Oatley Flora and Fauna Conservation Society Inc. (OFF)

Submission on DA2021/0181

'Glenlee' 80 Boronia Parade Lugarno

Subdivision Only - Torrens title subdivision of one (1) lot into thirty one (31) residential lots, demolition works and the construction of new roads, drainage and tree removal. The proposal is integrated development under the Water Management Act 2000

OFF objects to the DA2021/0181 and calls for it to be rejected by the approving authority for the following reasons:

General

The proposed development DA2021/0181 will destroy the ecological, historical and cultural values of this property and will substantially diminish the leafy character of the Lugarno neighbourhood.

Specifically, OFF calls your attention to the following points

- **Draft Georges River LEP 2020 and minimum lot size**

Weight given to draft Georges River Local Environmental Plan 2020 (GRLEP 2020)

With respect to **Foreshore Controls** the Statement of Environmental Effects (SEE) makes the false claim that "under the draft LEP the entire site …is…falling within the Foreshore Scenic Protection Area, (FSPA) whereas currently (presumably referring to the Hurstville LEP 2012) only the lower part of the site adjoining the waterfront is identified as such". (p. 18 Par 4.2.11)

This is false. The applicant may have confused the FSPA with the Foreshore Area enclosed by the Foreshore Building Line.

The whole of the site the subject of this DA falls within the Foreshore Scenic Protection Area in both the current Hurstville Local Environmental Plan 2012 (HLEP 2012) and the Draft Georges River Local Environmental Plan 2020 (GRLEP 2020).

The current minimum lot size requirement permitted under Clause 4.1 of the HLEP 2012 is 550m2. However, the draft GRLEP 2020 waiting for finalisation and gazettal requires that the minimum lot size is 700m2. In this regard it is noted that 25 of the 31 proposed lots in this subdivision DA are less than 700m2.

Despite the wording of "*1.8A Savings provisions relating to development applications*" quoted in the SEE (page 23/55) it is understood that Clause 4.15 of the *Environmental Planning and Assessment Act 1979* requires the Council, when assessing this DA, to take into consideration the provisions of any draft planning instrument such as an LEP.

According to the Council report **QWN027-21 Status Update on Draft Local Environmental Plan 2020** presented to the Council meeting on 24 May 2021, the Council was originally advised that the draft GRLEP 2020 would likely be gazetted in November 2020. In April 2021 the DPIE advised Council officers that it intended for the draft LEP21 to be gazetted together with the draft LEP 2020.

Given that the draft GRLEP 2020 has been through an extensive public consultation and Local Planning Panel approval process and its gazettal appears to be "certain and imminent", this draft planning instrument should be given considerable weight. (*Terrace Tower Holdings Pty Ltd v Sutherland Shire Council (2003*)

In this regard, it is OFF's contention that, when assessing this DA, the GRLEP 2020 should be given far greater weight in terms of the applicable planning instrument, particularly in regard to minimum lot size, than the current HLEP 2012. In which case **the DA should be rejected**.

- **Impact on biodiversity**

This DA threatens to destroy the bushland character of Eastern Lugarno by failing to protect the surviving remnant vegetation and substantially lessens green leafiness of the Suburb seriously decreasing tree canopy cover and tree canopy connectivity. The DA appears to have been prepared with little or no acknowledgement of the outstanding natural environment and its flora and fauna for which the area is known throughout the Sydney Metropolitan Area. This appears to be at odds with many government policies promoting the protection and enhancement of biodiversity in the Sydney Metropolitan Area and detailed in *Georges River Strategic Directions Paper 2018*.

The property includes a significant amount of remnant native vegetation including mature Smooth-barked Apple-Blackbutt-Red Bloodwood open forest which also includes Grey Gum and Sydney Peppermint. A number of these eucalypts are very large with very large crowns and would provide significant resources of nectar, foliage, seed and insects for native birds and mammals, including threatened species. Blackbutt, Grey Gum and Sydney Peppermint are also known Koala food trees.

A wide diversity of native fauna, including many threatened species, are recorded in the Lugarno region (Bionet Atlas) and may be present at times on the property, using it to support their existence.

The development proposes to remove 48 trees during this initial subdivision proposal and ultimately will likely destroy more than 200 trees on the site with subsequent buildings being constructed on the 31 proposed lots. **Quite clearly this will have severe consequences for local biodiversity.** (Please see further details in Appendix 1 of this submission.)

The native vegetation on **this property forms part of a forested corridor along the Georges River foreshore** between Oatley, Oatley Park, Lugarno, Saltpan Creek and the Georges River National Park. Tree canopies do have to be contiguous in order for native vegetation to form an effective corridor. The threatened Koala was historically known to occur in Oatley and they are still recorded regularly on the southern shores of the Georges River. At times of drought and severe bushfire, species such as the Koala may use these forested foreshore river corridors for movement and to find refuge habitats. That species such as the Swamp Wallaby are regularly recorded in Oatley Park and also on the Lugarno peninsula, including "Glenlee" (M. Argent *pers. com.*), is evidence of the effectiveness of these foreshore forest corridors.

Many birds, including those on migration, are also likely to use these forested river corridors as well as possums, wallabies, echidnas, reptiles and frogs. Currently hundreds to thousands of migrating Yellow-faced and White-naped Honeyeaters are flying along and foraging in the foreshore forests of the Lugarno peninsula. Several hundred were observed to alight in the mature Blackbutt canopies of "Glenlee" and adjacent Heinrich Reserve and others were observed foraging on blossom in flowering Blackbutt along the foreshore. The development of over 30 houses with infrastructure will totally sever the forest foreshore corridor. **The Biodiversity Assessment dismissed this impact** however OFF believes it will be significant and **the DA should be rejected.**

- **Impacts on adjacent habitats**

The property immediately borders the mangrove forest and intertidal mudflats of the Georges River which are the habitat of several threatened shorebirds and waterbirds. Together with the drainage from established streets, the development of over 30 additional houses and associated road infrastructure, along with the removal of almost all native vegetation, draining to the local creek line is likely to have severe impacts on stream flows, resulting in massive flows during storms with consequent erosion impacts on mangrove forests and intertidal flats.

The intertidal flats are the habitat of the threatened Bar-tailed Godwit and Pied Oystercatcher and the Critically Endangered Eastern Curlew which are regularly recorded on the intertidal flats at the mouth of Lime Kiln Bay. Erosion and pollution impacts from urban runoff will potentially impact on the feeding habitat of these threatened species. **The biodiversity assessment failed to consider these impacts** and **the DA should be rejected** for this reason.

The threatened Black Bittern is recorded from Mill Creek in the Georges River National Park and is potentially present in mangrove forests bordering the property. Mangrove forests form part of the habitat of the Black Bittern and **erosion, sedimentation and pollution impacts on the survival of mangrove forests should be considered as part of the assessment of the impacts on the habitat of the Black Bittern.**

- **Greater Sydney Commission's Objective 30 not met**

Greater Sydney Commission's Objective 30 is that "urban tree canopy cover is increased". The SEE suggests 1.5 hectares of the current tree canopy will be removed from the total 2.5 hectare area of the site. This development application runs completely counter to the GSC's objective. It leaves no room for the high quality remnant tree canopy over developed lots to the west, trees which form the green corridor for wildlife to pass along the foreshore. Trees can take up to 70 to 100 years to reach ecological maturity and to provide the nectar, fruit and hollows for wildlife to shelter and breed in. These resources will not be replaced in our lifetimes. Paying an offset fee for tree loss is a totally unacceptable option. Given the outcome of significant tree canopy loss which **fails to meet GSC's objective this DA should be rejected.**

- **Scenic Amenity diminished**

Glenlee is a substantial contributor to scenic Amenity for 1000's of visitors to Oatley Park, to residences along the foreshore in Peakhurst, Lugarno and across the river in Sutherland Shire and to people using the Georges River. The scenic amenity will be totally destroyed on this site and this is not in keeping with the objectives nor the provisions of the Foreshore Scenic Protection Area and **the DA should be rejected**.

- **Creating Lots that cross the Foreshore Building Line**

This proposed subdivision creates 4 lots that are 75% within the foreshore area (ie below the foreshore building line). The residual, that is the remaining 25%, of each of these 4 lots is outside/above the foreshore building line and is too small for a dwelling to be built upon. This will create enormous pressure when DAs are submitted for construction of dwellings that intrude into the Foreshore Area. It is poor subdivision design and not in keeping with the objectives of the planning instrument and the **DA should be rejected**.

- **Heritage impacts**

Despite the requirement that "Applications adjoining a heritage listed property must include a heritage statement prepared by a qualified heritage consultant" no heritage report has been submitted. The SEE briefly describes the items of heritage significance (SEE page 26 and

27 Section 5.10 Heritage Conservation) being items 160 and 161 and then simply makes the bald statement that “The subdivision will have no impact on the setting of the house or the stone wharf and path.” This is an **inadequate and unacceptable response in the DA which should be rejected**.

The SEE makes the inaccurate claim that “**it is unlikely that any Aboriginal cultural heritage items or places will be impacted.**” (SEE., p.15).

It has been common local knowledge that there is a large Aboriginal midden on the site. A cultural heritage assessment prepared by Kayandel Archaeological Services in 2010 for SMEC and the Georges River Estuary Management Committee indicates a midden beside the jetty on flattish ground near the edge of Lime Kiln Bay at the subject site. This has been recorded on the Aboriginal Heritage Information Management System, (AHIMS) administered by Heritage NSW. However, the SEE makes no reference to this midden.

In addition, the creekline has 2 items carved into the rocky creek ledges (hatchet grinding grooves and rock bowl), that have also been recorded on the AHIMS.

There is academic and peer reviewed research that documents the first known and documented culture contact between the Bidjigal clan and a party led by Lt Phillip Gidley King in 1788 at this Lugarno Peninsula and along this shoreline of Boggywell Ck. (Robert Hayworth, 'The Several 'Discoveries' of Sydney's Georges River: Precursors to the Tom Thumb Expedition', *Journal of Australian Colonial History*, Vol. 14, 2012, pp. 171-190).

The Applicant has made no attempt to conduct a survey nor study of any kind of the Archaeological and Indigenous Cultural Significance of this site, nor any attempt to consult with the traditional land owners, other Aboriginal residents or the Metropolitan Local Aboriginal Land Council. The professional standard, set out in the ‘Due Diligence Code of Practise for the Protection of Aboriginal Objects in NSW (Heritage NSW), requires this to be undertaken.

This is a significant failure on the applicant’s part and **on this basis the DA should be rejected.**

Conclusion

From the above analysis it is seen that the Development Application has failed to meet and/or comply with planning objectives and requirements on a large range of issues. Overall this proposed development is not in keeping with the character of the suburb or the intent of the LEP. The development application fails to protect the surviving remnant vegetation and results in a significant de-greening of the area. The resulting loss of wildlife habitat and general amenity is not in the public interest, as it will both erode the biodiversity base and also the liveability of the LGA for its present and future residents and ratepayers.

OFF recommends the DA be rejected.

Kim Wagstaff

President

Oatley Flora and Fauna Conservation Society

16 June 2021

Appendix 1 - ***Impacts of the proposed development on biodiversity and habitats***

Provided by Debbie Andrew – Zoologist and OFF member (See separate personal submission)

1. The loss of a significant and possibly all of the area of native vegetation (PCT 1789 – Smooth-barked Apple-Blackbutt- Red Bloodwood open forest in enriched sandstone soils of the Woronora Plateau) which is the habitat of many species of native birds, mammals, reptiles and amphibians, including threatened species and their prey. There are several records of the threatened Powerful Owl near the property and the Powerful Owl is known to breed in Oatley Park in Lime Kiln Bay immediately opposite and on the Lugarno peninsula. Powerful Owls have home ranges up to 800 hectares and this property would likely fall within the foraging territories of these breeding Powerful Owls. Prey species, such as the Common Ringtail Possum, Common Brushtail Possum, Grey-headed Flying Fox, Sulphur-crested Cockatoo, Currawong and others, are likely to be present on the site or use it for foraging. The loss of the majority of the tree canopy will result in a loss of prey resources for the Powerful Owl.
2. The threatened Square-tailed Kite hunts for small birds flying low over the tree canopy. It has been recorded at Illawong, Jewfish Point and Oatley Park and would also be likely to forage across the forests on the Lugarno peninsula. The loss of large mature eucalypt canopies would remove potential foraging habitat of the Square-tailed Kite.
3. The threatened Varied Sittella hunts for insects along the limbs and trunks of large eucalypts and has been recorded in the Georges River National Park. It may at times be present in the Blackbutt forests of the Lugarno peninsula and the loss of large mature Blackbutt would be a loss of foraging resources for the Varied Sittella.
4. The threatened Grey-headed Flying Fox has a camp of thousands of individuals in Myles Dunphy Reserve Oatley at the head of Gungah Bay. The loss of eucalypt canopy and large native Rusty Figs will result in the loss of nectar and fruit resources for the Grey-headed Flying Fox.
5. The threatened Eastern Osprey regularly roosts and has built nests in the mature Blackbutt trees on Gertrude Point on the Lugarno peninsula a short distance from the property. Eastern Osprey regularly forages over Lime Kiln Bay. The mature eucalypt foreshore forests provide important roosting and nesting habitat for the Eastern Osprey.
6. The threatened White-bellied Sea-Eagle also forages around Jewfish, Hurstville and Lime Kiln Bays and regularly roosts in large eucalypts around these bays. The loss of mature eucalypts in foreshore forests is a potential loss of roosting and future nesting sites of the White-bellied Sea-Eagle.
7. Twenty species of microbat including eight threatened species have been recorded in the Lugarno region and may at times be present on the property. The majority of microbats and five of the threatened microbats, the Yellow-bellied Sheathtail-bat, Eastern Coastal Free-tailed Bat, Eastern False Pipistrelle, Southern Myotis and Greater Broad-nosed Bat (present), use hollows, cracks and crevices in eucalypts and other large trees for roosting. The loss of large trees and tree stags with existing hollows will result in an immediate loss of roosting habitat for microbats and the loss of large mature trees, yet to develop hollows will be a loss of the future hollow resource within the next one hundred years. Blackbutt eucalypts are known to take over one hundred years to grow large enough to form tree hollows.

8. The threatened nectar feeding parrots, the critically endangered Swift Parrot and threatened Little Lorikeet are recorded in the region and the loss of large eucalypt canopies will result in a loss of significant nectar resources for these species.

9. The threatened Red-crowned Toadlet is recorded in Oatley Park and Mill Creek in the Georges River National Park. The Biodiversity Assessment does not mention the Red-crowned Toadlet. The Red-crowned Toadlet is a winter calling species and is less likely to be recorded outside this period. The freshwater stream and drip lines along rock shelves provide potential habitat for the Red-crowned Toadlet and its occurrence in the nearby Oatley Park means it should be considered in the assessment. Disturbance to the stream volumes and water quality and impact on driplines would likely impact on the habitat of the Red-crowned Toadlet.

10. The native vegetation on this property forms part of a forested corridor along the Georges River foreshore between Oatley, Oatley Park, Lugarno, Saltpan Creek and the Georges River National Park. Tree canopies do have to be contiguous in order for native vegetation to form an effective corridor. The threatened Koala was historically known to occur in Oatley and they are still recorded regularly on the southern shores of the Georges River. At times of drought and severe bushfire, species such as the Koala may use these forested foreshore river corridors for movement and to find refuge habitats. That species such as the Swamp Wallaby are regularly recorded in Oatley Park and also on the Lugarno peninsula, including “Glenlee” (M. Argent *pers. com.*), is evidence of the effectiveness of these foreshore forest corridors. Many birds, including those on migration, are also likely to use these forested river corridors as well as possums, wallabies, echidnas, reptiles and frogs. Currently hundreds to thousands of migrating Yellow-faced and White-naped Honeyeaters are flying along and foraging in the foreshore forests of the Lugarno peninsula. Several hundred were observed to alight in the mature Blackbutt canopies of “Glenlee” and adjacent Heinrich Reserve and others were observed foraging on blossom in flowering Blackbutt along the foreshore. The development of over 30 houses with infrastructure will totally sever the forest foreshore corridor. The Biodiversity Assessment dismissed this impact.

11. The assessment has not considered the dramatic increase in the number of domestic pets from 30 additional houses as potential predators of native fauna such as Swamp Wallabies, echidnas, reptiles and frogs and their impact on the effectiveness of the foreshore forest corridor.

Impacts on adjacent habitats

1. The property immediately borders the mangrove forest and intertidal mudflats of the Georges River which are the habitat of several threatened shorebirds and waterbirds. The development of over 30 houses with associated road infrastructure and drainage to the local creek line along with the removal of almost all native vegetation is likely to have severe impacts on stream flows, resulting in massive flows during storms with consequent erosion impacts on mangrove forests and intertidal flats. The intertidal flats are the habitat of the threatened Bar-tailed Godwit and Pied Oystercatcher and the Critically Endangered Eastern Curlew which are regularly recorded on the intertidal flats at the mouth of Lime Kiln Bay. Erosion and pollution impacts from urban runoff will potentially impact on the feeding habitat of these threatened species. The biodiversity assessment failed to consider these impacts.

2. The threatened Black Bittern is recorded from Mill Creek in the Georges River National Park and is potentially present in mangrove forests bordering the property. Mangrove

forests form part of the habitat of the Black Bittern and erosion, sedimentation and pollution impacts on the survival of mangrove forests should be considered as part of the assessment of the impacts on the habitat of the Black Bittern.