

7 December 2015

The Secretary
Good For Manly Incorporated
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To the Secretary

Ivanhoe Park/Manly Oval - Proposed car park and stormwater detention tank

1. You have asked us to provide advice about the legal requirements Manly Council (**Council**) would need to comply with if it decides to proceed with:
 - a. Its proposed two storey car park underneath Manly Oval, as part of the *Manly2015 Masterplan*;
 - b. A proposed stormwater detention tank under Manly Oval.

Summary of Advice

2. In our opinion, the Council will need development consent under Part 4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to construct and operate the car park. Likely legal requirements of this process are discussed in paragraphs 19 to 45 of our advice.
3. We also consider that the Council will likely need to comply with the provisions of Part 5 of the EP&A Act to construct and use the proposed stormwater detention tank under Manly Oval, as discussed in paragraphs 46 to 51 of our advice.
4. In our opinion, the Council will not be able to proceed with the car park under Manly Oval, within Ivanhoe Park (a reserve under the *Crown Lands Act 1989 (CL Act)*), unless the Minister for Lands and Water authorises the Park to be used for an additional purpose under section 121A of the CL Act. This is discussed in paragraphs 53 to 59 of our advice.
5. Other requirements may arise under the CL Act or the LG Act. However, further details of the proposed car park and stormwater detention tank are required in order to advise on these.

Limitations and Assumptions of Advice

6. This advice is provided on the following assumptions:
 - a. That the Council itself will be the applicant in any development application lodged for the car park. If the development application is lodged by or on behalf of a different legal entity to the Council, different legal requirements may arise and our advice will need to be revised;
 - b. That the car park and stormwater detention tank will be pursued as separate projects;
 - c. That the car park will be generally consistent with the broad indication provided on the Council's *Manly2015 Masterplan* website;¹ and
 - d. That the car park will be accessed via Sydney Road.
7. Our advice is subject to revision following review of the Council's final proposal with respect to the car park and stormwater detention tank. Additional assessment or approval requirements may be triggered depending on what is finally proposed and the development application documents prepared by the Council.
8. Our advice is prepared on the basis of the current law. Our advice will need to be revised if, for instance, changes to the law are made before the Council proceeds to lodge any development application.
9. Our advice is prepared for Good For Manly Incorporated to assist it understand the likely legal requirements that will likely apply if Council proceeds with the proposed car park and stormwater detention tank. This advice may not be relied upon by anyone other than Good For Manly Incorporated, and anyone other than Good For Manly Incorporated should seek their own legal advice.

Background

10. Manly Oval is located at the eastern end of Ivanhoe Park. Ivanhoe Park is bordered by Raglan St, Belgrave St and Sydney Road.
11. Part of the Park was initially resumed and appropriated under the *Lands for Public Purposes Acquisition Act of 1880 (44 Vic No. 16)* on 7 June 1887 "for and in connection with the establishment of a Public Park".² Subsequently, on 30 September 1887 the whole the Park was declared to be a Public Park (then known as Manly Park) subject to the provisions of the *Public Parks Act*

¹ Manly Council, *Revitalise Manly - Manly2015 Masterplan*, <http://www.manly.nsw.gov.au/council/manly2015---revitalise-manlys-cbd/>, accessed on 2 December 2015 at 10:30am

² NSW Government Gazette 7 June 1887 No. 326 pages 3774 - 3775

of 1884 (48 Vic No. 82).³ We are instructed that on 4 November 1887, the Council was appointed as the Trustee of the Park.

12. Ivanhoe Park is currently a public reserve subject to the relevant provisions of the *Crown Lands Act 1989 (CL Act)*, identified as reserve number R89199. We are advised by Department of Primary Industry – Lands (**Crown Lands**) that the current declared purpose of Ivanhoe Park under Part 5 of the CL Act is for “public recreation and community purposes”. We also understand, from the letter of Crown Lands to the Council of 5 July 2013, that the Council is the manager of the reserve trust for the Park for the purposes of the CL Act.
13. The Council proposes to construct a two storey car park under Manly Oval, as part of the *Manly2015 Masterplan*. The Council has not yet finalised any plans, however, we understand from the *Manly2015 Masterplan* website⁴ that the car park will likely have the following attributes:
 - a. Provide approximately 500 spaces, and incorporate the ability to expand to meet future demand;
 - b. Provide 2 hours free parking;
 - c. Entry and exit points located on Sydney Road.
14. Crown Lands, in its letter of 5 July 2013, also indicated that the Council would need to prepare a stratum plan to facilitate the development. This will likely require subdivision of the land.
15. We also understand that the Council will retain ownership of the car park but it will be operated by a third party.⁵
16. We are also instructed that the Council proposes to construct a stormwater detention tank under the western end of Manly oval, approximately 2 m deep. It is not clear whether this is to be constructed in connection with the car park or separately. For the purposes of this advice, we have assumed that the stormwater detention tank will be pursued as an independent project by the Council.

A. Planning law matters

I. General

17. Ivanhoe Park and Manly Oval are governed by the Manly Local Environmental Plan 2013 (**Manly LEP 2013**). Manly Oval is zoned RE1 – Public recreation, as is the rest of Ivanhoe Park, except a section in the centre of the park zoned RE2 – Private Recreation.

³ NSW Government Gazette 30 September 1887 page 6490

⁴ Manly Council, *Revitalise Manly - Manly2015 Masterplan*, <http://www.manly.nsw.gov.au/council/manly2015---revitalise-manlys-cbd/>, accessed on 2 December 2015 at 10:30am

⁵ Manly Council, *Revitalise Manly - Manly2015 Masterplan*, <http://www.manly.nsw.gov.au/council/manly2015---revitalise-manlys-cbd/>, accessed on 2 December 2015 at 10:30am

18. Ivanhoe Park (including Manly Oval) is listed as a heritage item (landscape) in the Manly LEP 2013 heritage maps.

II. Car park

19. In the RE1 – Public Recreation Zone, development for the purposes of car parks is permitted with consent. The Manly LEP 2013 defines “car park” as meaning “a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not”.

20. We consider that the Council’s proposal falls within this definition, and is therefore permissible but only with development consent. Therefore, the Council must lodge a development application for assessment in accordance with Part 4 of the EP&A Act. The Council cannot proceed unless development consent is granted permitting the construction and operation of the car park.⁶

21. We note that development for the purposes of car parks is prohibited in the RE2 – Private Recreation Zone which covers an area in the centre of Ivanhoe Park. The Council cannot seek development consent for any part of the car park within this zone.

Who will determine the development application?

22. The Sydney East Joint Regional Planning Panel (**JRPP**) will determine whether or not to grant consent to the development application, not the Council. This is on the basis that the Council will be the proponent of the proposed car park, and the car park is highly likely to have a capital investment value of more than \$5 million,⁷ in light of the estimated cost for each car park space of \$45,000 specified on the Council’s website.⁸

23. The Council will still be responsible for the assessment of the development application under Part 4 of the EP&A Act and certain other functions, such as any consultation or concurrence requirements under section 79B of the EP&A Act.

What must the development application contain?

24. The Council’s development application must comply with the requirements of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*.

⁶ Section 76A of the EP&A Act.

⁷ Sections 23G(2)(a) and 23G(2A) of the EP&A Act; Clause 4 of Schedule 4A of the EP&A Act; clauses 20 and 21(1)(a) of *State Environmental Planning Policy (State and Regional Development) 2011*

⁸ Manly Council, *Revitalise Manly - Manly2015 Masterplan*, <http://www.manly.nsw.gov.au/council/manly2015---revitalise-manlys-cbd/>, accessed on 2 December 2015 at 10:30am

25. The development application will need to contain the information and be accompanied by the documents specified in Part 1 of Schedule 1 of the EP&A Regulation,⁹ including a Statement of Environmental Effects.¹⁰ If the development is likely to significantly affect threatened species, populations or ecological communities, or their habitats a species impact statement will also be required.¹¹
26. It will also need to contain all relevant documents and materials required under the Manly LEP 2013 and the Manly Development Control Plan 2013 (**Manly DCP 2013**). In light of what is proposed, critical documents will likely include:
- a. A Heritage Impact Statement.¹² This document will need to be prepared by a qualified heritage consultant¹³ and must:
 - i. identify the heritage significance of the site, assess impact on that significance, and put forward measures to mitigate that impact;¹⁴ and
 - ii. demonstrate that all possible means of mitigating any negative impact on the item have been addressed, and that the proposed works will not significantly alter the heritage significance of Ivanhoe Park, or the character of the locality;¹⁵
 - iii. assist the Council in its assessment of the development.¹⁶
 - b. A Construction Site Management Report and Plan.¹⁷ This will need to include details of how all known significant natural features, historical or archaeological features will be protected. It will also need to address proposed noise, vibration, sediment and erosion control measures;
 - c. A Site Stability (Geotechnical Survey) Report.¹⁸

Is landowner's consent required?

27. As stated above, we have assumed that the application will be made by the Council itself. The Council is a "public authority" for the purposes of the EP&A Act and the EP&A Regulation. As such, the Council will not need the consent of the Minister for Lands and Water to lodge the development application, provided that the Council either:¹⁹

⁹ Clause 50(1) of the EP&A Regulation; sections 78A(1) and 78A(9) of the EP&A Act

¹⁰ Clause 2(1)(e) of Part 1 of Schedule 1 of the EP&A Regulation. This document must set out the matters specified in clause 2(4) of Part 1 of Schedule 1 of the EP&A Regulation.

¹¹ Section 78A(8)(b) of the EP&A Act; Clause 2(1)(f) of Part 1 of Schedule 1 of the EP&A Regulation

¹² Clause 5.10(5) of the Manly LEP 2013 and paragraph 2.1.5.1 of the Manly DCP 2013

¹³ Paragraph 2.1.5.1.(a)(ii) of the Manly DCP 2013

¹⁴ Paragraph 2.1.5.1(a) of the Manly DCP 2013

¹⁵ Paragraph 2.1.5.1(a)(i) of the Manly DCP 2013

¹⁶ Paragraph 2.1.5.1(a)(iii) of the Manly DCP 2013

¹⁷ Paragraph 2.1.10 of the Manly DCP 2013

¹⁸ Paragraph 2.1.13.1 of the Manly DCP 2013

¹⁹ Clause 49(2) of the EP&A Regulation

- a. Gives written notice of the application to the Minister for Lands and Water prior to making the application; or
- b. Gives notice of the application by advertisement published in a newspaper circulated in the area in which the development is to be carried out no later than 14 days after the application is made.

28. The application that is notified must be the specific application containing the specific proposal for the car park – it is not enough for the Council to have notified the Minister for Lands and Water of the general nature of the development (such as through its letter of 2 July 2013 to Crown Lands). We note that the Crown Lands' *Policy for Landowner's Consent for Development on Crown Land* (2010) specifies that the Council is to serve a copy of the application and all associated plans and documentation on Crown Lands.²⁰

Consultation or concurrence required

29. The Council will need to consult and obtain the concurrence of persons as required by section 79B of the EP&A Act and all relevant environmental planning instruments. On the limited knowledge we have of the development application proposed, it is not possible to definitively set out what concurrence or consultation requirements Council will need to meet.²¹

30. It is highly likely, however, that the Council will need to give written notice of the development application to Roads and Maritime Services (**RMS**) within 7 days after the application is made, as required by clause 104(3) of *State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)*. We consider this clause will likely apply, because the development proposed contemplates new premises (or an enlargement of existing premises) with a size or capacity of more than 200 vehicles.²² RMS will have 21 days after the notice was given to make a submission to the Council in response.²³

Notification of the development application

31. The Council will need to notify the development application in accordance with the provisions of the Manly DCP 2013 and the EP&A Regulation.

Consideration of the Development Application by the Consent Authority

32. The JRPP, when determining the development application will need to have regard to the matters set out in section 79C(1) of the EP&A Act. These are:

- a. the provisions of:
 - i. any environmental planning instrument; and

²⁰ Crown Lands, *Policy for Landowner's Consent for Development on Crown Land* (2010), page 4

²¹ The potential requirement to consult with Roads and Maritime Services is discussed below.

²² See Schedule 3 of the Infrastructure SEPP and clause 104(1) and (2) of the Infrastructure SEPP.

²³ Clause 104(3)(b)(i) of the Infrastructure SEPP

- ii. any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority; and
 - iii. any development control plan; and
 - iiia. any planning agreement that has been entered into under section 93F of the EP&A Act, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - iv. the regulations (to the extent that they prescribe matters for the purposes of this paragraph); and
 - v. any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*);
- that apply to the land to which the development application relates;

- b. the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- c. the suitability of the site for the development;
- d. any submissions on the development application made in accordance with the EP&A Act or the EP&A Regulation;
- e. the public interest, including the objectives of the EP&A Act. This includes the principles of ecologically sustainable development.²⁴

33. The JRPP will need to consider all these matters, as relevant, to the development application. The following discussion summarises some key observations of what this is likely to entail, but does not limit the matters that the JRPP may consider, nor does it exhaustively list the matters that the JRPP must consider to comply with section 79C(1).

34. In our view, the heritage significance of Manly Oval and Ivanhoe Park and any impacts of the proposed development on heritage values will be relevant considerations under sub-sections 79C(1)(b), (c), and (e).

35. For the purposes of section 79C(1)(a)(i), the JRPP will need to consider the provisions of all relevant environmental planning instruments that apply to Manly Oval. This will include the Manly LEP 2013 and the Infrastructure SEPP.

36. Some of the key requirements under Manly LEP 2013 will include the following:

- a. The JRPP will need to consider the effect of the proposed car park on the heritage significance of Ivanhoe Park, as a heritage listed item under the Manly LEP 2013,²⁵

²⁴ *Aldous v Greater Taree City Council* (2009) 167 LGERA 13 at [40] per Biscoe J

²⁵ Clause 5.10(4) of the Manly LEP 2013

- b. The JRPP will need to consider the following matters arising from the earthworks required for the car park:²⁶
 - i. the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
 - ii. the effect of the development on the likely future use or redevelopment of the land,
 - iii. the quality of the fill or the soil to be excavated, or both,
 - iv. the effect of the development on the existing and likely amenity of adjoining properties,
 - v. the source of any fill material and the destination of any excavated material,
 - vi. the likelihood of disturbing relics,
 - vii. the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
 - viii. any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development; and

- c. The JRPP will also need to consider the zone objectives of the RE1 zone.²⁷ These are:
 - i. To enable land to be used for public open space or recreational purposes;
 - ii. To provide a range of recreational settings and activities and compatible land uses;
 - iii. To protect and enhance the natural environment for recreational purposes;
 - iv. To protect, manage and restore areas visually exposed to the waters of Middle Harbour, North Harbour, Burnt Bridge Creek and the Pacific Ocean;
 - v. To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

37. Some of the key requirements under the Infrastructure SEPP will include the following:

- a. Assuming that the car park will have a frontage on Sydney Road (a classified road for the purposes of the Infrastructure SEPP²⁸), the JRPP must not grant consent unless it is satisfied that:²⁹
 - i. Where practicable, vehicular access to the land is provided by a road other than Sydney Road; and
 - ii. The safety, efficiency and ongoing operation of Sydney Road will not be adversely affected by the development as a result of:
 - 1. The design of the vehicular access to the land; or
 - 2. The emission of smoke or dust from the development; or

²⁶ Clause 6.2(3) of the Manly LEP 2013

²⁷ Clause 2.3(2) of the Manly LEP

²⁸ Clause 93 of the Infrastructure SEPP

²⁹ Clause 101(2) of the Infrastructure SEPP

3. The nature, volume or frequency of vehicles using the classified road to gain access to the land; and
 - iii. The development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from Sydney Road.
- b. The JRPP will also need to take into consideration:
 - i. any submission made by RMS within 21 days of notice of the development application being given to it by the Council under clause 104(3)(a) of the Infrastructure SEPP;³⁰
 - ii. the accessibility of the site, including the matters specified in sub-clause 104(3)(b)(ii) of the Infrastructure SEPP as relevant;³¹ and
 - c. Any potential traffic safety, road congestion or parking implications of the development.³²

38. For the purposes of section 79C(1)(a)(iii), the JRPP will need to have regard to all relevant provisions of the Manly DCP 2013.

Determination of the development application

39. Once the JRPP has satisfied all relevant requirements that must be met before it determines the development application, it may proceed to do so. It may determine to refuse consent, or grant consent (with or without conditions).³³

40. If consent is granted, the Council or any other person who relies upon the consent must comply with any conditions imposed by the JRPP.³⁴

Additional approvals

41. The proposed car park will likely involve works to Sydney Road to accommodate the entry and exit points.³⁵ This is likely to require the approval of the appropriate roads authority under section 138 of the *Roads Act 1993* (**Roads Act**). The Council is the appropriate roads authority for Sydney Road, as it is not a freeway or Crown Road.³⁶

³⁰ Sub-clause 104(3)(b)(i) of the Infrastructure SEPP

³¹ Sub-clause 104(3)(b)(ii) of the Infrastructure SEPP

³² Sub-clause 104(3)(b)(iii) of the Infrastructure SEPP

³³ Sections 80 and 80A of the EP&A Act

³⁴ Section 76A(1)(b) of the EP&A Act

³⁵ Manly Council, *Revitalise Manly - Manly2015 Masterplan*,

<http://www.manly.nsw.gov.au/council/manly2015---revitalise-manlys-cbd/>, accessed on 2 December 2015 at 10:30am

³⁶ Section 7(4) of the Roads Act

42. However, because Sydney Road is a main road, a “classified road” for the purposes of the Roads Act,³⁷ the Council cannot grant approval under section 138 without the concurrence of RMS.³⁸
43. In our opinion, any requirement to obtain approval under section 138 of the Roads Act would not trigger the integrated development provisions of the EP&A Act, as the development requires both development consent³⁹ and approval under section 138 of the Roads Act from the same Council.⁴⁰
44. There may be other requirements under the Roads Act which the Council may need to comply with in order to construct the car park. For example, to the extent that the development will require “road work” within the meaning of the Roads Act, sections 75 and 76 may apply. Section 75 of the Roads Act provides that the Council may not carry out road work on Sydney Road (a classified road) if it involves the deviation or alteration of the road, or the construction of a bridge, tunnel or level crossing on the road, unless the plans and specifications for the proposed work have been approved by RMS. Further, if the road works for the car park in Sydney Road are estimated to cost more than \$2 million, under section 76 of the Roads Act the Council must provide particulars of the road works to RMS at least 28 days before the commencement of the work. We also note section 61 of the Roads Act, which provides that it is “exclusively the function of RMS to make decisions as to what road work is to be carried out ... on any ... metropolitan main road”.⁴¹ There is a legal question as to the impact of this section on the Council’s ability to proceed with the proposed development, to the extent it involves road works on Sydney Road.
45. In addition, assuming consent is granted, we consider that the person who operates the car park may need approval to operate the car park under section 68 of the *Local Government Act 1993 (LG Act)*.⁴²

III. Stormwater detention tank

46. Development for the purposes of “stormwater management system” may be carried out by the Council (as a “public authority”) without development

³⁷ Section 4 of the Roads Act and the Dictionary of the Roads Act

³⁸ Section 138(2) of the Roads Act

³⁹ The JRPP is taken to be the Council in exercising its functions to determine the development application (section 23G(5A) of the EP&A Act).

⁴⁰ Section 91(3) of the EP&A Act

⁴¹ Sydney Road is a main road within the Sydney metropolitan area, therefore falling within the definition of “metropolitan main road” provided in the Dictionary of the Roads Act.

⁴² This involves a complex question of statutory construction. Clause 66(1) of the *Local Government (General) Regulation 2000* provides that a public car park may be operated without prior approval of the Council if approval for its erection and operation has already been given by the Council in connection with another approval or development consent and the car park complies with any applicable conditions of that approval. However, in our opinion, any consent in the present case granted by the JRPP will not have been granted by the Council for the purposes of this regulation and the LG Act. The provisions deeming the JRPP to be the Council only apply to the EP&A Act and the EP&A Regulations.

consent by virtue of clause 110 and 111 of *State Environment Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)*.⁴³

47. The definition of “Stormwater management system” includes “works for the collection, detention, distribution or discharge of stormwater”. On the basis of our instructions, we consider it is highly likely that the proposed stormwater detention tank will fall within this definition.
48. Accordingly, our preliminary view is that the Council will not require development consent to construct the stormwater detention tank.
49. However, we consider it likely that the Council will need to comply with Part 5 of the EP&A Act. This is because the construction and use of the tank is an “activity” and the Council is a “determining authority” for the purposes of section 110 of the EP&A Act.⁴⁴
50. As such, the Council will be required to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of the construction and use of the stormwater detention tank.⁴⁵ The Council would need to comply with all relevant requirements under the EP&A Act and EP&A Regulation relevant to this obligation.
51. The Council would also be required to determine whether the construction or operation of the stormwater detention tank would be likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities or their habitats. If there is likely to be any such significant effect, then the Council cannot proceed to construct the tank unless it has examined and considered an environmental impact statement (**EIS**).⁴⁶ The Council’s preparation and consideration of the EIS would need to comply with all relevant requirements under the EP&A Act and the EP&A Regulation.
52. There may be other approvals required to construct and use the stormwater detention tank. For instance, an approval under section 68 of the LG Act may be necessary.⁴⁷ This may bear on who the determining authority is for the purposes of Part 5 of the EP&A Act. Until further details of the proposal are known, it is not possible to provide a conclusive view on what additional approvals may be required.

B. Crown Lands Matters

53. Crown Lands, in its letter of 5 July 2013, advised the Council that:

⁴³ The Infrastructure SEPP will prevail over any requirement in the Manly LEP 2013 that development meeting the description of “stormwater management system” requires consent (clause 8 of the Infrastructure SEPP).

⁴⁴ Determining authority includes a public authority by or on whose behalf the activity is or is to be carried out (section 110 of the EP&A Act).

⁴⁵ Section 111(1) of the EP&A Act

⁴⁶ Section 112(1) of the EP&A Act

⁴⁷ Clause 5 of Part B of the Table in section 68 of the LG Act

Council should also give consideration to an additional purpose of “urban services” being notified over the reserve to accommodate use of the reserve for car parking purposes. In this regard, a formal request should be made under section 121A of the Crown Lands Act 1989 to the Department.

54. In our opinion, the proposal to use the land under Manly Oval for the car park proposed by the Council will require the Minister for Lands and Water to authorise Ivanhoe Park to be used for an additional purpose under section 121A.
55. The “declared purpose” of Ivanhoe Park is “public recreation and community activities”. There has not been any Plan of Management prepared for Ivanhoe Park in accordance with Part 5 of the CL Act permitting any additional purpose. Where land has been dedicated or reserved for a particular purpose, the use of the land for some other purpose is not authorised.⁴⁸
56. From the Council’s *Manly2015 Masterplan* website, it appears that the main purpose of constructing the car park is to provide off-street paid parking for people who may or may not be attending Ivanhoe Park. According to the website,⁴⁹ the Manly Oval car park is needed to relocate parking currently provided at a site in Whistler Street. The Council states that “the re-location of the Whistler Street car park will allow Council to create a village that is completely walkable and pedestrian centric.”⁵⁰
57. We consider that this use is for a separate, other purpose to the declared purpose of Ivanhoe Park. We do not consider that “public recreation” or “community activities” encompass the purposes for which the Council intends the car park to fulfil – namely, to provide parking more generally for the Manly CBD as a replacement for Whistler Street car park as part of its *Manly2015 Masterplan*. Nor do we consider that such purpose can be said to be in furtherance of, or incidental to the declared purposes of Ivanhoe Park.⁵¹
58. Therefore, for the car park to proceed we consider that the Minister for Lands and Water will need to authorise Ivanhoe Park to be used for an additional purpose consistent with the Council’s proposal under section 121A of the CL Act. Under this section, the Minister may not authorise Ivanhoe Park to be used for any additional purpose unless the Minister is satisfied that:

⁴⁸ *Friends of King Edward Park Inc v Newcastle City Council (No 2)* [2015] NSWLEC 76 at [99] per Sheahan J, citing *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (Goomallee Claim)* [2012] NSWCA 358; 84 NSWLR 219 per Basten JA at [37]

⁴⁹ Manly Council, *Revitalise Manly - Manly2015 Masterplan*, <http://www.manly.nsw.gov.au/council/manly2015---revitalise-manlys-cbd/>, accessed on 2 December 2015 at 10:30am

⁵⁰ Manly Council, *Revitalise Manly - Manly2015 Masterplan*, <http://www.manly.nsw.gov.au/council/manly2015---revitalise-manlys-cbd/>, accessed on 2 December 2015 at 10:30am

⁵¹ *Friends of King Edward Park Inc v Newcastle City Council (No 2)* [2015] NSWLEC 76 at [100] per Sheahan J, citing *Waverley Municipal Council v Attorney-General* (1979) 40 LGRA 419

- a. The additional purpose is compatible with the declared purpose of the reserve; and
- b. The use of the reserve for the additional purpose is consistent with the principles of Crown land management; and
- c. It is in the public interest for the reserve to be used for the additional purpose.⁵²

59. The principles of Crown land management are:

- a. that environmental protection principles be observed in relation to the management and administration of Crown land;
- b. that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible;
- c. that public use and enjoyment of appropriate Crown land be encouraged;
- d. that, where appropriate, multiple use of Crown land be encouraged;
- e. that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and
- f. that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

60. In terms of further requirements that may arise under the CL Act, it is not possible to provide a definitive view until further details of the proposal are known. For instance, there may be the need for additional licences or permits to be granted under the CL Act with regards to the land or the subdivided lots on which the car park will be built and operated. As such, further advice should be sought once the final details of the proposed development are known.

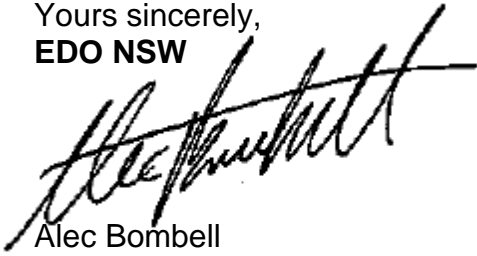
C. Other potential issues

61. We raise as a further issue a question as to whether the Council is required to comply with the provisions of the LG Act pertaining to “community land” when dealing with Ivanhoe Park and the proposed car park and stormwater detention tank. This question raises complex issues concerning the interaction of the LG Act and the CL Act. Due to time restraints this issue has not been considered in this advice. If you would like us to consider this issue in a supplementary advice, please let us know.

⁵² Section 121A(3) of the CL Act

If there are any matters that you would like to discuss please do not hesitate to contact the writer on (02) 9262 6989 or by e-mail alec.bombell@edonsw.org.au.

Yours sincerely,
EDO NSW

A handwritten signature in black ink, appearing to read 'Alec Bombell', written over a horizontal line.

Alec Bombell
Solicitor

Our Ref: 1522780