

Major Project Assessments
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

25 February 2019

Our ref DAL 183700

Attention: Ms Chloe Dunlop

By Email

Dear Ms Dunlop,

**SSD17_8859 – Elizabeth Drive Business Hub
1111-1141 Elizabeth Drive, Cecil Park**

We act for Nazzareno Barca, the registered proprietor of the properties known as 16 and 24-28 Cecil Road, Cecil Park.

We are instructed to make this submission in objection to State Significant Development application SSD17_8859 (**Application**) for subdivision into 14 allotments, including associated works including demolition of existing structures, clearing of vegetation, rehabilitation of riparian corridors, stormwater and civil works and road works (**Proposal**) at 1111-1141 Elizabeth Drive, Cecil Park (**Site**).

The Proposal fundamentally seeks consent for the use of the Site as a “Business Hub”, to comprise a variety of commercial and industrial developments and, therefore, must be considered as such.

In preparing this submission, reference has been made to the Environmental Impact Statement prepared by AE Design Partnership and dated 7 December 2018 (**EIS**) and its various annexures.

Grounds of objection are as follows.

Inconsistency with *State Environmental Planning Policy (Western Sydney Parklands) 2009*

1. The Site is located within the *Western Parklands* under *State Environmental Planning Policy (Western Sydney Parklands) 2009* (**SEPP**).

2. Pursuant to clause 12 of the SEPP, the consent authority must consider certain matters in determining an application for development within the Western Parklands.
3. It is submitted that development proposals should positively respond to the matters for consideration under clause 12, including the aim of the SEPP, to warrant being granted development consent.
4. Of the matters for consideration under clause 12, the EIS fails to demonstrate that the Proposal represents an appropriate and positive outcome for the Site and the locality. The matters for consideration are:

(a) the aim of [the SEPP], as set out in clause 2,

5. The aim of the SEPP, as outlined in clause 2, is *to put in place planning controls that will enable the Western Sydney Parklands Trust to develop the Western Parklands into a multi-use urban parkland for the region of western Sydney* through a number of principal objectives.
6. The EIS nominates four of the eleven objectives as being “*of particular relevant to the subject proposal*”, but fails to address how the Proposal satisfies or delivers the aim of the SEPP through those objectives.
7. The first objective nominated, *allowing for a range of commercial, retail, infrastructure and other uses consistent with the Metropolitan Strategy, which will deliver beneficial social and economic outcomes to western Sydney*, would appear to be the only justification for the Proposal. However, the Metropolitan Strategy has been replaced by the Western City District Plan, which promotes the Site and the surrounding locality for environmental purposes. Therefore, there is no current strategic plan which supports the Site being developed for a commercial/industrial development as is proposed.
8. The EIS also nominates other objectives of relevance as being:
 - *protecting and enhancing the natural systems of the Western Parklands, including flora and fauna species and communities and riparian corridors,*
 - *protecting and enhancing the cultural and historical heritage of the Western Parklands, and*
 - *ensuring that development of the Western Parklands is undertaken in an ecologically sustainable way.*
9. The Proposal involves the clearing of Cumberland Plain Woodland, a *critically endangered ecological community*, and Shale Gravel Transition Forest, an *endangered ecological community*, both listed under Schedule 2 of the *Biodiversity Conservation Act 2016 (BC Act)*. The Proposal will also result in the loss of habitat for *Pultenaea pedunculate* and the Bush Stone Curlew, both *endangered species*, and the Southern myotis, a *vulnerable species*, listed under schedule 1 of the BC Act. Therefore, it is agreed these objectives are relevant as the Proposal will result in significant detrimental impacts which are inconsistent with these objectives and does not represent ecologically sustainable development.
10. It is submitted that the Proposal is also inconsistent with objectives for *maintaining the rural character of parts of the Western Parklands by allowing sustainable extensive*

agriculture, horticulture, forestry and the like and allowing for interim uses on private land in the Western Parklands if such uses do not adversely affect the establishment of the Western Parklands or the ability of the Trust to carry out its functions as set out in section 12 of the Western Sydney Parklands Act 2006.

(d) the impact of carrying out the development on environmental conservation areas and the natural environment, including endangered ecological communities,

11. As detailed above, the EIS acknowledges that the Proposal will result in detrimental impacts on the natural environment and in particular, a *critically endangered ecological community*, an *endangered ecological community*, *endangered species* and a *vulnerable species* (as listed under the BC Act). This demonstrates the Proposal's inappropriateness for the Site.

(e) the impact on the continuity of the Western Parklands as a corridor linking core habitat such as the endangered Cumberland Plain Woodland,

12. As detailed above. A direct, detrimental impact will result on Cumberland Plain Woodland and the Proposal will reduce the corridor linking core habitat.

(g) the impact on the physical and visual continuity of the Western Parklands as a scenic break in the urban fabric of western Sydney,

13. The Proposal will have the opposite effect to this objective at the Site – it will provide a highly urbanised commercial/industrial development at the loss of contributory native bushland.

(i) consistency with:

(i) any plan of management for the parklands, that includes the Western Parklands, prepared and adopted under Part 4 of the Western Sydney Parklands Act 2006, or

(ii) any precinct plan for a precinct of the parklands, that includes the Western Parklands, prepared and adopted under that Part,

14. The *Western Sydney Parklands Plan of Management 2030 (PoM)* has been prepared under Part 4 of the *Western Sydney Parklands Act 2006 (Act)* and adopted by the Western Sydney Parklands Trust (**Trust**).
15. The PoM divides the Western Sydney Parklands into precincts as permitted under section 24(1) of the Act.
16. The Site is located within Precinct 11 – Cecil Park North (Precinct) of the PoM.
17. For reasons outlined in detail below, the Proposal is not consistent with the PoM or the relevant Precinct plan therein.

(j) the impact on surrounding residential amenity,

18. The Site directly adjoins our client's properties which is their principal place of residence.

19. For reasons outlined in detail below, it is considered that the Proposal (were it to be granted consent and implemented) would have significant detrimental impacts on the residential amenity of our client.

(l) the effect on drainage patterns, ground water, flood patterns and wetland viability,

20. The EIS acknowledges that the Proposal will change drainage patterns and result in flooding.

(n) the impact on traffic and parking.

21. The EIS acknowledges the supporting traffic report conclusions that the intersection of Cecil Road and Elizabeth Drive cannot satisfactorily cater for existing levels of traffic. Adding a significant, traffic generating development such as the Proposal will significantly exacerbate the traffic issue.

22. To relieve both the existing and exacerbated (by the Proposal were it to proceed) traffic issues, a roundabout is proposed to be constructed at the Cecil Road and Elizabeth Drive intersection with widening of Elizabeth Drive. However, with Elizabeth Drive is classified as a *State Road* and it is noted that NSW Roads and Maritime Services do not support the Proposed traffic solution. Without a viable solution, the traffic impacts of the Proposal would be unacceptable.

23. Pursuant to clause 17 of the SEPP, the consent authority must not grant consent to development on private land within the Western Parklands unless it has considered:

(a) whether the development will contribute to or impede the implementation of the aim of this Policy,

(b) the need to carry out development on the land,

(c) the imminence of acquisition of the land,

(d) the effect of carrying out the development on acquisition costs,

(e) the effect of carrying out the development on the natural systems of the Western Parklands,

(f) the cost of restoring those systems after the development has been carried out.

24. In this regard:

- The Proposal will impede the aim of the SEPP to a significant extent, as detailed above;
- Neither the Application nor the EIS have demonstrated any “need” to development the site other than for commercial purposes;
- The effect of carrying out the development, were consent granted, would significantly increase acquisition costs – the market value of the Site would increase significantly given the uplift from a largely undeveloped parcel of land

envisaged under strategic plans to remain of a bushland/rural character, to a significant 14 lot commercial and industrial development;

- The increase would likely preclude the acquisition of the land by the Trust for the furthering of the aim of the SEPP and reassert the rural/parkland character;
 - Consideration should be given to possibility that the application is merely an exercise in uplifting the market value of the land in the event of a future acquisition;
 - The Proposal would result in the loss of a significant area of bushland and native vegetation which be detrimental to the natural systems of the Western Parklands;
 - The ability to restore the natural systems in this section of the Western Parklands would appear to be difficult.
25. Clause 17A of the SEPP precludes the consent authority from issuing development consent unless it forms an opinion of satisfaction that, amongst others, access to or arrangements have been made for the disposal and management of sewage.
26. The EIS acknowledges that the Site does not currently have access to a reticulated sewer service and that it is not feasible to provide such as it would require a rising main traversing both Elizabeth Drive and the M7 Motorway. It is also noted that Sydney Water has indicated its objection to this and an on-site sewer management system.
27. Clause 17B of the SEPP seeks *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.*
28. Significant earthworks are proposed, which will have detrimental impacts on environmental functions and neighbouring uses.

Inconsistency with *Western Sydney Parklands Plan of Management 2030*

29. The PoM has been adopted by the Trust under the Act.
30. The PoM identifies four Strategic Directions which it seeks to promote so that the strategic vision for the parklands is achieved.
31. The Proposal is inconsistent with Strategic Direction 1 – Environmental Protection and Land Stewardship. In particular, the Proposal would be detrimental to the objectives under this strategic direction which seek to:
- *Increase sustainable outcomes for water, energy, waste, construction and horticultural materials;*
 - *Increase bushland biodiversity; and*
 - *Protect rural landscapes.*
32. The land-use framework outlines that the Cumberland Plain Woodland communities are an important contributor to protecting biodiversity in Western Sydney and achieving Sydney's Green Grid. Yet as has been outlined above, the Proposal would require the

clearing of a substantial area of Cumberland Plain Woodland from the Site. This is indicative of the Proposal being inappropriate for the Site.

33. The land-use framework also promotes business hubs on land with low environmental value which is not the case for the Site.
34. As noted above, the Site is located with Precinct 11 under the PoM. The PoM nominates a proposed business hub site – the Pikes Lane Business Hub – to the north of the Site. It is considered that the Proposal would conflict with Pikes Lane Business Hub and would provide an over-proliferation of commercial/industrial development in the Precinct, with economic impacts on surrounding centres and combined impacts.
35. The Precinct plan also nominates part of the Site as an environmental conservation area. However, the Proposal seeks to clear Cumberland Plain Woodland from this part of the Site which cannot be considered an appropriate environmental outcome and is inconsistent with the objectives for the Precinct.

State Environmental Planning Policy No. 55 – Remediation of Land

36. Clause 7(1) of *State Environmental Planning Policy No. 55 – Remediation of Land* (**SEPP 55**) provides that a consent authority must not consent to the carrying out of any development on land unless:
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
37. The preliminary site investigation prepared by Martens Consulting Engineers, dated September 2018 (**PSI**) and lodged with the Application concludes that the Site “is considered to have a risk of contamination and poses a potential risk of harm to human health and environment under proposed development conditions. Assessment of the identified [Areas of Environmental Concern] should be undertaken prior to any future development.”
38. In considering the PSI, the contamination status of the Site is unknown. It is submitted that the Department (as consent authority) is precluded by clause 7 of SEPP 55 from issuing development consent as it cannot form the requisite opinion of satisfaction as to the suitability of the Site to accommodate the Proposal.

Amenity Impacts

39. We are instructed that our client purchased the properties specifically for their rural and bushland setting.
40. We are instructed that at the time of the rezoning of our client’s property, our client received assurances from planning officers at the Department with respect to the rural zoning of other surrounding properties and the designation of the Site as being within

the Western Sydney Parklands, thereby having limited potential for any form of urban development.

41. Our client accepted these assurances on face value and is of the opinion that they should be carried through in the assessment and ultimately, the refusal of the Application.
42. If consent was granted for the Proposal, our client would suffer significantly in terms of:
 - Outlook – providing an intensive urban, commercial/industrial character adjoining our client's property where a rural/bushland outlook is currently enjoyed.
 - Visual privacy and security – the rear yard of our client's property faces the Site and is currently enjoyed as a very private and secure area of private open space. If the Proposal proceeds, the visual privacy and security will be reduced as buildings and activities are located in close proximity to the common boundary between the Site and our clients rear yard.
 - Acoustic privacy, as a result of noise that will be generated by the significant commercial and industrial activities that would be undertaken at the Site, and the significant working population and patronage, were the Proposal to be granted consent.
 - Odours and air quality associated with the Proposal.
 - Traffic, given the Proposal is mooted to provide 300 parking spaces on the Site and would therefore generate significant additional traffic in an area which is acknowledged by the EIS and supporting traffic report to already be problematic in terms of traffic at the Cecil Road/Elizabeth Drive intersection.

Conclusion

As detailed above, the Proposal fails to demonstrate that it would be consistent with the aim of the SEPP, the *Western Sydney Parklands Plan of Management 2030* and the existing and desired future character of the locality.

The Proposal will have a significant impact on biodiversity and our client's residential amenity is not supported by information that clearly addresses the matters for consideration such that, we submit, the Department as consent authority can be satisfied that it is an orderly development of the land which represents ecologically sustainable development.

As a result, it can be concluded that the Proposal is inappropriate for the Site and the Western Sydney Parklands.

For these reasons, we submit that SSD17_8859 should be refused.

If you require any further information, or to discuss this submission, please contact us.

Yours faithfully
Bartier Perry

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