

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	7 November 2022
DATE OF PANEL DECISION	7 November 2022
DATE OF PANEL MEETING	2 November 2022
PANEL MEMBERS	Chris Wilson (Acting Chair), Renata Brooks, Susan Budd, David Brown, Michael Mantei
APOLOGIES	None
DECLARATIONS OF INTEREST	Tim Fletcher - COI relating to working on a project where architect Edmiston Jones P/L was also engaged.

Public meeting held Wollongong City Council and by teleconference on 2 November 2022, opened at 1:30pm and closed at 2:45pm.

MATTER DETERMINED

PPSSTH-159 – Wollongong – DA-2022/469 at 14 Cosgrove Ave, Keiraville –Multi-dwelling housing development including the construction of 5 individual buildings with a total of 42 dwellings and 96 car parking spaces with associated earthworks, tree removal, construction of an internal private accessway, landscaping, Asset Protection Zone (APZ), stormwater drainage, new electrical substation, and strata subdivision of dwellings. (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. The Panel was not satisfied that the existing downstream stormwater infrastructure had the capacity to accommodate the development, and nor had it been demonstrated that augmentation could be practically achieved.
2. The Panel determined that the likely impacts of the proposed development on biodiversity values as assessed in the biodiversity assessment report were unacceptable having regard to the provisions of Section 1.7 of the *Environmental Planning and Assessment Act 1979*, and Part 7 of the *Biodiversity Conservation Act 2016*.
3. The Panel was not satisfied that the proposed development was consistent with the aims, objectives, and performance criteria established in Planning for Bush Fire Protection 2019.

4. The Panel was not satisfied the Applicant had demonstrated that the design and gradient of the proposed access could adequately accommodate construction, service, and emergency vehicles.
5. The Panel was not provided with landowner's consent in accordance with clause 23 of the *Environmental Planning and Assessment Regulation 2021* for work proposed on the following land:
 - a. Lot 96 DP 30903 and Lot 100 DP1257652 relating to the proposed stormwater works and a proposed drainage easement;
 - b. Lot 2 DP 852788 and the 'paper' road reserve for works associated with the implementation of the proposed Biodiversity Management Plan; and
 - c. The 'paper' road reserve relative to the geotechnical extent of the building area.
6. General Terms of Approval (GTA) have not been issued by either the NSW Rural Fire Service or the NSW Department of Planning and Environment (Water) as required by Section 4.47(4) of the *Environmental Planning and Assessment Act 1979*.
7. In accordance with Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the Panel determined the Applicant had failed to adequately address the relevant provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021 relating to koala habitat.
8. In accordance with Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the Panel determined that the development proposal was unacceptable and inconsistent with Wollongong Local Environmental Plan 2009 with respect to:
 - a. Clause 5.10 Heritage conservation
 - o Visual impact on the heritage-listed Illawarra Escarpment
 - o Visual impact on the State Heritage listed item "Glennifer Brae"
 - o An Aboriginal Heritage Interpretation Strategy (AHIS) was not provided as recommended in the Aboriginal Cultural Heritage Assessment Report (ACHAR)
 - b. Clause 7.1 Public Utility Infrastructure
 - o The failure to demonstrate that adequate water pressure can be provided to service the proposed development including for firefighting operations
 - c. Clause 7.2 Natural resource sensitivity – biodiversity
 - d. Clause 7.4 Riparian Lands
 - e. Clause 7.6 Earthworks
 - f. Clause 7.8 Illawarra Escarpment area conservation
 - g. Clause 7.14 Minimum site width
9. In accordance with Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the Panel determined the development proposal was inconsistent and unacceptable with regard to the following Chapters of the Wollongong Development Control Plan 2009:
 - a. Chapter A2 Ecologically Sustainable Development
 - b. Chapter B1 Residential Development
 - c. Chapter B6 Development in the Illawarra Escarpment
 - d. Chapter D1 Character Statement
 - e. Chapter E2 Crime Prevention through Environmental Design
 - f. Chapter E3 Car Parking, Access, Servicing/Loading Facilities and Traffic Management
 - g. Chapter E6 Landscaping
 - h. Chapter E7 Waste Management
 - i. Chapter E10 Aboriginal Heritage
 - j. Chapter E11 Heritage Conservation
 - k. Chapter E12 Geotechnical Assessment
 - l. Chapter E14 Stormwater Management
 - m. Chapter E16 Bush Fire Management
 - n. Chapter E17 Preservation and Management of Trees and Vegetation
 - o. Chapter E19 Earthworks (Land Reshaping Works)
 - p. Chapter E22 Soil Erosion and Sediment Control
 - q. Chapter E23 Riparian Land Management




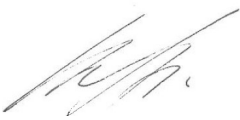

10. In accordance with Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the Panel determined that the built form, scale, and visual impact of the proposed development, together with the extent of modification to the natural landscape, was not sympathetic to the environmental values of the escarpment, and did not present a gradual transition to the environmentally sensitive areas within the escarpment.
11. In accordance with Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, and taking into consideration the matters identified in item 10 above, the Panel determined that the development proposal was inconsistent with the objectives of the C2 Environmental Conservation zone of Wollongong Local Environmental Plan 2009.
12. In accordance with Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*, the Panel determined that the site is not suitable for the development proposal.
13. In accordance with Sections 4.15 (1) (d) and (e) of the *Environmental Planning and Assessment Act 1979* the Panel determined that given the circumstances of the case as identified in items 1-12 above, the proposed development was not in the public interest.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition of the application and supporting documents and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Geotechnical concerns including slope instability/risk of landslip
- Traffic, parking, access arrangements and safety
- Stormwater run-off impacts/inadequate drainage design
- Bushfire risk
- Inappropriate scale and density of development for the location/overdevelopment
- Inconsistency with existing context and desired future character of the locality

The Panel considered that the concerns raised by the community had been adequately addressed in Council's Assessment Report (AR) and the reasons for refusal. The Panel considers that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Chris Wilson (Acting Chair)	 Renata Brooks
 Susan Budd	 David Brown
 Michael Mantei	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-159 – Wollongong – DA-2022/469
2	PROPOSED DEVELOPMENT	Multi-dwelling housing development including the construction of 5 individual buildings with a total of 42 dwellings and 96 car parking spaces with associated earthworks, tree removal, construction of an internal private accessway, landscaping, Asset Protection Zone (APZ), stormwater drainage, new electrical substation, and strata subdivision of dwellings
3	STREET ADDRESS	14 Cosgrove Ave, Keiraville - Lot 90 DP 1086429
4	APPLICANT/OWNER	Edward Cheung obo Surewin Parkview Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Related Legislation <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act (BC) Act 2016 • Commonwealth Environmental Protection and Biodiversity Act (EPBC) 1999 • Environmental planning instruments: <ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning (Resilience and Hazards) 2021 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • Wollongong Local Environmental Plan (WLEP) 2009 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> • Wollongong City-Wide Development Contributions Plan 2022 • Planning agreements: Nil • Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • 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: 19 October 2022 • Clause 4.6 Variation Request • Written submissions made during public exhibition: 102 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Geoff Kelly & Arnold McLean (Keiraville Resident Action Group Inc.) ○ Greg Bathurst ○ Dr Penelope Murphy ○ Ray Boniface ○ George Dellars ○ Felix Bronneberg ○ Michael Kokot ○ Honglin Chen ○ Aditya Ghose

		<ul style="list-style-type: none"> ○ Council assessment officer – Vivian Lee ○ On behalf of the applicant – None • Total number of unique submissions received by way of objection: 102
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 27 July 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Michael Mantei, David Brown ○ <u>Council assessment staff</u>: Vivian Lee, Pier Panozzo, Linda Davis ○ <u>DPE</u>: Amanda Moylan • Site inspection: 27 July 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Michael Mantei, David Brown ○ <u>Council assessment staff</u>: Vivian Lee, Pier Panozzo, Linda Davis ○ <u>DPE</u>: Amanda Moylan • Briefing: 30 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Susan Budd, Michael Mantei, David Brown ○ <u>Council assessment staff</u>: Vivian Lee, John Wood, Mark Adamson ○ <u>DPE</u>: Amanda Moylan • Final briefing to discuss council's recommendation: 2 November 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Susan Budd, Michael Mantei, David Brown ○ <u>Council assessment staff</u>: Vivian Lee, John Wood, Mark Adamson, Linda Davis ○ <u>DPE</u>: Amanda Moylan
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the Council Assessment Report