

DATE OF DETERMINATION	6 September 2023
DATE OF PANEL DECISION	6 September 2023
DATE OF PANEL MEETING	30 August 2023
PANEL MEMBERS	Chris Wilson (Chair), Juliet Grant, Grant Christmas, David Brown, Mark Carlon
APOLOGIES	None
DECLARATIONS OF INTEREST	<i>Michael Mantei - former panel member</i>

Public meeting held at Wollongong City Council and by videoconference on 30 August 2023, opened at 10.30am and closed at 11.55am.

Papers circulated electronically on 16 August 2023.

MATTER DETERMINED

PPSSTH-143 – Wollongong – DA-2022/136 at 7-9 Bellevue Road, FIGTREE NSW 2525 (Lot 10 DP 1034856), 11 Bellevue Road, FIGTREE NSW 2525 (Lot 77 DP 17037), 13 Bellevue Road, FIGTREE NSW 2525 (Lot 76 DP 17037), 38-40 Princes Highway, FIGTREE NSW 2525 (Lot 2 DP 210588, Lot 100 DP 614698) – Construction of a mixed-use seniors living complex including various ancillary uses such as a gym, wellness centre, club house, café, chapel, Seniors Day Care and flooding/ stormwater infrastructure, demolition of existing structures and tree removals (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

While the Panel acknowledged the vision of the applicant and the broader benefits of the proposal in terms of its location and the delivery of much needed Seniors Living accommodation for the community, the Panel was of the view that the following fundamental issues remained unresolved despite their identification early in the assessment process:

- flood modelling parameters;
- the adequacy of the design response to flooding;
- the extent and acceptability of off-site post development flood impacts;
- potential contamination issues; and
- bulk and scale of the development with a particular reference to the residential interfaces of the proposal.

The Panel notes the applicant was firmly of the view that these matters had been resolved sufficiently to enable a determination by way of approval. The applicant requested the Panel defer its decision so:

- The Panel could seek independent peer review and verification of the flood studies ;
- The applicant could consider design changes to the built form outcomes in response to the Panels concerns with the bulk and scale of the proposal and the justification supporting the contravention of the applicable height control;
- The applicant could prepare a Detailed Site Investigation (DSI) Report regarding potential onsite contamination notwithstanding the applicant's view that this could be dealt with as a deferred commencement condition; and

- The applicant could formally seek an amendment of the application under sections 37 and 38 of the Environmental Planning and Assessment Regulation 2021 to accommodate any design changes.

The Panel considered the applicant's request and determined there was not sufficient certainty regarding the timely resolution of the flooding issues and an appropriate design response to warrant the deferral, given these matters were raised by the Panel almost 12 months previously.

The decision was unanimous.

The Panel consequently determined to refuse the development application on the information before it pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

This decision was also unanimous.

The Panel noted the option for the applicant to seek a review of determination through section 8.2 of the *Environmental Planning and Assessment Act 1979*. Should the applicant seek a review, the Panel encourages the revision of the flood study to ensure:

- Appropriate flood model parameters can be achieved;
- Flood precincts can be identified;
- High flood risk areas can be mapped;
- A design response which avoids high impacts can be prepared;
- Onsite and offsite impacts are adequately addressed;
- Council's DCP controls regarding flooding are appropriately considered; and
- An appropriate design response is established.

Written request to justify a contravention of a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Wollongong Local Environmental Plan 2009 (WLEP), the Panel was of the view that the request does not demonstrate that:

- a) compliance with cl. 4.3(Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard.

the Panel is not satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (height of buildings) of the LEP and the objectives for development in the R2 Low Density Residential zone.

REASONS FOR THE DECISION

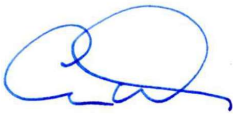




The Panel determined to uphold the Clause 4.6 request to building height and refuse the application for the reasons outlined in the Council Assessment Report. The full reasons for the Panel's decision to refuse the application are outlined in Schedule 2.

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:

- Traffic and parking impacts;
- Height and scale out of character for the area;
- Tree removal;
- Overlooking and intrusion; and
- Flooding.

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	
 Christopher Wilson (Chair)	 Juliet Grant
 Grant Christmas	 David Brown
 Mark Carlon	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-143 – Wollongong – DA-2022/136
2	PROPOSED DEVELOPMENT	Construction of a mixed-use seniors living complex including various ancillary uses such as a gym, wellness centre, club house, café, chapel, Seniors Day Care and flooding/ stormwater infrastructure, demolition of existing structures and tree removals
3	STREET ADDRESS	7-9 Bellevue Road, FIGTREE NSW 2525 (Lot 10 DP 1034856), 11 Bellevue Road, FIGTREE NSW 2525 (Lot 77 DP 17037), 13 Bellevue Road, FIGTREE NSW 2525 (Lot 76 DP 17037), 38-40 Princes Highway, FIGTREE NSW 2525 (Lot 2 DP 210588, Lot 100 DP 614698)
4	APPLICANT/OWNER	Applicant: Andrew Connor / Owner: ADRIA CARE LTD, Croatian Catholic Centres
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 (Hazards and Resilience) 2021 ○ State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development ○ State Environmental Planning Policy (Housing) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ Wollongong Local Environmental Plan 2009 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Wollongong Development Control Plan 2009 • 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: 16 August 2023 • The application includes a Clause 4.6 Exception to development standard request for Wollongong Local Environmental Plan 2009 - Clause 4.3 Height of buildings on R2 Low Density Residential zoned land. • List any council memo or supplementary report received: Select Date • Written submissions during public exhibition: 13 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Stuart Wilkinson ○ Council assessment officer – Rod Thew ○ On behalf of the applicant – Anton Crnkovic (Adria Care), Alistair MacCallum (AMC Architecture obo Adria Care), Philip Bull (Town

		<p>Planner, Civic Assessments Urban Planners), Anthony Barthelmess (Flooding Engineer, Reinco), Craig Perrott (AMC Architecture)</p> <ul style="list-style-type: none"> • Total number of unique submissions received by way of objection: 13
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 12 April 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, David Brown ○ <u>Council assessment staff</u>: Rod Thew, John Wood, Nicole Ashton ○ <u>Other</u>: Verity Rollason (DPE) • Site inspection: 21 June 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Tim Fletcher, David Brown ○ <u>Council assessment staff</u>: Rod Thew, John Wood, Nicole Ashton ○ <u>Other</u>: Amanda Moylan (DPE) • Council/Applicant Briefing: 29 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, David Brown ○ <u>Council assessment staff</u>: Rod Thew, Andrew Heaven, Mathew Carden ○ <u>Applicant representatives</u>: Andrew Connor (Canberra Town Planning), Phillip Bull (Civic Assessments), Alastair MacCallum (AMC Architecture), Craig Perrot (AMC Architecture), Nicholas Sutherland (AMC Architecture), David Pearce (DSBLA), Anthony Barthelmess (Flood engineer), Bernie Cusack (Design engineer), Fr Ivo Tadic (Catholic Diocese of Wollongong), Stephanie Tyrell (CEO Adria Care), Anton Crinovik (Adria Care) • Final briefing to discuss council's recommendation: 30 August 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Grant Christmas, David Brown, Mark Carlon ○ <u>Council assessment staff</u>: Rod Thew, Mathew Carden, Andrew Heaven, Pier Panozzo, John Woods, Charlie Bevan. ○ <u>DPE</u>: Amanda Moylan, Tim Mahoney, Tracey Gillet
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not applicable

SCHEDULE 2

DA-2022/136 be Refused for the following reasons:

- 1 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the development as proposed is consistent with State Environmental Planning Policy (Housing) 2021 with respect to:
 - a. Section 84 Development Standards - General;
 - b. Section 87 Additional Floor Space Ratios;
 - c. Section 98 Design of seniors housing;
 - d. Section 99 Neighbourhood amenity and streetscape;
 - e. Section 100 Visual and acoustic privacy;
 - f. Section 101 Solar access and design for climate;
 - g. Section 102 Stormwater;
 - h. Section 107 Non-discretionary development standards for hostels and residential care facilities;
 - i. Height of building;
 - ii. Density and scale;
 - iii. Communal open space;
 - iv. Deep soil zone
 - i. Section 108 Non-discretionary development standards for independent living units.
 - i. Height of building;
 - ii. Density and scale;
 - iii. Landscaped area;
 - iv. Deep soil zone
- 2 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, insufficient information has been provided with the application submission for the consent authority to assess and be satisfied with the requirements of State Environmental Planning Policy (Hazards and Resilience) 2021 with respect to:
 - a. Section 4.6 Contamination and remediation to be considered in determining development application.
- 3 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the development is consistent with State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development with respect to the principles of the Apartment Design Guide.
- 4 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposal is contrary to Section 1.2 (2)(c), (2)(d) and (2)(g) the aims of the Wollongong Local Environmental Plan 2009, as:
 - i. The developments bulk and scale contrasts markedly with the site's current context, and is inconsistent with the current and desired future neighbourhood character;
 - ii. the proposed development has not been designed appropriately given the constraints and characteristics of the site and has the potential to result in significant adverse impacts on the amenity of the surrounding area;
 - iii. The application proposes 'Critical Utilities', seniors housing, within the High and Medium Flood Risk Precincts; and
 - iv. The proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels.
- 5 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the proposal is not consistent with the objectives of the R2 zone of WLEP2009 as the application submission fails to demonstrate the development provides for a low density residential environment and is consistent with existing and desired future character of the area.

- 6 Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate consistency with Wollongong Local Environmental Plan 2009 with respect to:
- a. Section 4.3 Height of buildings
 - b. Section 4.4 Floor space ratio
 - i. The bulk and scale of the development as proposed is inconsistent with the bulk and scale of development in the locality and does not satisfy WLEP 2009 Section 4.3(1)(c) and the application fails to demonstrate that adequate consideration has been given to the principles set out in Division 6 of State Environmental Planning Policy (Housing) 2021.
 - c. Section 4.6 Exception to development standards
 - i. A written request has not been provided to the consent authority for the exception to the floor space ratio development standard as required under Section 4.6(3).
 - d. Section 5.21 Flood planning
 - i. Unsuitable land use for high and medium flood risk precinct
 - ii. Proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;
 - iii. Proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009;
 - iv. The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land;
 - v. Driveway passes through parts of floodplain where flood depths and velocities are outside safe criteria;
 - vi. Proposal includes car parking areas where flood depths and velocities are outside safe criteria.
 - e. Section 7.6 Earthworks
 - i. proposal will result in significant flood impacts on other land outside the development site including more extensive floodway areas, increased flood hazard, velocities, and increased flood levels;
 - ii. proposal includes filling and a car park located within an existing floodway and High Flood Risk Precinct area, which is considered contrary to the controls, objectives, performance criteria in WLEP 2009 Section 5.21
 - iii. The proposal includes piping and modification of a natural watercourse;
 - iv. The proposal will result in an increase in the frequency and duration of surface water flows being conveyed onto and across the downslope land.
- 7 Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal fails to demonstrate consistency with the provisions of the Wollongong Development Control Plan 2009 with respect to the following chapters:
- Chapter A2 - Ecologically Sustainable Development
 - Chapter B1 - Residential Development;
 - Chapter D1 - Character Statements;
 - Chapter E3 - Car Parking, Access, Servicing/ Loading Facilities and Traffic Management;
 - Chapter E6 - Landscaping;
 - Chapter E13 - Floodplain Management;
 - Chapter E14 - Stormwater Management;
 - Chapter E15 – Water Sensitive Urban Design;
 - Chapter E17 – Preservation and Management of Trees and Vegetation;
 - Chapter E19 - Earthworks (Land Reshaping Works);
 - Chapter E20 – Contaminated Land Management
- 8 Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the likely impacts of the proposed

development's bulk and scale on the amenity and character of the area will not be adverse.

- 9 Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the likely impacts of flooding on the amenity of the locality will not be adverse.
- 10 Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act, 1979, the application submission fails to demonstrate the site is suitable for the development proposed.
- 11 Pursuant to the provisions of Section 4.15 (1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development proposal is unsuitable with respect to:
 - Flooding;
 - Character of the area;
 - Tree removal; and
 - Overlooking impacts.
- 12 Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore, not in the public interest.