



# Special Planning

31/03/2008 **PLN123-08**

**Kurnell Open Space Feasibility and  
Voluntary Planning Agreement**

**File Number: LP/06/440271**

**Director: Environmental Services (MC)**

**Councillor Comment:**

## ▼ Report Item


### REPORT IN BRIEF

#### Purpose

The purpose of this report is to outline the results of investigations and negotiations by Council officers on the proposed offer by Australand and Breen Holdings to dedicate open space and provide playing fields in conjunction with a proposed residential rezoning of part of their landholdings on the Kurnell Peninsula.

This report and presentation by the landowners brings Council up-to-date with the proposal and negotiations.

#### Summary

On 10 December 2007 Council considered a presentation and report (PLN078-08 ) in relation to a request by Australand and Breen Holdings to amend Sydney Regional Environmental Plan No. 17 – Kurnell Peninsula (SREP 17) in order to rezone land for single lot residential development, to dedicate land to Council as open space and provide ten (10) playing fields and associated facilities to Council in lieu of Section 94 contributions. At that meeting Council indicated its desire to seek community input on the proposal and gave its support in principle, to the concept put forward subject to a number of issues being resolved.

The General Manager and Senior Council Officers are part way through a detailed analysis of the proposal to ensure that it is feasible and that the environmental outcomes and recreational opportunities facilitated by the rezoning are in the public interest. Extensive investigations have been undertaken to ensure that the proposed offer to dedicate open space and construct playing fields is realistic, and that there are appropriate legal requirements to secure the delivery of the project.

The investigations have lead to the development of a masterplan which, subject to a final detailed geotechnical report, is achievable. All considerations identified by Council have been investigated, however at the time of preparing this report, the following matters remain outstanding :

- final geotechnical report;
- final voluntary planning agreement;
- timing of the projects.

Preliminary geotechnical investigations have identified that majority of the site has been filled. Some of the site is known not to be currently sufficiently stable in the long term to accommodate playing fields, roads or amenities buildings. However, the preliminary geotechnical investigations also indicate that large areas are not currently sufficiently compacted to provide an adequate base for playing fields and other infrastructure.

The masterplan has gone through a series of refinements to confine the major infrastructure works to land that is on solid fill, relatively flat and free from easements for water or electricity. The latest draft masterplan, attached to this report (Appendix A) represents the current offering being made by Australand and Breen Holdings.

The draft masterplan proposes eight (8) fully finished playing fields (lighting, irrigation, and drainage), two (2) training fields with partial lighting, parking for 436 vehicles, overflow parking for a further 150 vehicles, three (3) amenities buildings, an extensive system of pedestrian and bicycle paths and over 33 additional hectares of revegetated coastal bushland. The two (2) training fields are located on land where the current nature of the landfill will result in differential settlement over time. The current proposal precludes a high quality surface being achieved in the long term.

Preliminary investigations have lead staff to believe that there is an engineering solution that would result in the two (2) training fields being constructed in a manner that would ensure that they were capable of being used for competitive sport, bringing the total number of playing fields to ten (10) as previously proposed to Council. Such a solution would result in additional construction cost that would need to be borne by Australand and Breen Holdings. It is recommended that the inclusion of 10 playing fields in the final draft masterplan be a condition of Council's agreement to move forward with the proposed zoning amendment required to facilitate the residential proposal.

The landowners have been requested to provide a more extensive geotechnical investigation of the whole of the site to ensure that there are no long term stability issues that would lead to unanticipated costs to Council in the future. The investigation should also investigate the potential engineering solutions available to facilitate the provision of originally proposed ten (10) playing fields. The results of this investigation were not complete at the time of writing this report. Consequently the recommendation of this report is conditional upon the General Manager, Director-Engineering and Manager-Environmental Science being satisfied in regard to geotechnical issues.

A draft Voluntary Planning Agreement is still being negotiated which identifies the full extent of the offer and secures the delivery of the project. However, its content cannot be finalised until the full geotechnical study is completed. The Environmental Planning and Assessment Act, 1979 requires the Voluntary Planning Agreement to be exhibited for public comment. This should occur at the same time as the amendment to SREP 17 and the masterplan for the open space precinct

In summary, Council officers have concluded that subject to detailed geotechnical investigations establishing that all ten playing fields can be delivered in a manner that will ensure the facilities are to the standard provided at The Ridge and that geotechnical conditions at handover will be such that Council will be protected from abnormal maintenance costs, the proposal is achievable. It will deliver a high quality recreational resource to Sutherland Shire, while securing significant environmental gains for the Kurnell peninsula. The playing fields and any future residential development will reuse water from Cronulla Sewerage Treatment Plant. As such, the proposal is considered to be

in the public interest provided the detailed geotechnical report and the final Voluntary Planning Agreement are both acceptable. Once these are resolved it is recommended that the proposed residential rezoning and open space rezoning should proceed to public exhibition so that Council can consider community input. Given that there remains outstanding issues at this point in time it is recommended that a further report be submitted to Council on 7 April 2008 addressing issues outstanding at this time and advising whether Council is in a position to exhibit the proposal for comment from the community.

In accordance with Council's previous resolution (PLN078-08), this will require Council to formally request the Minister of Planning to prepare and exhibit a draft amendment to Sydney Regional Environmental Plan No. 17 - Kurnell Peninsula, the draft final masterplan and the Voluntary Planning Agreement.

This report brings Council up-to-date with the proposal and negotiations. A further report is proposed for the Council on 7 April 2008.

## **REPORT IN FULL**

### **Background**

On the 10th December 2007 Council considered a presentation and report (PLN078-08) in relation to a request by Australand and Breen Holdings to amend Sydney Regional Environmental Plan No. 17 – Kurnell Peninsula (SREP 17) to rezone land for single lot residential development, dedicate land to Council as open space and provide of 10 playing fields and associated facilities to Council in lieu of Section 94 contributions.

Australand and Breen Holdings seek the rezoning of 33 hectares of land to permit single lot housing. This land comprises the area of the approved industrial subdivision on the Australand site, and the Breen Holdings land bounded by Bate Bay Road, Cronulla High School and the Australand site. Council has indicated initial support for the proposal on the 15th May 2006 (ENV046-06) and 10th December 2007 (PLN078-08).

Australand currently has an approved industrial subdivision for its site. That approval required 42 hectares of open space being dedicated to Council for conservation purposes; this includes the State Heritage listed dune. The residential proposal also includes this same area of open space. In addition, the current offer includes the dedication to Council of an additional 49.4 hectares of land for open space and conservation purposes.

The initial offer made to Council included the provision of ten fully constructed playing fields, internal roads, car parking areas, three amenities buildings, large areas of revegetation and compensatory habitat. The playing fields are proposed to be provided in a staged manner as landfill activities are completed.

The 91.4 hectares of open space and the construction of a new concentration of playing fields and associated facilities will create a regionally important recreational resource for the Sutherland Shire. Participation in organised sport continues to grow in the Shire. It will also provide a valuable passive recreation and picnic area, with access to extensive walking and cycling tracks, and provide dramatic views for users over both Botany Bay and Bate Bay. Council cannot provide this scale of facility elsewhere in the Shire, particularly given the limited availability of large areas of level land and financial limitations. Furthermore, once constructed and dedicated, the area may provide opportunities for other recreation pursuits. These could be considered as part of an

ongoing improvement program by Council for the park and subsequently be detailed in a plan of management.

The 91.4 hectares of open space will create a green corridor that will link the RAMSAR listed wetlands at Towra Point to the north, Quibray Bay, Woollooware Bay, Charlotte Breen Reserve, and the State Heritage listed dune with Lucas and Wanda Reserves fronting Bate Bay to the south. This will have significant benefits for remnant vegetation, threatened species and provide habitat corridors on contiguous land, including habitat for the endangered Green and Golden Bell Frog. This in itself is a very significant environmental outcome. The 91.4 hectares of open space will significantly improve the visual quality of the peninsula. For many years this area has been visually degraded by sand mining and landfill activities. Here is an opportunity to create a more natural landform with revegetation that will improve the scenic quality of the area.

However, Council's support for the proposal was conditional upon a number of matters being satisfactorily addressed (10th December 2007 PLN078-08). Council resolved the following:

- 1. That in this matter Council will welcome community input and will take that into consideration through the process.*
- 2. That Australand and Breen Holdings be advised that Council supports in principle the direction of the proposed rezoning of the Kurnell Peninsula between Bate Bay Road and Lindum Road, and the General Manager be directed to carry out detailed analysis of the offer being put forward by Australand and Breen Holdings and specifically ensure:*
  - (a) That ten playing fields can be provided on the land given the environmental, geotechnical and topographical constraints and the stability of landfill, within the \$12.5 million monetary ceiling set by Australand and Breen Holdings in their letter of 10 December 2007.*
  - (b) That a landscape/facilities master plan is prepared for the site which demonstrates that the playing fields will form part of a quality recreational facility.*
  - (c) That a detailed geotechnical investigation is carried out to ensure the facilities are not subject to long term subsidence.*
  - (d) That a solution can be found to the short term conflict between truck movements and users of the proposed open space.*
  - (e) That a safe vehicle and pedestrian access can be provided to the site.*
  - (f) That adequate car parking can be provided.*
  - (g) That the conditions of all previous development applications on the land are fully explored to determine how the conditions of consent affect the proposal.*
  - (h) That Australand and Breen Holdings carry out detailed research on the existence of any threatened species or communities that may jeopardise the achievement of the playing fields.*
  - (i) That the extent of revegetation and compensatory habitat to be carrying out by Australand and Breen Holdings be determined.*
  - (j) That the master plan specifically examines how the playing fields could be brought forward so that they are delivered earlier.*

- 3. That subject to the issues identified in 2 being resolved, the General Manager prepare*

*a draft voluntary agreement in accordance with Section 93F of the Environmental Planning and Assessment Act 1979 to deliver the public benefit as offered by Australand and Breen Holdings.*

*4. That in order for Council and the Minister for Planning to gauge community opinion on the future of the Kurnell Peninsula, the Minister for Planning, the Hon. Frank Sartor MP be requested to exhibit an amendment to Sydney Regional Environmental Plan No. 17 as follows:*

- (a) That in relation to the land owned by Australand (Lot 113 DP777967), that the 19.9 hectare site of the Land and Environment Court approved industrial subdivision be zoned Residential and the remaining 42 hectares be zoned Existing Open Space, and that the two smaller parcels adjacent to Captain Cook Drive with a combined area of approximately 7 hectares also be zoned Public Open Space (Lot 111 DP777967 and Lot 2 DP1101922).*
- (b) That in relation to the land owned by Breen Holdings and Consolidated Development, that the land parcels comprising approximately 13 hectares adjacent to Cronulla High School and Bate Bay Road (being Lot 22 DP226424, Lot C DP370539 and Lot 116 DP 777967) be zoned Residential; that the land parcels identified as A, B, C and D in Annexure C to Australand and Breen Holdings letter of 29 November 2007 be zoned Existing Open Space.*
- (c) That in order to base the draft Residential zone on the strictest environmental objectives and the following development standards:*

*Minimum lot size - 550sqm*

*Maximum floor space ratio - 0.55:1*

*Minimum landscaped area - 40%*

*Front building setback - 6.0m*

*Maximum ceiling height - nil*

*Maximum roof height - 9m*

*The use of grey water*

- (d) That the initial support for the matter proceeding to public exhibition is conditional upon recycled water being provided to the residential precinct and proposed playing fields and recreational facilities such as walking and cycling tracks being provided in Wanda Reserve.*

*5. That the Minister for Planning, the Hon. Frank Sartor MP be requested to defer exhibition of the amendment to SREP 17 until a draft voluntary agreement, prepared in accordance with Section 93F of the Environmental Planning and Assessment Act 1979, has been endorsed by Council so that it can be exhibited concurrently with the amendment to Sydney Regional Environmental Plan No. 17. Further, the Minister shall be advised that Council requests this on the basis that it currently has reservations that the public benefit described in Australand and Breen Holdings' letter of 29 November 2007 can be delivered and further analysis is essential before this concept is presented to the community for public comment.*

*6. That Council staff work with representatives of Australand and Breen to prepare a draft landscape/facilities master plan to be completed by 28 February 2008 and submitted to Council prior to Council indicating it is satisfied that the exhibition of the*

*proposed amended to SREP 17 should proceed.*

*7. That the cost of the landscape/facilities master plan be met by Australand and Breen.*

*8. That draft landscape/facilities master plan be exhibited in conjunction with proposed amendment to SREP 17 should it proceed.*

*9. That the Minister for Planning, the Hon. Frank Sartor MP be requested to allow Council to consider all submissions received during the exhibition of the amendment to SREP 17 with Council providing a report to the Department of Planning on the submissions received and its decision as to whether the rezoning request should proceed or how it should be altered in relation to the issues raised in submissions.*

*10. That at the earliest possible time, Council forms a Working Party of interested residents and community groups within the Sutherland Shire, in order to provide community input into the design of the proposed playing fields.*

### **Outcomes of Investigations and Negotiations**

The General Manager and Senior Council Officers have met weekly with the proponents of the project in a co-operative effort to arrive at a masterplan that meets the principles of Councils resolution. Detailed analysis has been carried out of the offer being put forward. The results of the analysis are summarised as follows:

*(a) That ten playing fields can be provided on the land given the environmental, geotechnical and topographical constraints and the stability of landfill, within the \$12.5 million monetary ceiling set by Australand and Breen Holdings in their letter of 10 December 2007.*

The proposed open space land is subject to a number of significant constraints which any future use of the land must allow for. The site is traversed with easements for electricity and water and there are other caveats on part of the site. Playing fields, roads and amenities facilities must not encroach on these easements. Minor easements are currently in the process of being removed from the title of the land, however, the easement for the electricity transmission line will remain and a Sydney Water easement adjacent to Captain Cook Drive must also be respected. Breen Holdings have assured Council that other encumbrances are in the process of being removed. The land also contains some remnant vegetation which is ecologically significant and must be preserved.

In addition, the majority of the proposed land to be dedicated as open space has been subject to sandmining to below the water table and refilled with waste building materials. The filling of the land is governed by the conditions of a development consent which establishes how the fill is to be compacted on site and the final ground levels upon the completion of work. Essentially the final fill levels establish contours similar to dune landforms which would have existed prior to sandmining. The approved compaction rates are based on the land simply being revegetated at the completion of the landfill operations with no end use of the land being anticipated. As a result the level of compaction has probably been to a lesser standard than would be required if the end use of the site was to include buildings and infrastructure (the actual compaction of the filled material is to be established through a detailed geotechnical assessment of the site).

The key constraint to the development of the site for playing fields is the ability to

establish large areas of level land that will have a sufficiently stable land mass to support construction. Essentially landfill can be of a solid nature where virgin excavated natural materials (VENM) are deposited and compacted to produce a firm foundation equivalent to a natural ground surface, or it can consist of a variety of organic and manufactured materials mixed with natural materials. When landfill consists of mixed materials it is subject to differential settlement. While it can be compacted, materials will continue to break down over time, which will produce voids within the subsoil leading to subsidence at ground level. For example, some timber and metals decays very slowly over time and as such the voids occur long after the landfill and compaction phase is complete. Engineering solutions can however, affect the rate and impacts of such compaction.

The investigations that have been carried out since Council's resolution of 10 December 2007 have sought to find the optimal layout for ten (10) playing fields and associated infrastructure, within the constraints of the site. Clearly, as a large portion of the site consists of a large hill of landfill, this area is incapable of providing sufficient level land for sporting fields. Also the heritage dune and other ecologically significant areas must be protected. The potential to achieve playing fields is essentially confined to those parts of the site that have not yet been mined, have been filled and appropriately compacted or have been filled and can be appropriately treated. In these areas it is possible to make level playing surfaces at appropriate levels by filling the areas with virgin excavated natural materials (VENM).

Since Council's resolution of 10 December 2007 the proponents and Council Officers have worked through a number of masterplan layouts. The proponents' landscaped architects have developed a number of potential layouts which have been refined with input from the group. The masterplan adjusts the profile of currently approved landfill program to ensure level spaces are created for the ten (10) fields. While the conditions of development consent for the existing landfill operations would require modification to achieve this, the revised levels do not raise any obvious planning or environmental issues.

Initially a masterplan was developed which provided ten (10) high quality playing fields in a workable and desirable arrangement, with Council Officers being satisfied that the requirements set in Council's previous resolution were well satisfied. However, preliminary geotechnical investigations have since been received which identified parts of the site that are not currently sufficiently stable in the long term to accommodate playing fields, roads or amenities buildings.

Given this geotechnical advice, the masterplan has gone through a series of further refinements to confine the major infrastructure works to land that is on solid fill and free from easements for water or electricity. The draft masterplan (which will be separately circulated to Councillors) represents the latest offering from the land owners. The latest masterplan proposes to deliver eight (8) fully finished playing fields with lighting, drainage and irrigation with recycled water, two (2) training fields with partial lighting, parking for 436 vehicles, overflow parking for a further 150 vehicles, three amenities buildings, an extensive system of pedestrian and bicycle paths and 72.3 hectares of coastal bushland and wetland (including 33.4 hectares of revegetation and a new wetland which will be created as habitat for the green and golden bell frog). Run off will be managed on site through constructed wetlands and vegetated swales. The specification which sets the standard of construction for the playing fields and amenities buildings has been based on the new fields provided at The Ridge facility.

The proponents have specified that two of the fields be training fields because the existing fill profile is such that differential settlement will occur, and a high standard of finish cannot be achieved to the two playing fields in question, nor can subsoil infrastructure be installed. However, preliminary investigations by Council officers suggest that engineering solutions can be found to ensure the final landform and construction methods provide an acceptable standard of competition sporting field, albeit at additional construction costs. As such, it is recommended that Council should insist on the provision of the ten (10) playing fields originally put forward by the proponents. This will be made a condition of the zoning amendment proceeding.

Australand and Breen Holdings have agreed to remove the cost ceiling from the Voluntary Planning Agreement. Instead, they agree to carry out site works shown on the masterplan, including the construction of the fields, parking areas, amenities buildings and associated infrastructure. It will also absorb the cost of revegetation and the construction of walking and cycle tracks. The cycle tracks will be surfaced in crushed sandstone to allow for land settlement, rather than being sealed with concrete. While this will not allow a full range of cycle activities, it will create a surface similar to fire trails which are well suited to off road and recreational use.

The fields will be irrigated using treated water from the Cronulla Sewage Treatment Works.

### **Field 1**

Field 1 is proposed to be located on a separate parcel of land currently owned by Australand which is located adjacent to Lindum Road and Captain Cook Drive. On the recommendation of Director-Community and Recreation Services this has been designed as a baseball field which is well suited to a stand alone facility. This field will be provided with safety fencing (fly nets), an amenities building and a car park for 68 vehicles. It will be provided with lighting, drainage and irrigation with recycled water. The surrounding land will contain a grassed area suitable for T-ball with perimeter revegetation of coastal bushland. This area has not been subject to previous filling. As such there are few existing geotechnical constraints. Provided filling and grading are undertaken to appropriate standards the provisions of fields in this area should be free of significant geotechnical constraints.

### **Fields 2 to 10**

The remainder of the fields (2 to 10) are located within a contiguous area bounded by Charlotte Breen Reserve, Captain Cook Drive, the heritage dune and the Breen Holdings land parcel proposed to be retained for long term industrial use. The site is provided with a new industrial standard road entrance off Captain Cook Drive. This entrance will ultimately be share with the industrial use of the Breen Holdings land. This is a desirable arrangement from a traffic management perspective as it minimises entry points onto Captain Cook Drive. It is also efficient because the peak traffic demand from the recreational area will be at weekends while the industrial uses will have weekday peaks.

### **Fields 2 and 3**

Fields 2 and 3 are proposed to be located immediately adjacent to the entrance road, which is the area to the east of the existing Breen Holdings site office. These two (2) playing fields are to be provided with car parking for 80 vehicles and an amenities building. This area will be filled with VENM to create a stable base for the facilities. Both fields will be provided with lighting, drainage and irrigation from recycled water. A wetland is also proposed adjacent to these fields which will provide for on site

management of stormwater run-off as well as creating compensatory habitat for the green and golden bell frog. This area has been subject to previous filling. The nature and extent of the fill is unknown at present. However due to the limited amount of fill in this area and the time since fill placement, geotechnical solutions should be available to overcome potential stability issues.

#### **Fields 4 and 5**

Fields 4 and 5 are located on land currently owned by Australand which is adjacent to the heritage precinct that contains the significant heritage sand dune. It also borders the endangered ecological community containing the Kurnell dune forest. This part of the site currently contains a water filled depression. The conditions of Australand's industrial consent require this area to be filled. The pad for the playing fields will be created using VENM producing a stable land mass for the facilities. Both fields will be provided with lighting, drainage and irrigation from recycled water. In addition to the two playing fields, this area also provides an amenities building, car parking for 112 vehicles and a grassed area for overflow parking for peak sporting events. This parking area will also serve as the starting point for residents to access the extensive system of walking tracks through the ecologically significant areas surrounding the heritage dune as well as the revegetated areas of the site, Charlotte Breen Reserve and Lucas Reserve. This area has not been subject to previous filling. As such there are few existing geotechnical constraints. Provided filling and grading are undertaken to appropriate standards with VENM as indicated, few geotechnical problems are envisaged in this area.

#### **Fields 6, 7 and 8**

Fields 6, 7 and 8 are proposed to be located adjacent to Captain Cook Drive in the same locality as fields 1 and 2. The fields will be provided with lighting, drainage and irrigation from recycled water. The amenities building adjacent to Field 3 is located so that it can also serve these fields. The fields are provided with a parking area for 176 vehicles and a grassed area for overflow parking in periods of peak demand. This area has been subject to previous filling. The nature and extent of the fill is unknown at present, but is known to contain fill other than VENM. Given the limited amount of fill in this area, and the time since fill placement, geotechnical solutions should be available to overcome potential stability issues. However, such geotechnical rectification may be more significant than for fields 2 and 3.

#### **Fields 9 and 10**

Fields 9 and 10 are currently specified as training fields. The area where they are proposed to be located is an area where the nature of the landfilling practices to date will result in differential compaction over time. The fill that has been placed in this area to date contains plastics, timber and steel which will result in an unpredictable settlement period. As a result, if current landfilling practices are continued in this area, it will not be possible to produce a high quality playing surface because depressions will occur in the surface at irregular intervals. This also means that irrigation, drainage and lighting cannot be provided because the infrastructure cannot be installed in unstable ground. However, under current filling practices, the fields would have utility for training and may prove capable of wider use in the future. Some lighting can also be provided from towers on fields 4 and 5.

This proposal, based on current landfilling practices, falls short of Council's expectations that the proponents would provide ten (10) high quality playing fields. However, if landfilling practices are modified, in conjunction with appropriate geotechnical solutions, it is highly likely that a suitably stable surface can be created that would provide for two

(2) high quality playing fields with appropriate infrastructure, such as drainage irrigation and lighting. Modification to landfilling practices may include preferential filling with materials of high bulk density (and low compressibility) such as crushed concrete, brick and tile, to limit degradation of materials within the fill and compaction of fill in layers to limit post fill settlement. Such landfilling and engineering practices will incur additional costs over current filling methods, however they are considered necessary if suitable playing fields are to be delivered in this location.

The Director-Engineering is currently investigating engineering solutions to the differential settlement problem affecting fields 9 & 10. This would improve the utility of the two (2) fields. These investigations will also ensure that outstanding issues associated with the long terms stability of playing fields 2, 3 6, 7, and 8 are also addressed. More information will be provided to Council on this issue when it becomes available.

*(b) That a landscape/facilities master plan is prepared for the site which demonstrates that the playing fields will form part of a quality recreational facility.*

A Landscape Masterplan has been prepared by JMD Design on behalf of Australand and Breen Holdings. Senior Council staff have formed part of the briefing team to the consultant and have assessed the merits of various design solutions as they have been put forward. This approach has seen considerable change to the initial plan put forward. The refinements have enhanced the efficiency of layout, thereby making it a more valuable recreational resource for the community.

The latest draft masterplan proposes the construction of eight (8) playing fields, two (2) training fields, parking for 436 vehicles, grassed overflow parking areas, internal roads, three (3) amenities buildings, lighting, drainage, irrigation with recycled water, the retention and rehabilitation of 30.5 hectares of coastal bushland, 41.8 hectares of revegetation, a new 0.8 hectare wetland, and pedestrian and bicycle tracks providing a network of kilometres of recreational paths.

The draft masterplan for the proposed open space area has sought to maximise the long term recreational value of the space. In total the area to be dedicated under the scheme is 91.4 hectares which is contiguous with Wanda Reserve, Lucas Reserve, and Charlotte Breen Reserve and only separated from Towra Point Reserve by Captain Cook Drive.

The masterplan seeks to develop the site as the access point to these significant recreational resources. In addition to the role of the space as a regionally significant location for team sporting events, the masterplan also recognises the wider recreation value of the locality. The masterplan incorporates a system of extensive walking tracks through revegetated coastal bushland which link to existing tracks through the Wanda Reserve, Lucas Reserve, Charlotte Breen Reserve and the environmentally significant elements of the Australand site, including the heritage dune. These walks will take residents through a diverse range of ecologically significant plant communities and afford spectacular views over Woollooware Bay to the City of Sydney, and of Towra Point itself. It will also provide extensive views over Bate Bay and of the heritage dune. The views alone should result in the site becoming a popular picnic destination. The masterplan provides grassed areas at key viewing points so that Council could further develop this aspect of the park over time.

It is considered that the masterplan seeks to create a quality recreational space that capitalises on its links to the adjoining reserves and ultimately provides far more utility than ten playing fields. The site has the potential to ultimately provide a cycle facilities and provides an opportunity for Council to cater for the growth in cycling as a recreational past time and as a sport in the longer term. As such it is anticipated that the locality will have increasingly wider recreational value over time if the masterplan comes to fruition.

As such, Council can be satisfied that the masterplan will deliver a quality recreational facility that will meet demand for increased access to sporting opportunities and passive recreation across Sutherland Shire. However, Council should insist on suitable filling and completion to ensure fields 9 and 10 are provided as 'proper' playing fields to ensure the full utility of the open space is realised.

*(c) That a detailed geotechnical investigation is carried out to ensure the facilities are not subject to long term subsidence.*

A Preliminary Geotechnical Investigation of the site has been prepared for the proposal by Consulting Earth Scientists. While the geotechnical report is largely a desktop report with no on the ground testing of the site, it does highlight significant potential for ongoing issues with subsidence and the long term stability of the land. Specifically the report concludes *"The principle geotechnical constraint for the proposed development is differential settlement as the fill / waste consolidates which results in an undulating ground surface and will impact directly on the proposed facilities buildings, roads and car-parks. The playing fields will be affected to a lesser degree; however, these undulations may eventually become so problematic such that the fields are deemed unplayable and even unsafe by the users."* A range of potential management options are also identified within the report.

Since this report was received the latest draft masterplan has been prepared. The current layout attempts to confine the playing fields onto locations where it is understood that VENM has been used as fill. However, to date Council does not have adequate assurances that this is the case. Council staff have requested further detailed geotechnical information, including field testing of the site, in order to better understand the nature and extent of the geotechnical issues associated with the proposal.

The results of this investigation were not complete at the time of writing of this report. As such Council cannot be satisfied at this point in time that the transfer of land to Council and its embellishment is in the public interest.

A draft Voluntary Planning Agreement has been prepared which identifies the full extent of the offer and secures the delivery of the project. However, the principles of the agreement cannot be finalised until the full geotechnical study is finalised and a number of other matters are agreed. The content of the Voluntary Planning Agreement will be reported to Council once all issues are resolved.

*(d) That a solution can be found to the short term conflict between truck movements and users of the proposed open space.*

Vehicle conflict between trucks, heavy vehicles and users of the open space clearly requires management because the playing fields of the early stages of the project will be made available to the public while filling operations are in progress. Every effort is being

made with the latest draft masterplan to ensure the timing of the works are such to ensure that no conflict will exist at the various stages of construction. In the event that this cannot be achieved the proponents have proposed a bebo arch as a solution. A bebo arch is essentially a bridge which provides a tunnel below. This solution would allow heavy vehicles to move at a lower level than cars, thereby avoiding conflict.

To date, final detail as to the timing of the works is yet to be agreed. As such, this matter is yet to be resolved. However, Council can be satisfied that acceptable solutions to traffic conflict can readily be achieved.

*(e) That a safe vehicle and pedestrian access can be provided to the site.*

Council's Engineering Division is satisfied that a safe vehicle and pedestrian access can be provided to the site. Throughout the design process Council Officers have sought to achieve road and parking layouts that minimise the potential for conflict. This has ultimately resulted in the location of all parking in designated parking areas, rather than along the edges of the internal roads. This minimises the potential for conflict between pedestrians and vehicles. The proposed point of connection to Captain Cook Drive is a satisfactory engineering solution that will help achieve safe traffic management on site while ensuring the performance of Captain Cook Drive is maintained.


*(f) That adequate car parking can be provided.*

The initial offer of 250 car parking spaces was considered to be deficient. Furthermore, the proposed location of spaces along the access road was likely to create a traffic hazard.

The offer has since been increased to 436 in dedicated car parking areas. This amount of parking is comparable with the number of car parking spaces provided for playing fields at The Ridge sporting complex.

It is extremely difficult to satisfy peak parking demand at large sporting facilities. With this in mind the masterplan also makes provision for 150 overflow parking spaces on level grassed areas adjacent to the playing fields. Council officers are of the view that 436 spaces are reasonable, particularly as the masterplan also provides for additional overflow parking for peak events.

*(g) That the conditions of all previous development applications on the land are fully explored to determine how the conditions of consent affect the proposal.*

The proposal is consistent with the conditions of consent on the court approved industrial subdivision on the Australand site. Site works for this development are now well advanced. Bulk earthworks are complete. Compensatory habitat works have been carried out, drainage and site preparation works are complete and road access from Captain Cook Drive is currently under construction. As part of this proposal, the heritage dune is to be dedicated to Council (in accordance with Council resolution ENV046-06 .

As part of the original development consent for sandmining on the Breen Holdings land, a landscape plan indicating final fill contours was required to be submitted and approved by Council. A landscape plan by Hassell Pty Ltd was submitted to Council.

Responsibilities required under both the conditions of consent and the landfill licences, associated with the management of the landfill post closure, are being incorporated into the Voluntary Planning Agreement.

The proposed levels of the playing fields relate to these levels and have been determined in relation to surrounding levels, including the levels of the heritage sand dune. This aspect of the masterplan has been subject to close attention. The solution contained in the draft masterplan balances the need to create level playing fields with adequate drainage and the need to provide an appropriate transition to the area contained within the heritage listing. The end result achieves an acceptable balance and is consistent with the consents that govern the adjoining land.

*(h) That Australand and Breen Holdings carry out detailed research on the existence of any threatened species or communities that may jeopardise the achievement of the playing fields.*

A detailed analysis of threatened species was undertaken by Australand as part of the approval process for the approved industrial subdivision. Areas worthy of preservation are protected and are also proposed to be protected under the residential proposal. Council has identified threatened species on the Breen Holdings land and the masterplan has avoided locating playing fields/development on such land and/or provided compensatory measures and/or habitat in the final masterplan. This is an acceptable outcome.

*(i) That the extent of revegetation and compensatory habitat to be carrying out by Australand and Breen Holdings be determined.*

The following table provides a breakdown of the proposed end use of land to be dedicated to Council and rezoned as open space. The areas includes the natural areas to be dedicated under the Australand industrial consent because these are also proposed to be dedicated under the current proposal.

<b>Description</b>	<b>Area (ha)</b>
<b>Site Area</b>	<b>91.4</b>
Fields and surrounds including carparks etc	19.1
Kurnell Heritage Dune	11.0
Existing Kurnell Dune Forest	3.9
Existing Wetland Areas	8.2
Proposed Wetland Areas	0.8
Existing Revegetation Areas	8.4
Dune Forest Rehabilitation Areas	6.6
Revegetation Areas	33.4
<b>Total Site Area</b>	<b>91.4</b>

With the exception of the 19.1 hectares that comprises the proposed playing fields themselves, the remaining 72.3 hectares consists of existing ecologically significant vegetation or revegetation of coastal bushland. The draft masterplan provides for 33.4 hectares of revegetation. These outcomes represent significant environmental gains that will create a green corridor that will link the RAMSAR listed wetlands at Towra Point to the north, Quibray Bay, Woollooware Bay, Charlotte Breen Reserve, and the State Heritage listed dune with Lucas and Wanda Reserves fronting Bate Bay to the south.

This will have significant benefits for remnant vegetation, threatened species and provide habitat corridors on contiguous land, including habitat for the endangered Green and Golden Bell Frog. This in itself is a very significant environmental outcome.

*(j) That the master plan specifically examines how the playing fields could be brought forward so that they are delivered earlier.*

This item will be subject to a further report.

### **Voluntary Planning Agreements**

The EPA Act (S.93F) allows for the negotiation of voluntary planning agreements between councils, developers, and/or other planning authorities for the provision of public purposes. Public purposes are defined in the EP&A Act as (without limitation):

- the provision of (or the recoupment of the cost of providing) public amenities or public services;
- the provision of (or the recoupment of the cost of providing) affordable housing;
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land;
- the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
- the monitoring of the planning impacts of development; and the conservation or enhancement of the natural environment.

Council may seek to negotiate planning agreements with relevant parties in relation to major developments. Such agreements may address the substitution of, or be in addition to, any Section 94 contributions normally required. Planning agreements requiring contributions must relate to the development proposed. They can allow for a redistribution of the costs and benefits of development. Planning authorities should ensure that their statutory decision making responsibilities are not fettered through a planning agreement.

The proposed residential rezoning and the dedication and embellishment of land for open space as put forward by Australand and Breen Holdings meets the legislative framework for a Voluntary Planning Agreement. The Act requires that Voluntary Planning Agreements (VPA) be exhibited for community comment along with a Local Environmental Plan (in this case a SREP) for 28 days. For the purposes of community consultation, Council is required to prepare an explanatory note that summarises the objectives, nature and effect of the proposed agreement, and contains an assessment of the merits of the proposed agreement, including the impact (positive or negative) on the public.


Council previously resolved, in part:

*5. That the Minister for Planning, the Hon. Frank Sartor MP be requested to defer exhibition of the amendment to SREP 17 until a draft voluntary agreement, prepared in accordance with Section 93F of the Environmental Planning and Assessment Act 1979, has been endorsed by Council so that it can be exhibited concurrently with the amendment to Sydney Regional Environmental Plan No. 17.*

A draft Voluntary Planning Agreement is still being negotiated, however it is close to completion due to extensive checking and refinement by Council's Legal Services Unit and Council's solicitors. The VPA puts into an enforceable legal agreement the commitments made in the masterplan as well as further commitments made both in writing and verbally to Council Officers. The VPA seeks to protect Council's interests over time to ensure no unforeseen costs are incurred by Council and that the standard of the facility lives up to expectations and that the project is completed. The exact terms of the VPA cannot be finalised until the further geotechnical study is completed.

A further report will advise Council of the position with the Voluntary Planning Agreement.

### **The Rezoning Process**

The previous Council report (PLN078-08 ) briefly outlined the rezoning process. It is recognised that due to time delays, the proposed rezoning cannot be included in Council's comprehensive Local Environmental Plan which must be in place by March 2011. Australand has expended significant money on site preparation works on an approved industrial subdivision. They are unwilling to wait until 2011 for a return on their investment.


To resolve the zoning of the land quickly, it was recommended that an amendment to SREP17 be prepared and exhibited. An amendment follows the same process as a Regional Environmental Plan amendment, and is subject to community consultation before a decision is made by the Minister for Planning. As discussed in the previous report, SREP 17 is a State Plan and as such it follows a different statutory process to a LEP. The normal procedure would be for the Department of Planning to prepare the amendment, prepare an environmental study (when required), exhibit the plan, consider submissions and report the matter to the Minister for the plan to be amended. However, in this case the Minister has advised Council that he will only proceed to make the amendment if requested by Council.

The Director-General of the Department of Planning may require an environmental study to be prepared to accompany the draft amendment to SREP17. This is likely to be the case in this instance. This will effectively be the next step in the process. However, given the degree of study that has already been carried out by Australand and the degree of disturbance on the Breen Holdings land it is likely that very little new research will be required. The study would need completed and be acceptable to the Department before the exhibition date can be set. Once this is achieved the draft amendment to SREP 17 would be exhibited concurrently with the voluntary planning agreement.

A regional environmental plan must cover relevant matters raised by public authorities. The Department of Planning has initially canvassed the following government authorities: Department of the Environment and Climate Change, Roads and Traffic Authority, Ministry for Transport, Police and Fire Departments, RailCorp, TAFE/Department of Further Education, Department of Health, State Emergency Service, Department of Lands, Rural Fire Service as to their requirements.

A draft amendment to SREP17 has been prepared by the proponent in consultation with Council officers. The draft amendment proposes to add a new residential zone 2(a1) to SREP17. The aim of the zone is to provide a low density residential environment and manage the impacts of development in sensitive natural environments. A new clause (11A) specifies the development standards (as per Council's December 2007 resolution) including: each allotment is a minimum of 550sq.m., FSR must not exceed 0.55:1 and

landscaped area must be a minimum of 40% of the site area of each lot. A street boundary setback of 6 metres is set with dwellings being limited to a 9 metre height limit. The use of grey water is also required. Small secondary dwellings (granny flats) are limited to 60 square metres or 20% of the total floor area. Dual occupancy development is permissible as this is a standard zoning provision. The development standards are consistent with Councils previous resolution and it is understood that they are critical to the applicant's plans for the site.

Council previously resolved (PLN078-08 ) to request that the Minister allow submissions to be directed to Council for its consideration, with Council providing a report to the Department of Planning on the submissions received and its decision as to whether the rezoning request should proceed or how it should be altered. Council should note that the Minister could choose to amend SREP 17 without a request from Council and even if this were a LEP, the Minister is not bound by Council's decision when deciding to make a LEP.

### **Conclusion**

Now is an optimum time for Council to direct the future of the Kurnell Peninsula. Sandmining on the Breen Holdings site has come to an end and Australand has an approved industrial subdivision that it can act upon. Should Council fail to support the zoning of these key sites, the peninsula will most likely be developed for predominantly industrial/ commercial purposes in accordance with its current zoning under SREP17 and in an ad hoc way. The community's strong desire for open space on the peninsula is recognised and needs to be accommodated. However, Council has no funds to purchase the land. As such, a pragmatic solution is essential. A community benefit is demonstrated through the Voluntary Planning Agreement.

The current offer being put forward by Breen Holdings and Australand will result in transfer of 91.4 hectares of land into public ownership as open space, with 29.9 hectares of future industrial land being developed as a residential neighbourhood. This represents 47 hectares of open space which is in addition to that which would be dedicated as part of the Australand industrial subdivision and the open space reservation under SREP 17. The offer essentially adds an additional 33.4 hectares of revegetated coastal bushland to the Kurnell Peninsula in a location that will link the key reserves of the Peninsula. This is in itself a significant environmental outcome that will enhance the ecological value of the Peninsula while also allowing the recreational value of the existing reserves to be better utilised by the community. The masterplan delivers a recreational space that will become a destination for picnics and passive recreation and meet the growing demand of the community for walking and cycling areas.

To date the proponents offer is based on 8 playing fields and 2 training fields. This falls short of Council's objectives for the site and does not allow the full recreational potential of the space to be realised. The provision of 10 additional playing fields will allow Council to address the overuse of existing facilities and make provision for the continued expansion of local sport in Sutherland Shire.

The investigations carried out to date have shown that the 10 playing fields are achievable; however, the lack of certainty on geotechnical issues does not allow a definite recommendation to be made at this point in time.

There are a number of matters to be finalised :

- geotechnical assessment;

- voluntary planning agreement;
  - timing;
- and these will be subject to a further report to Council on 7 April 2008.

▼ **Report Recommendation:**

1. That the report on Kurnell Open Space Feasibility and Voluntary Planning Agreement be received and noted.
2. That a further report be submitted to Council on 7 April 2008 addressing issues outstanding at this time and advising whether Council is in a position to exhibit a proposal for comment from the community.



▼ **Committee Recommendation:**

1. That the report on Kurnell Open Space Feasibility and Voluntary Planning Agreement be received and noted.
2. That a further report be submitted to Council on 7 April 2008 addressing issues outstanding at this time and advising whether Council is in a position to exhibit a proposal for comment from the community.

▼ **Council Resolution:**

This matter was considered in conjunction with CCL015-08.