

DETERMINATION AND STATEMENT OF REASONS
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	30 November 2022
DATE OF PANEL DECISION	30 November 2022
DATE OF PANEL MEETING	16 November 2022
PANEL MEMBERS	Chris Wilson (Chair), Susan Budd, Greg Flynn and Anthony Tuxworth
APOLOGIES	None
DECLARATIONS OF INTEREST	<p>Alison McCabe declared a conflict of interest as she provided Expert Advice to the applicant on an unrelated site in Sydney, through solicitors.</p> <p>Sandra Hutton declared a conflict of interest as the applicant is a client of her recent employer ADW Johnson. While Ms Hutton no longer works for ADW Johnson, and that company had no involvement in this development application, Ms Hutton removed herself from this determination to prevent any perception of conflict.</p> <p>Juliet Grant declared a conflict of interest as her employer, Gyde Consulting (previously known as City Plan) prepared the Statement of Environmental Effects for this application.</p>

A Public meeting was held by teleconference on 16 November 2022, opened at 3:30 pm and closed at 5:15 pm.

MATTER DETERMINED

PPSHCC-86 – Central Coast– DA/882/2021 at 19-21 Bias Avenue, Bateau Bay – Staged Seniors Housing Development (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

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

The Panel has had the benefit of several detailed briefings including a public briefing in March 2022 where concerned residents and the applicant had the opportunity to present to the Panel. The Panel also viewed the site from several properties along the southern and eastern boundaries with a particular focus on the presentation of the development to these properties and associated impacts.

The Panel notes that the application has been amended several times to reduce the bulk and scale of the development to improve both internal and external amenity outcomes. The amendments also focussed on improving the development's integration with existing development, notably, the need to find a more appropriate transition to existing residential interfaces.

Following the public briefing meeting, the Panel requested that Council address several issues raised by the Panel and the public during the meeting. These matters related to affordable housing, community liaison, additional sustainability measures, sediment control measures, caravan storage, air quality, notably dust and diesel emissions, koala observations, clarification regarding the applicability of several State Environmental Planning Policies (SEPPs), and the satisfaction of relevant threshold planning matters.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Central Coast Local Environmental Plan 2022 (LEP), that has demonstrated that:

- a) compliance with cl. 41(1) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Clause 5 Schedule 3 Private Car Accommodation) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives for development in the R1 and R2 zone; and
- c) the concurrence of the Secretary has been assumed.

Development application

The Panel determined to approve 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 acknowledged the impact on the community arising from the lengthy and complex planning process which included 4 iterations of the development proposal. It also acknowledged that more effective communication and consultation earlier in the planning process may have alleviated some of these concerns. However, the Panel also acknowledged the planning pathway chosen by the Applicant is provided for by the planning system and does not in itself, influence the assessment of the application, nor ultimately the Panel's decision, a decision based on the information before it.

In making its decision the Panel determined to uphold the Clause 4.6 variation for private car accommodation under the SEPP and approve the application for the reasons outlined in the Council Assessment Report subject to strengthened conditions of consent as determined by the Panel to address several residual concerns. The Panel was satisfied that the proposal was approvable noting a thorough assessment had been undertaken in accordance with Section 4.15 of the *Environmental Planning and Assessment Act, 1979*, and all jurisdictional prerequisites under WLEP 2013 and the relevant SEPPs had been satisfied.

The Panel was further satisfied that the development would result in a good quality and well-integrated urban outcome with an appropriate transition of bulk and scale from the northwest of the site to the southern and eastern boundaries. The development is architecturally sound involving a high level of articulation, generous onsite landscaping both internally, and around the perimeter, and highly accessible and functional community open space.

The Panel noted the significant changes made to the built form and scale to address the interface with the existing residential properties and that the urban outcomes achieved at the eastern and southern interfaces would not be dissimilar to what could be achieved for permissible residential uses under the existing land use zones and supporting controls.

The Panel was satisfied that the proposal would facilitate the replacement of an existing and aging facility with a new, contemporary facility which will deliver a better environment for care including the benefits of co-located independent living units (ILUs) and a residential aged care facility (RACF) which will allow for 'aging in place'. The provision of 23 affordable housing ILUs in perpetuity will also help meet the demand for affordable housing in the region. Finally, the Panel was satisfied that the Applicant had demonstrated that existing residents would be housed, relocated, and cared for in a socially acceptable manner.

CONDITIONS

The Development Application was approved subject to the revised schedule of conditions as set out in the Council's supplementary memo dated 21 November 2022.

Amendments to conditions to address matters raised by the Panel and community are as follows:

- A new condition (5.42) has been included requiring those affordable housing units upon which the proposal relies on for the bonus floor space to be the subject of positive covenants to ensure they are utilised as affordable housing in perpetuity;
- A new condition has been included (3.22) requiring the Applicant to establish a communication/liaison strategy with the local community in recognition of concerns raised by the community, with a particular focus on the management of construction impacts;
- Conditions 2.19 and 5.41 have been amended to provide for electric charging of scooters/carts to improve sustainability outcomes;
- Condition 3.7 has been amended to clarify that Soil and Water Plans are to be provided to the Certifying Authority prior to all stages of the development;
- Condition 6.19 has been amended to require that residents (of the development) do not park their caravans in streets surrounding the site;
- Condition 5.35 has been amended to include reference to the provision of a fire sprinkler system within the residential aged care facility. Although proposed by the Applicant, the Panel considered it a threshold issue and therefore should be referenced in the conditions of consent;
- Condition 2.13 has been amended to include additional requirements in the Construction Environmental Management Plan (CEMP). These relate to:
 - the preparation of an Erosion and Sediment Control Plan;
 - dust management including the need for monitoring;
 - a protocol relating to the management of any unexpected contamination found on site including appropriate disposal;
 - the incorporation of the recommendations identified in the Noise Impact Assessment and the Acid Sulphate Soil Management Plan; and
 - the need to prepare and incorporate a Diesel Management Plan consistent with the EPA's strategies aimed at reducing diesel emissions for Non- Road Diesel Engines.

The Applicant also sought changes to several conditions. As outlined in Council's memo, a number have been supported including minor changes to Conditions 1.1, 2.1, 2.11, 3.12, 5.10, 5.15, 5.16 (deleted), 5.19, 6.13 (deleted), 6.14, 6.17, and 6.24. The Applicant also sought changes to several other conditions which are either partly supported or have been reworded by Council. These include Conditions 3.13, 4.16, 5.11, 6.1, and 6.19. The Panel reviewed Council's suggested response and supported the changes as drafted.

It is also noted that Conditions 5.21 (was 6.2) through to condition 5.41 (was 6.19) have been renumbered and duplicate condition 6.17 has been removed and the remaining conditions renumbered.

CONSIDERATION OF COMMUNITY VIEWS





In coming to its decision, the Panel considered all written and submissions made during public exhibition and heard from all those wishing to address the Panel at the public determination meeting. Due to the level of public interest in this matter the Panel also heard from interested members of the community at a public briefing in March 2022 and via a site inspection in August 2022 where the Panel viewed the site from neighbouring properties.

The Panel notes that issues of concern included:

- Social impacts
- Physical impacts (privacy, solar access, lighting)
- Bulk, scale, and density of development
- Boundary interface issues
- Environmental and visual impacts of significant tree removal
- Landscaping
- Internal solar access
- Noise and odour impacts
- Traffic generation and access
- Operational aspects

- Compliance with SEPP-HSPD and ADG and other planning controls
- Diesel emissions during construction

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report, Council's memo and the amended conditions of consent as imposed and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Chris Wilson (Chair)	 Susan Budd
 Tony Tuxworth	 Greg Flynn

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-86 – Central Coast– DA/882/2021
2	PROPOSED DEVELOPMENT	Seniors Housing Development in 2 stages comprising, construction of a residential aged care facility (RACF) and independent living units (ILU's) with associated on-site support services and communal facilities, parking, landscaping, demolition and other ancillary uses and works under SEPP (Housing for Seniors or People with a Disability) 2004.
3	STREET ADDRESS	19 Bias Avenue Lot 524 DP 823143 and 1 Harbour Street Lot 16 DP240129 Bateau Bay (known as Nareen Gardens)
4	APPLICANT OWNER	Gyde Consulting (formerly City Plan Strategy & Development) Uniting Church in Australia Property Trust NSW
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 (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy No.65 - Design Quality of Residential Apartment Development State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 State Environmental Planning Policy (Housing) 2021 Central Coast Local Environmental Plan 2022 Draft environmental planning instruments: <ul style="list-style-type: none"> Draft Remediation of Land SEPP Draft SEPP (Environment) Development control plans: <ul style="list-style-type: none"> Central Coast Development Control Plan 2022 Wyong 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: 9 November 2022 Clause 4.6 Variation Request – Private Car Accommodation – Seniors SEPP Council memo and revised condition schedule dated 21 November 2022 Written submissions during public exhibition: 173 Verbal submissions at the public briefing meeting on 1 March 2022:

		<ul style="list-style-type: none"> ○ Graham Witt, Lauren Smith, Robert Cairncross, Patricia Wilson, Erin Breneger, Paul Francis, Kevin Davis, Ryan Stanton, Scott McIntosh, Kathryn Edwards, Jo Brown, Dominique Scafidi and Margaret Johnson ○ On behalf of the applicant – Adrian Ciano ● Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Erin Breneger, Peter Wright, Tom Wilson on behalf of Bateau Bay residents, Bernadette Ambrose on behalf of the Nareen Gardens residents, Jo Brown, Lauren Smith, Graham Witt, Dominique Scafidi and Ryan Stanton ○ On behalf of the applicant – Mel Krzus, Geoff Olson, Robert Bisley and Adrian Ciano
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> ● Kick-off Briefing: 8 September 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair) ○ <u>Applicant</u>: Robert Bisley, Paul Jones, Caine King, Mel Krzus, Milica Bircakovic and Adrian Ciano ○ <u>Council assessment staff</u>: Salli Pendergast and Emily Goodworth ○ <u>Department staff</u>: Alexandra Hafner, Leanne Harris, Lisa Foley and Angela Kenna ● Briefing: 3 November 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, Susan Budd, Greg Flynn and Anthony Tuxworth ○ <u>Council assessment staff</u>: Salli Pendergast, Tania Halbert and Emily Goodworth ○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley ● Applicant Briefing: 10 February 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, Susan Budd and Anthony Tuxworth ○ <u>Council assessment staff</u>: Salli Pendergast and Emily Goodworth ○ <u>Applicant</u>: Adrian Ciano, Ambrus C Biro, Hayden Dimitrovski, Josie Hills, Mel Krzus, Milica Bircakovic, Neil Gardner, Paul Jones, Robert Bisley, Geoff Olson and Leigh Tunbridge ○ <u>Department staff</u>: Jeremy Martin and Lisa Foley <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> ● Public Briefing: 1 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, Susan Budd and Anthony Tuxworth ○ <u>Council assessment staff</u>: Salli Pendergast and Emily Goodworth ○ <u>Department staff</u>: Leanne Harris and Lisa Foley ○ <u>Speakers</u>: Graham Witt, Lauren Smith, Robert Cairncross, Patricia Wilson, Erin Breneger, Paul Francis, Kevin Davis, Ryan Stanton, Scott McIntosh, Kathryn Edwards, Jo Brown, Dominique Scafidi and Margaret Johnson and Adrian Ciano ● Site inspection: 3 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, and Greg Flynn ○ <u>Council assessment staff</u>: Salli Pendergast and Emily Goodworth

		<ul style="list-style-type: none"> ○ <u>Applicant</u>: Adrian Ciano and Milica Bircakovic ○ <u>Department</u>: Leanne Harris <ul style="list-style-type: none"> • Applicant Briefing: 17 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, Susan Budd and Greg Flynn ○ <u>Council assessment staff</u>: Salli Pendergast and Emily Goodworth ○ <u>Applicant</u>: Adrian Ciano, Mel Krzus, Milica Bircakovic, Paul Jones, Daniel Holland, Robert Bisley, Zoe Spurway and Leigh Tunbridge ○ <u>Department</u>: Leanne Harris, Carolyn Hunt and Lisa Foley <u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues <ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: 16 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Susan Budd, Greg Flynn and Anthony Tuxworth ○ <u>Council assessment staff</u>: Salli Pendergast, Emily Goodworth, Jed Field, Johnson Zhang, Jon Scorgie, Michelle Gilson, Steven McDonald and Tania Halbert ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report