

DATE OF DETERMINATION	24 July 2023
DATE OF PANEL DECISION	24 July 2023
BRIEFING DATE	12 July 2023
PANEL MEMBERS	Dianne Leeson (Chair), Michael Wright, Stephen Gow, Rhonda Hoban and Daniel Walsh
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 4 July 2023.

MATTER DETERMINED

PPSNTH-209 – Kempsey – DA2200364 at 20 Airport Rd, Aldavilla – Proposed Macleay Valley Adventure Recreation Park (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 the site inspection listed at item 8 in Schedule 1.

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 determined to approve the application, subject to conditions, for the reasons outlined in the Independent Assessment Report.

The Panel agrees the principal issues associated with the development are flooding and evacuation, on-site accommodation, noise, and traffic.

Additional matters addressed by the Panel include scale and form of the main building in a predominantly rural setting, glare and reflectivity, hours of operation, compatibility with existing airport activities and movements, and water quality of the Swoop Pond.

The Panel is satisfied these issues can be managed and that identified impacts can be mitigated by imposition of conditions. The Panel has imposed additional conditions and modified other recommended conditions to address issues raised, including those raised in submissions.

CONDITIONS

The Development Application was approved subject to the recommended conditions attached to the Independent Assessment Report with the following amendments.

- Amend Condition 1 by deleting the words ‘and supporting documents’ in the first sentence (above the table) and second sentence (below the table)
- Amend Condition 2 to read as follows:
 2. The ‘Future Event Space’ indicated on Drawing AR-1002 is not approved. As such no outdoor amplified music events or similar are to be carried out on the site without the

development consent of Council. This does not exclude utilising the facilities approved by this consent, being rock climbing centre, skydiving centre, BMX Pump Track and Canopy Swoop Pond for tournaments.

- Amend Condition 3, third sentence to read as follows:

Unless the movable dwellings will have a floor level of at least RL 14.9 metres AHD the sites are only to be occupied by movable dwellings capable of being registered, that can individually be dismantled and moved within thirty (30) minutes.

- Amend Condition 8 to read as follows:

8. The finished floor level of the main building and hangar is to be a minimum R.L. 14.00 m A.H.D. The plans and specifications to accompany the construction certificate application are to indicate the use of flood compatible materials and services below the predicted flood level of RL 14.90 m AHD (that is the 2100 1% AEP with climate change), in accordance with the requirements of the current version of the *Floodplain Development Manual*. This requirement also includes any permitted structures within the caravan park. The construction certificate plans are to be certified by a suitably experienced and qualified Registered or Chartered Professional Engineer as containing the required flood impact mitigation and flood proofing measures.

- Amend Condition 11 by deleting the words - F2 Operating a caravan park or camping ground (application is to be for a maximum of 72 people)

- Amend Condition 13 by deleting the following wording:

This Section 138 application must as a minimum include the following:

- Detailed engineering design for any works within the road reserve
- A speed review for Old Aerodrome Road, and subject to the outcome of this speed review, installation of a speed reduction to 60 km/h of the sections of Old Aerodrome Road on the approaches to Warne Drive, Warneton Road and Fernhill Crescent. Intersection warning signs must be placed on intersection approaches with inadequate sight distance, at a distance that matches the SISD at the predevelopment 85%-ile speed plus 2 seconds.

- Amend Condition 16 to read as follows:

16. Evidence is to be provided as to the undertaking of consultation with the airport users regarding:

- i. Additional apron pavement area for skydiving operations,
- ii. Additional apron pavement area for visiting aircraft, and
- iii. Adjustments to wildlife fence alignment to suit the above.

Evidence is to be provided that agreed changes have been incorporated into the construction certificate plans.

- Amend Condition 18 to read as follows:

18. A Neighbour Management Plan must be developed to deal with potential issues with neighbouring residents to the adventure park. The plan is to be developed with the assistance of Tim Fitzroy and Associates or another suitably qualified consultant who is experienced in land use conflict policies, procedures and guidelines and their implementation. The plan is to include but is not limited to the following matters:

- a. Simple and effective measures to avoid potential risks associated with participants or spectators entering adjoining or nearby farmland,
- b. Display of clear, simple and highly visible signs to support adjoining farm's biosecurity messages,
- c. Protocols for skydiving personal regarding biosecurity risks and measures to minimise any impacts should they inadvertently enter adjoining farmland,
- d. Air quality impacts on animal and human health from aviation gas from planes,
- e. Protocols for amplified music, public address systems and other noises. Measures should include:

- i. restriction to the designated areas,
 - ii. outdoor amplified music and public address systems been limited to the daytime and evening period only (7am to 10pm),
 - iii. noise levels of each speaker should be limited to the modelled speaker sound power level listed in Table 4.9 of the 15 March 2021 assessment report by Air Noise Environment, and
 - iv. direction of speakers away from any sensitive residential receivers.
- f. Specific acoustic performance assessment by a suitably qualified acoustic consultant conducted over two separate events, which are reasonably representative of events held in the first six months of operation. The assessment is to provide recommendations on any amendments to the operation of the events to ensure compliance.
- g. Details of evidence of consultation with the neighbours identified in the submitted LUCRA by Tim Fitzroy and Associates (Illustration 2.2) and details of any requested changes to the draft plan and of the changes made. If requested changes have not been made, details of the reasons why the changes have not been made are to be included.
- h. Complaint handling procedures which are to include:
 - i. distribution to the neighbours of the direct contact details of the site manager and details of the adopted complaint handling procedures,
 - ii. a notice at the site entry of the contact details of the site manager,
 - iii. the recording of all complaints received and the response to those complaints. This record of complaints (with personal details redacted) is to be provided to any member of the public on request.

The management plan is to be developed in consultation with potentially impacted neighbours.

- Amend Condition 19 to read as follows:

- 19. The plans and specifications to accompany the construction certificate application are to indicate that the *Specular Light Reflectance* will be less than 15 per for all external building glazing and cladding materials and finishes when measured at an angle of 90 degrees to the surface of the material. Evidence of the review of the glare assessment and acceptance of the final plans by CASA must be provided.

In this condition *Specular Light Reflectance* means the proportion or percentage of light that reaches a surface and is reflected off that surface in a mirror-like way.

- Amend Condition 23 by deleting 'The' and replacing with 'Evidence of compliance with' and replacing 'completed' with 'provided in the first sentence.
- Insert new Condition 38, which reads as follows and renumber the remaining conditions accordingly:
 - 38. A road safety audit of Old Aerodrome Road is to be undertaken in accordance with Austroads Guide to Road Safety. The audit report and recommendations are to be referred to the Local Traffic Committee for consideration and appropriate action. The audit is to consider the following:
 - Speed limits of the sections of Old Aerodrome Road on the approaches to Warne Drive, Warneton Road and Fernhill Crescent.
 - Intersection design, sightlines and approaches.
- Amend former Condition 40 (now Condition 41) to read as follows:
 - 41. Documentary evidence from a suitably qualified consultant is to be submitted to the Principal Certifying Authority certifying that the completed caravan park accommodation complies with all conditions of the General Terms of Approval from NSW Rural Fire Service in Schedule 1 of this Notice of Determination
- Insert new Condition 44 under the 'Ongoing Operational Requirements', which reads as follows and renumber the remaining conditions accordingly:

44. Prior to the construction of the caravan park, approval under Section 68 of the *Local Government Act 1993* must be obtained from Council for operation of the caravan park. Such an application must have a maximum of ten short term sites and a maximum of 72 people.
- Amend former Condition 43 (now Condition 45) to read as follows:
 45. Noise monitoring must be undertaken during skydiving operations to ensure that the noise footprint, in terms of aircraft noise exposure levels around aerodromes N60, N65 and N70, does not increase over current operations. The proposed skydiving operations are to be adjusted and optimised based on the operational noise data set. The monitoring must be undertaken within three months of the completion of the first year of the operation of the adventure park, then every two years thereafter. This monitoring may be integrated into Council's *Kempsey Airport Noise Management Plan and Fly Neighbourly Advice* provided the objective of this condition is still achieved. That is, the new skydiving operations are monitored to ensure that the noise footprint, in terms of aircraft noise exposure levels around aerodromes N60, N65 and N70, does not increase over current operations.
 - Insert new Condition 46 and renumber the remaining conditions accordingly:
 46. The number of flights originating from the proposed Skydiving Centre must not exceed 190 flights per month.
 - Amend former Condition 44 (now Condition 47) by including the following at the end:



'The review is to be carried out with the assistance of Tim Fitzroy and Associates or another suitably qualified consultant who is experienced in land use conflict policies, procedures and guidelines and their implementation.'
 - Insert new Condition 50, which reads as follows:
 50. The water quality of the swoop pond is to be regularly monitored to ensure that the water quality will not result in adverse health outcomes for the users of the pond, as determined by Council's principal environmental health officer. Should the water quality level fall below the appropriate level determined by Council's principal environmental health officer the use of the pond is to cease immediately and not be used until the water quality returns to the acceptable level.

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:

- Conflict with the operations of the airport for current users
- Traffic impacts, particularly on Old Aerodrome Road
- Adequacy of the Acoustic Assessment
- Adequacy of the Flood Impact Assessment
- Scale and design of the building in relation to the surrounding rural property buildings
- Feasibility of the project and whether Council should be carrying out such a project
- Future event space shown on the plans.

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and through the conditions as modified by the Panel, and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues appropriate conditions have been imposed.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Michael Wright



Stephen Gow



Rhonda Hoban



Daniel Walsh

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-209 – Kempsey – DA2200364
2	PROPOSED DEVELOPMENT	Proposed Macleay Valley Adventure Recreation Park
3	STREET ADDRESS	Lot 1 and Lot 2 DP1144474 -20Airport Road Aldavilla
4	APPLICANT/OWNER	Kempsey Shire Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ Kempsey Local Environmental Plan 2013 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Kempsey Development Control Plan 2013 • Planning agreements: Nil • Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</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: 3 July 2023 • Council Supplementary Report received: 10 July 2023 • Written submissions during public exhibition: 10 • Total number of unique submissions received by way of objection: 9
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Wednesday, 19 April 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow, Rhonda Hoban and Daniel Walsh ○ <u>Council assessment staff</u>: Michael Jackson and Shane Reinhold • Site inspection: Wednesday, 26 April 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow and Rhonda Hoban ○ <u>Council assessment staff</u>: Shane Reinhold • Final briefing to discuss council's recommendation: 12 July 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow, Rhonda Hoban and Daniel Walsh ○ <u>Independent Consultants</u> - Chris Pratt (Assessment Planner) and Michiel Kamphorst (Engineer) ○ <u>Department Staff</u>: Carolyn Hunt, Louisa Agyare and Lisa Ellis • Submitter Briefing: 12 July 2023

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), [Michael Wright, Stephen Gow, Rhonda Hoban and Daniel Walsh ○ <u>Council assessment staff</u>: Melissa Zaide ○ <u>Independent Consultants</u> - Chris Pratt (Assessment Planner) and Michiel Kamphorst (Engineer) ○ <u>Department Staff</u>: Carolyn Hunt, Louisa Agyare and Lisa Ellis ○ <u>Submitters</u>: Adam Ulrick (Save Kempsey Airport Action Group) and Ross McIntosh <p><u>Note</u>: Submitter briefing was requested to inform the Panel of any further concerns not raised in written submissions and to respond to the recommendation in the council assessment report</p> <ul style="list-style-type: none"> • Applicant Briefing: 12 July 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), [Michael Wright, Stephen Gow, Rhonda Hoban and Daniel Walsh ○ <u>Applicant representatives</u>: Craig Milburn, Peter Allen, Ben Lee, Kylie Cameron ○ <u>Council assessment staff</u>: Melissa Zaide ○ <u>Independent Consultants</u> - Chris Pratt (Assessment Planner) and Michiel Kamphorst (Engineer) ○ <u>Department Staff</u>: Carolyn Hunt, Louisa Agyare and Lisa Ellis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report