

<b>DATE OF DETERMINATION</b>	18 April 2023
<b>DATE OF PANEL DECISION</b>	17 April 2023
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Juliet Grant, Angus Gordon, Tony Tuxworth and Greg Flynn
<b>APOLOGIES</b>	Tony McNamara and Roberta Ryan
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 5 April 2023.

#### **MATTER DETERMINED**

PPSHCC-96 – Central Coast – DA/1276/2021 - 35 McPherson Road, Mardi - Community Facility (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 application has been the subject of a number of briefings over the course of the assessment to afford the Panel the opportunity to understand the proposed development and the flood risks associated with the use of the site. The briefing and the Panel's deliberation have included a detailed consideration of the documents lodged with the application.

The proposed use for the Yerin Aboriginal Community Facility is a use that is needed and would provide much needed resources to the broader Aboriginal Community. The Panel is satisfied that the use is properly characterised as a community facility.

The Panel acknowledges that the proposed use is a less sensitive use than the aged care facility that operated from the site for many years – in that the use does not involve any resident occupying the site or overnight use.

The site and associated building are located in a floodway. This means the site severely constrained.

The Molino Stewart Report of 27<sup>th</sup> August 2021 provided the following information:

- i. The site is identified as a low flood island and access is cut in a 20% AEP (1 in 5 chance per year).
- ii. The site is understood to experience high hydraulic hazard. In the 1% AEP flood the site would have a hydraulic hazard of H5 (which is unsafe for people and vehicles and buildings would require special engineering to withstand).
- iii. Given the levels of the carpark relative to McPherson Road – access is cut before the part of the site where the building is located floods.
- iv. Given the site is already low lying future sea level rise associated with climate change will cause more frequent inundation of the site – increasing the frequency of isolation, higher hazard flood waters and for longer duration.

Page 8 of the Flood Emergency Response Plan report (Molino Stewart Sept 2021), under the heading “Flood Probabilities” states:

“Flooding of the Wyong River at or approaching the 1% AEP levels was reported in 1927, 1949 and 1964. Other major floods occurred in 1930, 1977 and 2007 (Catchment Simulation Solutions, 2020). This underlines the randomness of flood frequency.

Bigger floods can and do occur. There were several floods with greater than a 1% AEP experienced in Eastern Australia in early 2011. Some reached levels which have a 1 in 2,000 (0.05%) AEP. A flood with a 1 in 500 (0.2%) AEP has about a 1 in 6 chance of being reached or exceeded in the average person’s lifetime, the same as tossing a die and getting a 6.

The largest flood that can occur is referred to as the Probable Maximum Flood (PMF). Although it has a very low probability of occurring in any one year (1 in 10,000 or less), events approaching a PMF have been recorded. Flooding may occur at any time of year and at any time of day. “

It is noted from the same report that although some flooding of the buildings starts at the 20% AEP (1 in 5 year) event level, all buildings are likely to begin experiencing some inundation at the 5% AEP (1 in 20 year) event.

Page 9 of the 27<sup>th</sup> August 2021 report also notes:

“Due to high flood levels, high flood hazard and potential long duration of site isolation, the site must be evacuated early in response to dangerous flooding. The site needs to be fully evacuated before the evacuation route is flooded – and so requires appropriate triggers that allow timely evacuation.”

The report makes the following conclusions:

- A robust Flood Emergency Response Plan is required for the site that outlines how the site will manage flood risk to life, and any measures to reduce risk to property. It is to include details on the evacuation triggers and plan for a timely, early evacuation.
- The Flood Emergency Response Plan will include details for how site management will have to monitor weather, rain and river level information online when any rain is expected for the site.
- It is recommended that a site flood gauge and alarm system be installed on site. This alarm will need to be triggered at 0.6 m AHD, when there is enough time (i.e. 1 hour) to fully evacuate the site before the parking lot is flooded and driveway access is cut.
- It can be argued that since the proposed development is not a residential development, and is the adaptive re-use of an existing building, the long-term future risk associated with climate change is acceptable. The proposed development can operate in the meantime with flood evacuation procedures in place and provide beneficial services to the community until there comes a time at which it must explore solutions to adapt to climate change, such as raising the development's parking lot and driveway, in order to extend the lifetime of the development.

The Panel understands, from the Molino Stewart Flood Report that the waters flowing across the site in the event of flood are fast moving and are a potential hazard to life.

The application also includes a proposed new carpark in proximity to existing vegetation. The application does not contain any engineering details, geotechnical information, acid sulphate soil analysis or an arborist report, nor does it indicate whether or not the level of the new car park will be at or above the existing ground level and therefore whether there could be adverse impacts on flood flow around the southern area of the site.

The design of the carpark needs to be finalised in order to undertake an assessment of impacts and the appropriateness of the evacuation routes and options available. The application does not contain sufficient

information. These are not matters that can be addressed as a deferred commencement condition as they require further assessment.

The safety of the employees and customers in the event of flood relies on 100% compliance with the Flood Emergency Response Plan – including compliance with the evacuation triggers. The evacuation trigger relies on technology for a flood gauge and alarm system to be located on or close to the site. The alarm will be triggered at 0.6m AHD. The consultants flood report indicates it is their opinion that at this trigger height there is enough time (i.e. 1 hour) to fully evacuate the site before the carpark lot is flooded and the driveway access cut.

Any noncompliance with the Flood Emergency Response Plan would result in unacceptable impacts and risk to life.

The Panel considers the site to be highly constrained and not suitable for the use proposed.

The Panel questions the appropriateness of continued investment in a site that will be impacted upon by flooding requiring the potential for ongoing rectification works for the life of the use.

The Panel considers that the site is ultimately not suitable for the use given the risk to life of users of the site in the event of a flood.

#### **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:



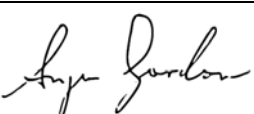
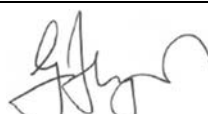
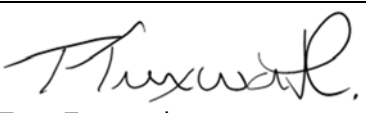
1. The site is not suitable for the proposed use given the nature and extent of flood affection.
2. The provisions of clause 5.21 Wyong LEP 2013 have not been satisfied.
3. The impacts associated with the flood prone nature of the site cannot be satisfactorily mitigated by the Flood Emergency Response Plan.
4. The proposed development results in an unacceptable risk to the users of the site.
5. There is insufficient information to assess the impacts of the development.

#### **CONDITIONS**

Not applicable.

#### **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel notes that the only written submission made during public exhibition was received from NSW Department of Planning, Industry and Environment – Crown Lands.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Angus Gordon	 Greg Flynn
 Tony Tuxworth	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-96 – Central Coast – DA/1276/2021
2	PROPOSED DEVELOPMENT	Proposed Alterations and Additions including Demolition and Change of Use of an Existing Aged Care Facility to a Community Facility
3	STREET ADDRESS	Lot 1 Sec 1 DP 3368, 35 McPherson Road, Mardi
4	APPLICANT OWNER	ADW Johnson Yerin Aboriginal Health Services Limited
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities with a CIV over \$5 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 (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>Wyong Local Environmental Plan 2013</li> <li>Central Coast Local Environmental Plan 2022</li> </ul> </li> <li>Draft environmental planning instruments: <ul style="list-style-type: none"> <li>Draft State Environmental Planning Policy Environment (SEPP Environment)</li> </ul> </li> <li>Development control plans: <ul style="list-style-type: none"> <li>Wyong Development Control Plan 2013 <ul style="list-style-type: none"> <li>Chapter 1.2 – Notification of Development Proposals</li> <li>Chapter 2.11 – Parking and Access</li> <li>Chapter 3.1 – Site Waste Management</li> <li>Chapter 3.3 – Floodplain Management</li> </ul> </li> </ul> </li> <li>Planning agreements: Nil</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: 5 April 2023</li> <li>Written submissions during public exhibition: one</li> <li>Total number of unique submissions received by way of objection: nil</li> </ul>

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 3 November 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Angus Gordon, Tony Tuxworth and Greg Flynn</li> <li>○ <u>Applicant representatives</u>: Amanda Hill, Paul Hussein and Belinda Field</li> <li>○ <u>Council assessment staff</u>: Nathan Burr and Emily Goodworth</li> <li>○ <u>Department staff</u>: Alexandra Hafner, Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>• Briefing: 3 March 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Angus Gordon and Tony Tuxworth</li> <li>○ <u>Council assessment staff</u>: Nathan Burr and Emily Goodworth</li> <li>○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>• Briefing: 17 August 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Angus Gordon and Greg Flynn</li> <li>○ <u>Applicant representatives</u>: Steven Molino, Brooke Sauer, Paul Hussein and Belinda Field</li> <li>○ <u>Council assessment staff</u>: Nathan Burr, Andrew Dewar and Emily Goodworth</li> <li>○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt, Lisa Foley and Mary Francis</li> </ul> </li> <li>• Briefing: 21 February 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Tony McNamara, Angus Gordon and Tony Tuxworth</li> <li>○ <u>Council assessment staff</u>: Andrew Dewar and Emily Goodworth</li> <li>○ <u>Department staff</u>: Leanne Harris and Lisa Foley</li> </ul> </li> <li>• Site inspections: <ul style="list-style-type: none"> <li>○ <u>Alison McCabe (Chair)</u>: 29 October 2021</li> <li>○ <u>Juliet Grant</u>: 1 November 2021</li> <li>○ <u>Tony Tuxworth</u>: 5 April 2023</li> <li>○ <u>Greg Flynn</u>: 2 November 2021</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 12 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Angus Gordon, Tony Tuxworth and Greg Flynn</li> <li>○ <u>Council assessment staff</u>: Nathan Burr and Emily Goodworth</li> <li>○ <u>Department staff</u>: Lisa Foley</li> </ul> </li> <li>• Applicant Briefing: 12 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Angus Gordon, Tony Tuxworth and Greg Flynn</li> <li>○ <u>Council assessment staff</u>: Nathan Burr and Emily Goodworth</li> <li>○ <u>Department staff</u>: Lisa Foley</li> <li>○ <u>Applicant representatives</u>: Adam Crampton, Paul Hussein and Belinda Field</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	Approval
10	DRAFT CONDITIONS	Attached to the Council assessment report