

<b>DATE OF DETERMINATION</b>	17 August 2021
<b>PANEL MEMBERS</b>	Gordon Kirkby (Chair), Renata Brooks, Susan Budd, Marianne Saliba
<b>APOLOGIES</b>	Graham Rollinson
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held by teleconference on 3 August 2021, opened at 1pm and closed at 1:45pm.

#### **MATTER DETERMINED**

PPSSTH-20 – SHELLHARBOUR – DA0563/2019 at 71 Fig Hill Lane, Dunmore NSW 2529 – Redevelopment of Site as an Eco-Tourist Facility Comprising 33 Guest Rooms, a Gym and Spa Area, Restaurant, Lounge Bar, Terrace and Pool Area (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 approve 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 approve the application, subject to a deferred commencement consent, for the reasons outlined in the council assessment report.

In addition, the following was considered by the Panel in making the determination:

- The proposed development has satisfied the relevant provisions under Clause 5.13 of Shellharbour Local Environmental Plan 2013 (SLEP) for approval as an “eco tourist facility”.
- The development is permissible with consent and generally consistent with the zone objectives of the RU2 Rural Landscape, E2 Environmental Conservation and E3 Environmental Management zones.
- The proposed development has addressed all on site bushfire management issues. In this regard the panel notes that the rural Fire Service has provided General Terms of Approval for the development.
- Legal advice provided to the panel confirms that the proposed development is consistent with the terms of the Right of Carriageway connecting the site to Riverside Drive via Fig Hill Lane
- Future required upgrades to Fig Hill Lane that may be required to facilitate the development are outside the scope of this development application and would be subject to separate approval processes, if required. Notwithstanding this, a condition of consent has been included to require any such approvals to be in place prior to commencement of works.
- The arrangements for registration of an easement for water supply to the development have yet to be put in place. The Panel has therefore determined to grant consent on a deferred commencement basis to ensure that the easement is in place and the supply of water to the site is confirmed prior to the consent operating.
- The ecological values of the site are proposed to be managed and conserved through a Biodiversity Stewardship Agreement (BSA). A condition of consent requires that evidence of approval of the BSA by the Biodiversity Conservation Trust and registration on title be provided to Council prior to the

issue of a Construction Certificate. A further condition requires that the BSA must be under active management (Total Fund Deposit satisfied) prior to the issue of any Occupation Certificate associated with this development.

- The Panel is satisfied that in regard to contamination, the investigations undertaken confirm that the site is suitable for the proposed use. Notwithstanding this, conditions of consent have been included to manage any unexpected contamination should it be encountered during works on site.
- The Panel is satisfied that the proposed development represents an appropriate use for the site and the development, as amended through the assessment process is an acceptable urban design outcome in the site context.

## **CONDITIONS**

The development application was approved on a deferred commencement basis subject to the registration of an easement for water supply to the development.

Following the meeting the Panel requested a number of amendments to the draft conditions recommended by Council as part of its Supplementary Report:

- Inclusion of conditions relating to the registration and operation of a Biodiversity Stewardship Agreement. A condition of consent requires that evidence of approval of the BSA by the Biodiversity Conservation Trust and registration on title be provided to Council prior to the issue of a Construction Certificate. A further condition requires that the BSA must be under active management (Total Fund Deposit satisfied) prior to the issue of any Occupation Certificate associated with this development. These requirements were recommended as deferred commencement requirements; however, the Panel was of the view that they would be more appropriate as conditions of consent and would still ensure that the biodiversity outcomes for the site are achieved prior to operation of the facility, while allowing works, particularly demolition, to proceed in parallel;
- Amend Condition 5 to include reference to the plan titles “Trees Proposed for Removal – Outside APZ” prepared by Norden Jago Architects;
- Amend recommended Condition 9 to delete Part a. requiring an arborist report for Fig Hill Lane as future works to this road, if required, will be the subject of a separate approval process;
- Amend Condition 13 to include the requirement for complaints handling procedures to be included in the Demolition and Construction Management Plan;
- Amend recommended Condition 69 to clarify that the reports requiring on-going monitoring be placed on title rather than the monitoring results required by those reports;
- Re-wording and re-numbering of conditions to accommodate the above amendments.

Revised Conditions incorporating the above amendments have been provided by Council and are acceptable to the Panel.

## **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:

- Proposed eco-tourist facility land use and consistency with the criteria in Clause 5.13 of SLEP 2013;
- Traffic and access to the site and the terms of the Right of Carriageway;
- Biodiversity outcomes;
- Existing condition of buildings and structures on the site, trespassing and anti-social behaviour;
- Visual impact of the development;
- Potential site contamination.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the second public meeting. The panel notes that in addressing these issues amendments have been made to the proposal and further clarification received on bushfire management and the legal status of the Right of Carriageway. The Panel is satisfied that appropriate conditions have been imposed addressing the issues of concern.

PANEL MEMBERS



Gordon Kirkby (Chair)



Renata Brooks



Susan Budd



Marianne Saliba

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-20 – SHELLHARBOUR – DA0563/2019 at
2	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
3	STREET ADDRESS	71 Fig Hill Lane, Dunmore NSW 2529
4	APPLICANT/OWNER	Applicant: Mr G Cirillo Owner: Alotap Pty & Ltd & David Moodie Pty Limited
5	TYPE OF REGIONAL DEVELOPMENT	Eco-tourist facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>Shellharbour Local Environmental Plan 2013</li> <li>Environmental Planning and Assessment Act 1979</li> <li>State Environmental Planning Policy– Remediation of Land</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Shellharbour Development Control Plan 2013</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: State Environmental Planning Policy– Coastal Management 2018</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: 25 March 2021</li> <li>Council supplementary report: 19 July 2021</li> <li>Written submissions during public exhibition: 41</li> <li>Verbal submissions at the public meeting – 13 April 2021: <ul style="list-style-type: none"> <li>Clifford Manson (on behalf of the Minnamurra Progress Association), John Porter, Paul Sheridan</li> <li>Council assessment officer – James Douglas, Vicki Walker</li> <li>On behalf of the applicant – Giovanni Cirillo, Stephen Nordon, Stephen Rush, John Travers</li> </ul> </li> <li>Verbal submissions at the public meeting – 3 August 2021: <ul style="list-style-type: none"> <li>Clifford Manson (on behalf of the Minnamurra Progress Association), Anabel Parbury, Richard Maitland, Ron Spencer</li> <li>Council assessment officer – James Douglas, Vicki Walker</li> <li>On behalf of the applicant – Giovanni Cirillo, Stephen Nordon, Stephen Rush, John Travers, Robert Day, David Moodie, Cecilia Eriksson, Tony Peterson</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: Tuesday 3 March 2020 <ul style="list-style-type: none"> <li><u>Panel members</u>: Gordon Kirkby (Chair), Tim Fletcher, Renata Brooks</li> <li><u>Council assessment staff</u>: James Douglas, Caren Taylor, Andrew Lee, Luke Preston, Prabin Kayastha</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Site inspection: Monday 29 March 2021 <ul style="list-style-type: none"> <li>○ Panel members: Gordon Kirkby (Chair), Renata Brooks</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: Tuesday, 13 April 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Susan Budd, Graham Rollinson, Marianne Saliba</li> <li>○ <u>Council assessment staff</u>: James Douglas, Vicki Walker</li> </ul> </li> <li>• Public Determination: Tuesday, 13 April 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Susan Budd, Graham Rollinson, Marianne Saliba</li> <li>○ <u>Council assessment staff</u>: James Douglas, Vicki Walker</li> </ul> </li> <li>• Public Determination: Tuesday, 3 August 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Susan Budd, Marianne Saliba</li> <li>○ <u>Council assessment staff</u>: James Douglas, Vicki Walker</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the council assessment report