

DETERMINATION AND STATEMENT OF REASONS

WOLLONGONG CITY COUNCIL – WOLLONGONG LOCAL PLANNING PANEL (WLPP)

DATE OF DETERMINATION	17 December 2020
PANEL MEMBERS	Robert Montgomery (Chair), Helena Miller, Glenn Falson, Bernard Hibbard (Community Representative)

Public meeting held at Wollongong City Council, Level 9 Function Room, 41 Burelli Street, Wollongong on 17 December 2020 opened at 5:00pm and closed at 7.34pm.

MATTER DETERMINED

DA-2019/1253 – Lot 87 DP 776802, 46 Berkeley Road, Berkeley (as described in detail in schedule 1).

PUBLIC SUBMISSIONS

The Panel was addressed by four submitters.

The Panel also heard from the owner, applicant and their representatives.

PANEL CONSIDERATION AND DECISION

The Panel considered the matters listed at item 7, the material presented at the meeting and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to approve the development application as described in Schedule 1 pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The reasons for the decision of the Panel were:

- The Panel generally agrees with the Officer's assessment and recommendation.
- Through discussion with the applicant and their acoustic consultant, the conditions relating to number of worshippers and hours of operation have been reviewed and rationalised in the attached conditions of consent.
- The Panel is of the view that the reviewable condition relating to morning prayers will provide an equitable solution to the control of the activity (and its associated impacts) during "night" hours.

CONDITIONS

The development application was approved subject to the conditions provided as Attachment 1 to this Determination.

PANEL MEMBERS



Robert Montgomery
(Chair)



Helena Miller



Glenn Falson



Bernard Hibbard
(Community Representative)

SCHEDULE 1		
1	DA NO.	DA-2019/1253
2	PROPOSED DEVELOPMENT	Construction of fencing, car park works, landscaping and alterations to hours of operation associated with existing place of public worship
3	STREET ADDRESS	46 Berkeley Road Berkeley
4	APPLICANT/OWNER	Berkeley Road Pty Ltd
5	REASON FOR REFERRAL	Schedule 2 clause 2(b) of the Local Planning Panels Direction of 30 June 2020 (Contentious development - number of objections)
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> · Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No 55 – Remediation of Land ○ State Environmental Planning Policy (Coastal Management) 2018 ○ State Environmental Planning Policy (Koala Habitat Protection) 2020 ○ Wollongong Local Environment Plan 2009 · Wollongong City Wide Development Contributions Plan 2020 · Draft environmental planning instruments: Nil · Development control plans: <ul style="list-style-type: none"> ○ Wollongong Development Control Plan 2009 · Planning agreements: Nil · Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil · Coastal zone management plan: Wollongong Coastal Zone Management Plan · The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality · The suitability of the site for the development · Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations · The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> · Council assessment report dated 17 December 2020 · Written submissions during public exhibition: 45 · Verbal submissions at the public meeting: four
8	SITE INSPECTIONS BY THE PANEL	<p>Site inspection 17 December 2020. Attendees:</p> <ul style="list-style-type: none"> ○ Panel members: Robert Montgomery (Chair), Helena Miller, Glenn Falson, Bernard Hibbard (Community Representative) ○ Council assessment staff: Pier Panozzo, Anne Starr
9	COUNCIL RECOMMENDATION	Approve
10	DRAFT CONDITIONS	Attached to the council assessment report

Approved Plans and Specifications

- 1) The development shall be implemented substantially in accordance with the details and specifications set out on
 - General Arrangement Layout Plan 82021047-SK001-1 dated 29 October 2020 prepared by Cardno
 - Typical Details and Floor Layout Plan 82021047-SK002-1 dated 29 October 2020 prepared by Cardno
 - Car Park Overview Sheet 1-3 dated 29 April 2020 prepared by Bitzios Consulting
 - Car Park Overview with Restricted Access Sheet 2-3 dated 29 April 2020 prepared by Bitzios Consulting
 - Car Park Signage and Aisle Closure Operation Sheet 3-3 dated 29 April 2020 prepared by Bitzios Consulting

and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

- 2) Construction Certificate

A Construction Certificate must be obtained from Council or a Registered Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-147 of the Environmental Planning and Assessment Regulation 2000 have been satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The Certifier must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within two (2) days after the date of the determination, the plans and documentation referred to in clause 142 (2) of the Environmental Planning and Assessment Regulation 2000.

- 3) Occupation Certificate

An Occupation Certificate must be issued by the Principal Certifier prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifier must be satisfied that the requirements of section 6.9 of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.

Prior to the Issue of the Construction Certificate

- 5) The site car parking area is to be re-linemarked and signposted as per the approved Berkeley Mosque Car Park Concept Plan (sheets 1-3), prepared by Bitzios Consulting, Reference P4299, Version 003, Dated 29/04/2020. This requirement shall be reflected on the Construction Certificate plans.
- 6) Compliance with DA-2018/577

Prior to issue of the Construction Certificate, the demountable building must be moved to the location required in DA-2018/577 and an Occupation Certificate obtained.
- 7) Lockable gate timer

Prior to issue of the Construction Certificate, a lockable gate with electronic timer is to be installed at both the vehicle driveway and pedestrian gate on Berkeley Road.

8) **Submit Green Travel Plan**

Prior to issue of the Construction Certificate, the developer shall submit a Green Travel Plan to the Principal Certifier and Council for approval, which includes actions to reduce motor vehicle use. Actions shall include development of a transport Access Guide, carpooling, designated carpool spaces, and on-site bicycle parking and facilities.

9) **Submit Noise Management Plan**

Prior to issue of the Construction Certificate, the developer shall submit a Noise Management Plan to Council for approval. The noise management plan shall reflect the hours of operation approved in this consent and detail further measures to reduce noise transmission off-site.

These measures shall include:

a) Amplified Speech

The noise level from amplified speech should not exceed an energy average sound pressure level over 15 minutes, ($L_{eq, 15 \text{ minute}}$) of more than 75dBA when measured no further than 3 metres from the acoustic centre of any speakers.

b) Allowable Building Openings

During early morning prayer (Fajr), all doors and windows to the building must remain closed, and be closed prior to amplified speech commencing.

Late arrivals during amplified speech should close the main entry door behind them prior to opening the internal prayer room door such that both doors are not open at the same time.

c) Acoustic barrier - Northern boundary

Erect an acoustic barrier as indicated on the Cardno plans 82021047-SK001-1 and 82021047-SK002-1 dated 29 October 2020 and maintain this barrier at all times.

The barrier shall have a minimum height of 2.1 metres above the top of the retaining wall or be erected entirely within the subject site to an equivalent height.

The barrier shall be constructed from any impervious material such as corrugated sheet steel, lapped and capped timber, 10mm thick polycarbonate etc without holes or gaps including where any extensions meet the existing fence or at the base where the fence meets the retaining wall.

d) Acoustic barrier - Western boundary

Erect an acoustic barrier as indicated on the Cardno plans 82021047-SK001-1 and 82021047-SK002-1 dated 29 October 2020 and maintain this barrier at all times.

The barrier shall have a minimum height of 1.6 metres above ground level.

The barrier shall be constructed from any impervious material such as corrugated sheet steel, lapped and capped timber, 10mm thick polycarbonate etc without holes or gaps other than a maximum 20mm at the base if required for drainage.

e) New Designated Play Area

A designated outdoor play area shall be established between the demountable building and the main brick building, as shown in Figure 2 of Harwood Acoustics Environmental Noise Impact Assessment dated 27 October 2020.

The outdoor play area may be used between 7am and 10pm Monday-Saturday and 8am-10pm Sundays and Public Holidays.

f) Grassed area fronting Berkeley Road

Demarcate an area using landscaped or physical barriers to ensure people do not encroach within 5m of the northern boundary.

The outdoor play area may be used between 7am and 6pm Monday-Saturday and 8am-6pm Sundays and Public Holidays. Lighting of this area is not permitted.

g) Parking Management Plan

People attending morning prayer (Fajr) should be instructed to park as close to the main brick building as possible.

A lock with an electronic timer shall be installed on the main vehicular access gate and pedestrian gate. The lock shall be timed to only allow entry on the premises within 15 minutes prior to the prayer.

h) Communication is required between the operator and persons attending the site explaining:

- The permitted hours of operation of the premises;
- People are only to play in outdoor play areas at the designated time for that area;
- The importance of minimising noise generation in outdoor areas;
- People are only allowed to be in outdoor areas for the purpose of accessing the buildings, car park area, or outdoor play areas; and
- The pedestrian gate and main vehicle gate must be locked overnight and prior to the commencement of the morning prayer (Fajr). People should be discouraged from arriving early and parking on Berkeley Road.

10) Car Parking and Access

The development shall make provision for a total of 97 car parking spaces (including 2 car parking spaces for people with disabilities, 2 dedicated staff parking spaces and 10 carpool spaces for multi-occupancy vehicles only). The development shall also make provision for a minimum of 2 motorcycle parking spaces and 9 (Class C) bicycle spaces.

This requirement shall be reflected on the Construction Certificate plans. Any change in above parking numbers shown on the approved plans requires a section 4.55 modification to the development. The approved car parking spaces shall be maintained to the satisfaction of Council, at all times.

The car park area shall only be used for car parking.

11) The parking dimensions, internal circulation, aisle widths, kerb splay corners, head clearance heights, ramp widths and grades of the car parking areas are to be in conformity with the current relevant Australian Standard AS2890.1, except where amended by other conditions of this consent. Details of such compliance are to be reflected on the Construction Certificate plans.

12) Each disabled person's parking space must comply with the current relevant Australian Standard AS2890.6 – Off-street parking for people with disabilities. This requirement shall be reflected on the Construction Certificate plans.

13) The submission of a final Landscape Plan to the Principal Certifier, prior to the release of the Construction Certificate. The final Landscape Plan shall address the following requirements:

- a) provision of a planted landscaped buffer comprising appropriately spaced canopy trees and shrubs, designed to achieve a high quality streetscape presentation to the site and to prevent car headlight spill to the east, for the full length of the Berkeley Road frontage
- b) provision of a 5m deep densely planted landscape buffer along the full northern boundary of the site generally as shown on Cardno plan 8202047-SK001 A1 dated 29 October 2020
- c) planting of indigenous plant species native to the Illawarra Region such as : *Syzygium smithii* (syn *Acmena smithii*) Lilly pilly, *Archontophoenix cunninghamiana* Bangalow palm, *Baccharis myrtilifolia* Grey myrtle, *Elaeocarpus reticulatus* Blueberry ash, *Glochidion*

ferdinandii Cheese tree, *Livistona australis* Cabbage palm tree, *Syzygium paniculatum* Brush cherry.

A further list of suitable suggested species may be found in Wollongong Development Control Plan 2009 – Chapter E6: Landscaping;

- d) a schedule of proposed planting, including botanic name, common name, expected mature height and staking requirements as well as number of plants and pot sizes;
- e) the location of all proposed and existing overhead and underground service lines. The location of such service lines shall be clear of the dripline of existing and proposed trees; and
- f) any proposed hard surface under the canopy of existing trees shall be permeable and must be laid such that the finished surface levels match the existing level. Permeable paving is to be installed in accordance with the manufacturer's recommendations.

The completion of the landscaping works as per the final approved Landscape Plan is required prior to the issue of Occupation Certificate.

- 14) Bicycle parking facilities must have adequate weather protection and provide the appropriate level of security as required by the current relevant Australian Standard AS2890.3 - Bicycle Parking Facilities. This requirement shall be reflected on the Construction Certificate plans.
- 15) A Site Waste Management and Minimisation Plan in accordance with Wollongong Development Control Plan 2009 shall be provided to the Principal Certifier prior to issue of the Construction Certificate.

Prior to the Commencement of Works

16) Appointment of Principal Certifier

Prior to commencement of work, the person having the benefit of the Development Consent and a Construction Certificate must:

- a Appoint a Principal Certifier (PC) and notify Council in writing of the appointment irrespective of whether Council or a Registered Certifier is appointed; and
- b notify Council in writing of their intention to commence work (at least two days notice is required).

The Principal Certifier must determine when inspections and compliance certificates are required.

17) Sign – Supervisor Contact Details

Before commencement of any work, a sign must be erected in a prominent, visible position:

- a stating that unauthorised entry to the work site is not permitted;
- b showing the name, address and telephone number of the Principal Certifier for the work; and
- c showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.

This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

18) Temporary Toilet/Closet Facilities

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be:

- a a standard flushing toilet; and
- b connected to either:
 - i the Sydney Water Corporation Ltd sewerage system or
 - ii an accredited sewage management facility or
 - iii an approved chemical closet.

The toilet facilities shall be provided on-site, prior to the commencement of any works.

During Demolition, Excavation or Construction

19) Structural Acoustic Attenuation

Implement all structural noise attenuation including acoustic barriers as recommended in the Harwood Acoustics Environmental Noise Impact Assessment dated 27 October 2020. Acoustic barriers should have sufficient density to act as noise barriers. All mechanical plants such air conditioning units should have acoustic enclosures around them.

20) Restricted Hours of Construction Work

The developer must not carry out any work, other than emergency procedures, to control dust or sediment laden runoff outside the normal working hours, namely, 7.00 am to 5.00 pm, Monday to Saturday, without the prior written consent of the Principal Certifier and Council. No work is permitted on public holidays or Sundays.

Any request to vary these hours shall be submitted to the Council in writing detailing:

- a the variation in hours required (length of duration);
- b the reason for that variation (scope of works);
- c the type of work and machinery to be used;
- d method of neighbour notification;
- e supervisor contact number;
- f any proposed measures required to mitigate the impacts of the works.

The construction works noise shall comply with the Australian Standard AS 2436-2010 "Guide to Noise and Vibration Control on Construction, Demolition and Maintenance Sites" and any other requirements as specified by Council or the NSW Environment Protection Authority.

Note: The developer is advised that other legislation may control the activities for which Council has granted consent, including but not limited to, the Protection of the Environment Operations Act 1997.

21) Provision of Waste Receptacle

The developer must provide an adequate receptacle to store all waste generated by the development, pending disposal. The receptacle must be regularly emptied and waste must not be allowed to lie or accumulate on the property other than in the receptacle. Consideration should be given to the source separation of recyclable and re-usable materials.

Prior to the Issue of the Occupation Certificate

22) Completion of acoustic fencing

All acoustic fencing as shown on Cardno plans 82021047-SK001-1 and 82021047-SK001-2 dated 29 October 2020 shall be completed prior to issue of the Occupation Certificate.

23) Implementation of Green Travel Plan

Physical aspects of the Green Travel Plan such as painting of designated car pool parking spaces are to be implemented prior to issue of the Occupation Certificate.

24) Completion of Landscape Works

The completion of the landscaping works as per the final approved Landscape Plan is required prior to the issue of Occupation Certificate. Photographic evidence of the completed landscaping is to be provided to Council by the Principal Certifier.

Operational Phases of the Development/Use of the Site

25) Number of persons within buildings

The number of persons within the mosque building is limited to the following numbers during the times listed below based on the NSW EPA Noise Guidelines and the results of the acoustic report submitted with the application:

Daytime Hours (7:00am to 6:00pm Mon to Sat, 8:00am to 6:00pm Sun and Public Holidays)	Maximum of 250 persons
Evening Hours (6:00pm to 10:00pm)	Maximum of 130 persons
Night Hours (10:00pm to 7:00am Mon to Sat, 10:00pm to 8:00am Sun and Public Holidays)	Operation during night time hours is limited by reviewable condition No. 27 (ie a maximum of 30 worshippers between the hours of 4:00am and 7:00am for a twelve month trial only)

26) Restricted Hours of Operation

The hours of operation for the development site shall be limited to the following:

Mosque Building:	<ul style="list-style-type: none"> · Monday to Saturday: 7:00am to 10:00pm · Sundays and Public Holidays: 8:00am to 10:00pm <p><i>All activities are to be completed and all worshippers and vehicles are to exit the site by 10:00pm.</i></p>
School holiday activities and any other children's activities within buildings	<ul style="list-style-type: none"> · Monday to Saturday 7:00am: to 6:00pm · Sunday and Public Holidays: 8:00am to 6:00pm
New designated play area between demountable and main brick building	<ul style="list-style-type: none"> · Monday to Saturday: 7:00am to 10:00pm

	<ul style="list-style-type: none"> · Sunday and Public Holidays: 8:00am to 10:00pm <p><i>This play area is to be supervised at all times during use.</i></p>
Grassed area fronting Berkeley Road	<ul style="list-style-type: none"> · Monday to Saturday: 7:00am to 6:00pm · Sunday and Public Holidays: 8:00am to 6:00pm

Any alteration to the approved hours of operation will require separate Council development consent or modification.

27) Reviewable Condition – Restricted Hours of Operation

The mosque may be used between the hours of 4:00am and 7:00am Monday to Saturday and 4:00am to 8:00am Sundays and Public Holidays for morning prayers only with a maximum of 30 worshippers.

This condition is a reviewable condition pursuant to the Environmental Planning and Assessment Regulation, 2000 which is limited to a trial period of twelve (12) months only.

During the trial period a noise monitoring and recording program shall be carried out by an independent accredited member of the Australian Acoustic Society or the Association of Australian Acoustic Consultants. The program shall provide an assessment of noise levels at the nearest residential receptor during the occurrence of morning prayer between the hours of 4:00am and 7:00am over a range of weather conditions and conducted on at least three separate days over nine (9) months of operation in accordance with the consent. Noise monitoring shall include at least one Friday during Ramadan and also on the final festival day.

A modification application, including reports of this monitoring, shall be submitted to Council within an appropriate time frame should the applicant wish to extend these hours beyond the twelve month trial. Should a modification not be approved, the hours of operation will revert to those listed in condition 26.

The modification will be assessed in accordance with the Environmental Planning and Assessment Act, 1979 and will take into account the results of noise monitoring during the trial period, compliance with required noise levels and any genuine, substantiated complaints received.

The purpose of this condition is to facilitate morning prayers which occur during night hours for a limited number of worshippers.

28) Implement Noise Management Plan

The place of public worship must be operated in accordance with the approved Noise Management Plan, to minimise the noise disturbance to adjacent residents and comply with restriction limits.

29) Implement and Review Green Travel Plan

The operator shall ensure that targets are reviewed annually, and that recommended actions are implemented in accordance with the recommended timeframes.

30) Acoustic Compliance Report

With 12 months of the date of this consent, the operator shall submit a noise compliance report prepared by an acoustic consultant who is a member of the Australian Acoustic Society (AAS) or the Association of Australian Acoustic Consultants (AAAC). The report shall detail activities occurring

on-site, number of persons in attendance and determine whether compliance with noise restriction conditions has been achieved.

Noise levels shall be measured on a minimum of four occasions and include the activities permitted in this consent.

31) Noise complaints

If Council receives genuine noise complaints which can be substantiated, Council may request the operator to engage an acoustic consultant to assess the operational noise that is causing the noise complaints and devise further noise attenuation methods. These methods would need to be incorporated into a revised Noise Management Plan, and a copy submitted to Council. The acoustic consultant shall be a member of the Australian Acoustic Society (AAS) or the Association of Australian Acoustic Consultants (AAAC).

32) Noise Restrictions

During operation of the place of public worship the operator shall ensure that the noise generated at the premises does not exceed the noise limits presented in the table below unless otherwise agreed to in writing by Council:

Receiver Locations	Allowable Noise Limits dB(A) - BG + 5 dBA			
	Day	Evening	Night	
	L _{Aeq} (15 minutes)	L _{Aeq} (15 minutes)	L _{Aeq} (15 minutes)	L _{AMAX} #
All potentially affected residential properties boundaries	49	47	35	55##

Sleep Disturbance Criteria dB(A) L_{AMAX}

if maximum allowable noise limit is exceeded between 10.00 pm and 7.00 am, then the acoustic consultant should reassess the noise management plan.

For the purpose of this condition:

'Day' is defined as the period from 7am to 6pm Monday to Saturday and 8am to 6pm Sundays and Public Holidays;

'Evening' is defined as the period from 6pm to 10pm; and

'Night' is defined as the period from 10pm to 7am Monday to Saturday and 10pm to 8am Sundays and Public Holidays.

33) Waste Management

An adequate number of waste receptacles for both general rubbish and recyclable materials shall be placed strategically around the site and collected on regular basis. Waste shall not be allowed to accumulate on the site.