

17 November 2020

Northern Beaches Local Planning Panel
Paul Vergotis - Chairperson

Our Ref: 2020/718633

Dear Mr Vergotis

Submission on behalf of Manly Warringah War Memorial State Park Advisory Committee regarding DA 2020/0552 - 181 Allambie Road, Allambie Heights

As the facilitator of the of Manly Warringah War Memorial State Park (MWWMSP) Advisory Committee please find attached the '2020-11-17 MWWMSP Advisory Committee Submission' on behalf of the Advisory Committee.

I have also attached a letter issued to Mr Mark Riddington from HWL Ebsworth Lawyers dated 24 February 2020 where it states that:

"... Council will not support new development proposals which will increase reliance upon and or increase the extent of APZs in the State Park or other Council bushland reserves."

"Council considers that the establishment or reliance on the State Park as an APZ for new (private) development as incompatible with the above objectives."(The objectives for land zoned RE1 under Warringah LEP 2011)

"Council does not support the proposed APZ within The Manly Dam, State Park."

Should you require any further information about the matters raised in this letter, please contact my office on (02) 8495 6755.

Yours faithfully



Steven Lawler
Executive Manager, Parks and Recreation

2020-11-17 Manly Warringah War Memorial State Park (MWWMSP) Advisory Committee Submission

Development Application No: 2020/0552 - Seniors Housing - 181 Allambie Road, Allambie Heights

Manly Dam War Memorial Reserve is a State Park established on 7 April 2017 as a significant environmental and recreation asset that is highly valued both locally and regionally as a recreation venue, conservation area, scenic asset, place of remembrance and for its water catchment roles. Establishment of the State Park reflects the significance of Manly Dam and surrounding public lands to the local community and the people of NSW. Northern Beaches Council manages the affairs of the State Park Trust and must adhere to the MWWMSP Plan of Management (PoM) 2014. The MWWMSP Advisory Committee, which is comprised of State agencies, e.g. Crown Land, NPWS and Community Representatives, also works with Council on the implementation of the PoM.

The Development Application is proposed on land adjoining MWWMSP and land that is part of the Manly Dam catchment. The State Park is zoned RE1 Public Recreation.

The Development Application is not supported by the MWWMSP Advisory Committee, in particular due to the excessive ecological impacts of the proposed development, the impacts of the proposed bushfire management, the inconsistencies with Planning Controls and the downstream ecological damage that will be caused by the construction and operational phases of the development.

The subdivision design does not attempt to avoid, minimise or adequately mitigate the impacts in accordance with Warringah DCP2011 and Warringah LEP 2011.

The development should seek to:

- avoid potential adverse impact on biodiversity
- if that impact cannot be avoided, minimise that impact
- if the impact cannot be minimised, to mitigate the impact

As well as retain unique environmental features of the site including:

- rock outcrops
- watercourses, drainage lines and riparian land
- groups of significant trees and vegetation
- mature hollow trees and other fauna habitat features on the site.

Importantly, the development will cause significant harm to the creek, waterbody and associated aquatic ecosystems downstream and it is proposed on Riparian land. While meeting water quality targets, the modelling for the development identifies that both pollution and changed flow regimes (e.g. dramatic 70% increase in volumes) will occur and will result in continual and irreversible impacts.

The development will have major impacts at both the **construction and operational phase** that will be continual and irreversible. To ensure there is no impact on the downstream aquatic ecosystems, '**Neutral or Beneficial Impact (NORBI)**' targets must be imposed for both the construction and operational phase of the development.

Specific objections include:

Inconsistency with Planning Controls

The development does not satisfy compatibility criteria and requirements in SEPP (Housing for Seniors or People with a Disability) 2004. The proposed development is not compatible with the surrounding land uses, specifically the conservation objectives of the Manly Warringah War Memorial State Park (MWWMSP).

The development does not satisfy planning controls and requirements in Warringah LEP 2011 and Warringah DCP 2011. The development is not compatible with the protection of bushland and riparian land within Curl Curl Creek Catchment (WDCP2011: E8 Waterways and Riparian Lands: Encourage development to be located outside waterways and riparian land).

Crown Land

The development would be located on Crown land that was reserved for public and semi-public use.

Built Form

The proposed construction of 24 apartments on the landscaped open space will convert the character and function of the land from a 'low density' to a 'medium density' residential environment, inconsistent with R2.

Height limit: The proposal has a maximum height of 8.65 metres, which exceeds the maximum 8 metre height limit in SEPP (HSPD) Clause 40(4)(a) by 0.65m.

Communal Building: The building and APZ are still located on Riparian land and the APZ extends into the adjoining MWWMSP.

Bushfire Management:

Bushfire prone land: The proposed development is on Bush Fire Prone Land. The *Rural Fires Act* (Planning for Bush Fire Protection (PBFP) 2006) specifically discourages locating Special Purpose Developments within bush fire prone land. For this type of development, PBFP states that “where ember protection is not feasible, then setbacks greater than 100 metres from bushland should be adopted. The building setback would be only 50 metres from Vegetation Category 1 bush fire hazard to the west.” (Bushfire report).

Asset Protection Zone (APZ): A large area of bushland would need to be managed as an Inner or Outer Protection Area. The APZ would require the removal of vegetation and modification of bushland areas. The APZ will impact on bushland that is contiguous with existing bushland in MWWMSP.

We object to any agreement that would allow the APZ for this new development to be located within the Manly Warringah War Memorial Park (MWWMSP) and do not support the APZ on Sydney Water land located in Manly Dam Catchment.

Council referral responses RE: APZ:

The referral response (Biodiversity) states that the extension of the APZ into adjoining RE1 zoned land is not supported and any APZ “should avoid and minimise impacts on the riparian area”. The referral response (Riparian) states: “The APZ of the proposed development extends into riparian lands, contrary to Council’s DCP and Protection of Waterway and Riparian Lands Policy.”

Bushland and Vegetation Impacts

Vegetation and habitat removal: The primary direct impact of the proposal is the removal of vegetation, including disturbed and intact native vegetation. This impact will include the destruction of habitat for native fauna, including threatened species. A total of twenty-five (25) vertebrate fauna species were recorded during the recent field survey including five (5) threatened fauna species (SEE). Significantly, the FFA determined that there was one threatened species *Cercartetus nanus* (Eastern Pygmy Possum) listed on Schedule 1 of the Biodiversity Conservation Act found on site. Furthermore, of the existing 107 trees within the cleared area of the site, 85 are proposed to be removed (SEE).

Buffer removal: The existing site is surrounded by significant bushland vegetation to the west and south-west that is contiguous with the MWWMSP. The existing landscape area provides an important buffer between the adjoining bushland and existing buildings. Therefore, through edge effects the proposed development will have detrimental impacts on the adjoining bushland and fauna inhabiting these areas.

Riparian Land Impacts

The majority of area proposed for development is mapped as Waterways and Riparian Lands (Warringah DCP 2011), with a first order tributary creek traversing the site and a riparian buffer around Curl Curl Creek (Warringah Creek Management Study (WCMS 2004). The development would have a direct impact on the natural waterways on the site and downstream in MWWMSP which both supports riparian vegetation and aquatic habitat. The siting is contrary to the objective in WDCP2011 “E8 Waterways and Riparian Lands: Encourage development to be located outside waterways and riparian land.”

Waterways and Biodiversity Impacts

Curl Curl Creek is classified as a ‘Group A’ creek meaning it has very high ecological value and less than 10% connected impervious area (WCMS 2004). Group A creeks can sustain very little further development before their aquatic ecosystems will change substantially, especially when they are close to natural condition and minor perturbations can have a major impact (WCMS 2004). A major threat to the high naturalness of the Curl Curl Creek system includes run-off from development in the catchment and presents a risk to water quality and natural flow conditions in these relatively pristine upper reaches (WCMS 2004).

Recent scientific studies have found the climbing Galaxias Brevipinnus has survived in Curl Curl Creek as the only place in Greater Sydney where this fish lives. They require clean, unsullied water to remain alive.

Construction and Operational Phase Impacts:

The development will have major impacts at both the **construction and operational phase** that will be continual and irreversible.

Additionally the Engineering Referral Comments of 1/11/2020 state: “*The applicant has still not submitted the previous requested information to support the stormwater drainage plans. As such a deferred commencement condition will be added to the recommended conditions.*”

The Advisory Committee does not support deferred commencement conditions in such an important area.

Construction Phase Impacts

The Erosion and Sedimentation Plan is completely inadequate for the protection required for this scale of development. A Soil and Water Management Plan needs to be prepared that complies with the requirements specified in the **Landcom's Managing Urban Stormwater: Soils and Construction**. This is particularly important considering the geotechnical report has identified soil type on-site have the potential for very high soil erosion.

If approved, the conditions **Construction Phase Conditions of Consent (Waterway Impacts)** in Box.1 below should be imposed as a minimum.

Operational Phase Impacts

The increase in impervious surfaces, increased flow rates and urban pollutants resulting from the development are a major risk to downstream aquatic ecosystems. These impacts include:

- Increased stormwater runoff, resulting in erosive flows, during the operational phase
- Decrease in water quality and increase in pollutant concentration and loads
- Contamination of the natural waterways downstream, including Manly Dam Lake

While the modelling associated with the operational phase of the development meets the pollution reduction targets, the development will still increase the pollution loads compared to the existing situation (22% more Phosphorus, 35% more Nitrogen). For such as sensitive downstream environment these increases will be extremely harmful.

Of equal and potentially greater concern is the increase in flows, up to 70% more volume will be produced from the site than currently occurs. These increased flows will have a major impact on the environmental integrity of the waterways downstream due to the erosion caused by regular, small to medium sized events. The damage to creeks, receiving waters and associated aquatic ecosystems downstream will be continual and irreversible.

To ensure there is no impact on the downstream aquatic ecosystems, '**Neutral or Beneficial Impact**' targets must be imposed for both the construction and operational phase of the development.

In summary, the **Development Application is not supported by the MWWMSA Advisory Committee** in particular due to the excessive ecological impacts of the proposed development, the proposed bushfire management, the inconsistencies with Planning Controls and the downstream ecological implications of the Construction and Operational phases on the Manly Dam Catchment.

Box. 1 Construction Phase Conditions (Waterway Impacts)

Section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.

The potential impact discharges from sediment basins must be considered consistent with s45 POEO Act.

The proponent must include details of the measures proposed to be implemented to avoid and minimise discharges of pollutants, including but not limited to

- Estimate the expected frequency and volume of discharges
- Characterise the expected quality of the discharge in terms of the typical and maximum concentrations of all pollutants likely to be present at non-trivial levels
- Assess the potential impact of the proposed discharge on the environmental values of the receiving waterway consistent with the national Water Quality Guidelines (ANZG, 2018; including comparison of the predicted water quality to the relevant guideline values for slightly to moderately disturbed ecosystems)

Consistent with the principles of the NSW Water Quality Objectives, the discharge impact assessment should:

- Demonstrate that the proposal will maintain the environmental values of the receiving waterway or contribute to restoring the environmental values where they are not currently being achieved.
- Implement a water quality monitoring program based on the outcomes of the discharge impact assessment. The proposed monitoring program should include analytes monitored at a frequency commensurate with the potential risk.

24 February 2020

Mr Mark Riddington
Partner
HWL Ebsworth Lawyers
mrriddington@hwle.com.au

Our Ref: 2020/105775

Dear Mr Riddington

DA Application for 181 Allambie Road, Allambie Heights

I refer to your emails dated 22 January and 14 February 2020 in respect to your request that Council consider extending the existing 30 metre Asset Protection Zone (APZ) to adjoin Martin Luther Lane to support the Development Application for 181 Allambie Road, Allambie Heights.

Manly Dam War Memorial Reserve is a State Park established on 7 April 2017 as a significant environmental and recreation asset that is highly valued both locally and regionally as a recreation venue, conservation area, scenic asset, place of remembrance and for its water catchment roles. Establishment of the State park reflects the significance of Manly Dam and surrounding public lands to the local community and the people of NSW. Northern Beaches Council manages the affairs of the State Park Trust.

In relation to the revised plans, the NSW RFS consider that the development should be considered under Planning for Bushfire Protection as a 'new' Special Fire Protection Purpose development rather than 'infill'. The revised plan including relocation of the pool/community facility (Jackson Teece 17/12/19) depicts an APZ approximately 900m² larger in area than the existing APZs in the park in order to accommodate the 85m setback requirement. It is acknowledged that bushfire asset protection zones (APZ's) have previously been established within the boundary of the State Park to protect the existing retirement village. Whilst legacy APZ agreements are in place over the area of proposed APZ, Council will not support new development proposals which will increase reliance upon and or increase the extent of APZs in the State Park or other Council bushland reserves.

The State Park is zoned RE1 Public Recreation. The objectives for land zoned RE1 under Warringah LEP 2011 are;

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

- To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Council considers that the establishment or reliance on the State Park as an APZ for new (private) development as incompatible with the above objectives.

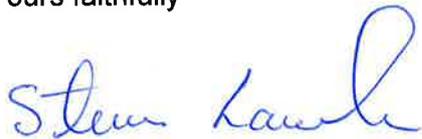
It is also noted that *Planning for Bushfire Protection 2019* includes the following relevant principles;

- PBP states that a fundamental premise for APZs is that they are provided within the property in such a way that the owner/occupant will be able to maintain the area in perpetuity (s3.2). In order to guarantee that an APZ can be managed in perpetuity, APZs should be contained within the overall development site and not on adjoining lands. APZs on adjoining land are not encouraged (3.2.5 APZs on adjoining land).
- Neither the NSW RFS nor a council has the power to impose an APZ on an adjoining landowner for new development. It is therefore the developer's responsibility to negotiate with adjoining land owner/s as part of the DA process. Easements should not be considered where the adjoining land is used for a public purpose and where vegetation management is not likely or cannot be legally granted (eg, National Park, bushland reserve, critical habitat, 'coastal wetlands' or 'littoral rainforests' mapped in the Coastal Management SEPP).

In summary, Council does not support the proposed APZ within the Manly Dam, State Park.

Should you require any further information or assistance in this matter, please contact my office on 9970 1372.

Yours faithfully



Steven Lawler
Executive Manager, Parks & Recreation