Clause 7.18 Mulgoa valley	Does not comply - See discussion
Clause 7.19 Villages of Mulgoa and Wallacia	Complies - See discussion

Clause 1.2 Aims of the plan

Aims of the Plan under clause 1.2 of PLEP include to:

(b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement,

(f) to protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance,

(h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.

With regard to the above, the application is unsupportable as follows:

- The application seeks approval for a reduction in biodiversity credits with limited justification in support of the request. Council's request for consolidated biodiversity mapping which takes account of impacts on vegetation resulting from road and intersection works, services installation and trenching, including piped sewer across Jerrys Creek, have yet to be responded to - although it is noted that the applicant has indicated reports are being prepared.
- The submitted sustainability report details potential measures which could be employed in the design of the proposal although does not make recommendations and plans do not detail any significant sustainability measures such as rainwater tanks, water re-use systems, solar panels and the like.
- Hard stand areas and the western elevation of the building are insufficiently shaded and setback from adjacent sites identified as being locally listed heritage areas and items.
- Impacts of the development particularly the road and intersection works will detrimentally impact on the Park Road heritage conservation area and the local character and significance of landscape and heritage values in the Wallacia village.
- The DSI and RAP submitted do not address potential for contamination in the areas where road and intersections works are proposed.
- The road and intersection works result in the removal of significant mature trees along the southern side of Park Road. The ecology and tree assessment do not include these works and it is determined that several of the trees contribute to local character, amenity and aesthetic values.

Clause 2.3 Permissibility

The permissibility of the various component parts of the proposal is detailed below.

Cemetery, Chapel, Administration Building and Use of Existing Golf Course Workshop

The cemetery and the ancillary chapel and administration buildings and the proposed use of an existing golf course workshop for cemetery staff, are located wholly within an area of the site which is zoned E3 Environmental Management under Penrith Local Environmental Plan 2010 (PLEP). Cemeteries are permitted with consent, within the zoning. The ancillary components of the cemetery such as the administration and chapel buildings, roads, drainage, landscaping works and the like, are permissible owing to their ancillary and subordinate relationship with the cemetery use.

9-Hole Golf Course Alterations, New Putting and Practice Areas

The proposed alterations to the existing 18-hole golf course and its conversion to a 9-hole golf course and the addition of a putting green and golf practice area can be supported, owing to the existing use right applicable to the area of those works. These activities are wholly contained within the area of the site zoned E3 Environmental Management under PLEP. These aspects of the proposal are aligned with the definition of existing use rights and are assessed to be limited as the Regulations allow.

Golf Clubhouse Alterations and Additions

The existing golf clubhouse and the northern and western sections of the existing and proposed surface carpark are located within an area of the site zoned E3 Environmental Management under PLEP. These alterations and additions to the golf clubhouse can be considered under the existing use rights provisions of the Act and Regulations.

The portion of the existing carpark located south of the clubhouse building, with frontage to Park Road, is located in an area zoned RU5 Village. Lots known as 17 and 19 Park Road on which the extension to the existing carpark is proposed are also zoned RU5 Village. In addition, the new gaming and smoking room to the southern side of the existing golf clubhouse is an expansion of the footprint of the existing building area, and this addition will be in the RU5 Village zone (with the remainder of the golf clubhouse being within the E3 zone).

These works can be considered as benefiting from the existing use right of the golf course and ancillary clubhouse on the area of the land on which it is proposed, noting also that *car parks* are a permissible land use in the RU5 Village zone under PLEP.

It is assessed that the existing golf club benefits from existing use rights as defined under Section 4.65 of the Environmental Planning and Assessment Act 1979 (the Act). The Environmental Planning and Assessment Regulation 2000 (the Regulations) specifies at Clause 41, that an existing use may, subject to this Division - be enlarged, expanded or intensified, or be altered or expanded, or be rebuilt.

Part 5, Clause 43 of the Regulations specifies that development consent is required for any alteration or extension of a building or work used for an existing use, and that the alteration or extension *(a) must be for the existing use if the building or work and for no other use, and (b) must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.*

With regard to Clause 41, the proposed clubhouse alterations and additions can be considered under Part 5 of the Regulations as the works represent an enlarged, expanded or intensified and altered existing use.

With regard to Clause 43(a) and (b) in particular, the clubhouse additions, alterations and expansions remain for the same use, being an ancillary golf clubhouse, and the works will be carried out on the same land.

New Gymnasium and Pool Building

Clarification was sought from the applicant as to the permissibility of the proposed pool and gymnasium building. The applicant provided legal advice and additional information which states that the pool and gymnasium are proposed as *community facilities* and that under PLEP this component of the proposal is permissible in the E3 Environmental Management zone.

Community facility is defined under PLEP as a building or place *(a) owned or controlled by a public authority or non-profit community organisation, and (b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.* The applicant has provided legal advice stating that St Johns Park Bowling Club, who will own and control the facilities, are a non-profit community organisation and the applicant further states, that the facilities will be open to the general public, including non-members in satisfaction of the definition.

On further examination of the documents provided it is considered that, as the pool and gymnasium building is attached by way of a covered verandah, shares amenities, parking and is strongly associated with the SJPBC clubhouse building, and will be owned and operated by the same entity, the pool and gymnasium building is "best fit" as an expansion of the ancillary clubhouse component, rather than a new dominant use in its own right.

It is documented that the golf course and ancillary golf clubhouse have operated at the site for many decades, although the onus is on the applicant to demonstrate existing use rights. It is acknowledged that the existing use rights are most appropriately characterised as a golf course and ancillary clubhouse (associated with the use of the golf course). The applicant however has not characterised the existing use in this manner, and this impacts the assessment of the proposed additional uses on the land for the purposes of a pool, gymnasium and bowling green (refer below in relation to the new bowling green component).

New Synthetic Bowling Green

The proposed new synthetic bowling green addition is best categorised as *recreation facilities (outdoor)*. *Recreation facilities (outdoor)* are prohibited in the E3 Environmental Management zone under PLEP.

The existing use right which applies to the existing golf course is not considered to be readily transferrable to the proposed new bowling green, as the golf course and ancillary clubhouse land use and its existing use right has not been properly categorised, as discussed above. The applicant asserts that the characterisation of the existing use is *recreation facility (outdoor)*, and therefore a bowling green falls within that definition, and is associated with the existing use right of recreation facility (outdoor). Having regard to the approach taken in *Shire of Perth v O'Keefe* (1964) 110 CLR 529 and followed in *Jojenji Investments Pty Ltd v Mosman Municipal Council* [2015] NSWCA 147, it is not correct to say (as the applicant does) that there are existing use rights for the purposes of *recreation facility (outdoor)*.

Clause 2.3 Zone objectives

The site is subject to three (3) land zonings under PLEP. The majority of the site inclusive of the existing golf clubhouse and golf course is zoned E3 Environmental Management. The existing hardstand and carpark south of the existing clubhouse building is zoned RU5 Village along with the adjacent two lots known as 17 and 19 Park Road, Wallacia. A narrow section of the site's frontage to Park Road is zoned SP2 Infrastructure (Classified Road) and is identified for road widening. Park Road is a classified State road.

SP2 Infrastructure (Classified Road) zone

No works with the exception of an access driveway and minor landscaping are proposed to be located in the areas zoned SP2 Infrastructure (Classified Road) and in this respect, the proposal is not in conflict with the objectives of the SP2 Infrastructure (Classified Road) zone which include; to provide for infrastructure and related uses, and to prevent development that is not compatible with or that may detract from the provision of infrastructure.

RU5 Village zone

The area of the site which is to the south of the existing golf clubhouse (being part of Lot 1 in DP 1254545, 13 Park Road) and the two lots known as 17 and 19 Park Road are zoned RU5 Village under PLEP. The part of the site located south of the existing golf clubhouse currently contains a carpark and driveway from Park Road and is used in association with the existing golf clubhouse and golf course. Lots known as 17 and 19 Park Road are vacant and contain trees and vegetation and are utilised intermittently as informal overflow car parking. No formal hardstand areas are existing.

The application proposes to alter this existing carpark layout and to formalise the car parking over lots 17 and 19 Park Road. Works include alterations and additions to hardstand areas, earthworks, new car parking spaces, line marking, fencing, tree removal and landscaping and ancillary stormwater and services provision. The proposed addition of an outdoor gaming and smoking room to the existing golf clubhouse is also proposed in this zoning. This part of the development results in an expansion of the existing golf clubhouse footprint into the RU5 Village zone, and over Lot 4 in DP 18701 (17 Park Road).

In relation to these works, they can be considered, as discussed elsewhere, as an expansion of the site's existing use right. Also, car parks are permissible within the RU5 Village zone. Objectives of the zone applicable to the proposal include: *To provide for a range of land uses, services and facilities that are*

associated with a rural village, and to ensure development is compatible with the role and character of the village, available infrastructure, services and facilities and with the environmental capabilities of the land.

Amended plans were sought from the applicant to address unsupportable impacts of traffic circulation, limited shade provision, landscape setbacks and buffers, building presentation and impacts on streetscape and local character, including impacts on nearby locally listed heritage items and areas. Amended plans indicated a variety of amendments including the provision of an increased 5.5m front landscaped setback to Park Road, a 2m setback to the eastern boundary with 17 Park Road, increased canopy tree planting and relocated car parking from the front setback to the northern side of the existing golf clubhouse. The first golf tee was relocated as a result.

The amended carpark and landscaping works within the RU5 zoned area, are not considered to be supportive of the objectives of the RU5 Village zone as insufficient landscape buffers to interfaces are provided, the areas provided for canopy tree blisters are too narrow to support mature tree growth, no confirmation of the suitability of the location of services such as hydrant boosters or an electrical substation is included, and importantly no details have been provided on how the car parking layout and levels will respond to the slope of the land fronting Park Road, which is not insignificant.

The modified plans retain a zero boundary setback to a portion of the north-western car parking area. This is not assessed to be supportable due to the negative impacts on heritage and local character, particularly given this area shares its boundary with a locally listed heritage item (Wallacia Hotel - I325) and a locally listed heritage conservation area (Mulgoa Road Conservation Area - HCA5).

The intersection works near the golf clubhouse entry are unsupportable as they will result in the removal of significant trees within the LEP Protection of Scenic Character and Landscape Values area and some of the trees are within the locally listed Park Road Conservation Area, and as such this aspect of the works is contrary to the zone objectives and cannot be supported (refer also to discussion under LEP Clauses 5.10 and 7.18 and DCP Section E9).

Images (below) - Left: Nearmap and site boundary overlay (Source: Council's mapping software); Right: Axil Architects - Site plan (Source: Applicant)



E3 Environmental Management zone

Objectives of the zone include:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values,
- To provide for a limited range of development that does not have an adverse effect on those values,
- To minimise conflict between land uses within the zone and land uses within adjoining zones,
- To ensure development is compatible with the environmental capabilities of the land and does not unreasonably increase the demand for public services or public facilities,
- To preserve and improve natural resources through appropriate land management practices.

Works proposed within the E3 Environmental Management zone include the cemetery and related infrastructure and ancillary chapel and administration buildings, new bowling green, pool and gymnasium building, the augmented 9-hole golf course, new putting and practice areas, new car parking areas, dam de-watering, tree and vegetation removal, landscaping and tree planting, and alterations and additions to the existing golf clubhouse building. A two lot Torrens title subdivision is also proposed.

In relation to dot points one, two, four and five, insufficient information has been provided in relation to land contamination, ecology, biodiversity and impacts on trees and vegetation as part of the amended 9-hole golf course and sewer servicing works, and limited justification in support of the request for reduced biodiversity credits, in particular. The tree assessment and biodiversity reports do not correlate with the most recent architectural plans and do not address impacts resulting from sewer servicing installation or works proposed in the roadway and resultant tree and vegetation removal and the finished levels of the car parking areas are not identified in relation to natural ground levels.

In relation to dot point three, it is not understood from the documentation how conflicts between the golfing use and the cemetery component (ball strikes, etc) at the interface between the proposed two uses and any related impacts on ecology, flora, fauna and the like will be managed.

A comprehensive view analysis which provides photomontages of views to the cemetery from Park Road or other important vantage points has not been provided and it is not apparent that the 15m buffer to Park Road (due to the undulating topography) will be effective in mitigating any negative impacts on important views and vistas and on local character.

This is seen as highly important, as the site is identified on Council's LEP maps as being subject to Clause 7.5 Protection of scenic character and landscape values (refer also to discussion under PLEP, Clause 7.5) and owing to the large number of submissions which include negative impacts of the development on heritage values, local character and views, as a component of the objections. Visual impacts of the development will have negative social impacts on residents and the community - long views or wide vistas of the cemetery and rows of memorial head stones and the like must be avoided. Plans do not demonstrate that sufficient regard has been had to this aspect, nor that the design and location of memorials, structures and landscaping (stands of trees, etc) will limit views to 'glimpses' rather than panoramic views.

Conclusion

The proposal is not considered to be compatible with the zone objectives of the E3 Environmental Management zone and the RU5 Village zone and insufficient information has been provided in relation to ecology, biodiversity and impacts on trees and vegetation as part of the amended 9-hole golf course, road works, sewer servicing works, and in support of the request for reduced biodiversity credits in particular, and the tree assessment and biodiversity reports do not correlate with the most recent plans.

Clause 4.1 - Minimum subdivision lot size

The Site is approximately 42 ha in area and comprises of four allotments known as 13, 17, 19 and 37 Park Road, Wallacia. The Lots are legally described as Lot 1 in DP 1254545, Lot 4 in DP 18701, Lot 3 in DP 18701 and Lot 2 in DP 1254545 respectively.

- Lot 1 in DP 1254545, which contains the existing golf clubhouse and car parking, is 1.557 ha in area,
- Lot 2 in DP 1254545, which contains the existing 18-hole golf course, is 42.73 ha in area, and
- Vacant Lots 3 and 4 in DP 18701 which have frontage to Park Road and which are currently utilised for overflow car parking, are each 695 sqm in area.

The proposal includes a two lot Torrens title subdivision of Lot 2 in DP 1254545 into two lots as follows:

- Lot 1 (western end) with a land area of 21.63 ha, and
- Lot 2 (eastern end containing the proposed cemetery) with a land area of 21.37 ha.

The proposed subdivision of Lot 2 in DP 1254545 complies with Council's minimum lot size requirements as expressed on the LEP maps, which is 20 ha.

Clause 5.10 Heritage conservation

Clause 5.10 Heritage conservation of PLEP includes the following objectives:

- (a) to conserve the environmental heritage of Penrith,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Subclause (4) states that *'The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned...'*

The subject site shares a part of its western boundary with a locally listed heritage item known as Wallacia Hotel at 1590-1594 Mulgoa Road, Wallacia (Item no. 325, Schedule 5 of PLEP) and shares a part of its southern boundary with a locally listed heritage item known as St Andrew's Anglican Church at 25 Park Road, Wallacia (Item no. 326, Schedule 5 of PLEP). The area of the clubhouse southern carpark and driveway shares its western boundary with a locally listed archaeological site known as Luddenham Homestead site at 1-9 Park Road (Item no. A849).

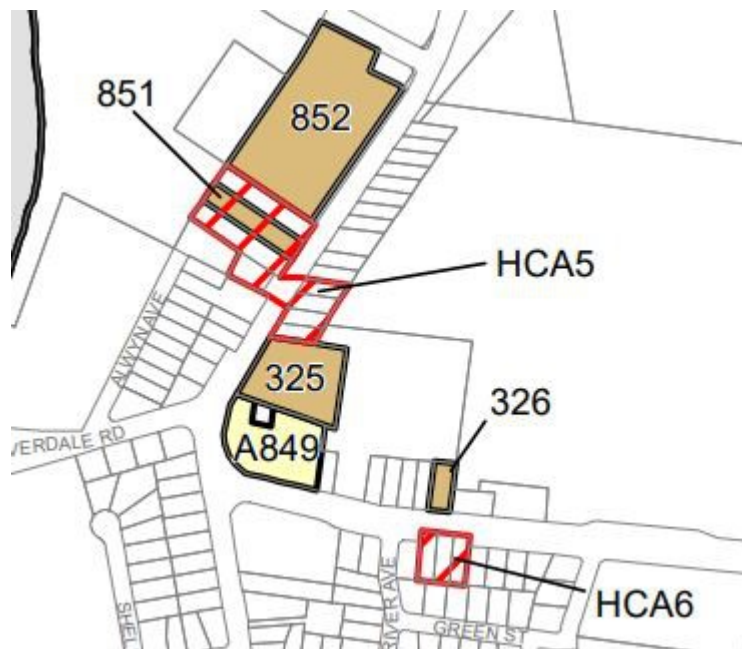
The site shares its western boundary with a locally listed heritage conservation area being the Mulgoa Road Conservation Area (HCA5) and is opposite the locally listed Park Road Conservation Area (HCA6). Other locally listed heritage items in the site's vicinity include Wallacia Public School at 1573-1585 Mulgoa Road (Item no. 852) and Wallacia Post Office at 1589 Mulgoa Road (Item no. 851). Nearby Greendale Road contains a number of other locally listed heritage items.

Image (below): *Excerpt from Austral Historical Archaeological Assessment - Heritage items and conservation areas*



Figure 2.1 Location of heritage items in the immediate vicinity of the study area.

Image (below): Excerpt from Council's LEP - Schedule 5 - Heritage items and conservation areas



The applicant has provided a Heritage Impact Statement prepared by Urbis, dated 02.12.2019, an Aboriginal Due Diligence Assessment, prepared by Austral, dated 6.12.2019, rev. 2, and an Historical Archaeological Assessment, prepared by Austral (final report), dated 8 November. The applicant has responded to the matters Council had raised in its Request for Information (RFI). In their RFI response letter dated 9 November 2020, the applicant has noted that a full Statement of Heritage Impact and Research Design document and an Aboriginal Cultural Heritage Assessment Report are being prepared for the site, these are yet to be submitted.

As detailed elsewhere in this report, the final Historical Archaeological Assessment concludes that there are

'...zones of varying degrees of historical archaeological potential located within the study area which may contain archaeological deposits...' noting that some may relate to occupation deposits or outbuildings associated with Blaxland's Luddenham Farm, and a Second World War air raid shelter and notes that *'...should they be intact, are considered to range from local to State significance'*. The assessment notes that archaeological remains associated with the Wallacia to Luddenham track (which is on the subject site) are not of significance. The report confirms that a pedestrian survey of the study area was unable to either confirm or refute the statement that an air raid shelter is present under the green of the 10th hole. Further archaeological investigations will be required to determine whether this item is present.

The report recommends an excavation permit is required under Section 140 of the *Heritage Act 1977*, and that an accredited archaeologist is appointed to oversee the excavation of sites of local significance. To obtain an excavation permit, it is noted that the application must include an archaeological assessment and research design. The reports and assessments are generally acceptable and are thorough as they relate to works and activities within the site and with regard to the internal activities. The need to undertake further assessments could be managed through the imposition of conditions.

Notwithstanding the above, the assessments and reports do not address the impacts resulting from road works and intersection works along Park Road. Several mature and contributory trees proposed to be removed on the southern side of Park Road form part of a listed heritage conservation area known as Park Road Conservation Area (HC6). The reports do not detail any assessment of the most recent plans and do not make recommendations or position in relation to proposed finished levels of hard stand and car parking areas.

The trees to be removed in and outside of the locally listed Park Road Conservation Area are highly contributory to streetscape, heritage, local character, biodiversity and are within a DCP identified Village centre and Gateway location (refer to DCP Mulgoa Village section of this report) and are identified on Council's LEP Protection of Scenic Character and Landscape Values map to which LEP Clause 7.5 applies - and in this respect, the proposal cannot be supported on heritage impact, scenic and local character grounds.

The proposal is in opposition to the objectives of sub-clauses (1)(a)-(d) and the matters for consideration under sub-clause (4) *Effect of proposed development on heritage significance*.

Clause 7.1 Earthworks

The plans of the clubhouse and pool and gymnasium building and car parking alterations and additions, do not detail finished levels and the interface with natural ground levels. The significance and local historical and scenic character of the western end of the site is detailed elsewhere in this report. The site shares its boundaries with several listed heritage items, a listed archaeological item and with a heritage conservation area. The site is also opposite the locally listed Park Road heritage conservation area.

The levels as understood from the plans, will not achieve compliance with the objective of sub-clause 7.1(1)(a) which is to *'ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land'*.

Sub-clause 7.1(3) states that *'Before granting development consent for earthworks, the consent authority must consider the following matters -*

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- (i) the proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area.'*

In relation to (d), (h), and (i), the proposal for the reasons above, cannot be supported. In addition, earthworks related to the proposal to fill areas of Jerrys Creek to provide for Tee 1 are not supported.

Clause 7.2 Flood planning

Clause 7.2(4) states that *"development consent must not be granted for development on land that is at or below the flood planning level unless the consent authority is satisfied that the development -*

- (a) is compatible with the flood hazard of the land, and*
- (b) if located in a floodway, is compatible with the flow conveyance function of the floodway and the flood hazard within the floodway, and*
- (c) is not likely to adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (d) is not likely to significantly alter flow distributions and velocities to the detriment of other properties or the environment, and*
- (e) is not likely to adversely affect the safe and effective evacuation of the land and the surrounding area, and*
- (f) is not likely to significantly detrimentally affect the environment or cause avoidable erosion, destruction of riparian vegetation or affect the restoration and establishment of riparian vegetation, or a reduction in the stability of river banks or waterways, and*
- (g) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and*
- (h) incorporates appropriate measures to manage risk to life from flood, and*
- (i) is consistent with any relevant floodplain risk management plan."*

Sub-clause 7.2(5) states that *"Development consent must not be granted for development on land identified as "Flood planning land" on the [Clause Application Map](#), unless the consent authority is satisfied that the development will not adversely affect the safe and effective evacuation of the land and the surrounding area"*.

The site is identified on Council's LEP Flood Planning Land map. The area in the vicinity of Jerrys Creek and an area along the northern site boundary are impacted by flooding. The applicant has provided a Flood Impact Assessment prepared by GRC Hydro, dated November 2019, which concludes that the golf clubhouse is located outside of the area impacted by flooding from Jerrys Creek and that proposed floor levels are above the 1% AEP flood extent. The report also provides that no off site impacts will result from the proposed cemetery or the 9-hole golf course works.

Additional information was requested to allow an assessment of the impact of floodwaters on proposed burial plots. A plan was provided which indicates that plots are located outside of the overland flow flooding and also indicates plots clear of areas where the known instance of ground water is <3m or is unsuitable for full body burials.

Image (below): GRC hydro plan 'Flood Depths' (Source: Applicant)



Image (below): Areas of site impacted by <3m ground water (Source: Applicant)



Clause 7.3 Development on natural resources sensitive land

The area of the site which is identified as Jerrys Creek and its banks is noted on Council's Natural Recourses Sensitivity map and is subject to clause 7.3 of PLEP. The objectives of the clause include:

(a) to protect, enhance and manage the ecological, hydrological, scientific, cultural and aesthetic values of biodiversity and wildlife habitat corridors, natural waterways and riparian land,

(b) to enhance connections between remnants of indigenous vegetation,
(c) to prevent the fragmentation and degradation of remnant vegetation, and
(d) to ensure that clearing and other development is located and designed to avoid or minimise the impact on the ecological, hydrological, scientific, cultural and aesthetic values of biodiversity and wildlife habitat corridors, natural waterways and riparian land.

Sub-clause 7.3(4) states that *'Before deciding an application to carry out development mentioned in subclause (3) [subdivision, earthworks, works, clearing], the consent authority must consider whether the development meets the objectives of this clause and such of the following as are relevant -*

(a) the condition and significance of the vegetation on the land and whether it should be substantially retained in that location,
(b) the importance of the vegetation in that particular location to native fauna,
(c) the strategic importance of the land as part of a biodiversity corridor,
(d) the sensitivity of the land and the effect of clearing vegetation,
(e) the relative stability of the bed and banks of any waterway that may be affected by the development, whether on the site, upstream or downstream,
(f) the effect of the development on waterway health, including pollution of the waterway, a significant increase or decrease in the amount or velocity of runoff entering the waterway, or a significant increase in siltation of the waterway,
(g) the effect of the development on the functions of aquatic ecosystems (such as habitat and connectivity).'

Sub-clause 7.3(5) of PLEP states that *'Development consent must not be granted to development mentioned in subclause (3) [subdivision, earthworks, works, clearing], unless the consent authority is satisfied that -*

(a) the development is designed and will be located and managed to avoid any potential adverse environmental impact, or
(b) if a potential adverse environmental impact cannot be avoided, the development -
(i) is designed and located so as to have minimum adverse impact, and
(ii) incorporates effective measures to remedy or mitigate any adverse impact caused.

A tree assessment report was submitted with the DA. The report does contain some minor inconsistencies, however is comprehensive and has reviewed and provided an assessment of trees across the site. The report does not address trees impacted by the development which are located outside the site, in particular those along the southern side of Park Road, which will be removed as part of the proposed intersection and road works.

A Biodiversity Development Assessment Report (BDAR) prepared by Travers, was also submitted and has been reviewed by Council's Biodiversity Officer (refer to discussion under the Biodiversity Conservation Act section of this report). The BDAR outlines that six (6) threatened fauna species (various bat species) and two (2) threatened ecological communities (TECs), being Cumberland Plain Woodland (CPW) and River-Flat Eucalypt Forrest (RFEF) were identified on the site.

The BDAR includes that *"It is considered that the proposal may constitute serious and irreversible impacts [SAII] on CPW"* (refer to discussion under the Biodiversity Conservation Act section of this report) and the report identifies that the proposed development was *"...considered to have a potentially significant impact on CPW, which is a matter of national environmental significance. As such a referral to Australian Government Minister for the Environment is recommended"*.

Further, the BDAR includes that Biodiversity Offsets are required through the Biodiversity Offsets Scheme (BOS). The Travers report request that Council consider a reduction in credits and provides reasoning in their report which are summarised as being (a) because 2.28 ha of the impacted vegetation is planted, (b) as 1.35

ha of the site is proposed to be re-vegetated, and (c) that replacement trees are proposed. Council does not support the credit reduction request and has requested additional information related to SAIIs (the referenced requires referral to the Australian Government Minister for the Environment).

The proposal includes the retention and re-vegetation of the area of Jerrys Creek. The submitted Vegetation Management Plan (VMP), prepared by Travers Bushfire and Ecology, includes that areas of RFEF and CPW vegetation will be regenerated. This is noted to involve bush regeneration, weed control and protection from potential disturbance. The VMP identifies that a total land area of 31,400 sqm comprised of 17,600 sqm of RFEF and 13,800 sqm of CPW will be enriched and sets enrichment densities for canopy trees, sub-canopy trees, shrubs and vines, grasses and ground covers.

The VMP outlines that works are to be undertaken by a fully qualified bush regeneration team with monitoring and auditing undertaken over time.

The VMP also outlines that habitat trees should be retained where possible and that good quality hollows be retained and relocated by a qualified arborist and ecologist, and that a minimum of 12 nest boxes are to be installed catering for bat species, owls, possums and birds and an indicative location plan for the boxes is to be provided.

Notwithstanding the above, the VMP and other tree and biodiversity reports do not address the potential impacts of the proposed sewer location along the southern boundary of the site in the proximity of Jerrys Creek, and any related impacts on RFEF, proposed RFEF re-vegetation, CPW and CPW re-vegetation. It is assessed that owing to this lack of information, and owing to the above mentioned outstanding BDAR matters, Council cannot be satisfied as to the matters for consideration under sub-clauses 7.3(4) and (5).

Images (below) - Left: Proposed sewer plan (Source: Applicant); **Right:** Proposed VMP in location of Jerrys Creek and sewer (Source: Applicant)



Clause 7.4 Sustainable development

The Penrith LEP requires under clause 7.4 *Sustainable development*, that *'in deciding whether to grant development consent for development, the consent authority must have regard to the principles of sustainable development as they relate to the development on a "whole of building" approach by considering each of the following -*

- (a) conserving energy and reducing carbon dioxide emissions,*
- (b) embodied energy in materials and building processes,*
- (c) building design and orientation,*
- (d) passive solar design and day lighting,*
- (e) natural ventilation,*
- (f) energy efficiency and conservation,*
- (g) water conservation and water reuse,*
- (h) waste minimisation and recycling,*
- (i) reduction of vehicle dependence,*
- (j) potential for adaptive reuse.'*

The application was submitted with a 'Sustainability Strategies - ESD Report' prepared by Steensen Varming, dated 4-12-2019, Rev. 03. Although the report highlights possible initiatives and provides a summary of potential employable sustainability initiatives and design responses, the architectural plans for the chapel, administration building, pool and gym building and clubhouse alterations have not had regard to the Report discussions and no report recommendations are provided. Planting to the west of the clubhouse and pool/gym building will not be effectual in providing shade to the western walls.

No rainwater tanks, water re-use measures, rating targets or solar panels are noted as being proposed as part of the new pool and gym complex or as part of existing golf clubhouse renovations.

The chapel building and administration building are not provided with solar panels or rainwater tanks and the orientation of the glazing of the chapel is toward the west and the roof includes large areas of glazing, raising issues of heat penetration and reliance on mechanical air conditioning. A shade tree is provided to the southern side of the administration building. Water features are indicated to the south of the administration building, although these are not picked up on plans.

In relation to (i) above, two areas of bicycle parking are provided adjacent to the pool and gym complex entry and adjacent to the clubhouse entry (western side) and in relation to (j) above adaptive reuse does not apply.

The primary focus in relation to sustainability as the clause relates to the proposal, is considered to be the ability to respond to heat loading; combating heat island impacts; reducing water consumption; installing drought resistant and dry/heat tolerant plants and trees; and reducing reliance on mechanical heating and cooling.

The development proposal does not adequately address these main issues (with the exception of the installation of drought tolerant trees and vegetation) which are reflected in the clause as (a), (c), (d), (f) and (g).

Clause 7.5 Protection of scenic character and landscape values

The subject site is identified on Council's Protection of Scenic Character and Landscape Values map under PLEP and as such clause 7.5 of the LEP applies.

Objectives under subclause (1) of the clause include:

- (a) to identify and protect areas that have particular scenic value either from major roads, identified heritage items or other public places,*
- (b) to ensure development in these areas is located and designed to minimise its visual impact.*

Subclause (3) states that *'Development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places'*.

The proposed development is in opposition to the objectives of the clause and Council is not satisfied that adequate measures have been taken, including in relation to the location and design of the development, to minimise the visual impact of the development.

The scale of the development at the western end of the site is resulting in the requirement for significant alterations to Park Road and Driver Avenue and will result in the removal of significant and contributory trees, some of which are identified as having heritage significance. The application cannot be supported on these grounds.

As detailed elsewhere in this report, insufficient view analysis has been provided to satisfy Council that views and vistas to the cemetery will not be poorly impacted. No photomontage of what will be visible from Park Road has been provided, and it is not ascertained that the locations of landscaping elements and tree stands will be effectual in screening and limiting long range or broad views, which would allow the scale of the cemetery to be apparent - and impact poorly on scenic quality.

Refer also to the discussions under PLEP, Clause 5.10 Heritage significance and Clause 7.18 Mulgoa valley, and DCP Section E9 Mulgoa Valley.

Image (below): Excerpt from Council's LEP maps - Protection of Scenic Character and Landscape Values map



Clause 7.7 Servicing

Clause 7.7 of PLEP states at (2) that *'Before granting development consent for development on any land to which this plan applies, the consent authority must be satisfied that -*

- (a) the development will be connected to a reticulated water supply, if required by the consent authority, and*
- (b) the development will have adequate facilities for the removal and disposal of sewage,*
- (c) if the development is for seniors housing, the development can be connected to a reticulated sewage system, and*
- (d) the need for the public amenities or public services has been or will be met.'*

The applicant has included information on how the site will be serviced and in particular how sewer will be connected to the cemetery uses. Sydney Water has confirmed (letter dated 24 August 2020, Ref. 172421) that there is inadequate capacity and has recommended that an inception meeting is held with Sydney Water after the proponent has prepared a detailed concept servicing proposal for potable water and waste water services.

The applicant has not provided sufficient information to confirm if further advice has been received and as such Council is not satisfied in relation to (a), (b) and (d) as relevant to the cemetery component of the development proposal.

Clause 7.18 Mulgoa valley

This clause applies to the subject site as it is identified on Council's LEP Clause Application map. Objectives of the clause include:

- (a) to establish specific planning controls for land in the Mulgoa Valley (the Valley),*
- (b) to protect and enhance the rural landscape of the valley, including its agricultural qualities, cultural heritage values and the setting of the villages of Mulgoa and Wallacia,*
- (c) to ensure development in the valley (including rural living opportunities) protects and utilises its tourism and recreational potential and is consistent with conserving its rural and natural landscape, heritage and agricultural qualities,*
- (d) to ensure traffic generating development is suitably located so as not to adversely affect the safety, efficiency and rural character of roads, particularly Mulgoa Road.*

Subclause (3) states that *'Before granting development consent for any purpose on land to which this clause applies, the consent authority must be satisfied of the following -*

- (a) that any proposed building will not be located on a ridgetop and will not intrude into the skyline when viewed from a road or other public place,*
- (b) that the proposed development will not adversely affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of any heritage item in the valley,*
- (c) that the proposed form and siting of buildings, colours, landscaping and building materials are appropriate for the rural character of the valley,*
- (d) that the proposed development will not detract from the "Vistas of heritage items" specified on the [Scenic and Landscape Values Map](#),*
- (e) that extensive areas of vegetation will not be cleared for the proposed development,*
- (f) that adequate provision has been made for the landscaping of the land to which the development relates and about whether any trees or other vegetation on the land should be preserved,*
- (g) that the agricultural viability of holdings and potential of the land will not be adversely affected*
- (h) that Aboriginal and non-Aboriginal cultural heritage resources on the land will not be adversely affected*
- (i) that the view from Mulgoa Road and the rural setting of the villages of Mulgoa and Wallacia will not be adversely affected,*
- (j) that the safety and efficiency of Mulgoa Road will not be adversely affected,*
- (k) that any upgrading required to maintain safety and efficiency will not detract from the present rural*

character of Mulgoa Road.'

With regard to the above matters and the objectives under sub-clause 7.18(1), the development proposal is considered to be acceptable when assessed against (3)(a), (d), (e), (g) and (j).

In relation to (3)(b) and (c), the proposed materials for the pool and gym and the arrangement of windows and hardstand areas requires further resolution and these are not designed having regard to the Siting, Building Form and Materials and Colours clauses within Chapter E9 Mulgoa Valley of the DCP (refer discussion in DCP section). It is assessed that insufficient landscape setback is provided to the shared boundary with the nearby locally listed heritage item, being the Wallacia Hotel - in the most western extent of the northern car parking area. Car parking is provided hard to the boundary.

In relation to (3)(f), (i) and (k), the application was submitted with a Tree Report, BDAR and Flora and Fauna Report, as well as a Vegetation Management Plan (VMP). Trees and vegetation proposed for removal are fairly extensive although the VMP and re-planting proposed is equally extensive. Plans for the clubhouse carpark were amended to increase the landscape setback to Park Road and to increase planting in the area.

The centrally located landscaped blisters within the front carpark area are assessed as being too narrow to accommodate canopy tree planting at maturity. The 5.5m front setback could be increased in the area adjacent to 21 Park Road, to ensure no negative impacts result.

Further, the tree report, BDAR and Flora and Fauna Assessment do not address trees and vegetation that will be removed as part of the road and intersection works along Park Road. The Botanica response to amended plans and Council's RFI notes that the tree assessment from Travers does not correlate with the golf layout and building works. The Botanica response notes that trees numbered 500, 543, 747, 749, 814, 824, 831, 834, 844, 850, 853, 886, 889, 862, 864, 880, 905, 911, 917, 920, 925, 930, 938, 942, 945, 958, 965, 974, 980, 992, 999, 980, 1001, 1006, 1150, 1154, 1164, 1166, 1172, 1175, 1172, 1182, 1184, 1186, 1190, 1192, 1203, and 1207 will need to be removed to facilitate the 9-hole golf course. The response also notes that the tree report does not include that trees numbered 18, 21, 31, 34, 37, 39, 40, 1012, 1212, 1213, 1214 and 1215, in the location of the car park areas, will be removed.

TfNSW has not granted concurrence for the works on Park Road that facilitate access to the site and which will impact trees, and Council's traffic engineers object to the impacts of the works. Amended plans and correlating tree assessment reports were not requested, as the application is recommended for Refusal, and the outcome of ongoing discussions with TfNSW and Council's traffic engineers may result in alternative options for the proposed intersections.

In relation to (3)(h), the applicant has provided a Heritage Impact Statement prepared by Urbis, dated 02.12.2019, an Aboriginal Due Diligence Assessment, prepared by Austral, dated 6.12.2019, rev. 2, and an Historical Archaeological Assessment, prepared by Austral (final report), dated 8 November. The applicant has responded to the matters Council had raised in its Request for Information (RFI). In their RFI response letter dated 9 November 2020, the applicant has noted that a full Statement of Heritage Impact and Research Design document and an Aboriginal Cultural Heritage Assessment Report are being prepared for the site. These are yet to be submitted.

Listed heritage items

The site shares a part of its western boundary with a locally listed heritage item known as Wallacia Hotel at 1590-1594 Mulgoa Road, Wallacia (Item no. 325, Schedule 5 of PLEP) and shares a part of its southern boundary with a locally listed heritage item known as St Andrew's Anglican Church at 25 Park Road, Wallacia (Item no. 326, Schedule 5 of PLEP). The area of the clubhouse southern carpark and driveway shares its western boundary with a locally listed archaeological site known as Luddenham Homestead site at 1-9 Park Road (Item no. A849).

Listed conservation areas

The site shares its western boundary with a locally listed heritage conservation area being the Mulgoa Road Conservation Area (HCA5) and is opposite the locally listed Park Road Conservation Area (HCA6).

The 9 November 2020 RFI response was accompanied by a final Historical Archaeological Assessment. The Assessment concludes that there are '...zones of varying degrees of historical archaeological potential located within the study area which may contain archaeological deposits...' and some may relate to occupation deposits or outbuildings associated with Blaxland's Luddenham Farm, and a Second World War air raid shelter and notes that '...should they be intact, are considered to range from local to State significance'. The assessment notes that archaeological remains associated with the Wallacia to Luddenham track (which is on the subject site) are not of significance. The report confirms that a pedestrian survey of the study area was unable to either confirm or refute the statement that an air raid shelter is present under the green of the 10th hole. Further archaeological investigations will be required to determine whether this item is present.

The report recommends an excavation permit is required under Section 140 of the Heritage Act 1977, and that an accredited archaeologist is appointed to oversee the excavation of sites of local significance. To obtain an excavation permit, it is noted that the application must include an archaeological assessment and research design.

It is also recommended that an unexpected finds protocol be put in place, and that a copy of the assessment report should be lodged by the proponent in the local history section of the local library, and in the library maintained by Heritage NSW.

The reports and assessments are generally acceptable and are thorough. The need to undertake further assessments could be managed through the imposition of conditions, although it is noted that the proposal is recommended to be Refused on other grounds.

Importantly, the reports do not adequately address the impact of road and intersection works and the resultant tree removal on Park Road, noting that trees to be removed form part of a listed heritage conservation area (HC6) and are highly contributory to streetscape, heritage, local character and biodiversity, are in a Village centre context and are in a DCP identified Gateway location as well as being identified in Council's LEP maps as being within a Protection of Scenic Character and Landscape Values area under PLEP - and in this respect, the proposal cannot be supported on heritage impact, streetscape and local character grounds.

Refer also to related discussions under SEPP (Infrastructure), LEP Clauses 5.10 and 7.5 and DCP Section E9 Mulgoa Valley.

Clause 7.19 Villages of Mulgoa and Wallacia

The western part of the site (west of Jerrys Creek) and the area on the southern side of Park Road, is identified on Council's LEP Clause Application map and as such Clause 7.19 Villages of Mulgoa and Wallacia, applies.

Objectives of the clause include:

- (a) to establish specific planning controls for land in the villages of Mulgoa and Wallacia, and*
- (b) to protect residential amenity by prescribing minimum dimensions for dual occupancy and the creation of new lots through subdivision.*

The clause relates to dual occupancy development and lot sizes. The proposal is not subject to these controls and as such is acceptable.

Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 - 1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property*

It is noted that the proposed changes to State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 - 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this draft instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No. 55—Remediation of Land. The proposed new land remediation SEPP will:

- Provide a state-wide planning framework for the remediation of land,
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- Clearly list the remediation works that require development consent, and
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979. The proposal is inconsistent with the provisions of this draft instrument, owing to the matters detailed under the SEPP 55 discussion.

Planning Proposal - Planning Proposal to Resolve Deferred Matters from Penrith Local Environmental Plan 2010 (Amendment 4)

The Phase 1 amendments to the Penrith LEP were on exhibition between 1 May - 29 May 2020 and include alterations to lot sizes in residential zones, alterations to permissible uses in identified areas, changes in the zoning of particular allotments and minor housekeeping amendments. The amendments sought do not impact the subject proposal. Amendment 4 was made to PLEP on 28 January 2015. Certain areas were deferred from the LEP to enable further community consultation of the post exhibition changes, although none of the areas relate to the subject site.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	Does not comply - see Appendix - Development Control Plan Compliance
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	Complies
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
D3.1. Bulky Good Retailing	N/A
D3.2. Sex Services Premises	N/A
D3.3. Restricted Premises	N/A
D5.1. Application of Certification System	N/A
D5.2. Child Care Centres	N/A
D5.3. Health Consulting Rooms	N/A
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	Does not comply - see Appendix - Development Control Plan Compliance
D5.6. Places of Public Worship	N/A
D5.7. Vehicle Repair Stations	N/A
D5.8. Cemeteries, Crematoria and Funeral Homes	Does not comply - see Appendix - Development Control Plan Compliance
D5.9. Extractive Industries	N/A
D5.10 Telecommunication Facilities	N/A
D5.11 Boarding Houses	N/A
E9 Mulgoa Valley controls	Does not comply - see Appendix - Development Control Plan Compliance

Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to the site or proposal.

Section 4.15(1)(a)(iv) The provisions of the regulations

Fire Safety

In accordance with Clause 143 of the Environmental Planning and Assessment Regulation 2000, an assessment of the fire protection and structural capacity of the proposal is necessary. The application has been referred to Council's Building Surveyor who has not raised any objections, subject to recommended conditions of consent, although it is noted that the application is recommended for refusal on other grounds.

Public Participation

The proposal has been notified and exhibited in accordance with the requirements of the Regulations.

Part 5 Existing uses

Clause 41 states that an existing use may, subject to the Division -

- '(a) be enlarged, expanded or intensified, or*
- (b) be altered or extended, or*
- (c) be rebuilt, or*
- (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
- (e) if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
- (f) if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act)'.*

Sub-clause (2) states *'However, an existing use must not be changed under subclause (1)(e) or (f) unless that change -*

- (a) involves only alterations or additions that are minor in nature, and*
- (b) does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and*
- (c) does not involve the rebuilding of the premises associated with the existing use, and*
- (d) does not involve a significant intensification of that existing use'.*

Development proposed on land being to which this clause applies is detailed in the relevant section of the assessment report.

Clause 50 How must a development application be made

The development application has not been made in satisfaction of Clause 50 of the Regulations and having regard to Part 1, Schedule 1 as follows:

- PLEP requires that the consent authority be satisfied that the development can be suitably connected to sewer. Sydney Water advise that adequate capacity is not available to the site. In this respect the application is unsatisfactory having regard to the requirement under Part 1, 2(1)(h) of the Regulations which requires *'if an environmental planning instrument requires arrangements for any matter to have been made before development consent may be granted (such as arrangements for the provision of utility services), documentary evidence that such arrangements have been made'.*
- The application is not satisfactory having regard to the required detail for plans expressed under Part 1, 2(3)(d).

Clause 59 Seeking concurrence

A copy of the development application was forwarded to agencies requiring concurrence including the RFS, TfNSW and NRAR. TfNSW has not given its concurrence. The application was also referred through the Planning Portal to the Environmental Agency Head as is required under Part 7 of the Biodiversity Conservation Act 2016 because the development application (in the Biodiversity Development Assessment Report) indicated that a discount was being sought in the biodiversity credits required under the report to be retired. Sub-clause 59(3)(a) states that if this is the case:

- (a) the development application must be forwarded to the Environment Agency Head within 10 days (instead of 14 days) after the application is lodged, and*
- (b) the consent authority must notify the Environment Agency Head within 30 days after the application is lodged whether it proposes to reduce the number of biodiversity credits required to be retired and, if it proposes to do so, the amount of (and reasons for) the reduction, as referred to in section 7.13(4) of the [Biodiversity Conservation Act 2016](#).*

The Agency Head was notified of the request for a reduction in credits to be retired, and was also notified that Council did not support the proposed reduction. No further action is required.

Section 4.15(1)(b)The likely impacts of the development

The likely impacts of the proposed development as identified throughout the assessment process include:

Negative Impacts on Views, Vistas and Scenic Character

The design of the buildings, specifically the alterations to the clubhouse and pool and gymnasium additions, are not complementary to the heritage and scenic values of the site's context. In particular, the locations and finished levels of car parking and hardstand areas are not detailed sufficiently and inadequate boundary interface setbacks and landscaping is included.

Negative Impacts from Road and Intersection Works

The road and intersection works are not addressed in the biodiversity and vegetation documentation. The proposal includes the removal of significant and mature trees in an identified Gateway location to the Village and the majority of these trees form part of the listed Park Road Conservation Area.

Road and intersection works are unsatisfactory in their design on safety and access grounds, with Council's engineer objecting to the proposed works including the impacts on access arrangements to private property and to Driver Avenue.

Matters Raised in the Submissions

The matters raised in submissions are not mitigated through the design of the site. Significant matters related to scenic views, vistas and heritage and those matters raised in relation to heritage significance and streetscape are assessed to be important and remain unaddressed. The significant impacts on local character is raised through the submissions and is identified as being strongly tied to community coherence, identity, general happiness and well being. The unsatisfactory design response of the cemetery component of the development as it relates to the impacts on local character, views and vistas and scenic quality has not been satisfactorily addressed.

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

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

- Data gaps in the RAP are unresolved in relation to road and intersection works,
- The biodiversity assessment and tree reports do not correlate with the amended architectural and Tee 1 layouts and do not include an assessment of impacts resulting from works within the area of Jerrys Creek related to sewer connection,
- TfNSW has not granted concurrence to the application as required under SEPP (Infrastructure),
- Council's traffic engineer objects to the proposal as the intensity of the use involves new road and intersection works on Park Road which are not supported in their current layout,
- The design of the pool and gym and car parking areas do not adequately respond to the site's location and its proximity to locally listed heritage items, and
- Insufficient information is provided in relation to the impact on views and vistas of the cemetery component.

Section 4.15(1)(d) Any Submissions

Community Consultation

The development application has been notified to adjoining occupiers and owners and was advertised and exhibited between 17 January and 28 February 2020 in accordance with relevant legislation. A total of 411 individual submissions were received, including 93 individual submissions and two (2) separate pro-forma style submissions totaling 325 submissions.

The submissions against the proposal raise various issues including negative traffic, stormwater and water contamination issues, groundwater and flooding impacts, negative social and character impacts, loss of the golf course, impacts of increased gaming and impacts on views and vistas. Submissions in opposition to the proposal include submissions from the Wallacia Progress Association and the Mulgoa Valley Landcare Group.

Submissions raised in support of the proposal include that the proposal will provide additional burial capacity for all faiths and that metropolitan cemetery capacity is limited for all faiths. Submissions in support of the proposal were primarily from industry and commercial operators and included a submission in support of the proposal from Cemeteries & Crematoria NSW.

A summary of submissions and responses are provided below. The matters raised have been considered in the assessment of the development proposal.

Submission Matter Raised

Council Officer Response

Traffic, parking and access

- It will be very difficult for the local community to cope with the potential traffic congestion.
- The traffic report does not detail the daily or weekly level of activity.
- Funeral processions will hold up heavy vehicles, the location of the cemetery entry is dangerous, on a corner and crest, fatalities have occurred here.
- The location of the cemetery entry is right at the 60/80 km zone.
- The seagull intersection will stop access to Park Road for right hand turns for one property.
- Congestion and parking impacts generally.
- Cumulative impact on Park Road of other developments not considered.
- Park Road is dangerous as there are many tipper trucks that use the road.

TfNSW has not issued their General Terms of Approval (GTAs) and are considering additional material provided by the applicant. A meeting is scheduled between Council and TfNSW in early December to discuss supportable alternative access and intersection arrangements, and it is envisaged that details of the meeting will be provided to the applicant.

Significant objections were raised by Council's traffic engineer in relation to the impacts of road and intersection works on Park Road, at Driver Avenue and impacts on private access arrangements and owing to unsupportable safety issues. Road works will result in the removal of significant and mature trees along the Park Road approach to the Wallacia village - with some of those trees being part of the Park Road Conservation Area.

The proposal is found to be unsupportable having regard to SEPP (Infrastructure).

Objects of the Act

-The proposal does not align with the objectives of the Noted. Act including to promote the social and economic welfare of the community, to facilitate ecological sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environment planning and assessment, and protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.

Trees, biodiversity, climate change impacts

- Cumulative impacts of CPW and biodiversity values in Mulgoa Valley, including impacts on CPW and environmental impacts of the airport and Glenmore Park.
- Credits won't conserve biodiversity values in the vicinity of the site.
- Nearly 500 trees and loss of Cumberland Plain Woodland - cumulative impacts on top of recent fires.

The application has submitted tree assessment reports and a BDAR. The reports include some inconsistencies and further information is required in relation to SAIL.

The application is unsatisfactory in relation to biodiversity values.

- Two of the biggest trees in Australia are one the site, a 21m Grey Box and a 36m Broad leaf apple tree.
- The applicant is seeking to clear 20% of endangered River Flat Eucalyptus Forest and almost half (49.12%) of the CPW.
- There will be impacts in the endangered Fox populations on the site.
- Further tree removal will contribute to heat impacts on fauna.
- Tree removal will result in habitat loss.
- Such a diversity of bat species is extremely rare on Cumberland Plain and the Mulgoa Valley is recognised as a Bat ecology 'hot spot'.
- 12 proposed nesting boxes will not replace natural habitat and replacement tree planting will take 10-100 years before natural hollows can form.
- 4 ha of habitat will be removed and critically endangered species are impacted.
- Issues of SAI raised in reports.
- The vegetation on the golf course site does have local connectivity and is connected to Crossman Reserve south of the site which is a 15 hectare restoration area with a new Bushcare Group (Wallacia Weeders) with support from Council and Conservation Volunteers Australia who recently received \$15,000 in federal funding.
- Jerrys Creek is a corridor for possums, kangaroos and wallaby frequently observed. The 9-hole course restricts Jerrys Creek and impacts the corridor impacting the width and diminishing opportunity for flora and fauna to pass.
- Flora and fauna studies not comprehensive and taken at only one time in the year.
- There is no mention in the report of two koalas that have been sighted within 3 km of the site.
- Aquatic habitat is not covered comprehensively and impacts on turtles and platypus not considered.

Heritage

- The area has many heritage estates - Christian Bros, Winbourne, Fairlight House, Fernhill, St Thomas's Church, Cox Cottage, Glenmore Golf Club, Glenleigh. This area is suited to tourism and the cemetery in this area disregards the historical, rural, natural setting and its vegetation, landform and cultural heritage.
- Council should put a heritage protection on the golf course which has been there since 1932.
- Wallacia has a unique character as a small village.

Serious concerns are raised in the report related to heritage impacts and impacts on local character, and scenic values, views and vistas. The application is not supported on these grounds.

Impacts on golf course

- The club membership is 570 playing 280,000 rounds annually. The level of tourism will be lost when the golf club becomes a cemetery.
- Wallacia has limited formal recreation facilities mainly an 18-hole golf course and it will be reduced to a 9-hole for a cemetery.
- It should be kept as open space and for recreation.
- We should not have to relinquish our sporting facilities for cemeteries.
- There is no confirmation that the golf course will remain open to the public and for how long.

The reduction in the scale of the golf course is not a matter for consideration under the planning legislation. Impacts on biodiversity values, scenic quality and character are found to be unsupportable.

Height of chapel building

- I object to the 12.6m height of the chapel, I don't want the building near my home. I will feel overwhelmed and distressed in my daily life.
- The Chapel will be nearly 4 storeys high and out of character with the area.

The development application has not adequately demonstrated through the submitted view impact analysis that the impacts of the development on views and scenic quality can be mitigated satisfactorily.

Cemetery location, limited access to cemetery

- If the Sydney area has an overall shortage of burial sites, the site selected should be in that location that will provide the best service for 100 years.
- The site is not economically accessible.
- Sydney-siders won't accept being buried in the western suburbs.
- Being on the main road residents will be reminded daily its a cemetery.
- The cemetery may be on the outskirts of Sydney but its not on the outskirts of Wallacia, it's in the Village centre, at the entry point to the Village and to Penrith.
- The public want cemeteries to be within 15km of their residences and there is no proof that the public will travel the extra distance to Wallacia.
- Objective 6 of the Cemeteries and Crematoria NSW Strategic Plan 2015-2020 states to establish need for additional burial space in a geographical and economically accessible location. Wallacia is not readily accessible by public transport.
- Hearses going past everyday.
- Agree with the reasons for refusal that the IPC detailed for the last application, permanent impact on the character of the Wallacia village and the communities sense of place, the site is unsuitable as it is removed from the population base it is meant to serve and is not easily accessed by public transport, the proposed benefits of publically accessible open space are unlikely tp be realised by the local community.

The scale of the cemetery is closely related to its impact on views and local character, which is unsupportable.

Independent Planning Commission (IPC)

- The IPC Refused the application why do we have the cemetery still being proposed?
- Agree with the reasons for refusal that the IPC detailed for the last application

The submission of the application is not impacted by the previously Refused DA.

Greater Sydney Commission

- Any decision on the proposed Wallacia cemetery should await the outcome of the Greater Sydney Commission's strategic report into cemeteries in NSW.

Cemetery scale, proximity to the village centre, need for cemetery, Character

- Why is the cemetery in the middle of the town? Refer to discussions above.
- It's a green site, not a development site.
- We are concerned that the village will be taken over by the cemetery. Future applications for additions or alterations can be assessed when they are lodged.
- If this part is approved, future cemetery development will also be approved.
- If approved the green rolling hills will be eroded by extensive road network, function centre, cafe.
- Cemeteries should never go in a village centre.
- This will damage the existing character of the village Refer to discussions above.
- It will destroy the entrance to our village.
- As the population grows the demand for burial space will never be satiated.
- The development of the Aerotropolis does not impact density of Wallacia, its character is protected under the planning policies.
- There have been a number of cemeteries approved in the area recently no need for another.

Social impacts

- I don't want to live next to a cemetery
 - The Social Impact Statement states that the study includes no communication with the locals until design, construction and opening of the cemetery.
 - The social impacts of this cannot be mitigated, our village lose its sense of place.
- It is agreed that there will be unsupportable social impacts. These are assessed to be closely linked to the impacts of the development on:
- heritage values and significance,
 - views and vistas,
 - scenic quality,
 - biodiversity values, and
 - streetscape, trees and landscape,

and as detailed within the report are not adequately responded to through a variety of factors.

Staged development, development of low cost properties

- This is Stage 1 of a broader plan for this site.
 - The developer has targeted a low cost properties like heritage and sporting facilities.
- Future stages are not proposed as part of this DA.

Proposed increased gaming at the venue

- I oppose the expansion of gaming facilities in the club. It is well established that gambling causes more harm than good.
- Expanded gaming facilities would be irresponsible, given the knowledge we have of gambling upon our society.

Gaming is not regulated by Council and is under the control of the Liquor and Gaming Authority although, it is agreed that additional gaming machines, concentrated in the location, will have a negative and lasting impact on the community.

Impact on property values

- Visual impact of graves will decrease the value of properties in Wallacia.

Cemetery as public space, Pool and gymnasium

- We will not use the cemetery for recreation purposes.
- We will not visit the cemetery.
- Many residents have pools and don't need the pool.

Noted.

Flooding issues, proximity to Nepean River, health impacts

- The cemetery is on a flood plain, it has not raised recently but it will and the site will flood.
- Infrastructure NSW, NSW DPI Office of Water and NSW SES consider Wallacia to be on a flood plain.
- The close proximity to Nepean River should be a cause for concern.
- There are no major cemeteries in the Sydney basin located near a river.
- Wallacia is the closest flood area to Warragamba Dam.
- Water from the golf course runs through the culvert under Park Road and onto private properties and through people's gardens and through a chain of ponds then into the Nepean, in times of flood we have water off the golf course up to the weep holes of our house, if water is polluted it will cause me illness, I already get mud sediment from rain events off the golf course.
- Reports do not address flooding from Warragamba Dam.

Council's development engineer has assessed the proposal and has not raised any objections to the proposal.

Visual impacts, wellbeing

- My family don't want to look out the window and see headstones up to 1.5m high and we don't want to see grieving families mourning.
- Not a pretty sight for us to endure.
- No cemetery in the heart of Wallacia.
- The development is not in the interest of the people.

Ground water, ground water contamination

- Dr Boyd Dent, author of "Hydrogeological Context of Cemetery Operations & Planning Australia" (2000) states that ... "land with a permanent or perched water table at a depth shallower than 2.5m is considered to be unsuitable for a cemetery".
- The site is flood prone and contains water courses which flow to the Nepean River where people swim - there is a risk of the river being contaminated by leachates.
- Pollution from decomposing corpses will affect our waterways and the environment and cause smell and impact our wellbeing.

The submitted technical reports indicate that burial plot areas are outside the 1 in 100 flood areas and are not proposed in locations where groundwater will impact graves (<3m).

Impacts on drinking water

- The site is in the water catchment regions of Sydney. There is no reticulated sewer, this poses a health risk.

The technical reports are considered to be satisfactory in this regard.

Health risks and crematorium

- It is unavoidable that crematorium air pollutants will be mixed in with harvested rain water for residents to use.
- If there is no crematorium, where will the bodies be cremated?

No crematorium is proposed.

Panthers sale of the site to CMCT

- Panthers sold the site to CMCT and kept members in the dark.

This matter is not a consideration in the assessment of the application. Owner's consent is provided.

Negative impacts on business and tourism

- The proposal will have an adverse impact on the business activities and the cultural hearth of the town. The plan will turn visitors and tourists away.
- The cemetery will hamper the potential tourism within the Wallacia and Mulgoa Valley.

These are not matters for direct consideration under the legislation. Refer to discussions above in relation to cultural and scenic impacts.

Greater Sydney Commission (GSC)

- The DA should await the GSC review into the need for land for cemeteries and crematoriums in the Greater Sydney Region. The shortage of burial plots is a Sydney problem. This review is not a statutory instrument.

Support for the proposal

Noted.

- It would be a good way to ensure the maintenance of the green space is assured for a longer period of time, if the continuation of the golf course is made more financially viable by this development.
- I support a development which ensures green space is retained (as this one does).

Agency and commercial submissions in support

- As the population of western Sydney continues to grow with more people moving to the area, so will the need for burial space in the area. Noted.
- A Crown cemetery to be made available that caters for all faiths.
- The proposal should be supported so that communities of western Sydney and those that require burial space to continue their religious/cultural practices will have a Crown Cemetery with first class facilities available in their local community.
- Current needs for Penrith local ethnic groups are filling up in Minchinbury and we support the proposed provision of new available space. Unavailability is driving up prices.
- Ethically diverse options for burial need to be respected.
- The DA includes upgrade of community facilities with a reduced cemetery which will benefit the Wallacia and Penrith Residents.
- The proposed integrated use of sporting facilities with a Memorial Parkland is a credit to the extensive due diligence undertaken by Catholic Cemeteries prior to acquiring the site.
- The landscape and community access to the site is a benefit for residents.
- The proposal is an excellent adaptive re-use of a failing sports facility.
- The site faces closure unless the submission is accepted.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Heritage	Not supported
Environmental - Environmental management	Not supported
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Environmental - Biodiversity	Not supported
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions
Social Planning	Not supported

Section 4.15(1)(e)The public interest

It is for the reasons provided within this report and those that form the recommended reasons for Refusal, that it is considered that support for the proposal cannot be recommended and that the proposal is not considered to be in the public interest.

Conclusion

The development application has been assessed against the Biodiversity Conservation Act 2016 and the applicable environmental planning instruments, including State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No. 55 - Remediation of Land and Penrith Local Environmental Plan 2010 and against the relevant plans and policies. It is considered that the proposal does not satisfy the aims, objectives and specific provisions of these plans and policies.

A thorough review has been undertaken of all the submissions received being for and against the proposal and the matters raised within have been taken into consideration in the assessment of the proposal.

The development application was not submitted with sufficient information in relation to how views and vistas to the cemetery component, as may be visible from important vantage points, would be mitigated or as to whether there is sufficient capacity for the connection of essential utilities. In relation to traffic, access and parking and in relation to the works proposed on Park Road being a Classified road, the concurrence of Transport for NSW has not been obtained and the scale of the development and its subsequent traffic generation cannot be supported owing to the related impacts on heritage and local character.

In relation to biodiversity and trees, Council does not support the applicant's request for a credit reduction under the biodiversity offsets scheme and a site walkover is required, and has not been undertaken with the applicant's expert(s) to ascertain and mark trees identified for retention or removal. In addition, adequate regard has not been had to addressing sustainability through the design of the various aspects of the proposal.

In its current form, the proposal will result in negative and unsupportable impacts on the significance and contributory values of nearby and adjacent heritage items and conservation areas, and on surrounding scenic and landscape values and the character of the area. Specifically, the setbacks and general design of the development is not compatible with local character and is not representative of the future desired character of the area, as defined by Penrith Local Environmental Plan 2010 and the Penrith Development Control Plan 2014.

It is noted that data gaps in the contamination assessment, inconsistencies in reports, and that design issues in relation to the landscaping and car parking areas and in relation to the gym and pool building, may be overcome through design amendments and additional information, however these component parts are not acceptable in their current form.

It is for the above reasoning that the development application cannot be supported and is not in the public interest. The reasons for refusal are detailed below.

Recommendation

1. That DA19/0875 for the change of use of part of an existing golf course to a cemetery including 27,000 burial plots, chapel and administration building, internal roads, new parking and amended access from Park Road, reconfiguration of the golf course to 9 holes, new pool, gym, putting and bowling greens, and alterations and additions to Wallacia Golf Club, tree removal and landscaping, fencing, civil and stormwater works and new intersection works along Park Road and two lot Torrens title subdivision, be Refused for the reasons provided below; and
2. That those making submissions and State agencies providing concurrence, are notified of the determination.

CONDITIONS

Refusal

- 1 The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:
 - The application has failed to demonstrate the permissibility of aspects of the proposal.
 - The proposal is inconsistent with Clause 1.2, Aims of Plan, and the objectives of the E3 Environmental Management zone and the RU5 Village zone.
 - The proposal is unsatisfactory having regard to the following provisions of PLEP:
 - (a) Clause 5.10 Heritage conservation,
 - (b) Clause 7.1 Earthworks,
 - (c) Clause 7.3 Development on natural resources sensitive land,
 - (d) Clause 7.4 Sustainable development,
 - (e) Clause 7.7 Servicing,
 - (f) Clause 7.18 Mulgoa Valley,
 - (g) Clause 7.19 Villages of Mulgoa and Wallacia.
- 2 The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of:
 - State Environmental Planning Policy (Infrastructure) 2007, specifically clauses 101 and 104, and
 - State Environmental Planning Policy No. 55 - Remediation of Land, specifically clause 7.
- 3 The application is not satisfactory for the purpose of Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*, as the proposal is inconsistent with the provisions of the Draft Remediation of Land State Policy.
- 4 The application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:
 - C1 Site Planning and Design Principles;
 - C6 Landscape Design;
 - C7 Culture and Heritage,
 - C10 Transport, Access and Parking;
 - C13 Infrastructure and Services;
 - Part D5 Other Land Uses, Section 5.5 Parent Friendly Amenities and Section 5.8 Cemeteries, Crematoria and Funeral Homes;
 - Part E9 Mulgoa Valley.

- 5 The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* and the applicable provisions of the the *Environmental Planning and Assessment Regulation 2000*:
- (a) The application is unsatisfactory having regard to the matters for consideration under Part 7 of the Biodiversity Conservation Act 2016;
- (b) The application is not satisfactory having regard to clause 50 and the requirements under Schedule 1, Part 1, 2(1)(h) and 2(3)(d).
- 6 The application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of the development including those related to:
- (i) negative and unsupportable streetscape, heritage and local character impacts;
- (ii) unsatisfactory traffic, parking, access and related safety impacts;
- (iii) unsatisfactory and unsupportable impacts on views and vistas and scenic character;
- (iv) unsupportable impacts on character and heritage related to earthworks and levels;
- (v) negative social impacts;
- (vi) negative impacts on biodiversity values, trees and vegetation;
- (vii) unsatisfactory sustainability considerations;
- (viii) inadequate landscaping provision and setbacks; and
- (ix) unsatisfactory building design.
- 7 The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is not suitable for the proposed development.
- 8 The application is not satisfactory for the purpose of Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as the proposal is not in the public interest.
- 9 The application is not satisfactory for the purpose of Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* due to matters raised in submissions which include:
- Impacts of the development on traffic, safety, access and parking,
 - Impacts of the development on residential amenity,
 - Impacts of the development on trees and biodiversity values,
 - Impacts of the development on local character, views and vistas, heritage significance and scenic quality,
- and
- Impacts of the development on the social fabric of the community and the related impacts on health and well-being.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

Clause 1.1.2 Key Areas with Scenic and Landscape Values

This clause applies to the subject site as the site is identified on Council's Scenic and Landscape Values LEP map. This section of the DCP focuses on locations that are visible from major roads and other public places and that have important scenic and landscape values. The DCP identifies that Wallacia Village east and west are each important village gateways and areas of visual sensitivity. Wallacia Village east and west are identified in Table C1.1 as being village bookends.

The DCP requires that a visual impact assessment be undertaken and be submitted and is to inform the design of the site. A Landscape and Visual Impact Assessment (VIA), prepared by Urbis, dated 5 December 2019, was submitted with the application. The commentary provided within surrounding views to the site from Mulgoa Road and Greendale and Silverdale Roads, and with regard to lighting impacts are accepted. There is insufficient detail provided in relation to the views from Park Road toward the cemetery at the eastern end of the site, and the view analysis does not include any photomontages which would confirm the visibility of memorials and the chapel building.

It is noted that greater landscaped buffer zones are provided along the rear (northern) boundary where the topography, dam and constructed ephemeral wetlands locations and flooding impacts to prevent the locating of burial plots or roadways. Some areas along the most eastern boundary are also provided with >15m landscape buffers and select trees in existing stands are identified for retention along this boundary.

The landscape plan prepared by Florence Jaquet (L101 A, Sheet 03) indicates that lawn burials with high headstones (1500mm max.) placed on concrete beams or as may be constructed as full monuments, are located in the zone adjacent to the eastern most boundary. This may impact on the visual amenity of an existing dwelling at 115 Park Road. Additional information was requested from the applicant on 27 April 2020, in relation to visual impacts.

The applicant provided a visual analysis document which modelled views toward the cemetery from private property, with vegetation spread after 5 years of post-planting growth and provided justification as to why the 1.5m high memorials should not be reduced to 800mm or less. Whilst the documentation provided in relation to views and landscape screening indicates planting in this particular area will be of some effect, it is assessed that head stones should be limited in height to a maximum of 800mm owing to the impact of high headstones on broader views and vistas to and across the site, from public and private properties.

The potential impact of the development on these broader long views and vistas to and across the site, from public and private properties, is not addressed in the submitted Urbis VIA. The findings in relation to view impacts from Park Road (Viewpoint 8 [VP8] in particular) are not supported through evidence and a site visit confirms that mid and long range views are available in the general area of VP8.

Ten principles are listed in this section of the DCP and require developments to have regard to matters surrounding views, vistas, landscapes, scenic quality, mid and long range views, back drops and settings, views and vistas from main roads and the like and are centered around

protecting and enhancing existing scenic, heritage and landscape qualities.

Clause 1.2.6 Maximising Access and Adaptability

The proposal was briefed to Council's Access Committee. The following matters were raised:

- No accessible access to gym,
- No end of passageway circulation spaces or door circulation spaces on plans,
- There are stairs at emergency exits,
- Suitable paths of travel are not clear,
- Questions regarding the levels of the car parking,
- Accessible footpaths to be provided across the site,
- Seating to be provided,
- Lack of accessible parking for staff in the administration area.

The applicant submitted an Access Report which did not address the above matters. Further information was requested in relation to accessibility around the pool, gym and clubhouse areas. A set of access plans prepared by Axil Architects was submitted which indicates that suitable at grade access is provided to all common entry points. Other matters of compliance could be managed at certification stage.

C6 Landscape Design

Objectives of this section include:

- to have an integrated approach to landscaping,
- to ensure that landscaping design takes into account the site's context, landscape and visual character,
- to encourage the retention of existing trees and vegetation to enhance landscape character,
- to ensure that landscape complements built form and minimises impacts of scale, mass and bulk in a site's context, and
- to encourage landscape that can be effectively managed to a high standard for the life of a development.

The DCP requires that landscape design soften buildings and that car parking is to be utilised as a visual element between the street and the development. The section also requires that, in open car parking areas, one large shade tree is to be provided for every 6 car spaces as a minimum, to improve visual amenity and the heat island effect. The proposal is not considered to comply with this section as insufficient boundary setbacks and landscaping are proposed and as a result, the significance of heritage items and conservation areas is impacted.

The majority of tree species are proposed as 25L pot size which is not considered to be of an adequate size, given many plantings are in replacement of trees to be removed.

The design of the site and surrounds does not detail the proposed electrical substation or any hydrant booster sets. The locations should be known so that an understanding can be had of their potential to negatively impact streetscape and local character. This is particularly important as the site is in close proximity to several locally listed heritage items and two listed heritage conservation areas (Park Road and Mulgoa Road).

It is not considered that views and vistas to the cemetery are adequately mitigated through the use of landscaping as discussed elsewhere in this report (refer to DCP Section E9 Mulgoa Valley and Section C1 Site Planning and Design Principles).

C7 Culture and Heritage

The proposed development is not considered to comply with the objectives and controls of this section. Sections of the proposed setbacks and boundary interfaces proposed do not protect, complement or enhance heritage significance or local scenic landscape or character values. Areas of hardstand and car parking are built to boundaries which are shared with listed heritage items, conservation areas or are adjacent to listed archaeologically significant sites.

The series of submitted archaeological and heritage reports do not address detrimental impacts of the development on the significance and scenic quality of the Park Road Heritage Conservation Area, its curtilage or the impact of tree loss within the Gateway approach to Wallacia Village.

Car parking within the front setback is significantly expanded and is not provided with sufficient landscape buffers.

C10 Transport, Access and Parking

The applicant submitted a traffic study with the application and through the assessment of the proposal, Council and TfNSW have requested additional information in relation to the required road and intersection upgrades required to facilitate the development. Two new intersection treatments are needed to support the traffic movements of the development, one at the golf clubhouse entry and one at the new golf course public entry.

The proposed works and Council's assessment of these aspects is detailed under the SEPP Infrastructure section of this report. It is noted that Park Road is a Classified road and that TfNSW have not issued their General Terms of Approval as to the works. Council's traffic engineer is not supportive of the proposal for the reasons provided in the aforementioned section - and in this respect the proposal is not supportable having regard to the objectives and relevant controls of this DCP section.

C13 Infrastructure and Services

It is not ascertained with any certainty that the site can be serviced by Sydney Water for the purposes of a reticulated sewer connection. Refer to the discussion under LEP Clause 7.7. The location of the required electrical substation is not included on the plans.

D5 Other Land Uses

D5.5 Parent Friendly Amenities

Public amenities are proposed to be located within the new administration building. Plans indicate the public will have access to one shared accessible wc, and separated male and female amenities zones each with two toilets and two hand basins. Council's DCP requires that baby change facilities be included in the design of the amenities area, which could be addressed through a condition of consent, although it is noted that the application is recommended for Refusal based on other matters.

D5.8 Cemeteries, Crematoria and Funeral Homes

Objectives of this section include:

- to ensure that the operation of cemeteries does not have a significant negative impact on the surrounding area including properties used for agriculture;
- to ensure sufficient buffer zones are provided around the edge of sites to minimise impact on adjoining land uses, and
- to ensure that uses locate on roads with sufficient capacity to accommodate likely traffic generation.

Controls of the DCP include that cemeteries are required to provide a 15m landscaped buffer zone to the side and rear setbacks and must be a minimum of 10 ha in area. The proposed cemetery lot will have a site area of approximately 26 ha. The proposal is for a minimum 15m wide landscaped buffer around the site's boundary, including along the frontage of the proposed cemetery to Park Road. The development proposal complies with these two controls.

Greater landscaped buffer zones are provided along the rear (northern) boundary where the topography, dam and constructed ephemeral wetlands locations and flooding impacts, prevent the locating of burial plots or roadways. Some areas along the most eastern boundary are also provided with >15m landscape buffers and select trees in existing stands are identified for retention along this boundary.

The DCP controls include that cemeteries may not locate immediately adjacent to properties used primarily for residential development only (including rural residential/rural living or seniors housing) unless a sufficient separation can be obtained between any buildings on the site and adjacent dwellings, and that the extent of the separation needs to vary with the scale of the proposed development. Sufficient separation should also be provided to minimise potential conflicts between cemeteries and properties used for agriculture in rural areas.

The landscape plan prepared by Florence Jaquet (L101 A, Sheet 03) indicates that lawn burials with high headstones (1500mm max.) placed on concrete beams or as may be constructed as full monuments, are located in the zone adjacent to the eastern most boundary. This may impact on the visual amenity of an existing dwelling at 115 Park Road. In this regard, additional information was requested from the applicant on 27 April 2020, in relation to visual impacts.

The applicant provided a visual analysis document which modelled views toward the cemetery from private property, with vegetation spread after 5 years of post-planting growth and provided justification as to why the 1.5m high memorials should not be reduced to 800mm or less, noting that the views toward the headstones from the private properties were adequately screened by the landscaping at 5 years and beyond.

Whilst the documentation provided in relation to views and landscape screening indicates planting in this particular area will be of some effect, it is assessed that head stones should be limited in height to a maximum of 800mm owing to the impact of high headstones on broader views and vistas to and across the site, from public and private properties.

It is also recommended that headstones be limited to a maximum of 800mm as the site is identified on Council's LEP maps as being within an area of scenic values (PLEP Scenic and Landscape Values Map) and thus Clause 7.5 Protection of scenic character and landscape values, applies. Refer also to the discussion under the LEP section of this report.

Figure 13 – Burial Extent and Types



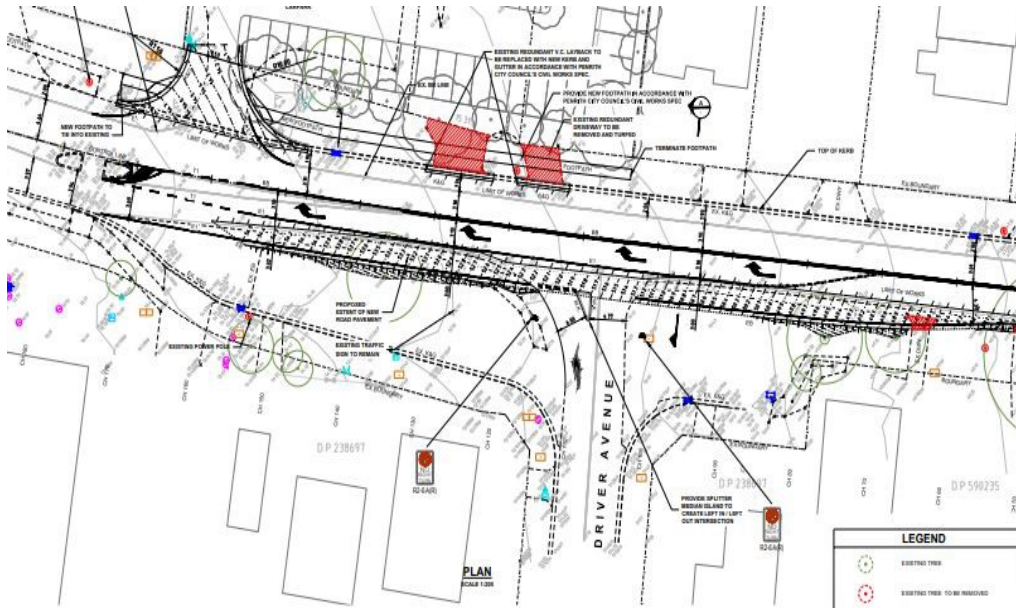
Source: Florence Jaquet Landscape Architect – Nepean Gardens Landscape Masterplan

The DCP requires a traffic report to accompany the application and objectives of the clause include *'to ensure that uses locate on roads with sufficient capacity to accommodate likely traffic generation'*.

The cemetery component of the proposal was addressed by accompanying relevant traffic reports and plans which detail proposed internal road networks and parking which are considered to be supportable (refer to discussion elsewhere in relation to the clubhouse parking and road works component). However, Council requested additional information resulting from TfNSW road requirements and resultant intersections amendments.

Information provided by the applicant indicates that intersection treatments required to facilitate vehicle access from Park Road into the cemetery component of the proposal, require the widening of Park Road along the southern side (locally) and the removal of vegetation including several trees. A site inspection confirms that several of the trees are mature natives. An assessment of these trees is not included in the Biodiversity Development Assessment Report (BDAR), Tree Report or other flora and fauna assessments.

Having regard to the traffic impacts of the development, specifically the intersection works required along Park Road, and owing to the lack of information in relation to vegetation removal along Park Road, the proposal is not considered to comply with the clause objectives. Refer to discussions elsewhere within this report in relation to intersection works at the western end of the site and associated tree removal.



E9 Mulgoa Valley

Part E9 applies to land within Mulgoa Valley and Wallacia, including Wallacia Village as identified on the LEP Clause Application map. The map indicates that the area of the subject site west of Jerry's Creek is within this area.

The DCP states that the controls for the Precinct seek to conserve the heritage, rural and natural landscape of the Mulgoa Valley, and encourage its development as a rural area emphasising its visual and environmental heritage values. Objectives of the Part include:

- (a) *To conserve the rural landscape of the Mulgoa Valley;*
- (b) *To protect the setting of the villages of Mulgoa and Wallacia within the rural landscape;*
- (c) *To conserve heritage items and vistas within the Valley;*
- (d) *To protect natural ecological elements within the Valley;*
- (e) *To protect the agricultural capability of prime agricultural land; and*
- (f) *To ensure that development in the Valley is consistent with conserving its rural and natural landscape, heritage and agricultural qualities.*

Clause 9.1.2 Siting

Clause 9.1.2 states that the section seeks to ensure that buildings are sited so that they are in harmony with the existing landscape. Objectives include to ensure that buildings are sited to protect and enhance the rural and natural landscape of the Valley, particularly when viewed from roads and other public places.

Controls of the chapter included that buildings are to be setback at least 100m from Mulgoa Road and 30m from public roads and that buildings are to minimise excavation, filling and high foundations by avoiding slopes greater than 1 in 6 with the longest elevations positioned parallel to the contours of the land.

The proposed alterations and additions to the existing clubhouse are acceptable having regard to the controls and objectives of the clause. It is noted that a 4m (approx.) section of the dining and kitchen area will be added to the northern elevation of the existing clubhouse and will be on columns creating an extension to the existing undercroft to the structure. This is not considered to be contrary to the clause as it is a minor extension to an existing situation and faces the golfing facilities, rather than the public domain.

The proposed pool and gym building is set into the slope of the land such that the pool entry from the western car park is relatively level and there will be steps down to the gym entry further to the south, along the western elevation. The building will have a high building platform in particular when viewed from the east, as the land slopes away and details of the levels when compared with existing levels is not adequately detailed. No detail is provided in relation to the extent of cut or fill, or in relation to possible retaining walls, in particular in relation to the car parks and hardstand areas. Detail of how these hardstand areas deal with the slope of the land is not identified. The proposal is not supportable in this regard.

Clause 9.1.3 Building Form, Materials and Colours

The western elevation is flat, relatively unarticulated and is proposed to be constructed from exposed blockwork, which may impact poorly on views and vistas from the Wallacia Hotel, a locally listed heritage item. The design of the pool and gym building does not align itself with the controls and objectives of the clause.

The proposed pool and gym building and elements of the alterations and additions to the golf clubhouse do not comply with the following:

- Clause 9.1.3(C)(3) which requires that large elements and flat surfaces are to be avoided, roofs and facades are to be broken up,
- Clause 9.1.3 (C)(5) which requires that windows shall have vertical proportions rather than horizontal,
- Clause 9.1.3(C)(6) and (7) in that building materials and colours match or complement those of rural buildings or heritage items.

Further detail could be requested in relation to materials and finishes and in relation to opportunities to break up flat facades and alter window proportions, however the application is recommended for refusal based on other matters.

Clause 9.1.5 Access, Parking and Services

The aims of this clause include to ensure that access roads, parking areas and services do not detract from the Valley's rural and natural landscape or its heritage values. Objectives include that visual impacts of access roads, parking areas and services are minimised.

Controls include:

- Parking areas shall be separated from access roads and from the buildings they serve by planting and other landscaping,
- Large parking areas shall not be visible from public roads,
- Services shall be appropriately located and screened by walls and landscaping.

The proposed electrical substation and any required hydrant boosters are not nominated on plans, such that Council can be satisfied these services will not detract from the streetscape and heritage or scenic values. It is noted that the exiting carpark is located forward of the existing clubhouse and is proposed to be expanded in this area. Amended plans were requested which indicate that the front setback landscaped buffer is increased to 5.5m. Limited landscape is provided as a buffer to the western site boundary and to the north-western most car parking areas, and between the building and the car parking and manoeuvring areas.

The car park area fronting Park Road is located opposite a listed heritage conservation area and is in close proximity to several listed heritage items.