



Filed: 31 August 2021 9:35 PM



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Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2021/00199083

TITLE OF PROCEEDINGS

First Applicant	Landgrowth One Pty Ltd ATF Landgrowth 001 Unit Trust ABN 20188505874
First Respondent	GEORGES RIVER COUNCIL ABN 57789014855

FILING DETAILS

Filed for	GEORGES RIVER COUNCIL, Respondent 1
Legal representative	John Alexander Cole
Legal representative reference	
Telephone	02 9334 8555

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (Glenlee SOFAC 31 August JLW.pdf)

[attach.]

STATEMENT OF FACTS AND CONTENTIONS

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2021/199083

TITLE OF PROCEEDINGS

Applicant	Landgrowth One Pty Limited ATF Landgrowth 001 Unit Trust
Respondent	Georges River Council

FILING DETAILS

Filed for	Georges River Council , respondent
Legal representative	John Alexander Cole
Legal representative reference	JAC
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PART A: FACTS

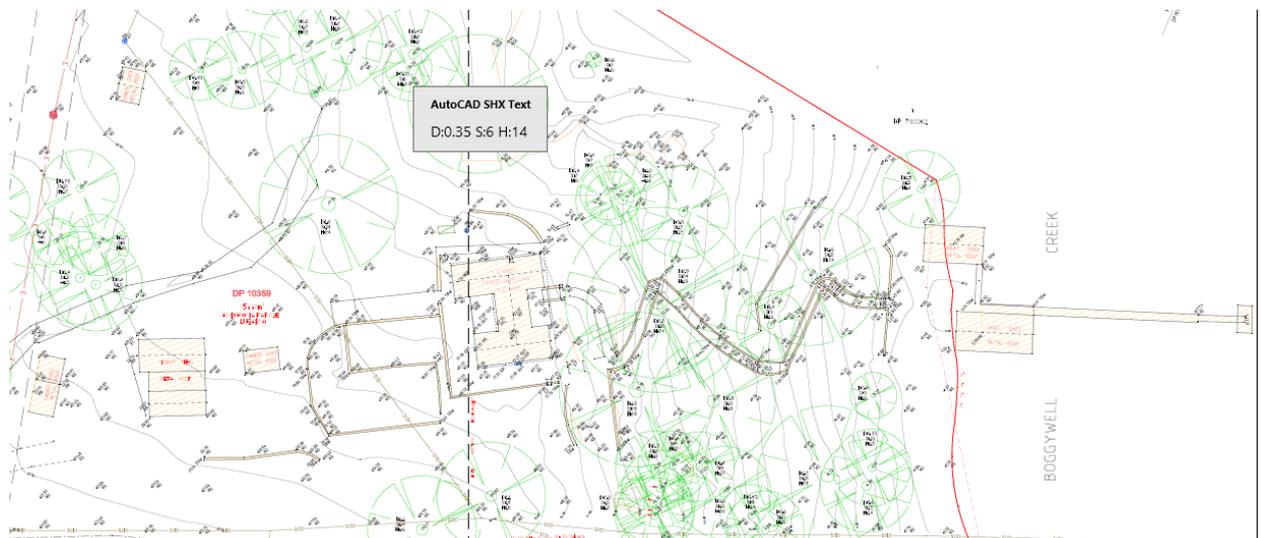
Introduction

1. These proceedings concern an appeal against the deemed refusal of Development Application DA2021/0181 lodged on 6 May 2021 that seeks consent for development works including subdivision, tree removal, demolition, drainage and ancillary works, (the details of which are set out below) at a property within the Georges River local government area legally identified as Lot 1 in DP10359, acknowledged as 80 Boronia Parade, Lugarno and known by its more familiar historical name, 'Glenlee' (**DA**). Throughout this document, the term 'Site' and 'Glenlee' will be used interchangeably to describe the property the subject of the DA. Glenlee has a rich history, which is set out below.

The Site – 'Glenlee'

2. Glenlee is located at the northern end of Boronia Parade and is a trapezoid shaped allotment with a total site area of 25,440sqm (or over 2.5 hectares).
3. The Site has a direct water frontage to Boggywell Creek (Lime Kiln Bay) along its eastern side reaching the Mean High-Water Mark (MHWM) which acts as the Site's eastern boundary. Boggywell Creek forms part of Jewfish Bay along the Georges River. The Site has a length of 263.01m (to the MHWM) along the southern side, a length of 220.245m (to the MHWM) along the northern side and a western boundary length of 176.975m.
4. An aerial photograph (**Figure 1**) of the subject Site is provided below:

6. The Site is flanked by a run of waterfront vegetation to the north (reserve) and south (private ownership with intermittent dwellings).
7. The land/water interface contains a boatshed and jetty and reflects the long-term ownership of the land by the Matthei family and their oyster farming in the Georges River with mangroves in the tidal river area.
8. The main constructed access/entrance to the Site is from Boronia Parade provided by a driveway which leads eastward to the existing detached garage and single storey cottage. Extending from the dwelling is a sandstone pathway which zig zags down to the foreshore where the two (2) detached boatsheds have been constructed. The boatsheds are located either side of a timber pier that leads out onto a jetty. The dwelling house on Site is often referred to as "Glenlee".
9. The Site also includes a number ancillary garden / shed structures of varying sizes that are scattered across the Site but surround the dwelling house and historically, appear to have been constructed to service the home.
10. The survey plans filed with the Class 1 Application show some of the existing structures on the Site. An extract from Sheet 4 is provided below:



11. An easement for electricity services dissects the Site centrally, generally north to south and Council's mapping system (Intramaps) indicates that a Sydney Water sewer main transects the Site as well.
12. There is a significant fall in the land from west to east of up to 34m. The difference in levels across the Site is summarised below with levels taken off the contours represented on the survey plan.
 - (a) West to east (along northern boundary) RL36 to RL2.02 amounts to approximately 34m;
 - (b) West to east (centrally) RL32 to RL1.71 amounts to approximately 30m;
 - (c) West to east (southern boundary) RL32 to RL2.01 which amounts to approximately 30m.
13. The crossfall is up to 2m and is relatively consistent across the Site.
14. The Site is zoned **R2 – Low Density Residential** under the provisions of Hurstville Local Environmental Plan 2012 (**HLEP 2012**) and the proposed development is permissible with development consent.
15. The eastern portion of the Site is mapped under the Coastal *SEPP (Coastal Management) 2018* as being within proximity to coastal wetlands as a wetland adjoins the Site at the

north-eastern boundary as shown below. The eastern portion of the Site is also mapped as coastal environment and a coastal use area.

Coastal Viewer Legend +

Coastal Wetlands and Littoral Rainforest Area Map

<input checked="" type="checkbox"/> ■ Coastal Wetlands	>
<input checked="" type="checkbox"/> ▨ Proximity Area for Coastal Wetlands	>
<input checked="" type="checkbox"/> ■ Littoral Rainforests	>
<input checked="" type="checkbox"/> ▨ Proximity Area for Littoral Rainforests	>
<input type="checkbox"/> ■ Coastal Vulnerability Area Map (Note: No map at this time)	>
<input checked="" type="checkbox"/> ■ Coastal Environment Area Map	>
<input checked="" type="checkbox"/> ■ Coastal Use Area Map	>



Historic and Cultural Context of the Site

16. 'Glenlee', also known as the 'Lugarno Early Settlers' Local Heritage Precinct', is classified by the National Trust (NSW) as an item of high cultural heritage significance. It forms part of the Lugarno Early Settler Precinct Landscape Conservation Area as shown in the extract from the National Trust listing card below.



Figure 3 Extract from National Trust listing card

17. The existing dwelling-house dates back to 1910 and it is estimated that it was constructed at that time. An examination of 1943 aerial photography extracted from the National Trust Listing Card (**see Figure 4 below**) shows that there has been very little change to the Site since 1943, with much of the extant vegetation and landscaped character pre-dating 1943. Therefore, the Site provides uncharacteristically strong and important surviving evidence of the pre-development and urban landscape of the locality, together with strong surviving evidence of the early occupation of the Site by the Matthei and Chislett families and their involvement in oyster farming in the Georges River. The Matthei family was one of the best and most well-known commercial oyster farmers at the time and its long-term ownership of the land since 1908 has ensured its unique preservation. The Site is presently subject to an option for purchase from the estate of the family.

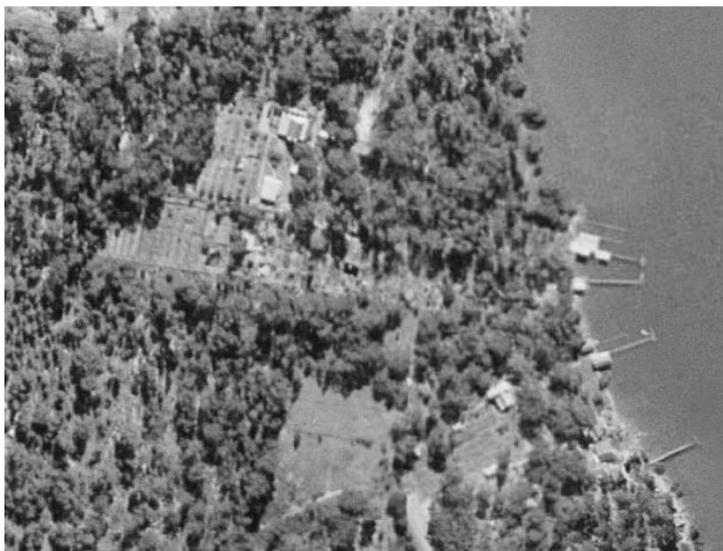


Figure 4 - 1943 Aerial Image extracted from National Trust Listing Card

18. The natural characteristics of the Site, being situated within close proximity to the waterfront and incorporating the land and water interface, together with the relatively undisturbed natural landscape and mature tree canopy, has very high potential to yield Aboriginal cultural heritage sites and also has high potential to demonstrate cultural and natural historical significance.



Figure 5: A photo of Glenlee dating back to circa 1914 (courtesy: Council's Historical records). A later brick extension now exists on the left (southern) side of the cottage.

19. The National Trust (NSW) listing card for the Site states that that the Site 'has historic significance because of the presence of rare Aboriginal rock engravings on the Matthei property'.
20. With respect to Aboriginal cultural significance, there are four (4) sites recorded and registered as part of the Aboriginal Heritage Information Management System (AHIMS) located within or adjacent to the development and are as follows:
- (a) 45-6-1713 – Matthei Jetty – comprising a shell midden
 - (b) 45-6-3907 – Glenlee hatchet grinding grooves – comprising two natural pools in the sandstone creek bed with grinding groove
 - (c) 45-6-3908 – Glenlee rock bowl – comprising a rock bowl formed in the sandstone beside a natural creek
 - (d) 45-6-3909 – Glenlee Midden 2 - comprising surface shell, bone and charcoal
21. These sites can be seen in the map below at **Figure 6**.

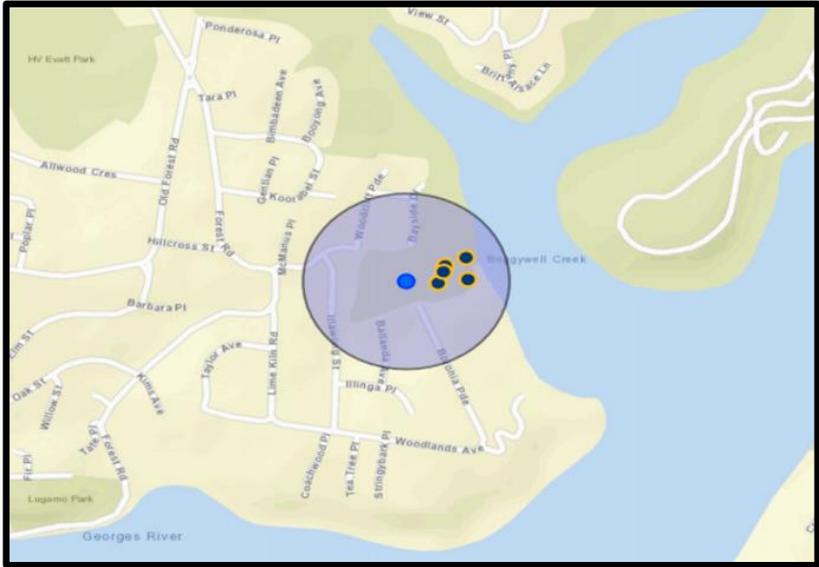


Figure 6: Location of the four recognised AHIMS sites

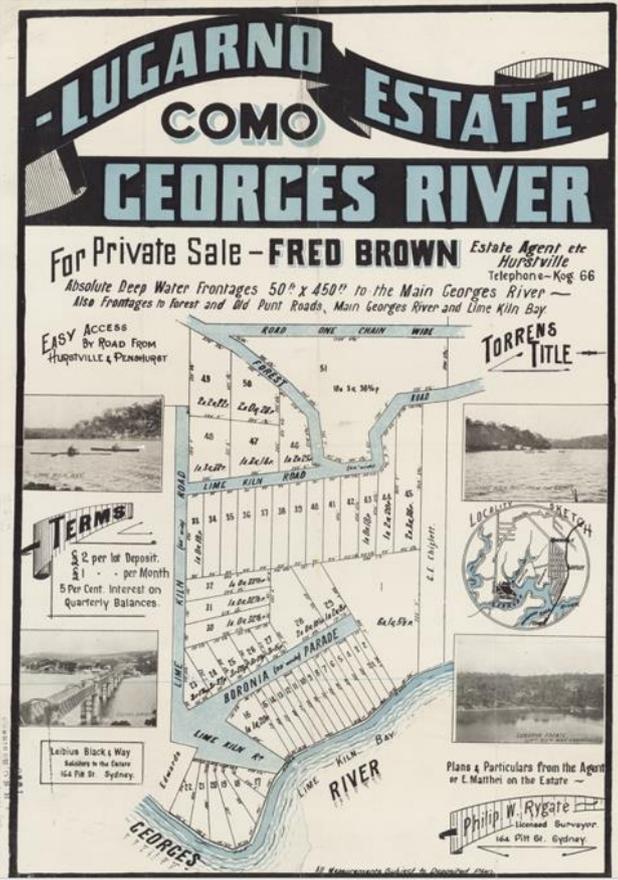


Figure 7: Poster of the subdivision plan for part of the Lugarno area adjoining 80 Boronia Street (circa 1916) showing Glenlee in its current form (courtesy: Council's historical records)

Potential Heritage Significance

- 22. The Site is classified by National Trust (NSW) as an item of high cultural heritage significance and value. The Site provides uncharacteristically strong and important surviving evidence of the pre-development and urban landscape of the locality with extant vegetation and landscaped character pre-dating 1943. The Site contains physical remains of pre-European occupation, including items and remnants of the occupation of the land by Aboriginal people, and has a high

potential to yield Aboriginal cultural heritage significance. The early European occupation of the area and the interrelationship with the Aboriginal people is also of potential significance. Lime Kiln Bay to the northeast is a reference to the use of the original concentration of oyster shells understood to indicate Indigenous occupation. The natural characteristics of the Site, being situated within close proximity to the waterfront and incorporating the land and water interface, together with the relatively undisturbed natural landscape and mature tree canopy, demonstrate high potential for natural historical significance

Aboriginal Cultural Heritage

23. The area now known as Lugarno was originally the home of the Bidjigal group of the Eora Aboriginal nation. The Site contains items and remnants of the occupation of the land by Aboriginal people, including Aboriginal rock engravings, grinding grooves in the sandstone of the creek bed and a “pot-hole” in the sandstone beside the creek which is believed to have been constructed by the Aboriginal people to store water and, using fire-heated rocks, warm food. There are also shell middens on the foreshore of the Site, indicating that it may have been an eating spot and potentially a recreational spot. The river environment's natural suitability for oyster grown and the use of this for traditional and European use has historical significance.
24. The NSW Government's Aboriginal Heritage Information System Database lists the two registered Aboriginal objects on the Site. The National Trust (NSW) listing card for the subject site states that the Site ‘has historic significance of the presence of rare Aboriginal rock engravings’. This occupation included oyster farming.

Natural Heritage

25. The Site contains significant remnant native vegetation, including mature Smooth-barked Apple-Blackbutt-Red Bloodwood open forest and a wide variety of native fauna. Endangered populations of flora and fauna are recorded in the Georges River LGA on the NSW Government's BioNet Atlas and may be present on the Site. The Site is positioned on the foreshore of Boggywell Creek (Lime Kiln Bay) on the Georges River, an important estuarine ecosystem. The large areas of remnant native vegetation on the Site within close proximity to the waterfront yield potential for high natural heritage significance.

Historical Heritage

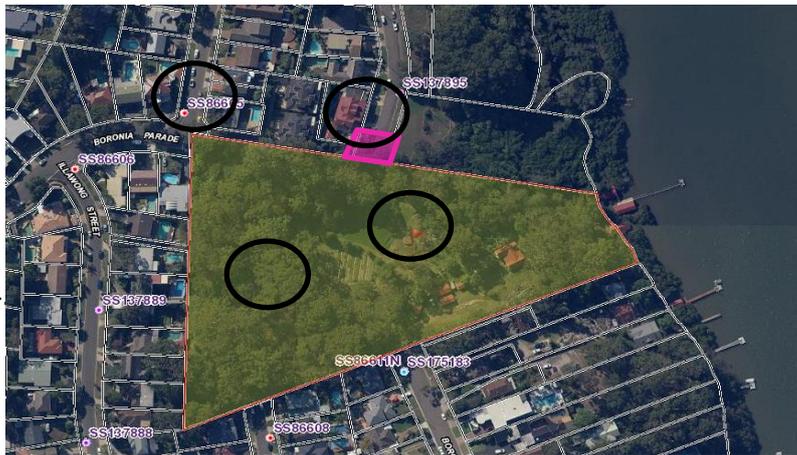
26. The National Trust (NSW) listing card for the subject Site states that the Site ‘has historic significance for its association with the early settler families, the Heinrich, Matthei and Chislett families and the strong surviving evidence of their occupation and works’.
27. The Site contains a single storey, detached style dwelling house, which displays the hallmarks and features attributed to the early 20th century Federation period to Inter-War period with a likely construction date of c1900-1920s. The period specific features of the Site together with the relatively undisturbed landscaped setting display important historical evidence of the early 20th century way of life in the locality (Edwards, 2021, p 2).
28. It is believed that the first major social exchanges between the British and the Eora occurred at the head of Lime Kiln Bay, on the Lugarno Peninsular in 1795 (Hayworth, 2021, p 4). The Site, being situated on the shore of Lime Kiln Bay, has a high potential to yield historical significance associated with these documented encounters.

The Locality

29. Glenlee is located in a predominantly low-density residential area comprised of detached single and two storey dwellings of varying architectural styles and forms. Adjoining the Site to the east is Boggywell Creek (Lime Kiln Bay) in Jewfish Bay which forms part of the wider Georges River catchment. Immediately to the west are the rear yards of a series of homes that front Illawong

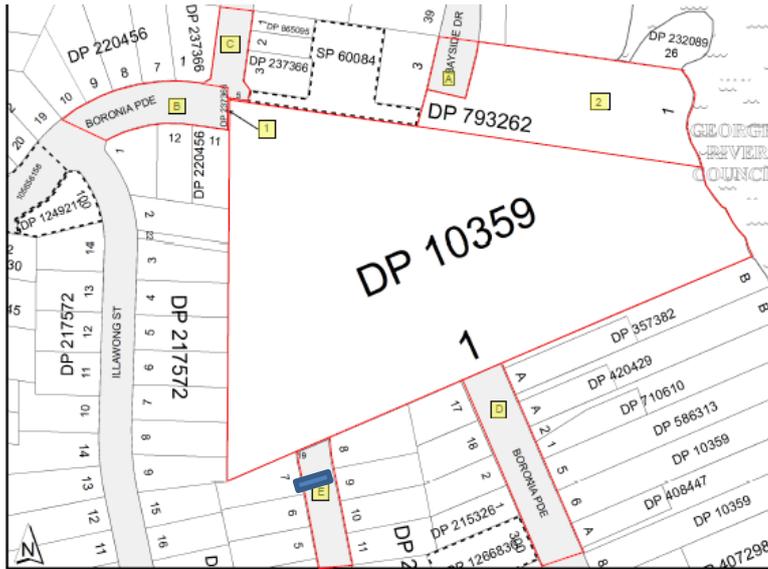
Street (Nos. 24-38 Illawong Street). To the north-west is the side boundary of No.61 Boronia Street.

30. Adjoining the Site to its north-east boundary is a public park known as Heinrich Reserve (named after one of the early German families which reflect the historic ownership of the area) which is located along Bayside Drive, a cul de sac that terminates close to the Site boundary. To the north-west are the side boundaries of No.2 Woodcliff Parade and 1 Bayside Drive.
31. To the south of the Site are the side boundaries of a series of detached dwelling houses comprising of No.37 Boronia Parade and 13 and 18 Ballanda Avenue. Numbers 46-48 Boronia Parade abut the Site to the southeast and these two properties are within a battle-axe allotment formation.
32. There are numerous stormwater discharges and overland flows onto the Site from the surrounding area. A creek / water course runs through the Site generally from the southwest to the northeast where it enters the river. A 'soggy' area exists in the northwest general area.
33. An aerial image of the Site is provided below. The areas circled below show the four potential physical road access points to the Site.



34. The pink shaded area above is legally described as Heinrich Reserve and is owned by Council. A public utility easement for an electricity easement, as shown in the aerial map below are vested in Council as follows:
- 35.

- (a) Parcel A, B, C, D and E is a Council Public Road;
- (b) Parcel 1 is owned by Council;
- (c) Parcel 2 is owned by Council, forms part of Heinrich Reserve and is classified as Community Land under Bushland of Heinrich Reserve POM - adopted 27/08/2003;



36. The portion of the Site shown in the blue box in the figure above is legally described as Lot 19 in Deposited Plan 220457 and is listed on Council's land register as Community Land for pathway uses.
37. The Site is within the vicinity of a number of Local Items of Heritage located to the north being "The Hermitage" at 1 Bayside Drive (I61), "Woodcliff" at 12 Woodcliff Parade (I68) and the stone wharf and pathway within Heinrich reserve known as I60. These items of local heritage are included in Schedule 5 of the HLEP 2012 and shown in the extract of the heritage map, below.



38. On the opposite side of the river to the east is a recreation area of regional significance known as 'Oatley Park'. This contains viewing vantage points looking at the subject Site and surrounds as shown in the photos below.



The Development Application

- 39. The DA, broadly includes Subdivision, Demolition, Tree Removal and Ancillary Works.
- 40. The proposed subdivision into thirty-one (31) lots and the proposed pattern is shown in figure 8 below.

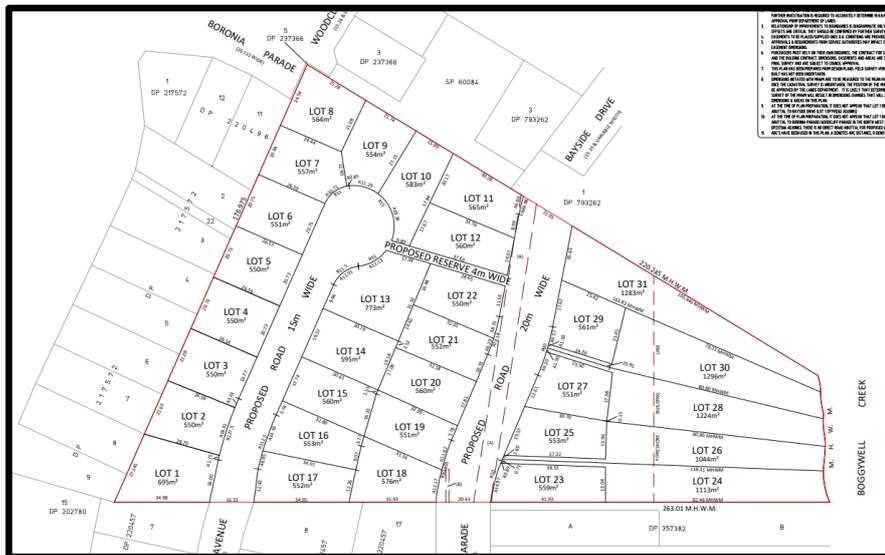


Figure 8 Extract of the proposed subdivision plan showing the proposed new allotments across the Site (courtesy: Bevridge Williams dated 26 April 2021)

- 41. The DA includes construction of new roads, infrastructure and stormwater drainage works and associated site works.

Demolition

- 42. The DA includes demolition of the existing detached dwelling house and ancillary structures shown in **Figure 2**. It is proposed to retain the existing jetty and boatsheds that are located below the Mean High Water Mark (MHW).

Tree Removal

43. The DA proposes the removal of approximately 79 established trees on Site and associated undergrowth. However, if proposed building footprints were shown on the Site the potential tree loss would be over 200.

Ancillary Works

44. The DA includes public domain works as follows:
- New centralised road which is an extension of Borenia Parade to the north. The civil engineering plans show this new road connecting through to Bayside Drive whilst the subdivision plan (refer to Figure 8 above) does not show this direct physical connection;
 - A newly formed cul de sac roadway which is an extension of Ballanda Avenue towards the western side of the Site and associated public domain works;
 - The creation of thirty-one (31) new lots varying in size from 550sqm to 1296sqm with battle-axe allotments fronting the foreshore (Boggywell Creek);
 - Civil engineering works involving earthworks that require excavating, filling, battering and regrading sections of the Site in order to access and service the new lots;
 - New stormwater pipes, pits and drainage works;
 - A pedestrian access way connecting Ballanda Avenue to Borenia Parade is proposed along the north-western side.

Figure 9 below is an extract of the extract of the civil plans showing a more detailed view of the proposed new road system and associated individual lot layout.

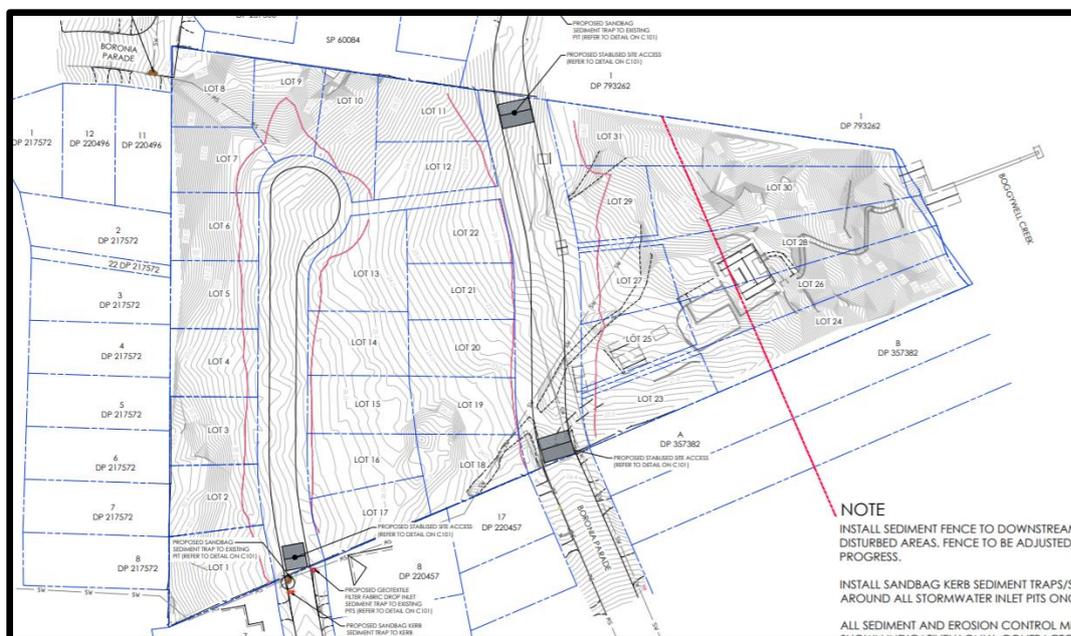
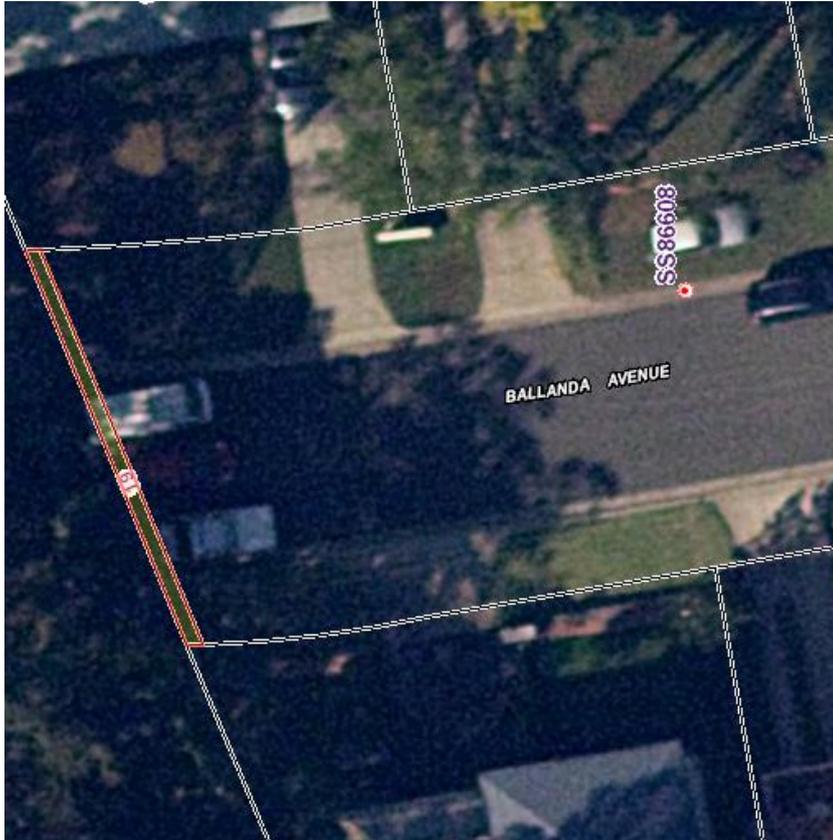


Figure 9: Extract from the civil design plans showing the proposed road layout and linkages/connections (courtesy: JN Engineering dated 24 April 2021)

45. The extension proposed through Ballanda Avenue will traverse over land owned by Council, legally described as lot 19 in DP220457 and shown highlighted below. Lot 19 in

DP 220457 is classified as community land and is listed as a 'pathway' on Council's land register.



46. The following documents and reports were lodged with the DA:
- Statement of Environmental Effects of Planning Ingenuity dated 28 April 2021
 - Arboricultural Impact Assessment Report of Jacksons Nature Works dated 25 April 2021
 - Geotechnical Investigation Report of Fortify Geotech dated March 2021 and Addendum dated April 2021
 - Preliminary Site Investigation of Reditus dated 25 March 2021
 - Flood Impact and Mitigation of JN Engineering (1 page) dated 27 April 2021
 - Ausgrid letter dated 26 April 2021
 - Biodiversity Assessment Report of Travers Bushfire & Ecology dated 27 April 2021
 - Quantity Surveyor's Cost Report of Property & Building Assessments Pty Limited dated 27 April 2021
 - Neighbourhood Notification Plan of JN Engineering;
 - Plans prepared by Beveridge Williams Project No. 2100492 (Sheets 7 of 7) Version A dated 1 March 2021

- Proposed plan of subdivision prepared by Beveridge Williams Project 2100492 Version A dated 26 April 2021
- Landscape Concept Plan of Taylor Brammer (1 page) Revision A dated 26 April 2021
- Civil Engineering Drawings prepared by JN Engineering dated April 2021(Drawings C001 to C900)
- Survey plans prepared by Beveridge Williams dated 1 March 2021.

Statutory Controls

Legislation

47. The DA is integrated development under the *Environmental Planning & Assessment Act, 1979*, (**EPA Act**). In addition, the following legislation is relevant to an assessment of the DA:
- The Biodiversity Conservation Act, 2016;*
 - Heritage Act, 1977;*
 - Water Management Act, 2000;*
 - National Parks and Wildlife Act, 1976;*
 - Roads Act 1993;*
 - National Parks & Wildlife Act 1974 [s90];*
 - Fisheries Management Act 1994 [205];*
 - Local Government Act 1919*

State Environmental Planning Policies (SEPPs)

48. The following state environmental planning policies apply to the Site;
- SEPP No.19 – Bushland in Urban Areas*
 - SEPP No.55 – Remediation of Land*
 - SEPP (Infrastructure) 2007*
 - SEPP (Vegetation in Non-Rural Areas) 2017*
 - SEPP (Coastal Management) 2018*
 - Draft Environment SEPP*
 - Draft Remediation of Land SEPP*
 - Primary Production and Rural Development SEPP*
49. The *Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment* applies to the Site.

Local Environmental Plans

HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012 (HLEP)

Clause 1.2 - Aims of Plan

50. There are a number of overriding aims of the plan however the most relevant to the proposed development are;
- to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
 - to encourage and co-ordinate the orderly and economic use and development of land that is compatible with local amenity,*
 - to provide a range of housing choice that—*

- (d) *accords with urban consolidation principles, and*
 - (ii) *is compatible with the existing environmental character of the locality, and*
 - (iii) *is sympathetic to adjoining development.*
- (e) *to conserve, protect and enhance the environmental heritage, cultural heritage and aesthetic character of Hurstville,*
- (f) *to maintain and enhance the existing amenity and quality of life of the Hurstville community,*
- (g) *to ensure development is carried out in such a way as to promote the efficient and equitable provision of public services, infrastructure and community facilities,*
- (h) *to protect and enhance areas of remnant bushland, natural watercourses, wetlands and riparian habitats,*
- (i) *to retain, and where possible extend, public access to foreshore areas and link existing open space areas for environmental benefit and public enjoyment,*
- (j) *to ensure development embraces the principles of ecologically sustainable development,*
- (k) *to foster economic, environmental and social wellbeing so that the Hurstville City Centre continues to develop as a sustainable and prosperous place to live, work and visit.*

Clause 2.1 - Zoning

51. The Site is located within the **R2 – Low Density Residential zone** in accordance with the provisions of the HLEP 2012 (refer to **Figure 10** below which is an extract of the zoning map). The proposed Subdivision of the Site is permissible in the zone. The objectives of the R2 zone are;
- (a) *To provide for the housing needs of the community within a low-density residential environment.*
 - (b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - (c) *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*
 - (d) *To ensure that a high level of residential amenity is achieved and maintained.*
 - (e) *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
 - (f) *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*



Figure 11: Extract of the zoning map Map_0004 HLEP. Oatley Park with lookouts is shown in green and top left corner.

Clause 4.1 – Minimum Lot size

52. The minimum lots size applicable to the Site is 550sqm in accordance with the mapping as part of the HELP 2012.
53. The aims of this Clause are;
- (a) *to retain the pattern of subdivision in residential zones while allowing infill development of smaller lots in some areas,*
 - (b) *to ensure lots have a minimum size that would be sufficient to provide useable area for building and landscaping,*
 - (c) *to require larger lots in the foreshore area or where the topography or other natural features of the site limit its subdivision potential.*

Clause 5.10 – Heritage Conservation

54. The objectives of Clause 5.10 are;
- (a) *to conserve the environmental heritage of Hurstville,*
 - (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
 - (c) *to conserve archaeological sites,*
 - (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*
55. Clause 5.10(2) states that development consent is required if works are “*disturbing or excavating an Aboriginal place of heritage significance*” or “*subdividing land—*”
- (i) *on which a heritage item is located or that is within a heritage conservation area, or*
 - (ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.”*
56. Clause 5.10 (5) stipulates that a Heritage assessment may be required before granting consent to any development—
- (a) *on land on which a heritage item is located, or*
 - (b) *on land that is within a heritage conservation area, or*
 - (c) ***on land that is within the vicinity of land referred to in paragraph (a) or (b),***

57. The subject Site adjoins a series of local heritage items included as part of schedule 5 of the HLEP. These items are known as “Woodcliff” at 12 Woodcliff Parade (I68), “The Hermitage” located at 1 Bayside Drive (I61) and the stone wharf and associated pathway (I60) located within the adjacent Heinrich reserve to the north. To the east immediately across the bay is Oatley Park and Baths which is also a recognised local heritage item (I177). The location of these items in relation to the Site is provided below at **Figure 12**.



Figure 12: Extract of the zoning map Map_0004 HLEP.

58. Subclause 5.10(8) states that in respect to any places of Aboriginal heritage significance the consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance—
- (a) *consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
 - (b) *notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Clause 6.1 – Riparian land and watercourses

59. The objective of this clause is to protect and maintain the following—
- (a) *water quality within watercourses,*
 - (b) *the stability of the bed and banks of watercourses,*
 - (c) *aquatic and riparian habitats,*
 - (d) *ecological processes within watercourses and riparian areas.*
60. The subject Site is identified as “sensitive land” as part of the Riparian Lands and Watercourses Map. **Figure 13** below provides as extract of the mapping showing the subject Site.



Figure 13: Extract from the Riparian Land and Watercourses map Map_0004 HLEP.

61. Clause 6.1 (3) and (4) state that in “determining a development application for development on land to which this clause applies, the consent authority must consider—
- (a) whether or not the development is likely to have any adverse impact on the following—
 - (i) the water quality and flows within the watercourse,
 - (ii) aquatic and riparian species, habitats and ecosystems of the watercourse,
 - (iii) the stability of the bed and banks of the watercourse,
 - (iv) the free passage of fish and other aquatic organisms within or along the watercourse,
 - (v) any future rehabilitation of the watercourse and riparian areas, and
 - (b) whether or not the development is likely to increase water extraction from the watercourse, and
 - (c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
62. Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—
- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
63. Council’s mapping system also indicates that Sydney Hinterland Apple Blackbutt Gully Forest and Estuarine Mangrove Forest is present at the site and the property is located within the Greater Sydney Green Grid (South District Plan)

Clause 6.3 – Limited Development on the Foreshore area

64. The objective of this clause is “to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area”.

65. The subject Site is located within a foreshore area and is affected by a Foreshore Building Line (FBL) of 60m. Refer to **Figure 14** below which shows the Site and the foreshore area and the FBL.

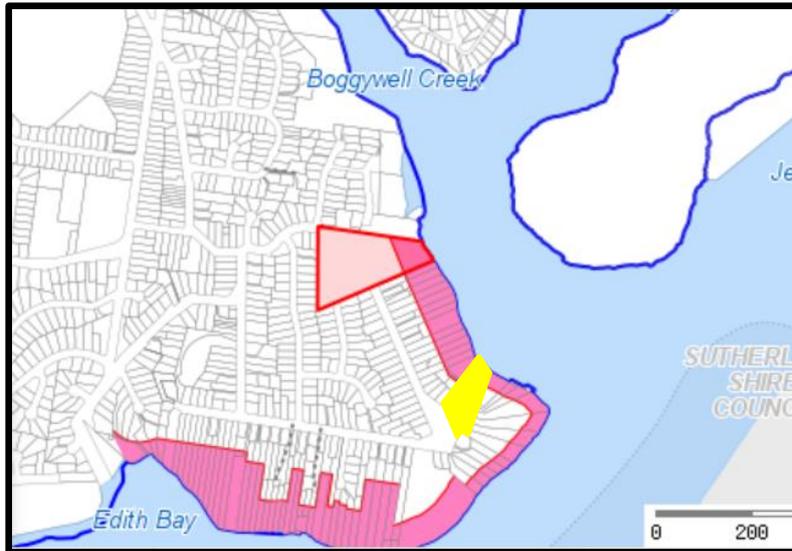


Figure 14: Extract from the Foreshore Area map showing the Foreshore area, Foreshore Scenic Protection area and the Foreshore Building Line (Map_0004 HLEP).

66. The area shown highlighted yellow in figure 14 above is known as 'Woodlands Avenue Foreshore Reserve' and is classified as community land.
67. Clause 6.3(2) and (3) state that “*development consent must not be granted for development on land in the foreshore area except for the following purposes—*”
- (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
 - (b) *the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
 - (c) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*
68. *Development consent must not be granted under this clause unless the consent authority is satisfied that—*
- (a) *the development will contribute to achieving the objectives for the zone in which the land is located, and*
 - (b) *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
 - (c) *the development will not cause environmental harm such as—*
 - (i) *pollution or siltation of the waterway, or*
 - (ii) *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - (iii) *an adverse effect on drainage patterns, and*
 - (d) *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
 - (e) *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
 - (f) *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*

- (g) *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) *sea level rise or change of flooding patterns as a result of climate change has been considered.*

Clause 6.4 – Foreshore Scenic Protection Area

69. The Site is located within the Foreshore Scenic Protection Area (FSPA) pursuant to the provisions of Clause 6.4. The objectives of this clause are—
- (a) *to recognise, protect and enhance the natural, visual, environmental and heritage qualities of the scenic areas of Hurstville and the Georges River,*
 - (b) *to protect significant views to and from the Georges River,*
 - (c) *to reinforce the dominance of landscape over built form.*
70. Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered how the development would—
- (a) *affect the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation, and*
 - (b) *affect the visual environment, including the views to and from the Georges River, foreshore reserves, residential areas and public places, and*
 - (c) *affect the environmental heritage of Hurstville, and*
 - (d) *contribute to the scenic qualities of the residential areas and the Georges River by maintaining the dominance of landscape over built form.*

DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020 (GRLEP)

71. A Planning Proposal (PP2019/0004) Georges River Local Environmental Plan 2020 February 2020 (**GRLEP 2020**) being a new LEP to replace the KLEP, and HLEP 2012 was given gateway approval to proceed to exhibition subject to conditions by the delegate for the Minister for Planning and Public Spaces on 10 March 2020. The GRLEP 2020 has been prepared to replace the Kogarah LEP and Hurstville LEP, reflecting the amalgamation of the former councils to the Georges River LGA.
72. The Georges River Local Planning Panel at its meeting dated 26 June 2020 endorsed the Planning Proposal (as amended) to be forwarded to the Department of Planning, Industry and Environment for gazettal in accordance with Section 3.36 of the EPA Act.
73. The Council anticipates that the GRLEP 2020 will be adopted by the end of September 2021. In that sense, the adoption of the GRLEP 2020 is imminent and certain.
74. The GRLEP 2020 provides the following savings provision:
1.8A Savings provisions relating to development applications
 (1) *if a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan has not commenced.*
75. The main relevant objectives of the GRLEP 2020 are:
- (a) *to provide for housing choices to cater for changing demographics and population needs,*
 - (b) *to provide for a range of business uses which promote employment and economic growth and contribute to the viability and vibrancy of centres,*

- (c) *to promote and facilitate an ecologically and economically sustainable and vegetated urban environment in which the needs and aspirations of the community are realised,*
- (d) *to provide for a range of recreational, social, cultural and community service opportunities to meet the needs of the Georges River community,*
- (e) *to protect and preserve the natural, built, cultural and Aboriginal heritage of Georges River, to build upon and enhance the character of local areas,*
- (f) *to promote a high standard of urban design and built form;*
- (g) *to protect, preserve and enhance the natural landform, vegetation and open space, especially foreshores or bushland, in order to maintain landscape amenity and public access and use,*
- (h) *to protect, maintain and improve waterway health to achieve the community environmental values and uses for waterways, (in response to EPA submission)*
- (i) *to facilitate infrastructure to support new development, and*
- (j) *to promote and facilitate transit-oriented development that encourages the use of public transport, cycling and walking.*

76. The GRLEP 2020 retains the R2 low density residential zoning of the Site but makes some changes to the statutory controls relating to the Site namely:

- (a) Increases the minimum lots size from 550sqm to a minimum of 700sqm via the provisions of Clause 4.1 – Minimum Lot size.
- (b) Amends the maximum floor space ratio control from 0.6:1 to 0.55:1 pursuant to Clause 4.3 – Floor space ratio.
- (c) The draft GRLEP maps the Site as containing Acid Sulfate Soils in accordance with the provisions of Clause 6.1.
- (d) The Foreshore Scenic Protection Area is extended and enlarged as part of the Draft LEP provisions (Clause 6.3) by including the whole Site and mapping a much larger area that is designated to be located within the foreshore area.
- (e) All other existing statutory planning provisions are retained as part of the Draft plan.

Development Control Plans

HURSTVILLE DEVELOPMENT CONTROL PLAN NO.1 (HDCP)

77. The development is subject to the requirements of the HDCP 2013. The relevant parts of the plan pertain to;

- Part 3: General Planning Controls
 - 3.1 Vehicle access, parking and manoeuvrability
 - 3.2 Subdivision
 - 3.3 Access and Mobility
 - 3.4 Crime Prevention through Design
 - 3.5 Landscaping
 - 3.6 Public Domain
 - 3.7 Stormwater

- Part 6: Controls for Specific Sites and Localities
 - 6.5 Additional controls for development in the foreshore.

DRAFT GEORGES RIVER DEVELOPMENT CONTROL PLAN 2020 (GRDCP)

78. The Draft Georges River DCP 2020 was endorsed by the Georges River Local Planning Panel on 4 March 2021 and formally adopted by Council on 24 March 2021. The DCP will come into effect upon the gazettal of the GRLEP 2020.
79. The purpose and principles of the Draft GRDCP are;
- (a) *Have a single document that supports the Georges River LEP 2020;*
 - (b) *Provide objectives and development controls that establish clear guidelines for development;*
 - (c) *Develop a high-quality urban environment and built form character in the Georges River LGA;*
 - (d) *Ensure development contributes to the prosperity of the Georges River LGA; and*
 - (e) *Ensure development protects and enhances the natural environment*
80. The relevant parts of the Draft GRDCP that are to be considered in the assessment of the proposed development are:
- (a) *Part 2 – Application Process*
 - i. 2.4 - Notification
 - (b) *Part 3 – General Planning Considerations*
 - i. 3.2 – Biodiversity
 - ii. 3.3 – Landscaping
 - iii. 3.5 – Earthworks
 - iv. 3.6 – Contaminated Land
 - v. 3.7 – Heritage
 - vi. 3.9 – Coastal hazards and risks
 - vii. 3.10 – Water management
 - viii. 3.13 – Parking, access and transport
 - ix. 3.14 – Utilities
 - x. 3.15 – Public Domain
 - xi. 3.16 - Subdivision
 - (c) *Part 5 – Residential Locality Statements*
 - i. 5.7 - Lugarno
 - (d) *Part 6 – Residential Controls*
 - i. 6.5 – Foreshore Locality controls

Actions of the Respondent

Pre-lodgement application – PRE2020/0139

81. A pre-lodgement application was submitted to Council on 27 November 2020 which proposed the “*subdivision of the subject land into twenty-three (23) allotments with new roads (proposed as an extension to the existing Boronia Parade and Ballanda Avenue at the southern side of the site) to provide pedestrian and vehicular access to the new allotments. The allotment sizes range from 701.71m² to 1894.59m², with larger allotments (lots 1-5) located on the eastern side of the Site*”. A plan of the proposed subdivision is shown at **Figure 15** below.
82. Council considered the application and provided formal written advice on 2 March 2021 and raised a series of significant concerns with the application. In summary, the key issues raised were:

- (a) Lack of information submitted with the Pre-lodgement application;
- (b) Compliance with key planning controls;
- (c) Subdivision type – Community Title Subdivision;
- (d) Concurrent DA approval for subdivision and dwellings;
- (e) Tree protection and retention;
- (f) Flora and Fauna Assessment (including Biodiversity Development Assessment Report (BDAR) requirements);
- (g) Flooding and stormwater drainage disposal;
- (h) Aboriginal Heritage;
- (i) Lugarno Early Settler Cultural Landscape and European heritage;
- (j) Consistency with the Character of the Area;
- (k) External linkages;
- (l) Infrastructure connections;
- (m) Waste management and emergency vehicle access;
- (n) Open space connections;
- (o) Traffic & transport; and
- (p) Contamination.



Figure 15: Proposed subdivision layout plan as submitted with the prelodgement application (Pre2020/0139)

Development application – DA2021/0181

- 83. The DA was lodged with the Respondent on 6 May 2021.
- 84. The application was advertised and notified on 19 May 2021 for the period of 28 days to 16 June 2021 inclusive as the development is classified as “*integrated development*” in accordance with section 91 (controlled activity) of the Water Management Act, 2000. A total of four (4) signs were also placed at the Site at different locations.
- 85. Council received more than 250 individual submissions including a petition which was tabled in State Parliament.
- 86. The DA was referred to the following internal divisions of Council and to external agencies:

Internal referrals

- (a) *Geographical Information Systems* (awaiting response)
- (b) *Stormwater Management* (awaiting response)
- (c) *Environmental Health* (response received on 25 May 2021 which requested further information in respect to contamination and Acid Sulfate Soils)
- (d) *Heritage Officer* (response received on 11 May 2021 which stated that the Site displays important evidence of the early 20th century way of life in the locality and the Site is highly likely to satisfy the Heritage Council of NSW significance assessment criteria in demonstrating historical, associative, technical, rarity and (possibly) representative significance. Mr Edwards requested further information including the submission of a Heritage Impact Assessment and an Aboriginal Cultural Assessment. The proposal is not supported on heritage grounds. It was recommended that Council place an Interim Heritage Order over the Site).
- (e) *Traffic Engineer* (awaiting response)
- (f) *Development Engineer* (Infrastructure, Assets and roads) (response received on 12 May 2021 concerns raised in respect to the proposed earthworks, gradients, tree removal, type of subdivision proposed)
- (g) *Development Engineer (stormwater)* (awaiting response)
- (h) *Waste Officer* (response received on 27 May 2021 which requires additional information and the provision of a Waste Management Plan)
- (i) *Natural Environment Assessment* (response received on 2 June 2021 which states that inadequate information is provided in respect to the biodiversity assessment and compliance with the Biodiversity Conservation Regulation 2017 and unsatisfactorily addressed Council's Tree Management Policy 2019 submitted with the application)
- (j) *Landscape Officer* (response received on 6 June 2021 which states that the arboricultural report is unsatisfactory and additional information regarding tree loss is required).

External referrals

- (k) *Ausgrid* (response received on 12 May 2021 and no objection is raised in respect to the proposed works)
- (l) *Natural Resource Access Regulator (NRAR)* (response received on 26 May 2021 and General Terms of Agreement (GTAs) have been issued if consent is to be recommended).
- (m) *Department of Primary Industries (Fisheries)* (section 205 of the Fisheries Management Act) (awaiting response)
- (n) *National Parks and Wildlife Service* (formal response received on 16 June 2021 objecting to the proposed development)
- (o) *Sydney Water Corporation* (section 78 of the Sydney Water Act) (awaiting response)
- (p) *Police* (awaiting response)
- (q) *Ambulance* (awaiting response)
- (r) *Fire and Rescue NSW* (awaiting response)
- (s) *Heritage Council* (independent formal response received from this agency prior to the referral being issued. The Heritage Council objects to the proposed development).
- (t) *National Trust* (independent National Trust Register Listing Report prepared with the following Statement of Significance:
The Lugarno Early Settler Precinct Landscape Conservation Area has historic significance for its association with the early settler families, the Heinrich, Matthei and Chislett families and the strong surviving evidence of their occupation and works.
The Conservation Area has historic significance because of the presence of rare Aboriginal rock engravings on the Matthei property.

The Heinrich Reserve and large areas of remnant native vegetation on the Matthei property have nature conservation and scenic significance.

Both the Heinrich Reserve and the Matthei property have the potential to yield information that will contribute to an understanding of Lugarno's cultural and natural history. (Reference: Graham Quint).

87. On 2 July 2021 Council received a letter dated 1 July 2021 from Heritage NSW that invited Council to use its delegations to place an IHO over the Site.
88. On 12 July 2021, the applicant commenced Class 1 proceedings in the Land and Environment Court of NSW, appealing Council's deemed refusal of the DA.
89. On 27 July 2021, Council unanimously resolved to lodge an Interim Heritage Order over the Site.
90. On 13 August 2021, an Interim Heritage Order was gazetted Reference no. 389 - Planning and Heritage.

PART B: CONTENTIONS

The Council contends that the following facts, matters and circumstances require or should cause the Court, in exercising the functions of the consent authority, to refuse the application:

1. OVERDEVELOPMENT OF THE SITE WITH NON-RESPONSIVE DESIGN

The proposal is an overdevelopment of a sensitive site with poor subdivision design which fails to respond to the significant constraints and opportunities of the Site. The layout and supporting information are poor, reflecting an ill-conceived 'cookie cutter' type design seeking to maximise lot numbers at the expense of numerous adverse environmental impacts (as addressed in various contentions below). The design also fails to take into account the likely future development of the lots and ensuing environmental impacts.

Particulars

- (a) The proposed design and layout of the subdivision does not satisfy the objectives of Clause 4.1 of the HLEP in that the layout of the subdivision is inconsistent with the existing form and established pattern of subdivision in the locality.
- (b) The proposed subdivision design and layout fails to satisfy the objectives of the R2 zone in accordance with the HLEP as the development in its current form will compromise the amenity of the surrounding area and its natural and cultural heritage.
- (c) The proposed subdivision demonstrates an inappropriate built form, particularly having regard to the supporting information adopting the planning principle in the matter of *Parrott v Kiama* [2004] NSW LEC 77. Proposed building envelopes have not been provided however considering the size and sensitive nature of the Site the proposed lots could not successfully accommodate dwellings without significant adverse impacts on trees and biodiversity values on the Site.
- (d) The likely development to follow subdivision will seek to maximise water views and floor space on the new Sites with the resultant devastating and irreversible impact on the existing landscape. They will sever the historical aspects of the Site to the surrounding natural and built environment.

- (e) The proposed development will fail to satisfy the objectives and controls of Clause 6.4 of the HLEP in that the subdivision will create an adverse impact on the foreshore scenic protection area and it will fail to reinforce the dominance of landscaping over built form.
- (f) The Site layout plan does not adequately identify items of Aboriginal heritage, nor does the proposal display sympathy towards those items.
- (g) The subdivision plans do not indicate details of the significant vegetation on the Site, including any endangered ecological communities.
- (h) The proposed development does not comply with lot sizes which are required as the minimum lot size under the Draft GRLEP.
- (i) Planning Proposal (PP2019/0004) Georges River Local Environmental Plan 2020 February 2020 (GRLEP 2020) being a new LEP to replace the KLEP, and HLEP 2012 was given gateway approval to proceed to exhibition subject to conditions by the delegate for the Minister for Planning and Public Spaces on 10 March 2020. The Georges River Local Planning Panel at its meeting dated 26 June 2020 endorsed the Planning Proposal (as amended) to be forwarded to the Department of Planning, Industry and Environment for gazettal in accordance with Section 3.36 of the EPA Act. The Department was working towards GRLEP 2020 being made by the end of August, but this is likely to now be end of September 2021. The making of the Draft GRLEP 2020 is therefore imminent and certain.
- (j) The GRLEP 2020 retains the R2 low density residential zoning of the Site makes, inter alia, the following changes to the statutory controls relating to the Site:
 - (i) Increases the minimum lots size from 550sqm to a minimum of 700sqm via the provisions of Clause 4.1 – Minimum Lot size.
 - (ii) Amends the maximum floor space ratio control from 0.6:1 to 0.55:1 pursuant to Clause 4.3 – Floor space ratio.
 - (iii) The draft GRLEP maps the Site as containing Acid Sulfate Soils in accordance with the provisions of Clause 6.1.
 - (iv) The Foreshore Scenic Protection Area is extended and enlarged as part of the Draft LEP provisions (Clause 6.3) by including the whole Site and mapping a much larger area that is designated to be located within the foreshore area.
 - (v) All other existing statutory planning provisions are retained as part of the Draft plan.
- (k) As under GRLEP 2020 the proposed development would be less than the minimum lot size requirements consent should not be granted as a matter of merit give the weight which should be given to GRLEP, the clear planning direction for desired future character and the absence of any potential well-founded clause 4.6 variation request.

2. TREES - VEGETATION

The DA and resultant development will have a significant adverse effect on existing vegetation on the Site resulting from the proposed subdivision on that vegetation. The amount and degree of tree loss is considered an unacceptable planning and environmental outcome and reflects a lack of serious consideration of this significant issue.

Particulars

- (a) The plans and reports submitted with the DA do not adequately map the vegetation on the Site, including the likely impact on the vegetation if the 31-lot subdivision is approved. There appear to be more trees on the Site than picked up in the Arboricultural Report prepared by Jacksons Nature Works. Impacts from subdivision and following residential development need to be assessed in detail with design options for preservation.
- (b) There is no evidence to suggest the significant tree and natural resources present on the Site have been adequately considered in the site planning process.
- (c) An assessment cannot be made as to the likely impact on the significant vegetation of the proposal because the DA does not include building footprints for each proposed subdivided lot.
- (d) The proposed development identifies the removal of 48 trees however the eventual building footprints on each allotment will result in the loss of well over 200 trees which has not been considered as part of the Arboricultural Impact Report submitted with the Application.
- (e) The Arboricultural Impact Report was limited to identifying only those trees that would require removal due to the proposed road works. The Arboricultural Impact Report did not assess the significant civil stormwater infrastructure works including pipelines of 750mm, 900mm, 1050mm and 1350mm diameters and associated headwalls and rock armour energy dissipaters. In addition, there has been no consideration given to the following potential impacts to trees:
 - (i) Dwelling construction;
 - (ii) Installation of driveways to the dwellings;
 - (iii) Installation of individual Lot services including water and power;
 - (iv) Installation of stormwater services for individual Lots;
 - (v) Installation of paved entertaining areas and level garden areas;
 - (vi) Likely changes to drainage patterns across the Site and within allotments;
 - (vii) Increased wind exposure to retained trees;
 - (viii) Longer term sustainable retention of trees in close proximity to dwellings following completion of development works (ie potential for future pressure from homeowners to significantly prune or remove trees in proximity to dwellings or recreation areas due to real or perceived risk management issues such as branch shedding).
- (f) The full extent of tree loss across the entire Site is considered unacceptable and will detrimentally affect the landscape character/appearance of the Site and have significant environmental impacts.
- (g) One of the key objectives of the R2 zone is “to encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment”. The proposal’s design fails to satisfy this objective due to the substantial earthworks, site works and tree loss that forms part of the proposal. The proposed subdivision layout and degree of tree loss is considered to be unacceptable.

3. ECOLOGY - BIODIVERSITY IMPACTS

The DA triggers entry into the NSW Biodiversity Offset Scheme as it exceeds the area clearing threshold. As the DA is not supported by a Biodiversity Development Assessment Report, it fails to comply with Part 7 of the BC Act and should therefore be refused. There has been no attempt to avoid and minimise impacts to biodiversity and the proposal is not sympathetic to the surrounding biodiversity values, nor does it consider the local importance of this native vegetation for habitat and connectivity. Council must not grant development consent to an application that would significantly impact a mapped coastal wetland or result in a Serious and Irreversible Impact to biodiversity. Insufficient information has been included within the Biodiversity Assessment Report to demonstrate that the proposal would not result in either of these outcomes.

Particulars

- (a) Biodiversity Assessment Report (Section 5.2.2) identifies that the proposal exceeds the NSW Biodiversity Offset Scheme Entry Threshold, therefore requiring that the DA be supported by a Biodiversity Development Assessment Report (**BDAR**). No BDAR has been prepared therefore the DA cannot be approved. In addition, the Biodiversity Assessment Report fails to meet the minimum requirements of a BDAR, as outlined in Appendix K of the Biodiversity Assessment Method (2020).
- (b) One of the purposes of the BC Act is to provide a framework for the avoidance and minimisation of impacts to biodiversity, followed by the offsetting of unavoidable residual impacts. The Biodiversity Assessment Report (Section 5.5) states that no avoidance actions have been taken. The proposal is therefore inconsistent with the purpose of the BC Act and the requirements of the BAM 2020.
- (c) The proposal is located within a SEPP (Coastal Management) 2018 proximity area and is mapped as Sensitive Land on the HLEP Riparian Lands and Watercourses Map. The Biodiversity Assessment Report fails to adequately assess the potential significance of the proposed impacts on the mapped coastal wetland and Sensitive Land in accordance with Clause 11 of the SEPP and Section 6.1 (3) and (4) of the HLEP respectively. Development consent must therefore not be granted.
- (d) The Biodiversity Assessment Report identifies four Serious and Irreversible Impact (SAII) candidate entities as occurring or having potential habitat within the subject Site, being; Large Bent-winged Bat, Eastern Cave Bat, Little Bent-winged Bat and Large-eared Pied Bat. An application for development consent under Part 4 of the EP&A Act must be refused if it would result in a SAII. No assessment of the potential for the proposal to result in a SAII has been included in the Biodiversity Assessment Report therefore insufficient information is available to determine whether a SAII would occur.
- (e) The Biodiversity Assessment Report identifies five threatened flora species as having suitable habitat present within the subject Site but fails to describe the methodology used for surveying for these species. Two of the five species cannot be readily detected in April when the surveys were conducted.
- (f) The Biodiversity Assessment Report states that there would be no significant impact to Matters of National Environmental Significance (MNES). No assessment (in accordance with the Significant impact guidelines v.1.1) has been completed to

demonstrate that this is the case. This assessment is required for each of the MNES recorded or considered to have habitat present within the subject Site.

- (g) The assessment of indirect impacts to the adjoining Boggywell Creek and Heinrich Reserve, as well as the proposed mitigation of impacts is inadequate. Greater consideration of measures to protect these sensitive environments is required.
- (h) The Biodiversity Assessment Report concludes at:
 - section 5.4.2 that the direct impacts of the Proposed Development are considered as:
 - ...
 - *Impacts on 0.003 ha of mangrove vegetation (PCT 920 - Mangrove Forests in estuaries)*
 -
 - Page 8 that PCT 920 occurs mostly to the immediate east of the subject lot, with a small sliver extending into the development footprint. It is comprised entirely of *Avicennia marina* subsp. *australasica* to a PCT of c.40%.
 - (i) Pursuant to section 205 of the *Fisheries Management Act 1994* a person must not harm any such marine vegetation in a protected area except under the authority of a permit issued by the Minister. General terms of approval have not been provided.
- (2) The proposed development should be refused as the proposal will detrimentally affect the environmental characteristics of the Site and its immediate surrounds especially the sensitive riparian zone along the foreshore.

Particulars

- (a) The proposed development fails to satisfy the objectives and provisions of Clause 6.1 of the HLEP as the development will have an adverse impact on the riparian zone and associated waterway (Boggywell Creek).
- (b) The development will have a negative environmental impact on the riparian area and could affect the Estuarine Mangroves located within the waterway through the stormwater design and proposed runoff as well as through tree loss.
- (c) The proposal fails to satisfy the provisions of part 3.5 of HDCP which requires the retention of important and significant trees and vegetation.
- (3) The detailed management of the lower parts of the Site form part of a foreshore wildlife corridor. The associated values and the impact of residential development on them will be adverse and needs to be properly managed going forward and this established as part of any potential approval. The development application ignores this.

4. ADVERSE VISUAL IMPACT

The development will have an adverse visual, aesthetic and associated environmental impact on the foreshore area and adversely affect the visual amenity of the Site when viewed from surrounding public and private vantage points.

Particulars

- (a) The Land is mapped 'scenic protection' under HLEP (see Figure 14). It is prominent from the adjoining waterway which is a significant long term public recreation asset. It is highly visible from Oatley Park and the associated look out. It forms an integral and important part of surrounding foreshore land (reserve and private) presenting a naturally vegetated high quality natural foreshore area. The proposed heavy handed dense subdivision and associated civil works will have a significant adverse impact on the scenic environmental values of the Site.
- (b) The proposed development will adversely affect the natural environment, including topography, rock formations, canopy vegetation and other significant vegetation due to the substantial earthworks that are proposed and amount of tree loss that is proposed along with the associated redevelopment of the blocks for residential purposes.
- (c) The proposal will be inconsistent and unsympathetic to the character of immediately adjoining residential developments and have an adverse impact on the public domain and achieve a poor relationship with areas of public open space along the foreshore and immediately adjoining the Site to the north (Heinrich Reserve).
- (d) The proposed development will not satisfy the objectives and provisions of Clause 6.3 of HLEP which limits development on the foreshore. The proposed development (and that following) fails to satisfy the provisions of Clause 6.3(2) and 6.3(3) as the proposed non-response subdivision layout will adversely affect the character of the Site and development along the foreshore and future development will not comply with the minimum 60m foreshore building line that is established for the Site.
- (e) The proposed subdivision layout will have a negative impact on the character of the foreshore area and will not enhance the visual qualities and character of the area as stipulated by the controls in Part 6.5 of the HDCP in respect to development along the foreshore.

5. (A) ADVERSE HERITAGE IMPACT

The DA should be refused because it has not adequately had regard to the heritage significance of the Site and will adversely affect the adjacent heritage items.

Particulars

- (a) No Heritage Impact Statement has been submitted with the DA.
- (b) The proposed development fails to consider and address the impact of the proposed subdivision on the cultural importance of the Site which is listed by the National Trust and identified as the "Lugarno Early Settlers Local Heritage Precinct".
- (c) The proposed development fails to satisfy the objectives and provisions of Clause 5.10 of the HELP in respect to Heritage conservation and does not consider the impact of the development on the adjoining items of heritage which are located within the vicinity of the Site.
- (d) The proposed subdivision will adversely affect the historical and cultural importance of the dwelling house, its associated outbuildings, established fruit trees and gardens, boat sheds and the existing pier. The proposed works and future development following will have a negative impact on the existing dwelling and its setting and historical/heritage characteristics and qualities of the Site.

- (e) The heritage significance of the Site and its long-term use by the Matthei family for oyster farming as a heritage use of the Site has not been assessed or responded to.

5 (B) ABORIGINAL HERITAGE SIGNIFICANCE

The DA should be refused because it has not adequately addressed or responded to the Aboriginal heritage significance of the Site or the existing identified Aboriginal artefacts that are located within and adjacent to the Site.

Particulars

- (a) There are four recorded Aboriginal Heritage Information Management System sites located within or adjacent to the Site as follows:
 - (i) 45-6-1713 – Matthei Jetty – comprising a shell midden
 - (ii) 45-6-3907 – Glenlee hatchet grinding grooves – comprising two natural pools in the sandstone creek bed with grinding groove
 - (iii) 45-6-3908 – Glenlee rock bowl – comprising a rock bowl formed in the sandstone beside a natural creek
 - (iv) 45-6-3909 – Glenlee Midden 2 - comprising surface shell, bone and charcoal.
- (b) The presence of AHIMS sites within the development area triggers the need for further Aboriginal cultural heritage assessment to inspect the sites, identify the cultural values and consider how they can be avoided or if avoidance is not possible how to mitigate the impact.
- (c) There are several landscape features present at and surrounding the Site which also trigger an assessment of potential for Aboriginal objects as per Stage 2(b) of the 'generic due diligence process' required by the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*.
- (d) No Due Diligence Aboriginal Cultural Heritage Assessment Report (ACHAR) was submitted with the DA.
- (e) The information submitted with the application fails to acknowledge the importance of the Site's heritage significance due to documented evidence of it being one of the first areas of known contact between English settlers and Aboriginal Bidjigal people in around 1795.
- (f) The information submitted with the application fails to adequately consider any Aboriginal cultural artefacts and/or places of significance within and surrounding the Site.
- (g) The Office of Environment and Heritage has not provided general terms of approval on the basis of a number of the matters raised above.
- (h) The proposal fails to satisfy the provisions of Clause 5.10 of the HLEP in relation to the location and impact of development on any place exemplifying Aboriginal significance.
- (i) The proposal fails to satisfy the provisions of the *Heritage Act, 1977* which requires a proposed development to consider the importance of any Aboriginal cultural heritage that does or could exist on a site and its impact.

5 (C) INTERIM HERITAGE ORDER

The proposed development should not occur whilst the Interim Heritage Order remains in effect on the Site.

Particulars

- (a) The Site is the subject of an Interim Heritage Order that was imposed by Council and formally gazetted in Government Gazette Number 389 - Planning and Heritage on 13 August 2021 in accordance with the provisions of Section 28 of the *Heritage Act, 1977*.
- (b) Pursuant to section 57 of the *Heritage Act 1977* the Proposed Development cannot occur without an approval under Subdivision 1 of Division 3 of the *Heritage Act 1977* whilst the Interim Heritage Order remains in effect.
- (c) Pursuant to section 63(2) of the *Heritage Act 1977* any such application in relation to the proposed development must be refused.

6. STORMWATER / FLOODING (A) FLOODING

The proposed design has not adequately or accurately assessed the existing and potential impacts associated with drainage, stormwater and flooding potential of the Site and the surrounding area resulting from any subdivision approval. The engineering modelling and design provided is insufficient. Drainage/flood impacts on and off site are unsatisfactory.

Particulars

- (a) The Site is located on a considerable sloped land and as a consequence, the surface overland flows occur from public drainage system and upstream surrounding properties and areas that drains through this property prior to discharging into a creek. The natural ground surface at the Site of the proposed development dips to east at an estimated angle from 80-180 towards Boggywell Creek downstream.
- (b) The Site has an area of 2.544 hectare and is identified as being affected by overland flow in the Overland Flow Flood Study prepared by Council for the Hurstville, Mortdale and Peakhurst Wards as shown below:

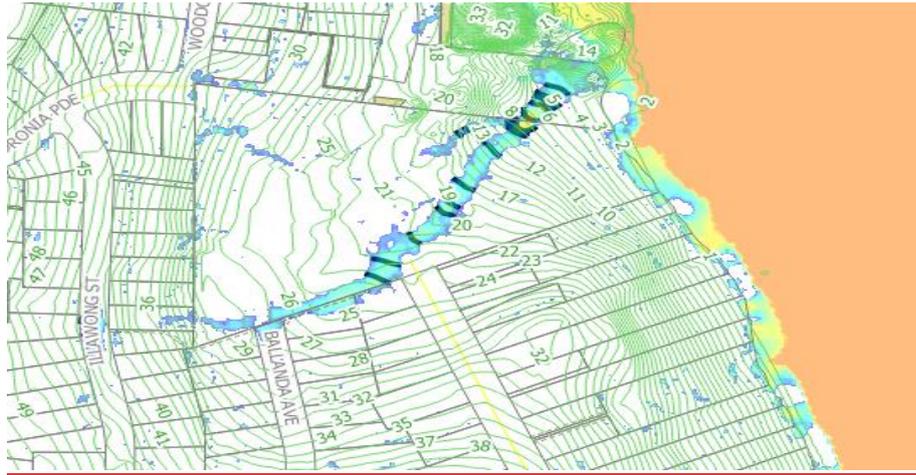


Figure 16: 1% AEP flood inundation extent through subject property (from SMEC prepared Overland Flow Flood Study for Hurstville, Mortdale and Peakhurst Wards)

- (c) The primary site flood inundation mechanism is overland flow from local upstream catchment (16.67 hectare), draining through the Site. The flood waters that enter via North-Western and Southern Boundaries Flows and travel generally along the low point routes of the watercourse in the eastern portion of the Site (refer to Figure 16 above). With the blockage of these upstream overland flows, these flows would be redirected within surrounding properties thereby cause considerable unacceptable flooding impacts. The future residential development also needs to be considered.
- (d) A diligent overland flow management is required to ensure that the development does not adversely affect surrounding upstream properties or the downstream receiving waters from a flood depth, flow velocity or flood hazard initiated from overland flooding perspectives.
- (e) Local Flood Study needs to be undertaken in accordance with Section 6.11 of Council's Stormwater Management Policy to identify upstream overland flow-initiated flood impacts and provide measures to manage safe passage of overland flow conveyed through the subject Site. An overland flow path impact assessment is required from flood study, which identifies extent of overland flow paths through the Site which would be required to be managed in order to ensure that the proposed development does not adversely create flooding impacts upon surrounding upstream properties including the development.
- (f) This Local Flood Study should investigate the effects of the proposed development on existing and developed scenario flow paths and flood levels within the Site, surrounding lots and upstream areas by using two dimensional TUFLOW flood modelling software.
- (g) The proposed development effectively removes the full extent of the natural watercourses within the Site, an unacceptable environmental and possibly heritage impact in itself. Proper investigation and design assessment options and impacts are required with respect to the extent of watercourses with 1% AEP event conveyance and subsequently to be reconstructed and/or rehabilitated including the requirements with respect to their width, profiles and construction specifications. Provision to allow for maintenance of the watercourses has not been addressed and is required to be. Existing and future drainage assets need to be identified and legal rights considered (*Local Government Act 1919, s53*).

- (h) The status of the existing creek / watercourse needs to be established to facilitate consideration of the associated legal and practical ramifications.

(B) STORMWATER

The proposed stormwater and drainage design and arrangement is non-compliant and unsatisfactory and will adversely affect the immediately adjoining area and foreshore. Further information is required to enable a proper assessment of the proposed stormwater management at the Site.

Particulars

- (a) Council's mapping indicates that there are existing Council drainage networks system that enter and discharge into downstream natural watercourses within the Site. These systems include street drainage pipes carrying considerable flows within the Site from Boronia Parade and Ballanda Avenue in the South, and another system at the Northwest from Boronia Avenue and Woodcliff Parade (refer to Figure 16). All existing drainage systems and watercourses within the Site and surrounding the Site are to be shown on a detailed surveyed including pits, pipes, outlet structures, and detail of all existing watercourses including cross sectional profiles. The detailed survey is to also define any existing drainage easements within the Site.
- (b) Relocation of the existing sewer traversing the property will be required to reduce the steep batters onto some lots and to remove the sewer from the proposed road pavement. Again, future house locations are necessary.
- (c) The DA proposes part of the public drainage system to be built on proposed lots 7, 8, 9, 17, 18, 29 and 30. All of the public drainage system needs to be built within the road reserve and dedicated drainage reserves with overland flow conveyance capability. Any proposed drainage reserves will need to be assessed for the feasibility of undertaking future reconstruction, repairs and other maintenance including with respect to their width, layout and designed levels.
- (d) The proposed stormwater and drainage design fails to comply with section 4.5 of Council's Stormwater Management Policy, 2020.
- (e) The proposed stormwater and drainage design does not incorporate Water Sensitive Urban Design.
- (f) Insufficient information has been provided to ensure that compliance with the Water Quality requirements performance criteria in accordance with Section 7 of Council's Stormwater Management Policy can be met.
- (g) The stormwater design fails to satisfy the design requirements and provisions in Section 3.7 of the HDCP.
- (h) The proposed design does not provide piped drainage system designed for at least 5% AEP flood event and for all overland flows in the 1% AEP flood event (in excess of pipe capacity). No analysis of 1%AEP flood flows from upper Boronia Parade into Lot 8 has not been provided.
- (i) No overland flow path from Upper Boronia Parade has been provided.
- (j) No overland flow path from the sag point in the proposed extension of Boronia Road has been provided.

- (k) Water quality modelling has not been provided.
- (l) A gross pollutant trap has not been provided.
- (m) Outlet scour protection modelling has not been provided.
- (n) Consent has not been provided by the downstream owner to accept the outlet flows in the location shown on the plans.
- (o) The proposal is not acceptable in that it would unreasonably obstruct the ability of Council to carry out any necessary reconstruction, repairs and other maintenance to the piped system within No. 18 Ballanda Avenue and 37 Boronia Parade. A practical proposal to have this drainage system fully diverted to be within a Drainage reserve within No. 80 Boronia Parade may need to be considered.

7. TRAFFIC, ROAD DESIGN AND PARKING

The proposed design of the roads and associated infrastructure services fails to comply with Council's requirements and Australian Standards. It is non-responsive to site constraints and will result in significant adverse environmental impacts. The development fails to provide adequate access arrangements to each new lot and the proposed roads and associated infrastructure are non-compliant with Australian Standards alternative less impactful vehicular access has not been assessed. The plans are unclear as to access proposed between Bayside Drive and the internal road which is proposed to connect to Boronia Parade.

Particulars

- (a) The proposed development and its associated design fail to achieve compliant driveway gradients and access arrangements to each allotment in accordance with the provisions of Part 3.1 of the HDCP. Confirmation of Site entry and driveway grades is required to ensure compliance with AS2890.1 and to ensure access is available onto all proposed lots and to identified dwelling site location. The applicant must demonstrate that a fully compliant driveways can be provided to each lot in accordance with AS2890.1-2004. Various lots including 6, 7, 8, part 9, 30 and 31 have very steep topography which may preclude access in accordance with AS2890.1.
- (b) The proposed access arrangements and new roads fail to satisfy the provisions of Council's road design requirements (refer to Part 3.2 of the HDCP).
- (c) The design fails to show the location of footpaths, gutters and associated public infrastructure.
- (d) The proposed subdivisional road and footpath planning is incomplete and lacks important details with respect to the ability of the road and footpath to comply with Council's road design requirements and to accommodating vehicular access requirements generally (including waste collection and emergency vehicle access) and for individual lots. The road, footpath and road verge details are necessary to enable a proper assessment of the DA.
- (e) The DA fails to confirm how waste management vehicles will service the Site.
- (f) The applicant has not confirmed any details with respect to the road reserve connection (including road carriageway width, verge widths and footpath provision) linking Boronia Parade to Bayside Drive. The Public Reserve may require a re-classification to Operational and management plan reviewed and required.

- (g) No tree removal and impact assessment in accordance with the Australian Standards has been provided.
- (h) The design of the extension of Boronia Parade causes undesirable steep batters on the downhill side of the road with associated environmental impacts.
- (i) Pedestrian access grades have not been provided to the pathway between Balanda Avenue and Boronia Avenue.
- (j) The extension of Boronia Parade through the RE1 public reserve land will require tree clearing for roadworks and batters. The proposed plans do not show any details of these works.
- (k) Erosion and sedimentation plans are inadequate and require more detail to even enable assessment.
- (l) Proposed building envelope plan does not show contours or trees to be removed. The envelopes appear to require the removal of most trees on most of the lots.

8. INTEGRATED REFERRAL MATTERS

The DA should be refused because the following agencies have refused to give general terms of approval or general terms of approval has not been provided in circumstances where those approvals are required pursuant to s4.46 EPA Act.

Particulars

- (a) General terms of approval under s205 *Fisheries Management Act, 1994* have not been provided.
- (b) Heritage NSW has refused to give approval under s58 *Heritage Act, 1977*.
- (c) General terms of approval under s90 *National Parks & Wildlife Act, 1974* have not been provided.
- (d) General terms of approval under s89, 90 and 91 *Water Management Act, 2000* have not been provided.

9. IMPACT ON NEIGHBOURS AND THE PUBLIC INTEREST

The development proposed and following will have adverse impacts on the amenity of neighbouring residents having regard to the above contentions 1, 2, 3, 4, 6 and 7. The DA should be refused because it is not in the public interest having regard to the contentions raised above and concerns raised in the 250 submissions received by the Respondent and/or any other matters the Court finds determinative of the application. The concerns identified by submitters can be largely categorised as follows:

- (a) Destruction of History and Culture of Site

Particulars

- (i) Development will result in the demolition of a 110-year-old settlers' cottage, stone pathways and gardens;

- (ii) Property has been recognised by the National Trust (NSW) as a site of historical significance;
- (iii) Property contains Aboriginal carvings and middens. The proposed development does not seek to preserve these.

(b) Development will cause great harm to the environment and ecology of the Site

Particulars

- (i) Proposed removal of some 200 mature trees from the Site will result in loss of habitat of native fauna and will threaten endangered species;
- (ii) Will create stormwater and pollution issues from runoff into the Georges River. This may also cause damage to estuarine ecosystem (including oysters);
- (iii) Removal of some 200 established trees will lead to less green space and less carbon capture which will result in climate change.

(c) Overdevelopment / Overcrowding

Particulars

- (i) The proposed development contains 31 lots. A number of the lots are less than the minimum lot size as proposed in the Draft Georges River LEP;
- (ii) Does not seem to be adequate vehicle access or infrastructure for a development of 31 lots;
- (iii) Development will result in the loss of green space including gardens and public access to the Georges River from the Site.

(d) Increased traffic volume / Parking / Inadequate Road System / Pedestrian Safety

Particulars

- (i) The road access into Lugarno is currently very congested. There is no provision to widen roads or provide alternate access. Such dense housing will cause greater congestion of the existing road system in Lugarno;
- (ii) Street parking and parking at the shops is currently scarce. This will become worse if the development proceeds.
- (iii) There could be increased risk for access in emergency situations;
- (iv) Currently a very quiet area without dedicated footpaths. Additional traffic could result in issues regarding pedestrian safety.

10. INADEQUATE AND INACCURATE INFORMATION

There is insufficient information provided to assess the DA and determine it by way of approval.

Particulars

- (a) A Biodiversity Development Assessment Report is required to be prepared and submitted in accordance with the Biodiversity Conservation Act 2016.
- (b) A detailed Aboriginal Cultural Assessment report is required to satisfy the provisions of Clause 5.10 of the HLEP and the Heritage Act, 1977.
- (c) In accordance with the recommendations of the Preliminary Site Investigation Acid Sulphate Soils assessment report as there is potential for ASS to be located within the development Site.
- (d) In accordance with the recommendations of the Preliminary Site Investigation a Detailed Site Investigation report is required in order to satisfy the provisions of SEPP No.55 and ensure the Site is not contaminated and is suitable for its intended use.

- (e) A detailed Heritage Impact Assessment report is required in accordance with the provisions of Clause 5.10 of the HLEP as the Site is located within the vicinity of a series of designated Heritage Items and the Site exemplifies an important cultural association with the suburb of Lugarno being acknowledged by the National Trust as an Early Settler Precinct.
- (f) Insufficient information has been provided to enable a proper consideration of whether the proposed development will have an adverse effect on oyster aquaculture development as required pursuant to clause 29 of the *State Environmental Planning Policy (Primary Production and Rural Development) 2019*.
- (g) The DA has not sufficiently dealt with or addressed the planning principles in the *Greater Metropolitan Regional Environmental Plan No.2 - Georges River Catchment* and it is considered that having regard to the matters raised in these contentions the DA should be refused as those principles are not met.

Traffic

- (h) It is not confirmed that the design of the proposed new roads, access and gradients for each new lot complies with AUSROADS requirements and Australian standards. Proposed access arrangements will also need to ensure they comply with emergency service requirements and satisfy waste management requirements.
- (i) It is unclear whether the proposed new road extension of Boronia Street is intended to connect through to Bayside Drive. If the proposal includes this physical connection, it will be traversing Heinrich Reserve and those works will need to be appropriately detailed and include ownership details and relevant consent.

Trees - vegetation

- (j) The Arborist report requires updating to reflect the potential additional tree loss that is proposed as a result of the future building envelopes being shown on the subdivision plans.
- (k) Amended building envelope plan showing contours and trees to be removed.
- (l) A tree removal plan is required to be provided.

Engineering

- (m) An accessibility report is required to be provided.
- (n) The DA should be refused as the subdivision pattern and connections relies upon, without any agreement of the owners nor consideration of permissibility and presupposes, an extension of Boronia Parade over Council owned land zoned RE1 Public Recreation, as confirmed in the Statement of Environmental Effects (page 5). Electricity infrastructure appears to be proposed to be constructed on Lot 1 in Deposited Plan 793262 which forms part of Heinrich Reserve. Heinrich Reserve is classified community land and the relevant Plan of Management and Local Government Act requirements.
- (o) An amended erosion and sediment plan is required to be submitted.
- (p) A detailed survey showing all existing drainage systems and watercourses within the Site and surrounding the Site including pits, pipes, outlet structures, and detail of all existing watercourses including cross sectional profiles. The detailed survey is to also define any existing drainage easements within the Site. These requirements have not been adequately addressed by the submitted information.
- (q) DRAINS modelling to be undertaken and provided to Council for the proposed drainage system. Design and hydrologic and hydraulic analyses must be provided to validate drainage design documentation.

- (r) A MUSIC model assessment report is required to be submitted identifying appropriate locations, performance and design details for the installation of stormwater treatment train measures including trash racks, gross pollutant traps, bio-retention basin or a wetland along the public drainage system to prevent pollutants being discharged to waterway downstream. It will require that there is adequate access to these devices for their cleaning and maintenance. The model is to assess the adequacy of proposed stormwater treatment measure to satisfy water quality objectives prior to stormwater runoff leaving the Site and will not worsen downstream water quality.
- (s) A diligent overland flow management is required to ensure that the development does not adversely affect surrounding upstream properties or the downstream receiving waters from a flood depth, flow velocity or flood hazard initiated from overland flooding perspectives.
- (t) A Local Flood Study is to be undertaken in accordance with Section 6.11 of Council's Stormwater Management Policy to identify upstream overland flow-initiated flood impacts and provide measures to manage safe passage of overland flow conveyed through the subject Site.
- (u) An overland flow path impact assessment is required from flood study, which identifies extent of overland flow paths through the Site which would be required to be managed in order to ensure that the proposed development does not adversely create flooding impacts upon surrounding upstream properties including the development.
- (v) A Slope Stability Assessment is required to be provided as the proposed subdivision includes lots which dip down from the western boundary to eastern side at an angle of 10–20 degree sloped land.
- (w) The proposed development fails to demonstrate that there will be no adverse impact on the Estuarine Mangrove Forest by sediment, stormwater run-off and potential erosion.
- (x) Given the issues raised with respect to flooding, stormwater and wetlands a proper assessment against the principles under the Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment.

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP):

- (y) The DA should be refused as it is not supported by sufficient information to enable the consent authority to be satisfied of the matters that it is required to be satisfied of under clauses 11, 13 and 14 of State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP):

Particulars

- (i) The eastern portion of the Site is mapped as being within proximity to coastal wetlands as a wetland adjoins the Site at the north-eastern boundary as shown below. Pursuant to clause 11 of the Coastal Management SEPP development consent must be granted to development on land identified as 'proximity area of coastal wetlands' unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*
- (ii) The information provided in support of the DA provides insufficient information to enable the consent authority to be satisfied under clause 11 of the Coastal Management SEPP.

- (iii) The eastern portion of the Site is also mapped as coastal environment area. Clause 13(2) of the Coastal Management SEPP provides that development consent must not be granted to development on land to which clause 13 applies unless the consent authority is satisfied that the development is designed, sited and managed to avoid, minimise or mitigate impacts on:
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*
- (iv) The consent authority cannot be satisfied that the development is designed, sited and managed to avoid, minimise or mitigate impacts on:
- A. Marine vegetation, as the Biodiversity Assessment Report confirms that mangrove vegetation PCT 920 will be impacted and no mitigation measures to protect it have been proposed (see contention 3); and
 - B. Aboriginal cultural heritage, practices as a proper assessment of these matters has not been carried out (see contention 5A).
- (v) The eastern portion of the Site is mapped as a coastal use area. Clause 14(2) of the Coastal Management SEPP provides that the consent authority must not grant consent to the development unless it is satisfied that the development is designed, sited and managed to avoid adverse impacts, minimise impacts or mitigate impacts on:
- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
- (vi) The consent authority cannot be satisfied that the development is designed, sited and managed to avoid, minimise or mitigate impacts on:
- C. The visual amenity and scenic qualities of the coast as the subdivision pattern facing the waterfront will result in development

of a scale that will affect the visual amenity and scenic qualities of the coast (see contention 4); and

- D. Aboriginal cultural heritage, practices as a proper assessment of these matters has not been carried out (see Contention 5A).
- (z) The proposed development fails to satisfy the provisions of the Coast Management SEPP (see contention 3).

Contentions that may be resolved by conditions of consent

11. Nil.

SIGNATURE



Signature

Name

Ryan Cole

Capacity

Manager, Development & Building,
Georges River Council

Date of signature

31 August 2021