

DETERMINATION AND STATEMENT OF REASONS
NORTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	29 November 2024
DATE OF PANEL DECISION	28 November 2024
DATE OF PANEL MEETING	20 November 2024
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Daniel Walsh and Michael Coulter
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 20 November 2024, opened at 2.33pm and closed at 4.26pm.

MATTER DETERMINED

PPSNTH-268 – Kempsey– DA2300926 – Phillip Drive, South West Rocks – Concept Development Application approval is sought for residential flat buildings, serviced apartments, shops and food and drink premises (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.

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. Having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act, which requires the consent authority to take into consideration the impacts of the development on both the natural and built environments, and the social and economic impacts in the locality - the form, height, bulk and scale of the proposal are considered excessive having regard to the character of the locality in the context of the small coastal town environment of South West Rocks and given the sensitive ecological context of the site.
2. The consent authority cannot be satisfied that the provisions of Kempsey Local Environmental Plan 2013 have been complied with, as the proposal does not satisfactorily address Clause 7.2(3)(g) of Kempsey LEP 2013. In particular, inadequate information has been provided to enable adequate assessment of the ecological impact of the groundwater impacts of car park excavation and dewatering and the changed stormwater discharge from the development site to the ecology of the adjoining land.
3. Inadequate information has been lodged with the Development Application to enable adequate assessment of the environmental impacts concerning matters specified in SEPP (Resilience and Hazards) Sections 2.8, 2.10 and 2.11.

4. The proposed development does not comply with core provisions of Kempsey Development Control Plan 2013 that directly seek to achieve the objectives of the R3 Medium Density Residential zone, particularly:
 - a. DCP Clause C1 chapter objectives concerning the protection of the unique character of South West Rocks; and
 - b. DCP Clause 5.1(DO2) requiring residential development at densities that are compatible with the desired natural character of the neighbourhood and locality, noting that the excessive bulk and scale of the development do not positively align with the adjoining sensitive Crown Land.
5. The proposed architectural form and building heights present an unsympathetic response to the existing and desired future character of the locality and in the immediate context of the Phillip Drive streetscape.
6. The Mosquito Impact Assessment has not demonstrated that there is an adequate buffer distance from mosquito habitat or proposed detention basins to the development to prevent or minimise nuisance and health risk associated with mosquitos and minimise human contact with mosquitos.
7. The development application does not satisfactorily address issues raised by the National Parks and Wildlife Service and the Department of Planning and Environment – Biodiversity & Conservation.
8. The proposed development is not in the public interest as it would conflict with the existing and the desired future character of South West Rocks and the community-led strategic planning that seeks to protect its unique character.
9. The significant community objection to the proposed development, with principal objections relating to:
 - Incompatibility of the proposed height, bulk and scale within the immediate locality of Phillip Drive and environs;
 - Incompatibility with the desired future character and amenity of South West Rocks as a small coastal town;
 - Visual impact including from Horseshoe Bay Headland, the Town Centre, State heritage listed Trial Bay Gaol and Monument Walk;
 - Environmental and ecological impacts on adjoining Crown Lands and wetland areas;
 - Traffic and concerns about insufficient parking (including boat parking)

Additional Panel comments

In addition to relevant mandatory considerations listed below, the Panel also had regard to community-led and Council adopted strategic plans including the Kempsey Local Growth Management Strategy and Local Character Statements Review (June 2022), and the South West Rocks Structure Plan (2023), all of which were prepared and adopted prior to lodgement of DA 2300926.

The Panel considers, subject to detailed analysis and more sympathetic urban form, that the site is suitable for medium density residential development without causing undue environmental and amenity impacts.

A more considered site design and building typologies transitioning from the existing urban form and better addressing the neighbourhood context in Phillip Drive would assist in developing a more sympathetic outcome and may also contribute to more housing diversity.

The provision of some serviced apartments would support the local tourism industry and be a worthwhile economic initiative. However, a detailed analysis of the number of apartments should be undertaken to ensure potential adverse impacts are mitigated.

The proposed provision of 10% of dwellings as Affordable Housing is commended.

CONDITIONS



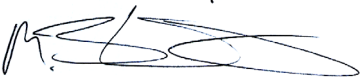
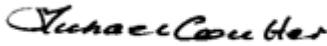

Not applicable

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:

- Building Heights
- Over Development
- Character
- Habitat and Endangered Species
- Visual Impacts
- Economy
- Infrastructure Capacity
- Traffic
- Flooding and Groundwater
- Contamination/Acid Sulfate Soils
- Nearby Wetlands
- Cultural Heritage
- Amenity Impacts
- Climate Change
- Bushfire
- Inadequate consultation
- Inconsistency with local strategic planning

The Panel considers that concerns raised by the community have been adequately considered in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Gow
 Michael Wright	 Michael Coulter
 Daniel Walsh	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-268 – Kempsey– DA2300926
2	PROPOSED DEVELOPMENT	Concept Development Application approval is sought for residential flat buildings, serviced apartments, shops and food and drink premises
3	STREET ADDRESS	Phillip Drive, South West Rocks
4	APPLICANT/OWNER	Daniel Pszczonka Rise South West Rocks Pty Ltd
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 (Housing) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Industry and Employment) 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: 7 November 2024 Written submissions during public exhibition: 479 Verbal submissions at the public meeting: <ul style="list-style-type: none"> David Miller, Richard (Dick) Pearson, Eric Matthews, Larrah Kennedy and Richard Phillips, Warren Bailey, Jakeb Love, Geoffrey Forsyth, Felicity O'Neill, Mark Byrne, Carole Ramm, Russell Gibson Gill Council's consultant planner – Steve Connelly On behalf of the applicant – Daniel Pszczonka, Andrew Pigott, Jane Maze-Riley, Karl Robertson, Damian McCann and Lange Jorstad Total number of unique submissions received by way of objection: 475
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Preliminary Briefing: 13 December 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright and Rhonda Hoban <u>Council assessment staff</u>: Melissa Zaide, Retha du Preez, Michael Jackson and Craig Milburn <u>Applicant representatives</u>: Daniel Pszczonka, Liam Poritt, Sally Prowd, Chris Wilson, Nathan Casamento and Antonio Siles

		<ul style="list-style-type: none"> ○ <u>Department staff:</u> Carolyn Hunt, Louisa Agyare and Lisa Ellis • Briefing: 17 April 2024 <ul style="list-style-type: none"> ○ <u>Panel members:</u> Stephen Gow (Acting Chair), Michael Wright, Rhonda Hoban and Daniel Walsh ○ <u>Council assessment staff:</u> Melissa Zaide ○ <u>Council Consultant Planner:</u> Steve Connelly ○ <u>Department staff:</u> Carolyn Hunt • Site inspection: 3 September 2024 <ul style="list-style-type: none"> ○ <u>Panel members:</u> Dianne Leeson (Chair), Stephen Gow, Michael Wright and Daniel Walsh ○ <u>Council assessment staff:</u> Melissa Ziade and Retha du Preez ○ <u>Council Consultant Planner:</u> Steve Connelly ○ <u>Applicant representatives:</u> Daniel Pszczonka, Liam Poritt, Keiley Hunter and Karl Robertson ○ <u>Community Representatives:</u> Larrah Kennedy, Richard Phillips and Richard (Dick) Pearson ○ <u>Other:</u> Noel Selby, Fred Altmann and Debra Holland (additional community members) • Final briefing to discuss Council's recommendation: 20 November 2024 <ul style="list-style-type: none"> ○ <u>Panel members:</u> Dianne Leeson (Chair), Stephen Gow, Michael Wright, Daniel Walsh and Michael Coulter ○ <u>Council assessment staff:</u> Melissa Ziade and Retha du Preez ○ <u>Council Consultant Planner:</u> Steve Connelly ○ <u>Department staff:</u> Carolyn Hunt and Lisa Ellis • Briefing to discuss Panel's recommendation: 25 November 2024 <ul style="list-style-type: none"> ○ <u>Panel members:</u> Dianne Leeson (Chair), Stephen Gow, Michael Wright, Daniel Walsh and Michael Coulter ○ <u>Council assessment staff:</u> Melissa Ziade and Retha du Preez ○ <u>Council Consultant Planner:</u> Steve Connelly ○ <u>Department staff:</u> Carolyn Hunt and Lisa Ellis
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the Council Assessment Report