

<b>DATE OF DETERMINATION</b>	20 October 2022
<b>DATE OF PANEL DECISION</b>	19 October 2022
<b>DATE OF PANEL MEETING</b>	12 October 2022
<b>PANEL MEMBERS</b>	Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, Stephen Leathley
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held Wingecarribee Shire Council Chambers and by teleconference on 12 October 2022, opened at 1:30pm and closed at 3:30pm.  
Papers circulated electronically on 29 September 2022.

#### **MATTER DETERMINED**

PPSSTH-175 - PAN-125770 – Wingecarribee – DA-22/0214 at 6 & 8 Wiseman Road, Bowral — Demolition of existing structures, lot consolidation, the construction of a staged seniors housing development and associated works (as described 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.

#### **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, briefings, the public meeting, and the matters observed at site inspections listed at item 8 in Schedule 1.

Following the consideration of all information before the Panel, including the Council's Assessment Report (AR) and recommended reasons for refusal, the Panel determined to refuse the application albeit with some changes to the Council's recommended reasons for refusal. In coming to its decision, the Panel also turned its mind to several matters raised by either the applicant or speakers at the public meeting. These are as follows:

1. whether threshold issues had either been met or were in the process of being met to enable the grant of consent;
2. the social impacts of the proposal; and
3. whether or not the proposal was compatible and consistent with the desired future character of the area.

#### **State Environmental Planning Policy (Resilience and Hazards) 2022 ("RH SEPP")**

The panel considered the prerequisites to the granting of development consent under *State Environmental Planning Policy (Resilience and Hazards) 2022 ("RH SEPP")* and *State Environmental Planning Policy (Biodiversity and Conservation) 2022 ("BC SEPP")*.

In terms of the RH SEPP, the information contained in the assessment report and the panel members observations on the site indicate that the development site is a type of land referred to in clauses 4.6(4)(b) and (c) of RH SEPP, being land on which landfill has been placed and agricultural activities are presently taking

place. Accordingly, the applicant in seeking development consent is required by clause 4.6(3) of RH SEPP to prepare a report specifying the findings of a preliminary investigation of the development site, carried out in accordance with the contaminated land planning guidelines. No such investigation has been carried out. The information provided in the statement of environmental effects (SEE) does not satisfy this requirement.

The absence of a report specifying the findings of a preliminary investigation of the development site, carried out in accordance with the contaminated land planning guidelines, means the panel does not have the power to grant consent to the application having regard to the requirements of clause 4.6(2) of RH SEPP.

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021 ("BC SEPP")**

Clause 8.8(1) of the BC SEPP prevents the panel from granting development consent unless the panel is satisfied that the carrying out of the proposed development, being the development of land in the Sydney drinking water catchment, would have a neutral or beneficial effect on water quality. Clause 8.9 of the BC SEPP prevents the panel from granting development consent unless NSW water has concurred to the decision to grant consent.

The panel has been informed that the applicant has not provided sufficient information to the consent authority for the panel to be satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality or for NSW Water to issue concurrence. Accordingly, the panel does not have the power to grant development consent to the application.

### **Social Impacts**

In accordance with S.4.15(b) of the *Environmental Planning and Assessment Act, 1979*, the Panel was not satisfied that sufficient information had been provided regarding the potential social impacts of the development. The Statement of Environmental Effects (SEE) provided the following information,

*"The proposed seniors living development is anticipated to have a positive social impact by providing a quality living arrangement with a high level of access to services both within the site and within nearby Bowral."*

The Panel was of the view that more detailed analysis was required including consultation with existing residents of the Pepperfield Village to determine the impact of the proposal on existing village facilities and social impacts more broadly, in particular, what additional facilities and services would be required to service an aging population.

The social needs of future and existing residents had not been addressed, including whether the village should operate to ensure residents can age in place, or could be provided with appropriate access to the required support services. The Panel considered that given the site's location on the fringe of Bowral, there was a need for a dedicated transport service for village residents, and the demand for and provision of such a service has not been addressed.

In summary, the Panel was of the view that a Social Impact Assessment, including a community consultation strategy and Operational Management Plan for the ongoing management of the retirement village was required to determine and manage the servicing needs of the development.

### **Compatibility and consistency with the desired future character of the area.**

Despite the applicant's views to the contrary, the Panel was not satisfied that the proposal had appropriately responded to the desired future character of the area. Consideration of this matter is identified in the Council's AR under the following headings:

- Natural and Built Environment Impacts
- Social and Economic Impacts.
- Suitability of the Site

Attachment 5 to Council's AR (DCP assessment), identifies the applicable DCP provisions (including building height, setbacks, and landscaping), and includes an assessment against the DCP provisions. It is important to note that whilst some of the DCP controls are numerical controls, the DCP generally requires a qualitative assessment against those controls. The Panel accepts the Council's findings in this respect.

It is noted that whilst the proposed development complies with the height control (maximum of 2-storeys), it is inconsistent with the DCP provisions in terms of setbacks. The site-specific component of the DCP (Wiseman Road Precinct) states in Clause 23.1.3 Preferred Development Outcomes:

*“That the scale and density of future development, building setbacks and open space areas reflect the transition between the urban interface of developments located to the north of Boardman Road and the rural landscape setting located to the south of Wiseman Road.”*

The Panel was satisfied with the Council’s summation that the setbacks proposed do not reflect a transition between the urban interface and rural landscape setting. For example, the proposed front setback of the development is between 7.66m and 12m, whereas the existing Pepperfield development is a setback in the order of 20m. Furthermore, the proposed development adopts a setback of 3.91m along its side boundary interface with the rural land to the east, which does not provide an appropriate transition of land uses.

The Panel accepted that the scale, density, building setbacks, and open space components of the proposal did not result in an appropriate transition of land uses. The existing Pepperfield development has by and large established the desired future character however, the proposed development is denser, with reduced setbacks and less open space.

In addition, under clause 23.1.7 of the site-specific component of the DCP, it states under the heading “Transition to Rural Interface” the following:

*“The subject site shall be developed as a transition interface between the two disparate land use types as outlined above, wherein the density of development, landscape treatment and open space areas shall reflect a graduation in development density to avoid a ‘harsh’ definition between land use activities.”*

The Panel agreed with Council’s position that the landscaping proposed is insufficient to provide such a transition. Furthermore, while it is claimed that the numerical standard of 40% landscaping has been met, this has not been demonstrated.

The applicant also made submissions that the development proposal was consistent with the Council’s Local Strategic Planning Statement (LSPS) and Housing Strategy in that those strategic documents identify future residential investigation areas near the site. It is understood that the LSPS identifies the precinct for future “New Living Areas” and the Housing Strategy identifies the precinct as an “investigation area”.

However, these strategic documents do not identify lot sizes or density and the land that has been rezoned and developed recently on the edge of Bowral and close to the precinct is large lot residential (lifestyle lots) in the order of 4000m<sup>2</sup> (rather than 500m<sup>2</sup> lots) which have large setbacks and large landscaped areas. No timing for these possible investigations has been established.

In conclusion, the Panel determined that the proposed development did not appropriately respond to the desired future character of the area given it was not compatible with the existing development, and not of a scale and density that reflected an orderly transition between the urban interface and rural landscaped setting.

There were two recommended reasons for refusal that the Panel did not support, and which have been deleted. The first relates to the impact on koalas or potential koala habitat. The Panel was generally satisfied that it was highly unlikely that the site contains core koala habitat or there would be an impact on koalas.

The second was Council’s concern that insufficient information had been submitted with the development application to address the issues raised in the public submissions received during public notification of the application. The Panel considered this both unreasonable and not a matter for consideration under S4.15 of the *Environmental Planning and Assessment Act, 1979*. Notwithstanding, the Panel was satisfied that the views of the community had been adequately addressed through the process and the Panel’s determination.

## REASONS FOR THE DECISION

The full reasons for the Panel's decision to refuse the application are outlined in Schedule 2.

## 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:

- Traffic, safety, and congestion
- Flood Impacts
- Setbacks and landscaping
- Inadequate services and facilities to accommodate the increased population
- Increased density and incompatibility with existing built form and character of the surrounding area
- Residential amenity for residents
- Inadequate care facilities
- Inconsistencies with the Bowral Township DCP
- Inadequate parking
- Breaches of contract with existing Pepperfield residents
- Lack of consultation for the Planning Proposal and subsequent Development Application

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

PANEL MEMBERS	
 Chris Wilson (Acting Chair)	 Renata Brooks
 Tim Fletcher	 Michael Mantei
 Stephen Leathley	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-175 - PAN-125770 – Wingecarribee – DA-22/0214
2	PROPOSED DEVELOPMENT	Demolition of existing structures, lot consolidation, the construction of a staged seniors housing development and associated works.
3	STREET ADDRESS	6 & 8 Wiseman Road, Bowral
4	APPLICANT/OWNER	Darren Hogan (Hogan Planning) for Pepperfield 6 Wiseman Road Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazard) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</li> <li>○ Wingecarribee Local Environmental Plan 2010</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Bowral Township Development Control Plan</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• Relevant provisions of the <i>Water Management Act 2000</i></li> <li>• Relevant provisions of the <i>Biodiversity Conservation Act 2016</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 28 September 2022</li> <li>• Written submissions during public exhibition: 40</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ John and Pam Bowes (Concerned Residents of Pepperfield), David McCosh (Pepperfield Lifestyle Resort Residents Committee)</li> <li>○ Council assessment officer – Jeremy Swan (Consultant Planner), Lachlan Rodgers, Nancy Sample</li> <li>○ On behalf of the applicant – Nick Eastman (Martin Place Chambers)</li> </ul> </li> <li>• Total number of unique submissions received by way of objection: 40</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 7 September 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Julie Walsh, Michael Mantei</li> <li>○ <u>Council assessment staff</u>: Nancy Sample, Jeremy Swan &amp; Lachlan Rodgers (The Planning Hub)</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Site inspection: 12 October 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, Stephen Leathley.</li> <li>○ <u>Council assessment staff</u>: Nancy Sample, Lachlan Rodgers &amp; Jeremy Swan – Consultant Assessment Planners</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: 12 October 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, Stephen Leathley.</li> <li>○ <u>Council assessment staff</u>: Nancy Sample, Jeremy Swan &amp; Lachlan Rodgers – Consultant Assessment Planners</li> <li>○ <u>Applicant representatives</u>: Darren Hogan – Hogan Planning, Justin Koprivnjak – Solicitor, Steven McGrath – Applicant representative, Nick Eastman – Barrister, Bill Lineham – Building Designer/Architect, Paul Johnson – Sewer and Stormwater Engineering, Dean Brodie – Traffic Engineer, Rebecca Hogan - Ecologist, John Maddocks – Flood Engineer</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the Council Assessment Report

## SCHEDULE 2 – REASONS FOR REFUSAL

1. The Panel as consent authority does not have the power to grant consent to the development application having regard to the prerequisites under State Environmental Planning Policy (Resilience and Hazards) 2022 (“RH SEPP”). In particular:
  - a) the development site is a type of land referred to in clauses 4.6(4)(b) and (c) of RH SEPP; and
  - b) the applicant for development consent is required by clause 4.6(3) of RH SEPP to prepare a report specifying the findings of a preliminary investigation of the development site, carried out in accordance with the contaminated land planning guidelines and no such report has been prepared; and
  - c) the consent authority has not been able to consider a report as required by clause 4.6(2) of RH SEPP prior to determining the development application.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(i)].

2. The Panel as consent authority does not have the power to grant consent to the development application having regard to the prerequisites to the determination of the application under clauses 8.8 and 8.9 State Environmental Planning Policy (Biodiversity and Conservation) 2022 (“BC SEPP”). In particular:
  - a) the development site is located in the drinking water catchment; and
  - b) the consent authority is not satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality because: and
  - c) NSW Water has not issued concurrence to the application under clause 8.8 of the BC SEPP.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(i)].

3. The proposed development does not satisfy the objectives of the C3 Environmental Management zone under the provisions of the Wingecarribee Local Environmental Plan 2010 as the scale and density of the development proposed is inconsistent with the aesthetic values of the existing landscape and development in the area.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(i)].

4. The proposed development does not satisfy the requirements of Section C8.3 of the Bowral Township Development Control Plan relating to neighbourhood amenity and streetscape as follows:
  - a) The design of the proposed development does not reflect the desirable elements of the location’s current character or contribute to the quality and identity of the area; and
  - b) The proposed development does not provide setbacks that are consistent with existing development in the area resulting in an increase in scale and bulk of built form within the area; and
  - c) The proposed development involves the removal of existing significant vegetation to accommodate the proposed built form.

5. Insufficient information has been provided to enable the social impacts of the development to be determined. A Social Impact Assessment including a community consultation strategy with recommendations detailed in an Operational Management Plan for the retirement village has not been provided to enable the social impacts of the development to be assessed

[Environmental Planning and Assessment Act 1979 s4.15(1)(b)].

6. The proposed development does not satisfy the requirements of Section C8.4 of the Bowral Township Development Control Plan relating to visual and acoustic privacy as the proposed dwellings have not

been sited and designed to provide adequate visual and acoustic privacy for residents.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(iii)].

7. The proposed development does not satisfy the objectives and requirements of Section 23 of the Bowral Township Development Control Plan relating to the Wiseman Precinct as follows:
  - a) The proposed development does not reflect the desired transition between the urban interface of developments located to the north of Boardman Road and the rural landscape setting located to the south of Wiseman Road; and
  - b) The design of the development provides a significant increase in the density of development within the area with reduced setbacks between dwellings and the road frontages; and.
  - c) The development does not appropriately recognise the desirable elements of the location's current character or contribute to the quality and identify of the area by providing a built form, scale and density that is compatible with existing development in the area or the C3 zoning of the site and adjoining land; and
  - d) Insufficient information has been submitted with the application to demonstrate that at least 40% of the site is landscaped area.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(iii)].

8. Insufficient information has been submitted with the application to satisfy the requirements of Section C8.5 of the Bowral Township Development Control Plan relating to solar access and design for climate as no Shadow Diagrams or solar access study was submitted.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(iii)].

9. Insufficient information has been submitted with the application to satisfy the requirements of Section C8.7 of the Bowral Township Development Control Plan relating to accessibility as no specific details on pedestrian accessibility within the development has been submitted as part of the development and therefore the consent authority cannot be satisfied that the development provides a safe environment for pedestrians within the site or surrounding area.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(iii)].

10. The proposed development does not satisfy the objectives of Section A2.2.4 of the Bowral Township Development Control Plan relating to residential amenity as it is not sympathetic to existing or desired neighbourhood character of the area and does not positively contribute to the enhancement of the urban amenity.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(iii)].

11. The proposed development does not satisfy the objectives of Section A2.2.6 of the Bowral Township Development Control Plan relating to visual amenity as it does not enhance the character of the area and the proposed private open space areas do not make a positive contribution to the overall visual amenity of the locality.

[Environmental Planning and Assessment Act 1979 s4.15(1)(a)(iii)].

12. The proposed development will have an adverse environmental impact on the character and residential amenity in the locality as the scale and density of development is inconsistent with the existing and desired future character of the area.



[Environmental Planning and Assessment Act 1979 s4.15(1)(b)].

13. The subject site is not considered to be suitable for the scale and density of development proposed.

[Environmental Planning and Assessment Act 1979 s4.15(1)(c)].

14. The proposed development is not in the public interest.

[Environmental Planning and Assessment Act 1979 s4.15(1)(e)].