

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	Tuesday, 31 August 2021
PANEL MEMBERS	Justin Doyle (Chair), Nicole Gurran and Sandra Hutton
APOLOGIES	None
DECLARATIONS OF INTEREST	<p>Louise Camenzuli: Perceived conflict due to law firm's previously acting for proponent – did not participate in assessment.</p> <p>Jeni Pollard: The conflict arises from my employment at Penrith City Council that has endorsed the preparation of a Planning Proposal that will prohibit cemeteries and crematoria in areas including Wallacia.</p> <p>Glenn McCarthy: I was present at Council meetings held on 26 June 2017, 24 July 2017 and 28 August 2017 when the permissibility of cemeteries and crematoria in the Mulgoa Valley and Wallacia were considered.</p> <p>Ross Fowler: The Conflict arises from the application of Clause 3.19.b of the "Panel Code of Conflict" in that I was a Councillor and part of the unanimous decision by Penrith City Council that referred a Planning Proposal to the Department of Planning that if adopted would have made the proposed use of a cemetery prohibited on the land subject to DA2019/0875.</p>

Papers circulated electronically on 2 June 2021.

MATTER DETERMINED

PPSSWC-45 – Penrith – DA19/0875 at Wallacia Golf Course 13, 17 & 37 Park Road WALLACIA, NSW 2745 – Change of Use of Part of Existing Golf Course to Cemetery] (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

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

The decision was unanimous.

REASONS FOR THE DECISION

Background

The assessment of this DA has overlapped with the assessment of DA 17/1092 for a cemetery development of the same land which was refused by this Panel (applying the determination of the Independent Planning Commission of 12 July 2019). That refusal was appealed to the Land & Environment Court, following which substantial amendments to the DA were made including the removal of any proposal to modify the club's operation. The amended DA was ultimately approved on 11 May 2021 for reasons set out in the Judgment of Commissioner Bish reported at *Catholic Metropolitan Cemeteries Trust v Penrith City Council [2021] NSWLEC 1225*. The Court determined (at [97]) that:

"... the proposed development will not cause negative social impact to the community of Wallacia. I have also addressed the issue of scale, and found that the proposed development

is of a scale that is not incompatible with the village of Wallacia or out of context for the local area.”

The development proposed in this DA is different in significant respects to that the subject of the Land & Environment Court judgment, but the Panel has taken into account the reasons given by the Court because in many respects, the cemetery portion of the development proposed over the existing golf course is similar. Critically, the judgment records at [118] to [124]:

- 117 Council contends that due to the potential for social impact and change to the local character of Wallacia, the proposed development is not in the public interest.
- 118 I recognise that several of the issues raised in the objector submissions, both resident and government authority, have been addressed by the more recent amendments to the DA under consideration by the Court.
- 119 I consider that the changes to the design and size of the cemetery, and provision of a publicly accessible parkland across the riparian zone, are positive contributions to the application before the Court, and have addressed many of the primary concerns of objectors.
- 120 I recognise that the proposed use will take some time for the community to adapt to. However, I consider that any perceived social impact will be limited due to the continuance of the golf course for a further 29 years, the establishment of parkland on the site and the effective screening of the burial plots from public vantage points.
- 121 Overall, the proposed development has considered and responded to the concerns of the community in a positive manner, which generally resolve their expressed concerns.
- 122 As described above, I find that the proposed development does not pose a negative social impact on the community of Wallacia and there is no adverse change to the local character.
- 123 I am satisfied that the proposed development is in the public interest, and s 4.15(1)(e) of the EPA Act is addressed.

The public meeting in relation to this DA was held on 17 February 2021 before that judgment was handed down. It was held by Public Teleconference due to the ongoing Covid-19 pandemic measures. The Panel issued a substantial report at that time setting out its views in relation to the merits and lawfulness of the proposal, as well as matters the Panel saw as still needing to be addressed.

Key issues presented by the Council assessment report which were considered in detail by the Panel at that time included:

- a) Permissibility of the component parts of the development including the new pool, gym and the new bowling green,
- b) Land contamination matters,
- c) Information at that time said to be insufficient 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).
- d) Impacts of the development on biodiversity values and potential for Serious and Irreversible Impacts (SAII),
- e) Considerations arising under the Biodiversity Conservation Act 2016 including in relation to the calculation of Biodiversity credits,
- f) 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,
- g) Considerations under SEPP (Infrastructure) and need for TfNSW concurrence,
- h) Inadequate response related to sustainability,
- i) Servicing issues related to sewer connection,

- j) 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
- k) Impacts on the locally listed Park Road Heritage Conservation Area.

A number of presentations were made to the public meeting to supplement the substantial public interest in the development application shown by more than 411 responses which the Council reports having received in response to notification of the DA, including more than 93 individually prepared submissions. Submissions opposing the DA were made by the Wallacia Progress Association and the Mulgoa Valley Landcare Group on behalf of their members.

Amendments encouraged by the Panel and the Council assessment staff since that meeting and the Panel's deferral have improved the proposal.

Examples include:

- (a) the potential for adverse traffic impacts - liaison with TfNSW during assessment of the application led to significant changes in the access and egress arrangements for the development, which reduced impacts within Park Road, to existing access to nearby properties and taking into account the heritage conservation area.
- (b) stormwater, flooding impacts and water contamination issues – these have been addressed through updated material supplied by the applicant and additional proposed infrastructure which is the subject of conditions of consent.
- (c) impacts on views and vistas (addressed through buffer planting, noting that the Panel members undertook an examination of the critical view lines on site during a site inspection).

Concerns about the proposal to increase available gaming facilities was also raised, but the regulation of gaming is principally to be regulated by the Liquor and Gaming Authority. Nothing in this determination should be read to indicate support for the increase of the number of gaming machines at the renovated club.

Subsequent individual briefings for the Panel by both the Council (including a published memorandum) and the Applicant occurred in June 2021 to report progress with the matters the Panel had identified as of residual concern. Council's memorandum identified certain deferral reasons were adequately addressed or able to be addressed by conditions, and identified two deferral matters remaining unsatisfactory, being biodiversity impact assessment and consistency and clarity on tree retention. The memorandum also identified late submissions and assessment of new issues raised, and identified a number of other assessment details. The Panel advised that there were still matters requiring amendment or embellishment of the proposal before the DA could be determined. Those matters and the Panel's observations in relation to each are:

- a) The Panel asked how it was proposed the consent granted by the Land & Environment Court was proposed to interact with that sought from the Panel, with the Panel concluding that it was undesirable to leave two development consents on foot approving similar but different development of the same land. The Panel notes that it has now been resolved between the Applicant and the Council that the development consent granted by the Court must be surrendered before a construction certificate can issue for any development approved by this consent. That would seem to provide an adequate resolution.
- b) Another matter the Panel sees as central to the DA now being considered is that the upgrade and proposed use of the clubhouse has been proposed at all stages as closely associated with a functioning golf course which yields its character for planning purposes. The continuation of a recreation use over the area of the retained portion of the golf course, and its association with the clubhouse, is seen as important to the merits of this DA. The Panel is pleased to see that is proposed as part of this DA, and a condition is imposed requiring that link to be continued.
- c) The Panel has also emphasised the importance of consistency between the BDAR, the arboricultural report, and the civil & landscaping plans, and also raised the linked issue on how the proposal would sufficiently satisfy the sustainability provisions of Penrith LEP Clause 7.4. The Panel notes the Council

assessment memorandum's conclusion that the proposal is now acceptable in relation to those matters subject to compliance with the recommended conditions of consent.

Further public submissions were received after the public determination meeting. One submission advised that the *Diuris pedunculata* (small snake orchid) of which examples had been found on the site had been listed as a candidate species on the NSW BioNet. The Panel has not been advised that there will be an irreversible risk of harm to the species arising from this proposal and the applicant has agreed to deferred commencement conditions requiring management of this species as well as an amended BDAR. The Panel is satisfied that with the additional ecological attention the orchid will receive through that condition, the application is satisfactory for the granting of consent in that regard.

Further individual briefings for the Panel by both the Council (including a further published memorandum) and the Applicant occurred in August 2021 to report progress with the matters and consideration of draft conditions.

Key issues

A major source of opposition to the proposal centred upon the perceived negative social and character impacts of a substantial portion of the golf course into a cemetery. The Panel was not ultimately satisfied that the DA could be refused for that reason after taking into account the judgment setting out the Land & Environment Court's reasons for approving the DA, the proposal in this DA to continue a 9 hole golf course to provide a buffer between the township and the cemetery, and the boundary planting which will offer a green buffer to public views of the cemetery.

The retention of a 9 hole golf course or some other form of publicly accessible green recreation space contiguous with the club is seen as important as preserving a sufficient separation with the town, given the scale of the proposed facility. A condition is to be imposed to ensure that fresh development consent will be required to continue the club if the golf course ceases operation.

The proposed development is an acceptable and lawful use for the site under its present E3 Environmental Management zoning. Objectives of that zoning include the protection, management and restoration of areas with special ecological, scientific, cultural or aesthetic values. While much of the site is cleared, there remains significant vegetation which is addressed in the BDAR and ecological reporting.

Importantly, the Council referred to the Minister for Gateway approval a planning proposal to remove cemeteries as a permissible use in the E3 Environmental Management zone and prohibit cemeteries and crematoria in the Mulgoa valley and parts of Wallacia under the Penrith Local Environmental Plan 2010. . The Gateway determination was initially delayed while the Greater Sydney Commission reviewed its findings and made a recommendation to the Premier in relation to the strategic planning considerations for the provision of new cemeteries to service metropolitan Sydney. After that review had progressed, Council's planning proposal was ultimately refused Gateway approval to proceed by the Deputy Secretary as the Minister's delegate on 24 March 2021.

Council's final memorandum called for detail in the club carpark design to demonstrate how it will relate to the street front and adjoining properties. The Panel understands that the Council assessing officers are now satisfied in that regard based on additional information provided and the conditions to be imposed by agreement.

Council's Biodiversity and Tree Management officers note that inconsistencies remain between the AIA, BDAR and the landscaping and golfing plans, but as noted above relevant conditions of consent have been agreed with the Applicant requiring the submission of amended landscaping and civil plans, an amended AIA, and an updated BDAR to address that discrepancy.

Having regard to all of those matters, the observations made in the Panel's Deferral Report and the assessing officer's report and memorandums, the Panel unanimously agreed to approval of the DA for the following key reasons:

- The parkland style cemetery is suitably scaled, designed and landscaped to be able to be accommodated on the site to meet the applicable zoning objectives and the requirements of relevant environmental planning instruments and development control plans;
- The restriction of the cemetery to the east of Jerry's Creek, the physical and visual separation achievable from Wallacia village through the continuation of the golf course use and the preservation of the character along Park Road and to external boundary interfaces, provides suitable mitigation to potential impacts to suitability, local character, sense of place, visual amenity and social impact;
- The relevant ecological, cultural and aesthetic values of the land have been preserved through management of the larger site including retention of bushland and habitat trees, and through conditions of consent which include ongoing landscape and vegetation management and enhancement;
- The proposal is consistent with the identified heritage significance of the adjacent listed heritage conservation area and nearby listed heritage items.
- Considering the likely impacts of the development on the natural and built environments, the development is considered to provide balanced and appropriate outcomes subject to conditions of consent;
- The suitability of the site for the development has been considered and found to be suitable subject to conditions of consent;
- Matters of public interest have been considered in relation to social, economic and environmental outcomes.

CONDITIONS

The Panel requested and were supplied a draft set of consent conditions, which were attached as Appendix F to the published Council memorandum dated 13 August 2021. Following initial consideration of these by the Panel, the Panel provided a further opportunity for the Council and applicant to confer and provided a further draft set of conditions, and identify any areas of disagreement. The Panel adopts the consent conditions set out in the Council's recommended draft supplied to the Panel by the Council staff by email dated 19 August 2021, consisting of Schedules A, B and C, except for the following changes.

- (a) Amend the relevant portion of Condition at Schedule A- a.(v)(d)(iii) to delete "(Lachlan's advice)".
- (b) Add an additional condition to the effect:

"The approved clubhouse is to cease operation if the 9 hole golf course described in the DA plans closes for more than 3 months (other than for the purposes of maintenance or public health orders)."

CONSIDERATION OF COMMUNITY VIEWS

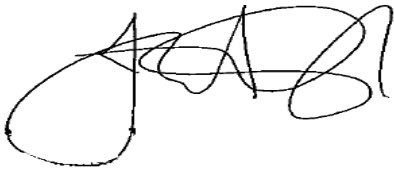


In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel.

The panel notes that issues of concern included but were not limited to:

- Permissibility
- Access, traffic and parking and safety
- Contamination
- Environmental impacts on biodiversity values, tree removal
- Social Impacts
- Impacts on Heritage, Scenic Values, Views Vistas and Local Character
- Building design impacts related to levels, materials, landscaping and setbacks
- Issues related to sewer connection
- Non-support for Biodiversity Offset Scheme credit reduction request
- Scale and site suitability

The panel considers that concerns raised by the community have been adequately addressed in the assessment report, memorandums and within the Panel deliberations, and that no new issues requiring

assessment were raised during the public meeting. The Panel notes that Council advised of additional late submissions and new issues arising from those and provided assessment of those issues to aid the Panel deliberations.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Nicole Gurrán
 Sandra Hutton	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-45 – Penrith – DA19/0875
2	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 & 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.
3	STREET ADDRESS	Wallacia Golf Course 13, 17 & 37 Park Road WALLACIA, NSW 2745
4	APPLICANT/OWNER	Applicant: Catholic Cemeteries Board C/- Urbis Owner: Catholic Metropolitan Cemeteries Trust
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy No. 55 Remediation of Land State Environmental Planning Policy (State and Regional Development) 2011 Draft Environmental SEPP Draft Contaminated Lands SEPP Penrith Local Environmental Plan 2010 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Penrith Development Control Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 13 August 2021 Additional information received from applicant: 11 February 2021 Council assessment report: 7 December 2020 Written submissions during public exhibition: 411 Verbal submissions at the public meeting 17 February 2021: <ul style="list-style-type: none"> Lisa Harrold, Jane McLuckie, Matthew Fowler, Bernadeta Cansdell, Ken Samuels, Sandra Newham, Anna Judy Dwyer, Ned McGovern, James Murray, Melissa Pulo, Margaret

		<p>Stepniewski, Heather Davies, Richard Ung, Lionel Fowler, Darrell Bell and Vic Alhadeff</p> <ul style="list-style-type: none"> ○ Council assessment officer – Robert Craig and Peter Wood ○ On behalf of the applicant – David Hoy, Peter O’Meara, David Bonjer, Florence Jaquet, Ben Salon, Rachel Trigg, Michael Cahalane and Ken Hollyoak • Council memorandum report: 31 May 2021 • Council memorandum report: 13 August 2021
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site Visit/Briefing: Monday, 17 February 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Susan Budd ○ <u>Council assessment staff</u>: Kathryn Saunders, Robert Craig and Wayne Mitchell • Site inspection: Friday, 24 July 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Sandra Hutton • Applicant Briefing: Thursday, 9 July 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Sandra Hutton and Stuart McDonald ○ <u>Applicant representatives</u>: David Hoy – Urbis, Rachel Trigg – Urbis, Nazia Pokar – Urbis, Ben Salon - Mills Oakley Law Firm, Peter O'Meara – Catholic Cemeteries, David De Angelis - Catholic Cemeteries, Florence Jaquet – Landscape Architects Fjla, Daniel Martens – Martens, David Marsh – St John Park Bowling Club <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> • Final briefing to discuss council’s recommendation: Friday, 18 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Sandra Hutton ○ <u>Council assessment staff</u>: Robert Craig and Kathryn Saunders • Final briefing to discuss council’s recommendation/Site inspection: Wednesday, 3 February 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Sandra Hutton ○ <u>Council assessment staff</u>: Robert Craig, and Kathryn Saunders • Final briefing to discuss council’s recommendation: Wednesday, 17 February 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Sandra Hutton ○ <u>Council assessment staff</u>: Robert Craig, Wayne Mitchell, Peter Wood and Kathryn Saunders • Council and Applicant Briefing: Monday, 7 June 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Nicole Gurran and Sandra Hutton ○ <u>Council assessment staff</u>: Robert Craig, Peter Wood and Kathryn Saunders

		<ul style="list-style-type: none"> ○ <u>Applicant details:</u> David Hoy, David Bonjer, Ben Salon, Narelle Sonter, Peter O'Meara, Meredith Henderson, Florence Jaquet, Michael Cahalane, Ken Hollyoak, David De Angelis and Rosie Sutcliffe ● Final briefing to discuss Council's recommendation: Monday, 16 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members:</u> Justin Doyle (Chair), Nicole Gurran and Sandra Hutton ○ <u>Council assessment staff:</u> Robert Craig, Peter Wood, Kathryn Saunders, Gavin Chery, Donna Montgomery, Peter Wood and Michelle Plant ○ <u>Applicant details:</u> David Hoy, Ben Salon, Narelle Sonter, Peter O'Meara, Meredith Henderson, Florence McIver, Marc Fisher, Tom A, David De Angelis and Rosie Sutcliffe
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A