

DETERMINATION AND STATEMENT OF REASONS

SYDNEY CENTRAL CITY PLANNING PANEL

DATE OF DETERMINATION	23 February 2021
PANEL MEMBERS	Abigail Goldberg (Chair), Mark Colburt, Noni Ruker and Chandi Saba
APOLOGIES	Gabrielle Morrish
DECLARATIONS OF INTEREST	David Ryan advised that his company had prepared the SEE for this application.

Papers circulated electronically on 5 February 2021.

MATTER DETERMINED

PPSSCC-26 – The Hills Shire - DA228/2020/JP, Lot 12 DP 833069 and Lot 34 DP 834050, Nos. 332-334 Annangrove Road, Rouse Hill, Concept development for a mixed-use development and early works including tree removal and bulk earthworks.

PANEL CONSIDERATION AND DECISION

The Panel considered and debated the matters listed at item 6 and the material listed at items 7 and 8 in Schedule 1.

The Panel determined to **refuse** the development application for the reasons outlined in the Council Assessment Report, noting in particular that:

- The proposal is likely to have a serious and irreversible impact on the biodiversity values of the site;
- Impacting on the Cumberland Woodland on this site will increase the fragmentation of residual Cumberland Woodland throughout the sub-region, reducing its viability and increasing its sensitivity across the board.

Even if the impact of the proposal on the biodiversity values of the site were not considered to be serious and irreversible, the Panel considers that:



- The proposal will have an unacceptable impact on both the flora and fauna communities on site;
- The development footprint of the proposal is unsatisfactory, and the applicant has made no apparent effort to avoid and minimise impact on endangered flora and fauna communities.


As such, the proposal is considered not to be in the public interest.

The decision to refuse was **unanimous**.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that there were no written submissions received during the public exhibition.

PANEL MEMBERS	
 Abigail Goldberg (Chair)	 Chandi Saba

 Noni Ruker	 Mark Colburt
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SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSCC-26 – The Hills Shire - DA228/2020/JP
2	PROPOSED DEVELOPMENT	Concept development for a mixed-use development and early works including tree removal and bulk earthworks.
3	STREET ADDRESS	Lot 12 DP 833069 and Lot 34 DP 834050, Nos. 332-334 Annangrove Road, Rouse Hill
4	APPLICANT/OWNER	Lennon Project Management / Abax Contracting Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	CIV exceeding \$30million
6	RELEVANT MANDATORY CONSIDERATIONS	<p>Environmental planning instruments:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011 • Biodiversity Conservation Act 2016 • State Environmental Planning Policy No 55 – Remediation of Land • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • State Environmental Planning Policy (Infrastructure) 2007 • Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River • The Hills Local Environmental Plan 2019 <p>Draft Environment State Environmental Planning Policy: Nil</p> <p>Draft environmental planning instruments: Nil</p> <p>Development control plans:</p> <ul style="list-style-type: none"> • The Hills Development Control Plan 2012 Part B Section 7 – Industrial • The Hills Development Control Plan 2012 Part C Section 1 – Parking • The Hills Development Control Plan 2012 Part C Section 3 – Landscaping <p>Planning agreements: Nil</p> <ul style="list-style-type: none"> • 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: February 2021 • Biodiversity Development Assessment Report – Keystone Ecological Version 2.1 dated 15 July 2020 • Letter by Keystone Ecological undated (received 10 December 2020) Version: 11, Version Date: 03/02/2021 • Mills Oakley Advice dated 23 September 2020 • Applicant's Peer Review Cumberland Ecology dated 9 December 2020 • Applicant's Peer Review Ecological Australia dated 10 December 2020 • Written submissions during public exhibition: 0
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY	<ul style="list-style-type: none"> • Papers were circulated electronically on 5 February 2021. • Site inspection - Site inspections have been curtailed due to COVID-19 precautions. Where relevant, Panel members undertook site inspections individually. • 18 February 2021 - Council Briefing <u>Attendees:</u> <ul style="list-style-type: none"> • Panel Members - Abigail Goldberg (Chair), Noni Ruker, Mark Colburt and Chandi Saba (Suzie Jattan and George Dojas in attendance on behalf of the Panel Secretariat) • Council Assessment Staff - Cameron McKenzie – Group Manager Development and Compliance, Paul Osborne – Manager Development Assessment, Robert Buckham – Principal Coordinator Development Assessment, Danielle Adams Bennett - Senior Biodiversity Officer, Mark Chidel - Environment Co-ordinator and Angelo Berios - Manager Environment and Health. <p><u>Points discussed –</u></p> <ul style="list-style-type: none"> • Size and condition of the Cumberland Woodland area, related undergrowth and level of weed infestation; • Relationship of the Cumberland Woodland area on site to wider sub-regional Cumberland Woodland areas; • Status of the snail population. Current snail ecosystem requirements, potential to relocate successfully; • Applicant attempts to avoid impacting on both the Cumberland Woodland and snail communities on site, or to minimize impact; • Applicant's legal advice. <ul style="list-style-type: none"> • 18 February 2021 - Applicant Briefing to discuss Council's recommendation <u>Attendees:</u> <ul style="list-style-type: none"> • Panel Members - Abigail Goldberg (Chair), Noni Ruker, Mark Colburt and Chandi Saba (Suzie Jattan and George Dojas in attendance on behalf of the Panel Secretariat) • Council Assessment Staff - Cameron McKenzie – Group Manager Development and Compliance, Paul Osborne – Manager Development Assessment, Robert Buckham – Principal Coordinator Development Assessment, Danielle Adams Bennett - Senior Biodiversity Officer, Mark Chidel - Environment Co-ordinator and Angelo Berios - Manager Environment and Health.

		<ul style="list-style-type: none"> • Applicant Representatives – Tom Baxter – Director, Abax Contracting Pty Limited (Landowner, Developer), Matt Sonter – Partner, Mills Oakley (Legal, Planning), Elizabeth Ashby – Director, Keystone Ecological (Project Ecologist) and Scott Lennon – Director, Lennon Project Management Pty Limited (Applicant, Project Manager) <p><u>Points raised by the Applicant’s representatives –</u></p> <ul style="list-style-type: none"> • Response to Council’s assessment and recommendation for refusal, specifically: <ul style="list-style-type: none"> ○ Legal interpretation of the requirements of the Act as well as the Biodiversity Assessment Manual (2019) published by the Department of Planning, Industry and Environment; ○ Differences in approach and opinion of the ecological consultants as opposed to Council staff; ○ Acknowledgement that an approach of ‘avoid and minimise’ through site design has not been attempted as this would render the project financially non-viable; ○ Viability of the Cumberland Woodland over the long term.
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A