

DATE OF DETERMINATION	8 May 2023
DATE OF PANEL DECISION	8 May 2023
DATE OF PANEL MEETING	2 May 2023
PANEL MEMBERS	Alison McCabe (Chair), Roberta Ryan, Tony McNamara and Stephen Leathley
APOLOGIES	Tony Tuxworth
DECLARATIONS OF INTEREST	Greg Flynn declared a conflict of interest due to his social connections to a number of people who have made written objections to the proposed application.

Public meeting held at Central Coast Council Chambers on 2 May 2023, opened at 12:30pm and closed at 1:30pm.

MATTER DETERMINED

PPSHCC-146 – Central Coast – DA/1750/2022 at 40 Kooindah Boulevard and 50 Parry Parade, Wyong – Alterations & Additions to Existing Hotel (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.

The Panel has had the benefit of a briefing from the applicant and Council officers prior to the consideration of the matter at a public meeting.

The Council correspondence of the 20 December 2022 identified a number of issues with the application and requested that the applicant withdraw the proposal.

The Panel understands that the broader site has been developed in accordance with the staged DA approval issued in June 2003 under DA/2732/2002 for a Masterplan for a Managed Resort Facility including 150 room hotel, 252 residential dwellings, 18-hole golf course, golf club, recreation facilities and associated carpark, and engineering and landscape works.

The Council's assessment report identifies a number of issues with the application and recommends refusal. The Panel concurs with this assessment.

The Panel is of the view that the application as currently lodged:

- i. Is not permitted as it does not meet the requirements of Schedule 1 clause 16 (2) Central Coast LEP 2022 where development for the purposes of residential accommodation is permitted with development consent if the consent authority is satisfied that tourist and visitor accommodation will remain the dominant use of the land as a whole.

The Panel is not satisfied that the predominant use of the land is as tourist and visitor accommodation given the amount of residential accommodation proposed and existing across the site.

- ii. Fails to satisfy clause 5.10 Heritage, clause 5.21 Flood Planning, clause 7.1 Acid Sulphate Soils, clause 7.4 Airspace Operation and clause 7.6 Essential Services of the Central Coast LEP 2022.

- iii. Does not contain sufficient information to enable a proper assessment under section 4.15 *EPA Act 1979*.
- iv. Results in unacceptable traffic and transport impacts that cannot be managed or mitigated.
- v. Reinforces the practice of shelter in place in the event of flood for permanent residents and users of the site.
- vi. Results in unacceptable potential impacts on vegetation and the wetland environment.
- vii. Is of a scale and mass that is incompatible with the character of the surrounding area.

The proposal is not consistent with the Masterplan approved for the site and has failed to address how the existing consents relate to this proposal.

Land owners consent has not been granted from the Community Association, noting that the land is part of a community title.

The jurisdictional issues alone would require the Panel to refuse the application.

The Panel also considered that the massing scale and siting of the building results in an inappropriate built form for the site and surrounding area.

The Panel has had regard to the matters required to be considered under section 4.15 *EPA Act* and considers that the application warrants refusal.

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* for the reasons at Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons at Schedule 2.

CONDITIONS

Not applicable.





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:

- Height, bulk and scale incompatible with the existing and desired character of the area
- Visual impacts; social impacts and lack of community consultation
- Permissibility and inconsistency with zone objectives
- Inconsistent with approved Masterplan
- Insufficient documentation
- No Community Association approval and non-compliance with by-laws
- Conflict between residents and tourists
- Acid sulphate soils
- Environmental impacts
- Access, traffic and parking impacts
- Construction impacts
- Site contamination
- Inadequate sewer system
- Adverse impacts on residential amenity (noise, privacy, visual impacts, dust)
- Building on a wetland cannot structurally support the building
- Flooding; community facilities

- Overshadowing
- Aesthetics
- Urban design

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	
 Alison McCabe (Chair)	 Tony McNamara
 Roberta Ryan	 Stephen Leathley

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC – 146 – Central Coast – DA/1750/2022
2	PROPOSED DEVELOPMENT	Alterations & Additions to Existing Hotel, Serviced Apartments & Golf Club plus Construction of 26-storey Mixed Use Building comprising of Serviced Apartments (97), Residential Units (98), Restaurant, Bar, Conference Centre & Additional Parking
3	STREET ADDRESS	Lot 4 DP270434 & Lots 1, 2, 4, 5 and 6 DP280015 & Lot 171 DP270434 50 Parry Parade, 40 Kooindah Boulevard and 50 Kooindah Boulevard, Wyong
4	APPLICANT OWNER	Nigel Dickson, Dickson Rothschild Michael Jou & Yanjie Li
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development <i>Central Coast Local Environmental Plan 2022</i> Draft environmental planning instruments: <ul style="list-style-type: none"> Draft Remediation of Land SEPP Development control plans: <ul style="list-style-type: none"> Central Coast Development Control Plan 2022 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> 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: 24 April 2023 Written submissions during public exhibition: 106 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Penelope Little on behalf of the Kooindah Waters Community Association Committee, Dr Jane Walmsley and John Cragg On behalf of the applicant – Nigel Dickson
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 9 November 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Sandra Hutton, Anthony Tuxworth and Stephen Leathley <u>Applicant representatives</u>: Nigel Dickson, Stacy Zhang, Paul Oreshkin, Michael Jou and Yanjie Li

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Jenny Tattam, Emily Goodworth, Tania Halbert, Andrew Dewar and Brendan Dee ○ <u>Department staff</u>: Leanne Harris and Lisa Foley <ul style="list-style-type: none"> ● Briefing: 21 February 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Tony McNamara, Tony Tuxworth and Stephen Leathley ○ <u>Council assessment staff</u>: Jenny Tattam, Andrew Dewar and Emily Goodworth ○ <u>Department staff</u>: Leanne Harris and Lisa Foley ● Site inspections: <ul style="list-style-type: none"> ○ <u>Alison McCabe (Chair)</u>: 13 January 2023 ○ <u>Tony McNamara</u>: 12 March 2023 ○ <u>Stephen Leathley</u>: 14 September 2022 ● Final briefing to discuss Council's recommendation: 2 May 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara and Stephen Leathley ○ <u>Council assessment staff</u>: Jenny Tattam, Emily Goodworth, Danielle Allen, Tania Halbert, Brendan Dee and Stephen McDonald ○ <u>Department staff</u>: Lisa Foley
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided

REASONS FOR REFUSAL

1. The proposal has failed to demonstrate that it is permissible in accordance with clause 16 of Schedule 1 (Additional permitted uses) of the *Central Coast Local Environmental Plan 2022*.
2. The development does not achieve the zone objectives of the SP3 Tourist zoning of the *Central Coast Local Environmental Plan 2022*:
 - a. The proposal has not demonstrated the provision of limited permanent accommodation in the form of a mixed use development.
 - b. The application has not demonstrated how the proposal protects or enhances the natural environment.
3. The development has not demonstrated the permissibility of ancillary works in either the RE2 Private Recreation zone or C3 Environmental Management zone of the *Central Coast Local Environmental Plan 2022*.
4. The development does not achieve the zone objectives of the C3 Environmental Management zone of the *Central Coast Local Environmental Plan 2022* as the removal of vegetation is not consistent with the zone objectives.
5. The proposal is inconsistent with the approved Masterplan which identifies a maximum three storey building on the site for the purposes of tourist accommodation.
6. The proposal fails to promote a high standard of urban design that responds appropriately to the existing or desired future character of the area. The height, scale, form and density of the development will result in adverse visual and amenity impacts.
7. The scale, massing and height of the proposed development is not compatible with the character and form of development in the surrounding area.
8. The development results in the clearing of native vegetation and there is inadequate information to determine if the area of native vegetation to be cleared requires preparation of a BDAR under the *Biodiversity Conservation Act 2016*. A BDAR has not been submitted with the application.
9. There is inadequate information to assess the potential impacts on coastal wetlands and the coastal wetland proximity area as required by *State Environmental Planning Policy (Resilience and Hazards) 2021*.
10. There is insufficient information to assess the impacts of the development application in accordance with the requirements of clause 4.9 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. A Koala Assessment Report prepared in accordance with the Draft Koala Habitat Protection Guideline 2020 has not been submitted.
11. The proposal fails to comply with the requirements of SEPP 65 as:
 - a. The proposal is contrary to the nine (9) design quality principles.
 - b. The proposal is contrary to the ADG requirements with respect to context and building type, building depth, visual privacy, car parking and vehicle access, apartment size, room depth, private open space, solar access, natural ventilation, common circulation, storage, acoustic privacy, apartment mix, facades, mixed use developments, energy efficiency and waste management.
12. The proposed development fails to satisfy the requirements of clause 4.6(2) of *State Environmental Planning Policy (Resilience and Hazards) 2021*. The applicant has not provided a report that specifies the findings of a preliminary investigation of the subject land in accordance with the contaminated land planning guidelines.
13. Insufficient information has been provided in relation to the following:
 - a. Acoustic assessment

- b. Social impact assessment
 - c. Economic assessment
 - d. Acid sulphate soils
 - e. Dewatering
 - f. Geotechnical constraints
 - g. Aboriginal due diligence
 - h. Site contamination
 - i. Sewer and water
 - j. Construction management – dust, odour and environmental impacts
 - k. Waste management
 - l. Covenants applying to the site
14. The proposal fails to comply with the following requirements of the Central Coast Development Control Plan 2022:
- a. Chapter 2.3 – Residential flat buildings
 - i. Building height
 - ii. Floor space ratio
 - b. Chapter 2.13 – Transport and Parking
 - i. With respect to the amount of car parking provided and the assumptions made regarding traffic generation.
 - c. Chapter 2.14 – Site Waste Management
 - i. Not demonstrated that a waste truck can enter the development.
 - ii. Does not comply with the Central Coast Waste Control Guidelines.
15. The proposal will result in unacceptable impacts on the residential amenity of neighbours from:
- a. The height, bulk, and scale of the development
 - b. Overlooking
 - c. Noise impacts
 - d. Light overspill
16. The proposed development will result in unacceptable traffic impacts having regard to the sites location and dependency on cars as the primary means of accessing the site.
17. The consent of the Community Association has not been provided with the application. The proposal relies on infrastructure (roads and sewerage) that are owned and operated by the Community Association.
18. The proposal fails to comply with clause 5.21 of the *Central Coast Local Environmental Plan 2022* as it has not been demonstrated that the development incorporates appropriate measures to manage risk to life in the event of a flood.
19. The provision of clauses 5.10 Heritage, 5.21 Flood Planning, 7.1 Acid Sulphate Soils, 7.4 Airspace Operation and 7.6 Essential Services of the *Central Coast Local Environmental Plan 2022* have not been satisfied.
20. The site is not suitable for the proposed development having regard for the provisions of section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
21. The proposal is not in the public interest.
22. The impacts arising from the construction of the project have not been adequately documented.