

# **JOINT REGIONAL PLANNING PANEL** **(Hunter and Central Coast)**

## **Supplementary Council Assessment Report**

Panel Reference	PPS-2016HCC020
DA Number	DA 49565/2016
Local Government Area	Central Coast Council
Proposed Development	Mixed Use Development – Commercial and Shop Top Housing (2 Towers) Residential Flat Building (4 towers)
Street Address	Lots 1, 2, 3, 25 & 26 Sec A DP1591, Lots 4 & 5 DP15954, Lot 31 DP553523 and Lot 2A DP407164,  Nos 372, 374, 393, 395 & 397 Mann Street, Nos 35, 37 & 41A Dwyer Street and No 76 Hills Street, North Gosford
Applicant	Caine King - CKDS Architecture (note that the site owner Ken Schmidt has requested to be the applicant via email dated 12 July 2020)
Owner	K Schmidt
Date of DA Lodgement	31 March 2016
Number of Submissions	First round - 33 submissions, petition with 55 signatures  Second round - 15 submissions, petition with 122 signatures.  Third round - 25 submissions, petition with 121 signatures  Fourth (final) round - 18 submissions, petition with 121 signatures.
Recommendation	Refusal
Regional Development Criteria - Schedule 7 of the State Environment Planning Policy (State and Regional Development) 2011	Capital Investment Value > \$20M and lodged before 1 March 2018.

List of all relevant 4.15(1)(a) matters	<ul style="list-style-type: none"> <li>• <i>Environmental Planning &amp; Assessment Act 1979</i> (EP&amp;A Act)</li> <li>• <i>Local Government Act 1993</i> (LG Act)</li> <li>• <i>Roads Act 1993</i> (Roads Act)</li> <li>• <i>State Environmental Planning Policy (State and Regional Development) 2011</i> (SEPP State and Regional Development)</li> <li>• <i>State Environmental Planning Policy No 55 - Remediation of Land</i> (SEPP 55)</li> <li>• <i>State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development</i> (SEPP 65)</li> <li>• <i>State Environmental Planning Policy (Coastal Management) 2018</i> (SEPP Coastal Management)</li> <li>• <i>State Environmental Planning Policy No 71 - Coastal Protection</i></li> <li>• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> (BASIX)</li> <li>• <i>State Environmental Planning Policy (Gosford City Centre) 2018</i></li> <li>• <i>Central Coast Regional Plan 2036</i></li> <li>• <i>Draft Central Coast Local Environmental Plan 2018</i> (CCLEP)</li> <li>• <i>Gosford Local Environmental Plan 2014</i> (GLEP 2014)</li> <li>• <i>Gosford Development Control Plan 2013</i> (GDCP 2013)</li> <li>• <i>Apartment Design Guide</i> (ADG)</li> </ul>
List all documents submitted with this report for the Panel's consideration	<p><b>Attachments:</b></p> <ol style="list-style-type: none"> <li>1. Regional Planning Panel Record of Deferral</li> <li>2. Further written submissions</li> <li>3. Amended Reasons for Refusal</li> <li>4. Previous Documents considered by the Panel (Council Assessment Report, Reasons for Refusal, Amended Architectural Plans, Landscape Plans, Sydney Trains Letter, Independence Design Review Clause 4.6 request)</li> </ol>
Report prepared by	Erin Murphy – Senior Development Planner
Report date	28 September 2020

**CENTRAL COAST COUNCIL  
DEVELOPMENT APPLICATION ASSESSMENT REPORT**

**Application Number**

DA 49565/2016

**Summary**

The purpose of this report is for the Regional Planning Panel to consider a supplementary report for Development Application DA 49565/2016 for the staged construction of a mixed use development comprising commercial and shop top housing (2 Towers) and residential flat buildings (4 towers) at Nos 372, 374, 393, 395 & 397 Mann Street, Nos 35, 37 & 41A Dwyer Street and No 76 Hills Street, North Gosford. The report was previously considered (and deferred) at the RPP meeting on 16 September 2020.

**RECOMMENDATION**

- A. That the additional public submissions be noted.**
- B. That the proposed amendments to existing reason for refusal, renumbered as No. 12 and new reasons for refusal being No.'s 3 and 6, are accepted.**
- C. That the Hunter and Central Coast Regional Planning Panel do not agree to the amendment of the application under clause 55 of the *Environmental Planning and Assessment Regulation 2000*, as detailed in amended plans and documentation submitted on 16 June 2020, for the reasons stated in the original Assessment Report.**
- D. That the Hunter and Central Coast Regional Planning Panel refuse Development Application DA 49565/2016 at Lots 1, 2, 3, 25 & 26 Sec A DP159, Lots 4 & 5 DP15954, Lot 31 DP553523 and Lot 2A DP407164, being No's 372, 374, 393, 395 & 397 Mann Street Nos 35, 37 & 41A Dwyer Street and 76 Hills Street, North Gosford for a proposed Mixed Use Development for the reasons detailed in the schedule attached to this report (Attachment 3) and having regard to the matters for consideration detailed in section 4.15 of the *Environmental Planning and Assessment Act 1979* and other relevant issues.**
- E. The those who have made written submissions be notified of the Panel's decision.**
- F. That those Public Authorities who made written submissions be notified of the Panel's decision.**

## Background

The development application was considered by the Regional Planning Panel at its meeting held Wednesday 16 September 2020.

At the meeting the Chair acknowledged that the assessment report had not been publicly available on the Planning Panel website for a period of seven days before the public meeting in accordance with the Sydney and Regional Planning Panels Operational Procedures. The Chair offered each registered speaker an opportunity to make a further submission on the application prior to Monday 21 September 2020 in the event they considered they had been unfairly prejudiced by not having access to the report the full seven days before the meeting.

Accordingly, the Panel resolved to defer determination of the development application for the following reasons:

1. The Panel defer the determination of the matter to provide an opportunity for additional submissions on the Council assessment report to be submitted to Council by close of business Monday, 21 September 2020.
2. That Council prepare a further report addressing any matters raised in the submissions for the Panel's consideration, or advise the Panel that no further submissions were received.
3. That the Panel determine the matter electronically.

## Written submissions made

Two further written submissions were made which are summarised below with a full copy included in Appendix 2.

### Submission

*It is noted that the applicant has requested a review pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979. As there has been no relevant 'determination', it is not open to the applicant to request any review, or for the Panel to grant such a request. Any action to the contrary would be an administrative error.*

### Comment

The Panel is aware of its statutory responsibilities. The applicant advised the Panel it intended to lodge a Section 8.2 Review of determination in future, but it was not stated as a request to the Panel.

### Submission

*The applicant detailing the protracted assessment process given council staff turnover and the amalgamation is a deflection. The proposal has been non-compliant from the outset, had a compliant scheme been submitted there wouldn't have been a requirement for so many amendments. The applicant seeking a Section 8.2 review provides them with a fourth review totalling five separate submissions to date. Council should have enforced that they lodge a new application given the development is substantially different. The applicant has had ample*

*opportunity to amend the application already and the applicants request for a Section 8.2 review should be denied.*

#### Comment

The application before the Panel for determination is a development application for a mixed-use development. If a review of determination is lodged it will be assessed in accordance with the provisions of Section 8.2 of the *Environmental Planning and Assessment Act 1979*, including whether the development is substantially the same development. The Regional Planning Panel will remain the consent authority for any Section 8.2 review application.

The applicant has a choice as to the future path they wish to take in relation to a future application.

#### Submission

*Significant concern with the Council approving the building itself, and particular concern with the impacts on Campbell Street which has not been adequately addressed by the applicant or highlighted within the later received Council report. Campbell Street carriageway is 4.4m wide, this is not enough for 2 vehicles to travel safely in opposite directions, pedestrian safety is also of concern as there is no footpath or kerb and guttering, any increase to pedestrian or vehicle movement is of concern. Campbell Street and road and pedestrian safety not adequately addressed.*

#### Comment

While there has been no specific discussion or concern raised in relation to Campbell Street, insufficient information has been provided in relation to accessibility, road congestion, efficiency and of movement of people and safety of the site and the overall surrounding road network and this is included as a reason for refusal.

#### Submission

The water table on the Campbell Street Side is high and flooding already occurs when it rains on the corner of Campbell and Dwyer Street.

#### Response

This is an existing situation and not attributed to the proposed development. Notwithstanding, an appropriate level of on-site detention is proposed for both the eastern and western portions of the site as well as appropriate stormwater quality improvement devices. In accordance with the GDCP 2013 on-site detention is to limit post development flows from the proposed development site to less than or equal to pre-development flows for all storm events up to and including the 100 year ARI storm event and therefore would not worsen any existing flood conditions.

The additional submissions are noted, and the issues raised do not change the previous recommendation for refusal to the Panel or warrant any further changes to be made to the report.

## Amended Reasons for Refusal

The panel raised concern that *State Environmental Planning Policy 55–Remediation of Land (SEPP 55)* has not been adequately addressed by the applicant in the application as amended (or as originally submitted).

The history and past uses of the site, which included a tile storage facility and previously as a car sales yard and motor vehicle showroom, had been investigated by council staff. While these uses are not identified as activities or uses that may cause contamination in Table 1 of the 'Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land', the Panel would require more information to be satisfied that the land was not contaminated. It is the responsibility of the applicant to provide a preliminary contamination investigation to satisfy the consent authority the land is not contaminated, or if it is, can be appropriately remediated to allow for the proposed use on site.

Having regard for the concern raised by the Panel in relation to the absence of necessary contamination information, the following additional reason for refusal is recommended:

New reason for refusal numbered 3:

The application has not addressed the provisions of Clause 7 of *State Environmental Planning Policy No 55—Remediation of Land* to satisfy the consent authority that the land is not contaminated or if it is contaminated, is suitable in its contaminated state, or will be suitable after remediation, for the purpose for which the development is proposed to be carried out.

This reason is included in the reasons for refusal at Attachment 3.

It is also considered necessary to have a separate reason for refusal that discusses the non-compliance with building separation requirements of the Apartment Design Guide, both to the southern and western boundaries and between buildings on the site as this is considered an important design matter. As such a new reason for refusal has been drafted specifically dealing with this issue and an existing reason for refusal has been amended to specify non-compliance with building separation.

New reason for refusal numbered 6:

1. The proposal has not provided adequate justification for significant non-compliances to the Apartment Design Guide in relation to the separation required under Objective 3F-1 Visual Privacy, including separation to both the southern boundary, the western boundary and between towers on the site which will result in unacceptable amenity and built form outcomes.

Amended reason for refusal 12:

The proposal does not comply with the objectives of Part 8 – Additional Local Provisions – Gosford City Centre of GLEP 2014, in the context of revitalisation of the

Gosford City Centre as the proposal's non-compliance's with the southern boundary setbacks will have significant impacts on, and unfairly prejudice, the development potential of sites to the south. ***In addition, the noncompliance's with building separation required to both the southern boundary, the western boundary and between towers on the site result in unacceptable amenity and built form outcomes*** and does not exhibit design excellence.

These reasons have been incorporated in the reasons for refusal at Attachment 3.

## **Conclusion**

The proposed development is still considered unsatisfactory having regard for the matters for consideration in Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The issues raised in the additional submissions received after the meeting have been considered and do not require any fundamental changes to the report previously provided to the Panel. However, upon further consideration of the fundamental design issues associated with the proposed development, it was considered warranted to provide a new reason for refusal (No. 6) and amended reason for refusal (No. 12) to better reflect the importance of the non-compliances with building separation both within and external to the site.

## **Attachments**

1. Regional Planning Panel Record of Deferral
2. Further written submissions
3. Amended Reasons for Refusal
4. Previous Documents considered by the Panel (Council Assessment Report, Reasons for Refusal, Amended Architectural Plans, Landscape Plans, Sydney Trains Letter, Independence Design Review Clause 4.6 request)