

<b>DATE OF ORIGINAL DETERMINATION</b>	9 February 2023
<b>DATE OF AMENDED DETERMINATION</b>	27 March 2023
<b>PANEL CHAIR</b>	Dianne Leeson
<b>DECLARATIONS OF INTEREST</b>	None

The following development application (DA) was referred to the Northern Regional Planning Panel as 'Development subject to delays in determination' under section 9 of Schedule 6 to the *State Environmental Planning Policy (Planning Systems) 2021*.

I, as Panel Chair, have considered the referral and this is a record of my determination and reasons.

**Development Application:**

**DA2200404 – Kempsey Shire Council**

Phillip Drive, South West Rocks

Staged Community Title Subdivision incl. Multi-Dwelling Housing, Residential Flat Building and Neighbourhood Shops and Take Away Food & Drink Premises

**Consideration and Determination:**

On 31 January 2023, the Planning Panels' Secretariat provided to me a copy of the written request (in the form of a Regional Development Request Form dated 18 January 2023) to Kempsey Shire Council (Council) from the Applicant, for the Northern Regional Planning Panel to deal with the above development, being a development that has a capital investment value of more than \$10 million but less than \$30 million, and for which a development application to the Council has been lodged but not determined within 120 days after the application was lodged.

On 22 February 2023, the Planning Panel's Secretariat provided to me a copy of the amended written request, in the form of a Regional Development Request Form, dated 13 February 2023 and incorporating a supplementary letter from the Applicant of the same date.

Section 1.4(8) of the *Environmental Planning and Assessment Act 1979* (the Act) empowers me to amend my determination dated 9 February 2023. Having regard to the additional information provided by the Applicant dated 13 February 2023, I am now amending the reasons for my original determination.

I have considered the following materials in coming to my determination:

- Regional Development Request Form dated 18 January 2023
- email from Council dated 6 February 2023 and attachments thereto
- amended Regional Development Request Form dated 13 February 2023 including the supplementary letter from the Applicant dated 13 February 2023, and
- Sydney District and Regional Planning Panels Operational Procedures dated November 2022

I conclude that although the Applicant is not wholly responsible for the entirety of the time taken to determine the application, the Applicant has materially caused the delay in determining the application by providing inadequate information to Council to enable a full assessment to be undertaken and agencies to provide their General Terms of Approval.

In particular, I conclude that the delay is due to the failure of the Applicant to address the matters contained in Council's RFI dated 23 June 2022. Without limitation as to the matters that have not been addressed, I note that Council advised in that RFI that the development constitutes 'designated development' under s 2.7 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* because part of the site is mapped as coastal wetlands. To date, the mandatory statutory requirements for designated development under the Act and *Environmental Planning and Assessment Regulation 2021* have not been complied with by the Applicant for DA2200404, including applying for the Secretary's environmental assessment requirements and preparing and submitting an environmental impact statement.

Accordingly, the request is refused. The DA will be determined by Kempsey Shire Council.

Determined by

A handwritten signature in dark ink, appearing to read 'D Leeson', written in a cursive style.

Dianne Leeson  
**Panel Chair**  
**Northern Regional Planning Panel**