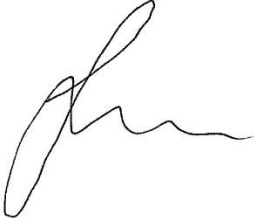
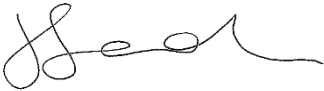


MEMO

Panel Reference.	PPSSTH-20
DA Number	0563/2019
Local Government Area	Shellharbour City Council
Proposed Development	Redevelopment Of Site As An Eco-Tourist Facility Comprising 33 Guest Rooms, A Gym And Spa Area, Restaurant, Lounge Bar, Terrace and Pool Area
Street Address	71 Fig Hill Lane Dunmore NSW 2529, Lot 3 DP 717776,
Applicant / Owner	Applicant: Mr G Cirillo Owner: Alotap Pty & Ltd & David Moodie Pty Limited.
Date of DA Lodgement	16 October 2019
Total number of submissions	41 submissions were received in total.
Regional Development Criteria Schedule 7 of the SEPP (State and Regional Development) 2011	Clause 6 Eco-tourist facilities over \$5 million. The proposed development has a CIV of \$15,834.121.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> a. Environmental Planning and Assessment Act 1979; b. State Environmental Planning Policy– Coastal Management 2018; c. State Environmental Planning Policy (State and Regional Development) 2011; d. State Environmental Planning Policy (Infrastructure) 2007; e. State Environmental Planning Policy– Remediation of Land; f. Shellharbour Local Environmental Plan 2013; g. Shellharbour Development Control Plan 2013; h. Environmental Planning and Assessment Regulation 2000; i. The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality; j. The suitability of the site for the development; k. Any submissions made in accordance with the EPA Act or EPA Regulation; and l. The public interest.
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> 1. Draft Conditions of Consent 2. NSW Rural Fire Service Determination Letter – 1 April 2021 3. Esplins advice – 6 April 2021 4. Barker Ryan Stewart Access Road Requirements letter – 7 April 2021

MEMO

Clause 4.6 requests	Nil
Summary of key submissions	Refer to Assessment Report
Report prepared by	 James Douglas, Senior Development Assessment Officer  Jessica Saunders, Principal Planner
Date of report	9 April 2021

ADDENDUM REPORT

PURPOSE OF REPORT

This report has been prepared to provide the Panel with an update following developments in the progress of the assessment and submission of further information following the publication of Councils Assessment Report and Recommendation.

This report provides an assessment commentary of that information in order to assist in further consideration of the application.

Specifically, there have been developments in relation to the following matters:

- The receipt of recommended conditions from the NSW Rural Fire Service pursuant to 100B of the Rural Fires Act 1997;
- The submission of supplementary advice regarding the Right of Carriageway; and
- The submission of additional information regarding the works required within the Right of Carriageway.

DEVELOPMENTS IN ASSESSMENT

- (1) *The receipt of recommended conditions from the NSW Rural Fire Service pursuant to 100B of the Rural Fires Act 1997;*

As discussed throughout the Assessment Report, the primary reason for the recommendation of refusal was that a 100B authorisation pursuant to the Rural Fires Act 1997 had not been provided.

A response including recommended conditions was provided by the NSW Rural Fire Service (RFS) on 1 April 2021. A copy of that response is provided at Attachment 2 to this Addendum Report. As the RFS have now provided General Terms of Approval as required via clause 4.47 of the Environmental Planning and Assessment Act 1979, the Panel can proceed to approve the development application.

The response has been reviewed and the conditions recommended would not result in any significant change to the built form proposed. The south eastern corner of Clifftop Lodges A building will be required to be moved 1m to the north west to satisfy the condition. Draft condition 7 is recommended to require that this amendment be made prior to the issue of any Construction Certificate.

As this matter has now been resolved, should the Panel be of a mind to approve the application, a suite of draft conditions are provided at Attachment 1 to this Report. A copy of these conditions has been provided to the applicant.

- (2) *The submission of supplementary advice regarding the Right of Carriageway matter.*

Further legal advice has been provided from Esplins Solicitors to the Panel Chair dated 6 April 2021. A copy of this advice is provided at Attachment 3 to this Report.

The advice has been reviewed by Council staff, however given the complexities of the matter and conflicting legal advice that has been provided as part of submissions received, Council would be required to seek independent advice as to whether the existing terms of the Rights of Carriageway allow both the owners to undertake the required upgrades and use the Rights of Carriageway for the more intensive use.

Given the timing of the submission of this advice, Council has been unable to obtain this independent advice. As such, it is Councils position that this matter should remain part of the Deferred Commencement Condition. Two options for how this condition could be satisfied are provided, as per the following:

The developer must demonstrate to the satisfaction of Council that the development either;

- i) has the right to upgrade Fig Hill Lane generally in accordance with the Fig Hill Lane, Dunmore – Extent of 5.5 Metre Wide Pavement plan dated 23 February 2021 prepared by Barker Ryan Stewart and utilise the existing right of carriageway for the purpose of the proposed development, pursuant to the existing terms of the rights of carriageway which benefit the site;*
- or*
- ii) the developer, at its own cost, must obtain an interest in the land, and register that interest in the land with the NSW Department of Land and Property Information, whether by Right of Carriageway, Right of Access or otherwise, to allow for the use of and carrying out of works generally in accordance with the Fig Hill Lane, Dunmore – Extent of 5.5 Metre Wide Pavement plan dated 23 February 2021 prepared by Barker Ryan Stewart, to provide for a suitable access to the development from Riverside Drive. The access must be generally within the extents of the existing Rights of Carriageway over Lots 501 DP 1174897 and 51 DP 1012246.*

The options provided within the above would enable further consideration of the advice provided as part of satisfying the deferred commencement condition.

(3) *The submission of additional information regarding the works required within the Right of Carriageway*

The applicant has provided a further letter from Barker Ryan Stewart in relation to the comments provided within Councils Assessment Report which refer to the requirement to upgrade the pavement within Fig Hill Lane to 5.5m. The advice is provided at Attachment 4 to this Report.

This advice clarifies that whilst the advice provided previously referred to a 5.5 carriageway width, that the 5.5m could be comprised of a 3.7m wide hardstand pavement area with 0.9m unsealed shoulders either side of the pavement would be sufficient to allow two vehicles to pass.

This advice has been reviewed by Councils Engineers, however condition 6 within the RFS determination letter of 1 April 2021 requires that access comply with Table 6.8b of Planning for Bushfire Protection (PBP 2019), with the exception of secondary access. PBP 2019 has been reviewed and requires that where a non-perimeter road is being relied up, as in this instance, that access roads are designed to allow safe access and egress for firefighting

vehicles while residents are evacuating, and are provided with a minimum 5.5m carriageway width kerb to kerb. As such, a 5.5m pavement width would be required to satisfy the RFS conditions.

CONSULTATION

INTERNAL CONSULTATION

Engineering:

Councils Development Engineer has reviewed the letter from Barker Ryan Stewart and advised that the position presented relies on the access road being considered a 'rural road'. Given the development type and the surrounding area, Council does not agree that Fig Hill Lane should be considered a Rural Road pursuant to Austroads. Notwithstanding, as discussed above, the conditions on the RFS 100B Authorisation would require a 5.5m pavement width. Conditions are recommended in this regard.

EXTERNAL CONSULTATION

NSW Rural Fire Service

The application was referred to the NSW RFS under the Rural Fires Act 1997 as the proposal requires Special Fire Protection authorisation under section 100B as the development is categorised as a special fire protection purpose development and is proposed on land which is mapped as being affected by bushfire hazard.

Additional information was requested by the RFS on four of occasions relating to vegetation mix, what areas had been considered as managed land, the use of short fire run methodologies, slope categories, the upgrading of the existing access handle, the building setbacks, management of the land surrounding the buildings, the requirement for an on-site refuge and modelling and construction requirements, modelling inputs and Asset Protection Zones.

An amended report with modelling as requested by the RFS was provided to Council on the 23 March 2021.

The RFS provided a 100B authorisation for the proposal, subject to conditions on 1 April 2021. This response is provided at Attachment 2 to this report, and has also been incorporated into the draft conditions of consent provided at Attachment 1.

CONCLUSION

The construction and operational stages of the development will provide employment and economic benefits to the Shellharbour Local Government Area.

The contribution of the proposed tourism generating development will bring additional benefit to the community through economic, education and ecological contribution to the Shellharbour region and adjoining lands.

The establishment of the Biodiversity Stewardship Agreement (BSA) will benefit the public through continued management and protection of the significant environmental value of the site through a sustainable economically viable option. Additional benefits to the community include education and increased awareness through the provision of walking tours which promote the importance of the site from a historical and ecological perspective that would not

be available if the site was to be utilised as a private residence. The walking tours will also promote and provide an avenue for the transference of local and traditional aboriginal knowledge to be passed onto the community. The retention and protection of the sensitive environmental location and species located onsite assists in preserving biodiversity and provides a mechanism for collating and sharing data on the status of biodiversity and the effectiveness of conservation actions which can be applied to other regions.

The concerns regarding the outstanding determination from the NSW Rural Fire Service has been resolved.

Subject to the Draft Conditions as provided at Attachment 1, it is considered the proposed development is unlikely to result in adverse impacts on the character or amenity of the surrounding area, environment and adjoining development. The site is considered suitable for the proposed development, also subject to the Draft Conditions provided.

RECOMMENDATION

It is recommended that DA0563/2019 be determined by way of deferred commencement pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, subject to the Draft Conditions provided at Attachment 1 to this report.

ATTACHMENTS

5. Draft Conditions of Consent
6. NSW Rural Fire Service Determination Letter – 1 April 2021
7. Esplins advice – 6 April 2021
8. Barker Ryan Stewart Access Road Requirements letter – 7 April 2021