

## DETERMINATION AND STATEMENT OF REASONS

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>DATE OF DETERMINATION</b>	16 November 2021
<b>DATE OF PANEL DECISION</b>	15 November 2021
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Julie Savet Ward, Peter Garnham and Sally Halliday
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	<p>Sandra Hutton declared a conflict of interest as the previous owner of the site, the applicant at the time of her declaration, is a client of her employer.</p> <p>Juliet Grant declared a conflict of interest as her employer acts for an adjoining landowner.</p> <p>Stephen Leathley participated in two briefings for this development application when the site was under previous ownership. On 22 September 2021, the McCloy Group was appointed to act on behalf of the new owner, UPG 77 Pty Ltd. When Mr Leathley became aware of the change, he declared a conflict of interest due to the connection between the McCloy Group and another company which is a client of his on several unrelated sites.</p>

Papers circulated electronically on 28 October 2021.

#### MATTER DETERMINED

PPSHCC-64 – Maitland– DA/2020/1388 at 51, 134 and 146 Station Lane, Lochinvar – residential subdivision concept plan (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 very early briefing on this application in March 2021 and provided a detailed set of minutes outlining key issues and amendments that needed to occur.

The Panel at that point in time was clear that they would accept one (1) set of amendments to address the issues. It was considered that the application required a redesign including a total revision of the engineering approach to the site. The Panel also considered that the proposal had not been properly informed by an urban design analysis.

The Panel was briefed in August 2021 on the amended package and at that stage requested that the matter be reported to the Panel – noting that the package of information had not fully addressed the issues raised in the Panels previous briefing minutes and Council RFI.

The McCloy Group has recently purchased the property and is now the applicant and owner of the property.

The Panel has had the benefit of a further briefing from Council, and the applicant. The applicant requested a deferral of the determination till at least February 2022.

The applicant provided a detailed Gantt Chart of how additional information could be provided in a time frame to meet their deferral request.

The Panel does not doubt that the McCloy Group could provide the information, but considers the time frame proposed to be overly optimistic.

It is the Panel's view that the proposal requires a fundamental redesign and needs to integrate engineering, ecology and urban design considerations into the redesign. This has not been done. Resolution of traffic and infrastructure provisions will require ongoing negotiation.

The Panel cannot be satisfied that clause 6.1 Arrangement for Designated State Infrastructure, clause 7.2 Earthworks, clause 7.3 Flood Planning (now clause 5.21) and clause 7.4 Riparian and Watercourse can be met. These are threshold issues.

The Panel is not satisfied that cut and fill has been minimised, or that the subdivision design has had regard to urban design principles. The proposal lacks appropriate diversity in lot size and has made no attempt to retain the small pockets of vegetation that exist on site.

The application needs to be revisited and started from first principles. The amendments needed are not minor.

For these reasons, the Panel is not supporting the applicant's request to defer the application. The application package as presented in the report to the Panel warrants refusal.

The Panel notes that Council is committed to a continuing dialogue with the new owner. The Panel is also committed to an efficient and expeditious determination of a new application that comprehensively addresses the short comings in the current application and includes the requisite information to make a proper assessment of the proposal.

#### **Development application**

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

1. The lack of diversity in lot layout and proposed subdivision design results in poor urban design outcomes and boundary interface relationships;
2. The engineering solution proposed and vegetated outcomes are not acceptable and result in unnecessary and unreasonable environmental impacts;
3. The development does not comply with the provisions of the Maitland Local Environmental Plan 2011 and fails to satisfy or comply with clauses 6.1, 7.2, 7.3 and 7.4 of the Maitland LEP 2011;
4. The development does not comply with various controls contained in Part F of the Maitland Development Control Plan 2011;
5. The development results in unreasonable impacts on the natural and built environments. The development does not provide balanced and appropriate outcomes;
6. The land is not suitable for the development as proposed;
7. The proposal has not demonstrated that the necessary infrastructure to service the development can be provided;
8. The traffic impacts arising from the development are unacceptable;
9. The extent of cut and fill is not minimised and results in unnecessary loss of vegetation;

10. The development has not addressed the requirements of Integrated Development Approval bodies having regard to the *Rural Fires Act, 1997*, and the *Water Management Act, 2000*;
11. The development does not meet the requirements of State Environmental Planning Policy (Infrastructure) 2007;
12. The development has not addressed the requirements of State Environmental Planning Policy (Koala Habitat Protection) 2020;
13. The development has not adequately addressed matters of public interest in relation to social, economic and environmental outcomes;
14. Owner's consent for the reserved road (private) over which works are proposed had not been provided; and
15. The proposal has not provided sufficient information to properly assess the application.

#### 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:

- Energy efficient design of dwellings, including solar energy,
- Waste Management
- Traffic impacts and provision of infrastructure
- Flooding/Drainage
- Stormwater management
- Environmental impacts
- Access to retail services and public transport
- Provision of recreation land and related facilities
- Upgrade of infrastructure (services)
- Loss of native vegetation and fauna
- Impacts on rural outlook
- Landscaping of creek lines and for visual separation

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)	 Julie Savet Ward
 Sally Halliday	 Peter Garnham

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-64 – Maitland– DA/2020/1388
2	PROPOSED DEVELOPMENT	Concept Development Application for staged delivery of Six Stages of Residential Subdivision (812 Torrens Title Lots plus one Residue Lot) and Development of Stage 1 for 203 Torrens Title Lots (plus one Residue Lot) including associated works
3	STREET ADDRESS	51 Station Lane, Lochinvar (Lot 3 DP 564631), 134 Station Lane, Lochinvar (Lot 4 DP 634523) and 146 Station Lane, Lochinvar (Lot 2 DP 634523),
4	APPLICANT OWNER	McCloy Project Management Pty Ltd UPG 77 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (State and Regional Development) 2011</li> <li>○ State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007</li> <li>○ State Environmental Planning Policy (Koala Habitat Protection) 2020</li> <li>○ Maitland Local Environmental Plan 2011</li> </ul> </li> <li>• Draft environmental planning instruments:</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Maitland DCP 2011</li> </ul> </li> <li>• Planning agreements: Yet to be finalized.</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>:</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council assessment report: 28 October 2021</li> <li>• Council memorandum: 4 November 2021</li> <li>• Written submissions during public exhibition: ten (10)</li> <li>• Total number of unique submissions received by way of objection: nine (9)</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Site inspection: 11 March 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Julie Savet Ward, Stephen Leathley and Peter Garnham</li> <li>○ <u>Council assessment staff</u>: Tegan Harris, Ben Schaffer and Elizabeth James</li> <li>○ <u>Applicant representatives</u>: Graeme Allen and Christopher Scholes</li> </ul> </li> <li>• Briefing: 11 March 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Julie Savet Ward and Stephen Leathley</li> <li>○ <u>Council assessment staff</u>: Tegan Harris, Ben Schaffer and Elizabeth James</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Briefing: 4 August 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Julie Savet Ward, Stephen Leathley, Peter Garnham and Sally Halliday</li> <li>○ <u>Council assessment staff</u>: Brian Gibson, Simina Simaki, Ben Schaffer, Kristy Cousins and Matt Prendergast</li> <li>○ <u>Department staff</u>: Leanne Harris, Jake Love Soper and Lisa Foley</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 4 November 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Julie Savet Ward, Peter Garnham and Sally Halliday</li> <li>○ <u>Council assessment staff</u>: Brian Gibson, Ben Schaffer, Kristy Cousins, Jessica Stockham and Sam Dart</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>• Applicant Briefing: 4 November 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Julie Savet Ward, Peter Garnham and Sally Halliday</li> <li>○ <u>Council assessment staff</u>: Brian Gibson, Ben Schaffer, Kristy Cousins, Jessica Stockham and Sam Dart</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> <li>○ <u>Applicant representatives</u>: Brian Swaine, James Goode, Sam Rowe and Jeffrey Bretag</li> </ul> <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the Council assessment report</p> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided