

DETERMINATION AND STATEMENT OF REASONS
DECISION REVIEW PANEL OF THE HUNTER AND CENTRAL COAST
REGIONAL PLANNING PANEL

DATE OF DETERMINATION	10 May 2022
DATE OF PANEL DECISION	9 May 2022
DATE OF PANEL MEETING	3 May 2022
PANEL MEMBERS	Stephen Gow (Chair), Penny Holloway, Clare Brown and Greg McDonald
APOLOGIES	None
DECLARATIONS OF INTEREST	<p>The Decision Review Panel of the Hunter & Central Coast Regional Planning Panel is comprised of different members to those members that made the original decision.</p> <p>Stephen Gow and Penny Holloway declared non-pecuniary, non-significant conflicts of interest as they are members of the Northern Regional Planning Panel and the planning consultant appointed by Upper Hunter Shire Council to undertake assessment for the Section 8.2 Review, David Crofts, is a member of that Panel for the Port Macquarie-Hastings LGA.</p>

Public meeting held by videoconference on 3 May 2022, opened at 3:05pm and closed at 4:45pm.

MATTER DETERMINED

PPSHCC-107– Upper Hunter – 10.2017.163.2 at 150 Gundy Road, Scone– Section 8.2 Review for refused residential subdivision (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 briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Procedural issues

The applicants made various changes to the subdivision design refused by the Hunter & Central Coast Regional Planning Panel on 30 September 2020 (ref. PPS-2017HCC052). Notably these have involved a reduction in residential allotments from 423 to 384 (average size now 829m²), to be developed in 16 stages, with associated changes to the subdivision layout, as shown on the applicants' plan set 'Version P'. In this regard, the Council and the Panel are satisfied that the amended design for the development subject of this Section 8.2 Review Application is substantially the same as the original development application (UHSC DA 163/2017). This is a necessary pre-requisite for the Review Panel's consideration of the matter pursuant to Section 8.2(3) of the *Environmental Planning and Assessment Act 1979* (the Act).

However, the Review Panel has been advised that the necessary general terms of approval (GTAs) have not been issued for the amended development proposal by the NSW Rural Fire Service. Council has also indicated to the Review Panel that GTAs are required from the NSW Natural Resources Access Regulator for works proposed as part of the amended design which require approval under the *Water Management Act 2000*. As the development is integrated development pursuant to Part 4 Division 4.8 of the Act, at the date of the Panel's determination the lack of these GTAs precludes the granting of any consent. Given the Review Panel's decision as outlined below, however, and the provisions of Section 4.47(2) of the Act, there is no bar to a determination of the application by way of refusal.

Finally, the proposed development as amended relies upon various works to be undertaken on an adjacent property (Lot 2 DP 1237000), which the Review Panel is advised was not nominated as part of the application site. Although the applicants have advised that the consent of the owner of that land can readily be obtained, at the date of the Panel's meeting the application for the proposed development as amended was not considered to have been made in accordance with Part 4 of the Act and the Regulation to the Act. Finally, the situation in relation to existing electricity easements on the adjacent land also affected by aspects of the proposed development has not been sufficiently clarified.

Merit issues

The Review Panel acknowledges that many of the changes made to the proposed subdivision design have sought to address concerns raised in the original Panel decision, including an improved relationship between the residential allotments and the central drainage / open space corridor. The amended development has also improved biodiversity outcomes in relation to tree loss, including retention of hollow bearing trees.

Notwithstanding multiple amendments and additional supporting documents submitted since this Review was initiated in September 2021, however, some significant issues are still unresolved.

In particular, salinity is a significant concern for Council and its peer advisors and there remain fundamental differences between the Council and the applicants on this issue. Dryland salinity is a known constraint and is affecting immediately surrounding lands. The Review Panel also heard from a number of community members who are greatly concerned about the potential for the proposed urban subdivision to exacerbate this problem.

Martens Consulting Engineers, for the applicants, has chosen to rely upon a predictive model for groundwater changes, MODFLOW, rather than a range of salinity models which were suggested as options in the previous Panel decision. Dr. Daniel Martens indicated to the Panel that his written advice of 30 March 2022 reflected modelling amendments to take account of the Council's peer review concerns (Soil Futures). This updated modelling reinforced his view that, provided that the proposed stormwater basins in the subdivision were appropriately designed and constructed, the development would not lead to any increase in soil salinity within the site or downstream, because there would be reduced groundwater recharge arising from the intended urbanisation of the site. However, the written advice was not accompanied by data from the revised modelling and when questioned Dr. Martens could not inform the Panel of other examples of urban subdivisions undertaken in areas prone to salinity which would substantiate his prediction of reduced groundwater levels post-development.

Council's position, supported by independent expert review and advice from the Department of Planning and Environment's Principal Salinity Officer, remains that the model provided by the applicant's expert is not adequately informed by local data, including anticipated groundwater recharge arising from residential development and use based on local (2020) gross water consumption data.

In addition, the Review Panel is concerned that the applicants' position is reliant on further piezometric and groundwater salinity data being obtained post-consent. Further, if future monitoring and management arrangements after the development has commenced require interventions, these will be complicated by multiple ownerships on the land and potentially involve a significant public cost, if indeed the impacts are not irreversible.

The Review Panel strongly agrees that a precautionary approach to salinity is warranted within the sub-catchment and, like the original Panel, concluded that there was insufficient information to be confident and satisfied that onsite and offsite salinity impacts from a development with the proposed lot density could be avoided and / or mitigated.

Another area of concern for the Panel was the amended development's reliance on off-site facilities in connection with the proposed residential use. These included bushfire protection and rural buffer / mitigation measures, as well as the proposed emergency egress, which would all require physical works and management through easements/88b instruments rather than being addressed within the site of the

proposed development. Aside from the legal issues of owner's consent and GTAs discussed previously, this approach would involve significant reliance on third party property owner(s) to ensure acceptable performance going forward, where Council would be required to monitor and potentially intervene.

Finally, the proposed subdivision is reliant on a single public road intersection/access to and from Gundy Road. This is considered inadequate for the number of residential allotments proposed in the event that this access road becomes impassable for any reason. This road would also provide the only construction and residential access from Gundy Road for over 300 lots in proposed stages 4-16 south of the proposed drainage / open space corridor.

The Review Panel were strongly of the view that a second, permanent public road access should be provided so that the major part of the proposed subdivision south of the drainage / open space corridor has the choice of two routes to and from Gundy Road as part of this proposal and is not reliant for such access on any future development to the east. While the amended application proposes an emergency access route (exit only) to Gundy Road via adjoining land, this would be reliant on works over property which is not part of the current application. Moreover, the construction impacts / details and arrangements for access / use of this route have not been addressed and that proposed route traverses a stream channel which is subject to flooding.

While noting concerns from submitters regarding potential traffic impacts affecting the use of Gundy Road arising from the proposed development, the Review Panel has noted advice from Council and Transport for NSW that the capacity of the existing road network is considered adequate, subject to review of local speed limits and possible upgrading of the intersection of Gundy Road with Kelly Street to the west.

There were a number of other issues where the Review Panel felt that further negotiation between the parties and design amendments could define desired outcomes as conditions of any consent. These included arrangements for Council utility services for the site, open space design and facilities, pedestrian connectivity, and the important issue of a workable, easily maintained landscape buffer along the Gundy Road frontage of the proposed subdivision.

However, the unanimous view of the Review Panel was that the application in its current form and intensity should be refused.

In reaching this decision, the Review Panel is conscious that the subject site is zoned R1 General Residential and that the proposed development would constitute a significant supply of new housing lots for Scone and district. As noted by the original Panel, this zoning and related DCP provisions reflect the outcome of a Planning Proposal. That process recognised that the site, while potentially suitable for residential development, required a detailed assessment and response to ecological and salinity constraints in addition to the typical issues associated with an urban release area.

Development application

The Review Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Review Panel determined to refuse the application for the following reasons:

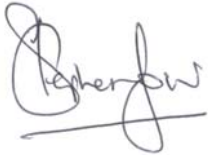



1. Having regard to Section 4.15(1)(a) of the *Environmental Planning and Assessment Act 1979* (the Act), the proposed development is not considered consistent with the Aims outlined in cl. 1.3 of the Upper Hunter Local Environmental Plan 2013, in particular in relation to environmental protection, including the protection and conservation of natural and human-made resources, due to the potential for increased dryland salinity impacts in its sub-catchment.
2. Having regard to Section 4.15(1)(b) of the Act, the proposed development has the potential to adversely impact on land, vegetation and existing infrastructure and buildings in the sub-catchment, with consequent social and economic impacts, through increased dryland salinity. The Review Panel was not convinced that such adverse impacts could be sustainably ameliorated or managed.
3. Having regard to Section 4.15(1)(c) of the Act, the application has not adequately demonstrated that the site, which lies within a sub-catchment with known saline soil and groundwater conditions which could be exacerbated by urban development, is suitable for the proposed development.
4. Having regard to Section 4.15(1)(e) of the Act and to Object (b) in Section 1.3 of the Act (to facilitate ecologically sustainable development, which includes consideration of the precautionary principle), the proposed development would not be in the public interest as it would pose a foreseeable risk of serious and potentially irreversible salinity impacts in the sub-catchment.
5. Having regard to Section 4.15(1)(d) of the Act, the above concerns have been reflected in a number of submissions received from long-term community members.
6. Having regard to Section 4.15(1)(e) of the Act, the design of proposed subdivision is not considered in the public interest as it is reliant on a single public road intersection/access to and from Gundy Road. This is considered inadequate for the number of residential allotments proposed in the event that this access road becomes impassable for any reason. This road would also provide the only construction and residential access from Gundy Road to over 300 lots in proposed stages 4-16 south of the proposed drainage / open space corridor. While the amended application proposes an emergency access route (exit only) to Gundy Road via land to the east, this would be reliant on works over another property which is not part of the application. Moreover, the construction impacts and detailed arrangements for design, access to and use of this route have not been addressed and the proposed route traverses a stream channel which is subject to flooding.
7. The Review Panel is advised that general terms of approval have not been issued for the development, as required for integrated development pursuant to Part 4 Division 4.8 of the Act.
8. The proposed development relies upon works to be undertaken in part on an adjacent property, which was not nominated as part of the application site. The consent of the owner of that land has not been provided to Council in relation to those aspects of the proposed development. As such, the application is not considered to have been made in accordance with Part 4 of the Act and the Regulation to the Act. Finally, the situation in relation to existing easements on this adjacent property which would be affected by aspects of the proposed development has not been sufficiently clarified. Accordingly, the granting of consent would not be in the public interest.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Salinity/ground water impacts, including impacts on downstream biodiversity and agriculture
- Exacerbating existing local flooding
- Lots are too small / Not much change from the original proposal
- Increased traffic with potential traffic congestion on Gundy Road
- Loss of native vegetation
- Stormwater and increased flood potential
- Potential loss of biodiversity
- Need for more housing in Scone and inappropriate urban planning for the area

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Stephen Gow (Chair)	 Penny Holloway
 Clare Brown	 Greg McDonald

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-107– Upper Hunter – 10.2017.163.2
2	PROPOSED DEVELOPMENT	Section 8.2 Review of refused subdivision – amended proposal seeks consent for 384 lot residential subdivision, including roads and other essential service infrastructure (reticulated water, reticulated gravity sewer, stormwater, electricity, telecommunications), public open space and landscaping
3	STREET ADDRESS	LOT: 2 DP: 1169320 150 Gundy Road Scone
4	APPLICANT OWNER	Charles David Pty Ltd C/- Perception Planning Charles David Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million (DA lodged prior to 1 March 2018)
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No. 44 – Koala Habitat Protection State Environmental Planning Policy No. 55 – Remediation of Land State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (State and Regional Development) 2011 Upper Hunter Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Upper Hunter Development Control Plan 2015 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: 25 April 2022 Council memorandum: 2 May 2022 Written submissions during two public exhibitions: 21 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Steve Eccles, Chris Hopton, Katherine Brooks and John Taylor On behalf of the applicant – Matthew Fraser, Erin Daniel and Dr. Daniel Martens Council assessment officers –Paul Smith & David Crofts (consultant) DPE Principal Salinity officer – Allan Nicholson
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 9 December 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Stephen Gow (Chair), Penny Holloway, Clare Brown and Greg McDonald <u>Council assessment staff</u>: David Crofts and Paul Smith <u>Department staff</u>: Carolyn Hunt and Lisa Foley <u>Applicant</u>: Matthew Fraser, Erin Daniel and Michael Cole

		<ul style="list-style-type: none"> • Site inspection and briefing: 8 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen Gow (Chair), Clare Brown and Greg McDonald. Penny Holloway attended the briefing only. ○ <u>Council assessment staff</u>: David Crofts and Paul Smith ○ <u>Department staff (briefing only)</u>: Carolyn Hunt and Lisa Foley • Final briefing to discuss Council's recommendation: 3 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen Gow (Chair), Penny Holloway, Clare Brown and Greg McDonald ○ <u>Council assessment staff</u>: David Crofts, Paul Smith and Allan Nicholson ○ <u>Department staff</u>: Allan Nicholson, Carolyn Hunt and Lisa Foley
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided