

MEMORANDUM

To: Sydney Western City Planning Panel
From: Kathryn Saunders, Principal Planner
Date: 13 August 2021

DA19/0875, Regional Panel Reference – PPSSWC-45

Subject: Development Application at 13, 17, 19 and 37 Park Road, Wallacia for 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 Reconfiguration of 18-Hole Golf Course to 9-Holes, New Community Facility inclusive of a Pool and Gymnasium, a new Putting and Bowling Green 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 a Two Lot Torrens Title Subdivision.

This memorandum is provided in response to matters raised within the Sydney Western City Planning Panel's (the Panel) Record of Briefing dated Monday, 7 June 2021, in relation to the above-mentioned development application.

Background

Council has completed its assessment of the above development application and the recommendation is for Refusal based on a range of matters [**Appendix A**].

A public meeting was held on Wednesday, 17 February 2021 by public teleconference and the Panel's decision was to defer a decision on the application to allow the Council and the applicant to provide additional information as detailed in the Record of Deferral of the same date [**Appendix B**].

Following the deferral, on 7 June 2021, the Panel was briefed on the applicant's response material and Council's attached memorandum [**Appendix C**]. Subsequently, the matter was deferred a second time and a consolidated description of matters requiring the applicant's response was included in the Panel's Record of Briefing [**Appendix D**].

The applicant has since provided supplementary material [**Appendix E (a) through (i)**] in response to the consolidated matters raised in the Panel's Record of Briefing provided at Appendix D.

Council has reviewed the supplementary material and provides its response below. As requested, Council also provides a set of Draft Conditions [**Appendix F**] should the Panel determine that the application is Approved.

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The applicant was provided a copy of the Draft Conditions on 7 July 2021 and a copy of their mark-up of the conditions and associated correspondence is included [Appendix E(h)].

List of Attachments:

Appendix A – Council Assessment Report

Appendix B – SWCPP Record of Deferral - 17 February 2021

Appendix C – Council's Memorandum - 31 May 2021

Appendix D – SWCPP Record of Briefing - 7 June 2021

Appendix E – Applicant's Supplementary Material

(a) Urbis Letter to the Panel, August 2021

(b) Civic A, Arboricultural Impact Assessment, 3 August 2021

(c) EcoLogical, BDAR, V4, 2 August 2021

(d) Wallacia CC Tree Data Excel Spreadsheet

(e) Nepean Memorial Park Tree Disturbance Plan 1 of 3

(f) Nepean Memorial Park Tree Disturbance Plan 2 of 3

(g) Nepean Memorial Park Tree Disturbance Plan 3 of 3

(h) Applicant's response to Draft Conditions and outstanding matters table

Appendix F – Council's Draft Conditions (Schedules A, B & C)

Appendix G – Travers Flora and Fauna Assessment report

1. Summary of Record of Briefing Matters

Four key issues were identified by the Panel as requiring resolution prior to the determination of the application. A summary of the matters raised by the Panel in their Record of Briefing dated 7 June 2021, as responded to by the applicant, is provided below.

A. In relation to consent DA17/1092 the Panel enquired:

'What is proposed by the Applicant in relation to the consent granted by the Land & Environment Court by the judgment published Catholic Metropolitan Cemeteries Trust v Penrith City Council (2021) NSWLEC 1225, noting that it would seem undesirable to leave two development consents on foot covering similar (but fundamentally different) uses of the same land. Notably, the clubhouse has been proposed at all stages as closely associated with a functioning golf course which yields its character for planning purposes. The Panel would also assume therefore that the currency of any consent granted for the clubhouse would be dependent on continuation of the golf course.'

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Council response:

It is noted that the applicant objects to the Draft Deferred Commencement Condition requiring the surrender of DA17/1092 (refer applicant's response to draft conditions attached to **Appendix E(h)**).

It is Council's strong position that consent DA17/1092 must be surrendered prior to an active consent being issued under DA19/0875, for the following reasons:

- (a) Each consent will differ in relation to the extent of works including in relation to tree and vegetation removal. The extent of tree and vegetation removal permissible under the two consents combined exponentially is greater than that of each single consent (should consent be granted under DA19/0875).
- (b) The matters considered in the grant of consent will differ between each application including in relation to the proposed subdivision under DA19/0875, local character, permissibility, amenity impacts, retention of the golfing, existing use rights in relation to the existing ancillary golf clubhouse and in relation to a buffer being provided to the township.
- (c) The plans and reports differ in relation to the intersections, landscaping, tree retention and removal and in particular having regard to the BDAR and credits to be retired and will differ in relation to the vegetation management plan.
- (d) The commitments made and development approved under DA17/1092 would be obstructed by the requirements of an approval under DA19/0875, in particular in relation to the area of land to be provided as publicly accessible lands (under DA17/1092) and through the approved plans and reports under the subject application including the BDAR and Tree Protection Plans. Refer also to comment above in relation to the proposed subdivision under DA19/0875.
- (e) There will be impracticalities and difficulty in regulating and certifying various works at the site with two applications applying and with each differing in terms of drawing and report revisions and authors.
- (f) Council does not agree that the Decisions referred to by the applicant in their Response to the Draft Conditions have been applied to an equivalent circumstance and thus the references are largely irrelevant.
- (g) It is for the above reasons that Council is of the view that the consents will be in conflict with each other.
- (h) Should the consents operate on the site, there will be little certainty or clarity for the community and works will be complicated and is in circumstances

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contradictory. Having two operative consents for the development of the site is not in the public interest.

B. In relation to biodiversity and sustainability the following was noted:

'The Panel would expect consistency between the BDAR, arboricultural report, and the civil & landscaping plans. The Council raised the linked issue of whether the proposal would sufficiently satisfy the sustainability provisions of the LEP (Clause 7.4). Where the sustainability report advances measures to achieve environmental performance, again they should be consistently picked up in the DA as a whole.'

Council response:

Council's Biodiversity and Tree Management officers have reviewed the submitted amended BDAR and newly submitted Arboricultural Impact Assessment (AIA) (**Appendix E(b) and E(c)**) and have determined (and having regard to the time frame provided for their review), that the reports could be accepted, subject to the recommended draft conditions of consent and subject to the added requirements of Schedule C (Parts A and B) of those Conditions.

Council officers were unable to undertake a site inspection with the applicant's technical consultants or on their own owing to the Covid related stay at home orders and social distancing requirements.

Council officers note that since the June 2021 briefing of the Panel, *Diuris Pedunculata* (small snake orchid) was listed as a candidate species on the NSW BioNet and as such the applicant has agreed to deferred commencement conditions requiring management of this species and an amended BDAR.

Council's Biodiversity and Tree Management officers note that inconsistencies remain between the AIA, BDAR and the landscaping and golfing plans and as such, relevant conditions of consent are recommend requiring the submission of amended landscaping and civil plans and an amended AIA.

Schedule C, Parts A and B are provided and relate to the requirements for the provision of a Biodiversity Management Plan (BMP).

Part B of Schedule C of the Draft Conditions includes the requirements for the preparation of an amended AIA.

In relation to sustainability, the applicant agrees to the imposition of relevant conditions of consent.

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C. In relation to the car park design, the Panel noted the following:

‘The Council reporting has repeatedly raised issues of inconsistency and sufficiency of detail in the carpark design, particularly as to how it will relate to the street front and adjoining properties. Further detail appears to be required to resolve this issue’.

Council response:

The survey plan indicates that the subject site falls approximately 3.36m across the frontage of the site from a high point at approximately RL 54.30m at the western driveway entry to a low point of approximately RL 50.94m AHD adjacent to the dwelling to the east.

The site also falls an additional 1m from south to north, with a low point in the rear car park area of Lot 3 in DP 18701 of RL 49.96m.

The amended architectural plan provided (refer **Appendix E(h)**) does not make clear how the levels will be treated and as such, a condition of consent is recommended requiring details to be provided to and approved by Council prior to the issue of a Construction Certificate (see Condition 31(b)).

D. The fourth matter the Panel had raised was a request for Draft Conditions which have been provided.

Further to the above matters, Council does not agree to the amending of the development application to include 4 Phases as detailed in the Applicant’s response to the Draft Conditions at Appendix E(h).

In addition, should the Application be approved by the Panel, Council proposes to mark stamped approved plans in red, where trees are shown for removal, to reference the approved Tree Retention and Removal Plan.

Kathryn Saunders
Principal Planner