

MEMORANDUM

To: Sydney Western City Planning Panel
From: Kathryn Saunders, Senior Development Assessment Planner
Date: 31 May 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 Pool, Gymnasium, 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 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 Deferral dated Wednesday, 17 February 2021, in relation to the above-mentioned development application.

List of Attachments:

Appendix A – Council's Assessment Report
Appendix B – Record of Deferral
Appendix C – Late Public Submissions
Appendix D – Applicant's Response Letter with Attachments
Appendix E – TfNSW Concurrence Letter, Dated 21 May 2021

A copy of the Assessment Report recommending Refusal is provided at **Appendix A**, and a copy of the Panel's Reasons for Deferral is provided at **Appendix B**.

The panel unanimously resolved to defer the determination of DA18/0875 – PPSSWC-45 at the public meeting held by teleconference on 17 February 2021, until such time as Council has reported on the matters and requested additional material identified in the panel's Record of Deferral (**Appendix B**).

The Record of Deferral includes observations on various issues and notes, in particular, that the panel was not satisfied that consent could currently be granted as proposed by the Applicant due to a number of unresolved matters, including the absence of TfNSW concurrence.

The panel noted specifically that the resolution to defer the determination of the

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application was to allow matters related to buffer areas, permissibility, biodiversity and SAIL, biodiversity impact assessment, contamination, adequate arrangements for infrastructure, SEPP Infrastructure, and consistency and clarity on tree retention to be addressed.

In addition to the late submission material provided by the applicant and submitters (**Appendix C**), Council has received a package of documentation from the Applicant in direct response to the Record of Deferral (**Appendix D**).

Council provides below a summary of the eight matters raised by the Panel in their Record of Deferral as well as a more detailed review having regard to the supplementary material provided.

1. Summary of Record of Deferral Matters

Council has reviewed the eight matters raised by the Panel in its Record of Deferral and is satisfied that the matters listed at Points 42(a) *Buffer*, (c) *Biodiversity and SAIL*, (e) *Contamination*, (f) *Adequate Arrangements for Infrastructure*, and (g) *SEPP Infrastructure*, could be addressed through conditions of consent, or are adequately addressed.

In relation to (b) *Permissibility*, the applicant has provided legal advice addressing the issue which seeks to address the matters raised both by the Panel and Council's Assessment Report.

The response material provided in relation to Points 42(d) *Biodiversity Impact Assessment* and (h) *Consistency and Clarity on Tree Retention*, of the Record of Deferral, is considered to be unsatisfactory.

2. Detailed Review of Record of Deferral Matters

Having regard to the Applicant's supplementary material, a detailed response is provided below in relation to each of the reasons provided in the Panel's Record of Deferral, specifically the matters listed at Points 42(a) through (h).

(a) Buffer – *Clarity is to be provided as to whether the panel is invited to rely upon the area of the golf course retained as a buffer to mediate the planning and social impacts of the proposed cemetery and the Wallacia township, the basis upon which that invitation is made having regard to the matters discussed above [within the Record of Deferral] and any mechanism proposed to give effect to the proposal.*

Response – The applicant has submitted a cover letter dated 24 March 2021, which, in response to clarity being requested in relation to any mechanism

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proposed to give effect to any buffer provided between the cemetery and Wallacia village, includes that the applicant *‘...is willing to accept an appropriately worded condition which prohibits internments within Lot 1 in DP 1254545 in perpetuity’* and suggests the following draft condition of consent:

“The area marked in dark shaded hatch as depicted in the Overall Site Plan prepared by Florence Jaquet is not to be used for internments without the prior development consent of the relevant consent authority.”

Noting that the applicant is willing to accept an appropriately worded condition which prohibits internments within proposed Lot 1 in DP 1254545, in perpetuity, and noting also that the application before the Panel only seeks approval for a cemetery for 27,000 full body burials, Council recommends the following condition, should consent be granted:

“The maximum number of full body burial plots approved by this consent is 27,000 plots.

All internments and memorialisations including ash scattering and ash internments are to be located within the approved cemetery as marked in a dark shaded hatch on the Council stamped and approved ‘Overall Site Plan’, drawing no. L1, sheet no. 1, revision C, dated 22/7/2020 prepared by Florence Jaquet.”

Furthermore, to ensure that the proposed buffer to the township is maintained and to prohibit internments within this lot (proposed Lot 1 in DP 1254545) in perpetuity, the following condition is recommended:

“Prior to the issue of any Construction Certificate or works commencing (whichever occurs first) and prior to the issue of a Subdivision Certificate, a restriction as to user is to be registered on the title of proposed Lot 1 in DP 1254545 which has the effect of prohibiting the use of the land for a cemetery and for the internment of bodies, ashes and all other memorialisations.”

The applicant’s cover letter notes that two phases of the development are proposed, Phase 1 being the amendments to the clubhouse and golf course, and Phase 2 being the cemetery works. No timing of the phasing is provided.

Draft conditions could be provided cognisant of potential phasing, should consent be granted.

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- (b) Permissibility** – *Any addendum submission concerning permissibility and the evidence it relies upon.*

Response – The applicant has provided additional legal advice prepared by Mills Oakley. The applicant's cover letter notes that "...the legal advice does not consider the issue of whether the Site enjoys existing use rights, as it is evident from the Deferral Notice of the Panel that this is not in dispute. The additional legal advice addresses the characterisation of the proposed bowling green use." Refer to Attachment C of the applicant's response material at **Appendix D**.

- (c) Biodiversity and SAI** – *Any submission as to whether the proposal will or will not have a Serious and Irreversible Impact (SAI) on each candidate species, communities or populations.*

Response – Council's Biodiversity Officer has reviewed the applicant's supplementary documentation and is of the opinion that SAI is not likely, although raises concerns in relation to the adequacy of the applicant's Biodiversity Development Assessment Report (BDAR). Refer to response provided under (d) below.

- (d) Biodiversity Impact Assessment** – *An updated BDAR report is to be supplied (or the statutory basis upon which it is submitted one is not required) and any submission relied upon as to why the panel should conclude that the requirements of the Biodiversity Conservation Act 2016 have been complied with (particularly with regards to any impacts arising from infrastructure including sewer and external road works extents). Any requisite guidelines relevant to the objective of avoiding and minimising ecological impacts should be addressed. The submission may include any proposed practical revisions to the internal pathways if appropriate to reduce tree loss.*

Response – A new BDAR has been provided in support of the application and is dated 23 March 2021, version 2, prepared by EcoLogical.

In relation to the BDAR, Council notes the following:

- The BDAR notes that a Tree Protection and Management Plan (TPMP) is to be submitted for approval prior to the issue of a Construction Certificate. No objections are raised to this proposal. A relevant condition of consent could be imposed.
- The BDAR states at 1.1.1 that the study area is 13 ha. The subject site is 42 ha and no map of the study area is provided.

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- The development footprint nominated in Figure 3 of the BDAR (p.16) does not include impacted areas associated with the construction of:
 - Proposed temporary sediment basins,
 - Piped drainage lines and swales (formal and informal),
 - The extent of works surrounding the formalisation of the existing pond and its use as Retarding Basin 2,
 - The dewatering of an existing dam and the construction of a new one,
 - Proposed Wetland/Retarding Basin 1,
 - The proposal for 2km of a generally 1.5m wide network of internal pathways and boardwalks proposed in Landscape Design Response prepared by Florence Jaquet, dated 5 December 2019, and
 - Required earthworks for terracing of burial areas owing to the slope of the site, in particular for full monumental burial typologies situated in sloping locations (refer to blue hatched area on Florence Jaquet Landscape Masterplan drawings 3102, sheet 04 and L603, sheet 15).
- The Applicant's cover letter notes that the revised BDAR does not assess impacts to trees which may or may not require removal due to safety reasons. No further explanation is provided in relation to this statement and it is unclear which trees are impacted and what the safety reasons include.
- In relation to the applicant's Attachment I – Tree Classification, prepared by ArborSafe, Council's Biodiversity Officer notes that this is a guide to tree classification only, and that the Applicant's Cover Letter notes that a revised Arboricultural Impact Assessment (AIA) is pending.

The AIA is not available for review. It is not clarified as to whether the EcoLogical BDAR has taken into account the completed revised tree classification report or AIA.

- The Travers Flora and Fauna Assessment Report referenced in the supplementary material has not been submitted to Council as part of the DA material.
- In relation to the Applicant's cover letter, Council's Biodiversity Officer raises that it appears that there are plans for ongoing tree removal relative to the timing of development requirements and to meet the requirements for burial locations progressively.

It is not clear if these vegetation removal requirements have been assessed within the BDAR. Council requires that the full extent of the

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development and intended use are included in the BDAR assessment and clarification is required.

- Having regard to the matters raised, Council would seek the opportunity to review the revised assessment and conduct a site inspection with Council's Senior Biodiversity Officer and Tree Preservation Officer present, with the intention to review the trees that have now been excluded from the assessment on the grounds of constituting a 'safety reason' and sight the location of significant habitat trees.

Vegetation for removal and retention must be clearly mapped and tagged on site. This inspection may best be conducted with the Applicant's representatives to assist the timely resolution of any onward concerns.

Overall, it is unclear from the information submitted precisely which trees are to be retained or removed. Should the Panel be of a mind to Approve the DA, Council recommends a Deferred Commencement consent with specific conditions surrounding the requirement for additional and amended correlating plans and reports addressing the matters raised herein, and for a site inspection and ground truthing exercise in relation to tree and vegetation removal.

Further to the above, and in relation to the applicant's cover letter and landscape plans, the following is noted:

- Landscape plans indicate the removal of a stand of trees located north of the Chapel building. This stand of trees contains habitat which is to be retained and protected in accordance with the applicant's Vegetation Management Plan (VMP) which requires the retention of marked habitat trees in this stand (amongst other locations).

(e) Contamination – *Written advice is to be supplied from the relevant authority to satisfy Clause 7.7 of PLEP as it relates to sewer servicing as identified by Council's assessment report.*

Response – Upon review of the applicant's material, Council is of the view that the proposal is satisfactory in relation to contamination matters, subject to relevant conditions being imposed.

(f) Adequate Arrangements for Infrastructure – *Written evidence is to be supplied from the relevant authority to satisfy Clause 7.7 of PLEP as it relates to sewer servicing as identified by Council's assessment report.*

Response – Upon review of the applicant's material, Council is of the view that

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the proposal is satisfactory in relation to Clause 7.7 of PLEP, subject to the relevant conditions of consent requiring connection to water and wastewater prior to operation of the relevant phase.

(g) SEPP Infrastructure – *The concurrence and conferral requirements of SEPP Infrastructure are to be addressed.*

Response – The concurrence of TfNSW has been received in its letter dated 21 May 2021 (**Appendix E**). The concurrence is issued with conditions requiring amendments to the applicant's plans. The amendments required will result in a reduced impact on existing mature trees located on the southern side of Park Road and reduced impacts on existing access to nearby residential properties.

The TfNSW requirements could be included as conditions, should consent be granted.

(h) Consistency and Clarity on Tree Retention – *The proposed tree retention and tree removal is to be clarified and documented, with the justification for tree removal in burial locations and within 30-50m of Park Road and external interface boundaries to be articulated. Removal might be avoided where control of access to the trees is an alternative.*

Response – Council has reviewed the information provided by the applicant and the following is noted:

- An updated Arboricultural Impact Assessment (AIA) is in the process of being completed, although has not been provided to Council for assessment.
- It is concluded that the Travers Tree Assessment Report, the supplementary Tree Disturbance Plan (Applicant's Attachment H) and the Florence Jaquet landscape plans accompanying the DA, cannot be relied upon as a source for accurate information on tree and vegetation removal and retention.
- It is not accurately known how many trees are sought to be removed as part of the development application as plans and reports do not correlate. Tree removal and retention inconsistencies include:
 - (i) Select trees marked for retention in the Travers Reports (being the VMP and Tree Assessment Report) are marked as being removed on the landscape plans.
 - (ii) Landscape plans propose the removal of habitat trees required to be

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retained as recommended by the Travers Vegetation Management Plan.

- (iii) The Landscape plans do not detail the areas required to be fenced, protected and re-vegetated as proposed within the Travers Vegetation Management Plan. This is important as the re-vegetation areas are not to be trafficable and are not to be utilised for burials and ash internments.
- (iv) Inadequate justification is provided for removal of trees marked 'Drainage' and 'Development', 'Earthworks', 'Health' and 'Safety'.
- (v) The Applicant's Tree Disturbance Plan (Applicant's Attachment H) does not accurately identify trees which require removal in relation to dam and swale construction and does not correlate with the Tree Assessment Report or VMP. Refer to Table 1 below.

Table 1 - Tree Removal and Retention

Tree No.	Travers Tree Assessment	Tree Disturbance Plan	Botanica Landscape Plans	Details
T43	Retained	Removed	Retained	24m high Spotted Gum
T42	Removed	Removed	Removed	24m high Grey Gum; not impacted by works
T45	Retained	Retained	Removed	24m high Grey Gum
T67	Removed	Removed	Removed	18m high Grey Gum; not impacted by works
T246	Remove	Retained	Retained	22m high Cabbage Gum
T547	Remove	Retained	Remove	20m high Spotted Gum
T599	Retained	Removed	-	13m high Radiata Pine
T600	Retained	Removed	Retained	22m high Radiata Pine
T702	Retained	Removed	-	23m high Forrest Red Gum
T753	Removed	Retained	-	21m high Grey Box
T756	Retained	Removed	-	19m high Forrest Red Gum
T757	Retained	Removed	-	8m high Forrest Red Gum
T814	Retained	Removed	Removed	23m high Tallowwood
T917	Retained	Retained	Removed	22m high Thin-Leafed Stringybark
T1178	Removed	Removed		25m high Grey Box; not impacted by works
T1179	Removed	Removed	Removed	26m high Forrest Red Gum; not impacted by works

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T1166	Retained	Removed	Removed	Dead Stag
T1192	Retained	Retained	Removed	22m high Camphor Laurel

- (vi) The Landscape Design Response prepared by Florence Jaquet, dated 5 December 2019 (p.12) includes areas which are identified as being suitable for burials, terraced burials and memorial gardens. Page 32 notes areas for passive recreation. Each of these plans are in conflict with the native revegetation area identified in the Travers Vegetation Management Plan.
- (vii) Tree retention, landscape master plans and buffer planting locations require amending to reflect the Council and TfNSW endorsed and amended traffic plans prepared by TTPP (The Transport Planning Partnership), which indicate amendments to the proposed eastern cemetery intersection and road widening design.

3. Additional Matters

In addition to the matters above, Council seeks this opportunity to re-iterate its position on the following matters as raised in the development assessment report, noting the concentrated focus on other threshold matters raised thus far.

A statement in relation to related development application DA17/1092 is also provided.

(a) DA17/1092 – [2021] NSWLEC 1225 Catholic Metropolitan Cemeteries Trust v Penrith City Council

Since the issue of the Record of Deferral in relation to DA19/0875, a recent judgement in relation to related development application DA17/1092 and NSW LEC Class 1 Appeal – Catholic Cemeteries Metropolitan Trust v Penrith City Council [2021] NSWLEC 1225, has been handed down and the Appeal was upheld.

The subject Development Application relates to the same land and would conflict with works approved. Should consent be granted, a condition of consent is recommended to be imposed to require that prior to the issue of any Construction Certificate or Subdivision Certificate in relation to the development, consent no. DA17/1092 is to be surrendered in accordance with Section 97 of the Environmental Planning and Assessment Regulation 2000.

(b) OneCrown Amalgamation

On Tuesday, 25 May 2021, The Hon. Minister Pavey MP announced the amalgamation of Sydney's five Crown land cemetery operators, including Catholic Metropolitan Cemeteries Trust (CMCT), and the appointment of an

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administrator, effective 28 May 2021.

A statement made available on the Minister's website states that:

"The NSW Government will appoint Lee Shearer as Administrator, as the first step towards the establishment of OneCrown, taking on the functions of the boards of the five Crown cemetery operators. This includes overseeing the recruitment of a single, multi-faith, multi-disciplinary skills-based board that will manage OneCrown's operations, establishing an advisory group to ensure the interests of all faiths are represented at all times, looking after the day-to-day management of cemeteries, acquiring and developing new cemetery land."

Information ought to be sought from the applicant confirming that adequate owner's consent is provided to the application, noting the abolition of CMCT and its relationship with the Catholic Cemeteries Board (CCB), being the applicant.

Confirmation ought to be provided as to whether the development application is now, owing to the installation of an administrator, made by a Crown authority.

On this aspect, the applicant, Catholic Cemeteries Board (CCB), had previously provided advice confirming that although the owner of the land is CMCT, CCB were the applicant and thus the application was not a Crown DA.

(c) Late Public Submissions

Council has read and had regard to the matters raised in the late submissions at **Appendix C**. New issues raised in the submissions include:

- Concerns raised in relation to an orchid species having been sited on the golf course;
- Objections in relation to the negative impacts of gaming and alcohol as part of the development;
- Concerns in relation to whether the applicant is proposing to retain the 9-hole golf course in perpetuity and lack of clarity in the documents.

In relation to the orchid species which was reported to have been sited on the golf course, a condition of consent could be imposed requiring further investigation by a suitably qualified ecologist.

In relation to gaming and alcohol proposed as part of the application, Council notes that these components of the application are regulated by Liquor and Gaming NSW although notes that increased gaming is likely to result in some negative social outcomes for the village of Wallacia.

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In relation to the retention of the 9-hole golf course, the applicant confirms in their response material that the 9-hole golf course will be retained in perpetuity.

All other matters raised in the submissions were considered as part of the assessment of the application and in the formulation of the Council Assessment Report. There are no further issues requiring assessment, as a result of the further submissions.

(d) Sustainability

Page 36 of Council's Assessment Report (**Appendix A**) includes that Penrith Local Environmental Plan 2010 (PLEP) 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 –*

- (i) *conserving energy and reducing carbon dioxide emissions,*
- (ii) *embodied energy in materials and building processes,*
- (iii) *building design and orientation,*
- (iv) *passive solar design and day lighting,*
- (v) *natural ventilation,*
- (vi) *energy efficiency and conservation,*
- (vii) *water conservation and water re-use,*
- (viii) *waste minimisation and recycling,*
- (ix) *reduction of vehicle dependence,*
- (x) *potential for adaptive reuse."*

The DA was submitted with a 'Sustainability Strategies – ESD Report', prepared by Steensen Varming, dated 4/12/2019, Rev. 03.

Although the report outlines possible initiatives and provides a summary of potential employable sustainable initiatives and design responses, no recommendations are provided.

The plans for the buildings (chapel, administration, clubhouse, indoor pool and gymnasium) have not had regard to the Report's content and do not address the LEP clause. No solar panels or other energy efficiency or emission reduction measures are proposed.

Should consent be granted, Council would recommend that a condition or conditions of consent be imposed to require the installation of solar panels on the clubhouse and administration building roof tops and the installation of a commercial solar pool heating device such as strip solar, rigid panels or the

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like, in relation to the proposed indoor pool, and the installation of rainwater tanks to the clubhouse, pool/gym complex and to the administration building.

(e) Finished Levels, Retaining Walls and Earthworks

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 architectural plans do not include sufficient detail demonstrating that the finished levels are appropriately dealt with in the architectural, civil and landscaping design of the Park Road front car park. No retaining wall locations or top of wall heights are detailed on the plans.

An assessment of this area, the levels and proposed landscaping is necessary as the finished levels are relevant to streetscape presentation. It is noted that the site is sloped and fronts Park Road at a prominent town entry point. The site is identified on Council's LEP Protection of Scenic Values and Landscape Character map.

(f) Landscape Design Response

The Landscape Design Response prepared by Florence Jaquet, dated 5 December 2019 states that the 15m wide "burial free" landscape buffer applies along all boundaries (p.9). This conflicts with the statement in the same document at page 31 which includes that the 15m landscaped buffer will include 'future memorial gardens for ash internments'.

Page 16 of the Landscape Design Response notes that the design of the cemetery complies with the requirement to have burials a minimum of 50m distance from permanent water bodies and 10m distance from drainage lines (ag drains, ephemeral swales and other water structure). Should consent be granted, a condition of consent would be sought in this regard.

Kathryn Saunders
Senior Development Assessment Planner