

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN JOINT REGIONAL PLANNING PANEL

DATE OF DETERMINATION	29 August 2017
PANEL MEMBERS	Hon. Pam Allan, Renata Brooks, Lindsay Fletcher, Carl Peterson
APOLOGIES	None
DECLARATIONS OF INTEREST	<p>Cr. Ian Scandrett declared a non-pecuniary significant interest as both he and the applicant are standing Councillors and colleagues. He did not vote on the matter and excused himself from the deliberations.</p> <p>Carl Peterson declared a non-pecuniary less than significant interest as he resides in the same street at the applicant's consultant planner. Carl Peterson remained on the panel, participated in the debate and voted on the matter.</p>

Public meeting held at Gibraltar Room, Wingecaribee Shire Council, 68 Elizabeth St, Moss Vale NSW on 29 August 2017, opened at 12:00 pm and closed at 1:20 pm.

MATTER DETERMINED

2016STH031 – Wingecaribee – DA 16/1079 at 164 Mittagong Road, Bowral (AS DESCRIBED IN SCHEDULE 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979* for the following reasons:

- 1) Pursuant to section 91A(4) and section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, approval cannot be granted as WaterNSW has not granted concurrence to the proposal in its current form.
- 2) Pursuant to section 91A(4) and section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, approval should not be granted as the Panel is not satisfied that the development is consistent with clause 10 of *State Environmental Planning Policy (Sydney Water Catchment) 2011*.
- 3) Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with Clause 7.9 WLEP (Flood Planning) and Section A4 Flood Liable Land of the Bowral Development Control Plan in that it proposes to extend a significant part of the residential development over land designated as High Flood Hazard (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).
- 4) Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with clause 7.9 WLEP (Flood Planning) and Section A4 Flood Liable Land of the Bowral Development Control Plan in that it has failed to make adequate provision for the safe evacuation or refuge in place for occupants of the building in a significant flooding event (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).
- 5) Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the Panel is not able to be satisfied that the proposed development complies with Section A4 Flood Liable Land of the Bowral Development Control Plan and clause 7.9 (Flood Planning) of Wingecaribee Local Environmental Plan 2010 (WLEP) in that it has not been demonstrated that adequate flood storage will be available under all conditions, having regard to the interaction of the ground water table with proposed finished levels of the site (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).

6) Pursuant to section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the Height Standard under clause 4.3 WLEP and the submission under clause 4.6 WLEP is not well founded.





7) Pursuant to section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the development would result in an adverse impact on streetscape and the character and amenity of the locality by reason of its siting, design, height, bulk and setbacks, contrary to objective (c) of the B4 zone WLEP (To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas'); Objective 4.3(b)(Height) WLEP ('to ensure that the heights of buildings are compatible with the character of the existing development within the surrounding area'); clause 5.10 WLEP (Heritage Conservation) and the provisions of Bowral Town Plan Part A, particularly the residential amenity objectives and Part A2.2.6, A4.4, A4.4.3, A6.6, B2.2 and B2.3, Section 14(c) & (d) and C1.2 Bowral DCP.

8) Pursuant to section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the development would result in adverse impacts on residential amenity in the locality by reason of its siting, design and setbacks and consequent unacceptable adverse impacts in terms of privacy and bulk.

9) Potential deficiencies in Floodmit's "Flood Assessment Report", October 2016 (based on Bewsher Consulting's "Bowral Flood Study Addendum Report", April 2009 and IEA's "Australian Rainfall & Runoff - Guide to Flood Estimation", 2001); in that the DA does not appear to have adequately addressed subsequent significant flood events (eg. June 2016) and updated estimations of rainfall intensity and climate change projections referred to in the current version of Australian Rainfall & Runoff (2016).

10) Pursuant to section 79C(1)(e) of the Environmental Planning & Assessment Act 1979, the development is not in the public interest.

The decision was unanimous.

PANEL MEMBERS	
 Hon. Pam Allan (Chair)	 Renata Brooks
 Lindsay Fletcher	 Carl Peterson

SCHEDULE 1

1	PANEL REF – LGA – DA NO.	2016STH031 – Wingecarribee – DA 16/1198
2	PROPOSED DEVELOPMENT	47 Unit residential flat building with basement parking for 83 cars
3	STREET ADDRESS	164 – 178 Mittagong Road, Bowral
4	APPLICANT/OWNER	Mr G. Turland / G. Turland, Coona Pty Lt ITF W&K Quinn Super Fund, RM Hanbury Pty
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Water Management Act 2000 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 State Environmental Planning Policy No. 44 (Koala Habitat Protection) State Environmental Planning Policy No. 55 (Remediation of Land) State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development Wingecarribee Local Environmental Plan 2010 Australian Standard 2601-1991: The Demolition of Structures Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Wingecarribee Development Control Plan (Bowral Town Plan) Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil 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 of 14 August 2017, provided on 21 August 2017 Additional documents incl. Flood Assessment Report, Plans and Perspectives provided to the Panel on 25 August 2017 Written submissions during public exhibition: 27 submissions, 22 being objections Verbal submissions at the public meeting: <ul style="list-style-type: none"> Support – Mr Springett Object – Mr Olsen, Mr Bartlett, Mr Edwards, Mr Lewis, Mr Landon, Mr Cowley On behalf of the applicant – Mr Lee, Mr McGrane, Mr Maddocks. Responses to questions put to representatives of the applicant by the Panel
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing meeting 17 March 2017, site inspection held beforehand on the 16 March 2017. Final site inspection on 29 August 2017 at 9:00 am. Final briefing meeting to discuss Council's recommendation, 29 August 2017, at 10:15am Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Hon. Pam Allan, Renata Brooks, Lindsay Fletcher, Carl Peterson, Cr. Ian Scandrett (excluded himself from the meeting) <u>Council assessment staff</u>: Nick Wilton Group Manager Planning Development and Regulatory Services; Deb Laidlaw Consultant Town Planner.
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	None provided – see executive summary and report