

DATE OF DETERMINATION	22 August 2023
DATE OF PANEL DECISION	22 August 2023
DATE OF PANEL MEETING	15 August 2023
PANEL MEMBERS	Christopher Wilson (Chair), Juliet Grant, Mitchell Nadin, David Porter
APOLOGIES	Grant Christmas
DECLARATIONS OF INTEREST	None

Public meeting held by videoconference on 15 August 2023, opened at 10:30am and closed at 11:10.
Papers circulated electronically on 1 August 2023.

MATTER DETERMINED

PPSSTH-199 – Bega Valley Shire – DA-2022-335 at 83 Lakewood Drive, Merimbula (Lot 602 DP 1277714) – The proposal seeks development consent for a seniors housing development comprising 89 units. The development includes one 5-storey building and one 4-storey building with ancillary leisure and communal spaces, 141 car spaces, landscaping, vehicular crossings, and business identification signs (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.

Application to amend the development application

On the 14 August 2023 the applicant uploaded amended plans to the Planning Portal which were accompanied by a letter from the applicant's planner (HDC Planning) advising that the development application had been formally amended. The letter also requested that Council:

- Ask the Panel to consider the amended plans and not to proceed to determine the application on the basis of the earlier plans; and
- Recommend that the Panel defer determination of the development application until the amended plans had been considered. It was also noted that the 4.6 Request to Vary a Development Standard would need to be updated to reflect the amended plans.

The Panel understands that the applicant has applied for an amendment to the application under section 37 of the *Environmental Planning and Assessment Regulation (2021)*. Under section 38 of the *Environmental Planning and Assessment Regulation (2021)*, a consent authority may approve or reject an application for an amendment to a development application submitted under section 37.

The Panel considered the request and unanimously agreed to reject the application to amend the development application. The Panel was of the view that the issues of concern raised by both Council and the Panel had been well known for over 6 months with adequate time for the applicant to address these matters well before the determination date. It is worth noting that the written request and supporting documents were not uploaded to the ePlanning Portal until the evening before the scheduled determination date.

Given the above, the Panel agreed to continue to consider the development application on the information before it, including the Council's assessment report and recommendation.

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 Bega Valley Local Environmental Plan 2013 (LEP), the Panel was of the view that the request had not demonstrated 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 was 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 not consistent with the objectives of cl.4.3 (Height of buildings) of the LEP and the objectives for development in the R3 Medium Density Residential Zone.

Development application

Following consideration of all information before the Panel, including the Council's Assessment Report, the Panel determined to refuse the application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* for the reasons provided in Schedule 2.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined that:

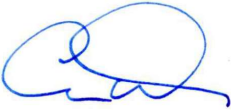



- A thorough assessment in terms of Section 4.15 of the *Environmental Planning and Assessment Act, 1979* had been undertaken by Council;
- Not all the prerequisites for the grant of consent had been met;
- The section 4.6 request was not justified;
- The matters raised by the Panel at its meetings of 22 November 2022 and 30 May 2023 had not been satisfactorily addressed; and
- The development was not in the public interest.

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:

- Bulk and scale
- Location and proximity to services and facilities
- Visual impact
- Privacy impact
- Overshadowing
- Noise
- Access and traffic
- Impact to environment
- Lack of supporting infrastructure
- Lack of demand for seniors housing
- Impact on environment
- Construction impacts
- Solar Access

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

PANEL MEMBERS	
 Christopher Wilson (Chair)	 Juliet Grant
 Mitchell Nadin	 David Porter

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-199 – Bega Valley Shire – DA-2022-335
2	PROPOSED DEVELOPMENT	The proposal seeks development consent for a seniors housing development comprising 89 units. The development includes one 5-storey building and one 4-storey building with ancillary leisure and communal spaces, 141 car spaces, landscaping, vehicular crossings, and business identification signs.
3	STREET ADDRESS	83 Lakewood Drive, Merimbula (Lot 602 DP 1277714)
4	APPLICANT/OWNER	HDC Planning /Sea Eagle 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 (Planning Systems) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Bega Valley Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Bega Valley Development Control Plan 2013 Bega Valley Section 94 and 94A Contributions Plan 2014 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: 28 July 2023 Request under clause 4.6 of the BVSC LEP 2013 to justify a contravention of a development standard - clause 4.3 (Building Height) Written submissions during public exhibition: 59 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Sharon Kinnes, Catherine Phillips Independent assessment officer – Adam Coburn On behalf of the applicant - Ivan Kokotovic Total number of unique submissions received by way of objection: 59
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 22 November 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Chris Wilson (Acting Chair), Tim Fletcher, Renata Brooks, Mitchell Nadin <u>Council assessment staff</u>: Cecily Hancock, Mark Fowler Site inspection: 30 May 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Grant Christmas, Mitchell Nadin

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Adam Coburn - Consultant Planner (Mecone), Cecily Hancock, Mark Fowler, Erin Moon ○ <u>DPE</u>: Suzannah Byers, Kyle Johannes, Amanda Moylan • Council/Applicant Briefing: 30 May 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Grant Christmas, Mitchell Nadin ○ <u>Council assessment staff</u>: Adam Coburn - Consultant Planner (Mecone), Cecily Hancock, Mark Fowler, Erin Moon ○ <u>DPE</u>: Amanda Moylan, Suzannah Byers , Kyle Johannes ○ <u>Applicant representatives</u>: Benn Lane (Justice Fox), Alison Murray (Justice Fox), Ivan Kokotovic (HDC Planning) • Final briefing to discuss council's recommendation: 15 August 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chis Wilson (Chair), Juliet Grant, Mitchell Nadin, David Porter ○ <u>Council assessment staff</u>: Adam Coburn - Consultant Planner (Mecone), Cecily Hancock, Emily Harrison, Erin Moon ○ <u>DPE</u>: Kyle Johannes, Amanda Moylan, Tracey Gillett
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	NA (Council recommended refusal)

SCHEDULE 2 – Reasons for Refusal

The DA was refused for the following reasons:

1. For the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* (as amended) the development has not demonstrated compliance with the following relevant environmental planning instruments.

In regard to the Housing SEPP:

- The proposal has not demonstrated compliance with clause 87 to qualify for additional FSR and height under the Housing SEPP.
- The proposal has not demonstrated compliance with clause 93 of the Housing SEPP for the consent authority to be satisfied that residents will have adequate access to facilities and services by a transport service that meets subsection (2).
- The proposal does not meet design principles under clause 99 of the Housing SEPP relating to neighbourhood amenity and streetscape.

In regard to SEPP 65:

- The applicant has not provided an assessment of the development against SEPP 65 and the ADG.
- The proposed development is not consistent with design quality principles contained within SEPP 65 including Principle 1: Context and neighbourhood character, Principle 2: Built form and scale, Principle 3: Density and Principle 6: Amenity.
- The proposed development is not consistent with the ADG including Objectives 2F – Building Separation, 3C – Public Domain Interface, 3F – Visual Privacy, 4B – Natural ventilation and 4H – Acoustic Privacy.

In regard to the Resilience and Hazards SEPP:

- The applicant has not provided sufficient information to demonstrate compliance with clause 4.6 of the Resilience and Hazards SEPP for the consent authority to consider whether the land is contaminated and determine whether the site is suitable for residential development.

In regard to Bega Valley *Local Environmental Plan 2013*

- The proposal is inconsistent with the aims of clause 1.2(2)(a)(c)(d)(e)(f)(h) and (i) of the BVLEP.
- The proposal is inconsistent with the Land Use Table in clause 2.3 of the BVLEP.
- The proposal is considered inconsistent with zone objectives for the R3 and C3 zones under clause 2.3 of the BVLEP.
- The proposal does not provide sufficient and accurate documentation to support noncompliance with the maximum height of building control under clause 4.3 of the BVLEP.
- The proposal does not provide sufficient and accurate documentation to support noncompliance with the maximum floor space ratio control under clause 4.4 of the BVLEP.
- The clause 4.6 request has not adequately addressed the matters required to be demonstrated by cl 4.6(3) of the BVLEP. The consent authority cannot reasonably be satisfied, that the applicant's written request to vary the development standard is unreasonable or unnecessary in the circumstances of the case.
- The proposal requires approval from Heritage NSW and a response to outstanding matters relating to Aboriginal heritage to satisfy clause 5.10 of the BVLEP.
- The proposal has outstanding matters to address to satisfy NSW RFS GTA and clause 5.11 of the BVLEP.
- The proposal has outstanding matters to address for assessment to satisfy compliance with clauses 6.4, 6.5, 6.6 and 6.7 of the BVLEP.

2. For the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* (as amended) the development has not demonstrated compliance with the following relevant controls within the Bega Valley DCP 2013.
 - The proposal is not consistent with the desired future character of Merimbula as described in clause 3.1.10.2 of the BVDCP.
 - The proposal has insufficient information to enable a proper assessment of the visual impact of the proposed development under Section 3.2.2.6 of the BVDCP.
 - The proposal has insufficient information to adequately assess the waste management plan submitted as part of the proposed development under Section 3.2.3.4 of the BVDCP.
 - The proposal has insufficient information to enable consideration of the likely social and economic impacts of the development. Under clause 5.4 of the BVDCP, a development application for the purpose of housing for seniors is to be accompanied by a socio- economic impact assessment.
3. For the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* (as amended) the development has not demonstrated compliance with the following matters within the 2021 EP&A Regulation.
 - The proposal does not provide written owners consent for adjoining land at Lot 601 DP 1277714 where the proposed APZ extends to satisfy NSW RFS GTAs and clause 23(1) 2021 EP&A Regulation.
 - A design verification statement has not been provided, pursuant to clause 29 of the 2021 EP&A Regulation.
4. For the purpose of Section 4.15(1)(a)(b) of the *Environmental Planning and Assessment Act 1979* (as amended), the development is considered to have the following adverse impacts.
 - The proposal is not consistent with the current and desired character of the locality in terms of the proposed bulk and scale.
 - The proposal has not been designed to minimise the visual impact.
 - The proposal is not considered to adequately address impacts to the environment including bushfire risk, biodiversity values, coastal values, and riparian corridors.

For the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* (as amended), the application fails to demonstrate that the development site is suitable for the intended use, in relation to the following matters.

- The proposal does not meet site-related requirements including proximity and access to facilities and services. Based on the current proposal, reliance on a private bus service is not considered appropriate and demonstrates the unsuitability of the site for development.
 - The proposal results in an inappropriate density for the current and desired character of the area. The scale and height of the proposed development is not consistent with the provision of housing and a variety of housing types within a medium density residential environment defined with reference to the locality.
5. In accordance with Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979* (as amended), Council has reviewed the submissions received, and note that several matters were raised of relevance to the assessment of this application. The development as proposed is not in the public interest.
 6. In accordance with Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* (as amended), the development as proposed is not in the public interest.
 - The proposal in its current form is not in the public interest noting its density, height, bulk and scale, which is inconsistent with the desired future character of the locality. The development represents a predominantly 5-storey development, within an area where the future desired character is two-three storey residential development.

- The proposal has attracted 59 submissions objecting to the development, predominantly from the residents within the locality. Noting the large number of objections to the development and outstanding matters to be resolved, the proposal is not considered in the public interest.
- The proposal seeks approval of a height exceedance to the LEP height limit. Whilst a clause 4.6 request has been submitted, the consent authority, cannot be satisfied, for the purposes of cl. 4.6(4)(ii) of the LEP, that the proposed development will be in the public interest because it is not consistent with the objectives of the standard sought to be contravened and the objectives of the R3 Medium Density Residential Zone.