

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	6 September 2023
DATE OF PANEL DECISION	6 September 2023
DATE OF PANEL MEETING	29 August 2023
PANEL MEMBERS	Chris Wilson (Chair), Juliet Grant, Grant Christmas, David Brown
APOLOGIES	Tania Brown
DECLARATIONS OF INTEREST	None

Public meeting held at Wollongong City Council and by videoconference on 29 August 2023, opened at 3pm and closed at 4.30pm. Papers circulated electronically on 16 August 2023.

MATTER DETERMINED

PPSSTH-222 – Wollongong - DA-2022/1357 at 85 Midgley Street Corrimal (Lot 6 DP 29329) – Mixed-use development comprising the demolition of existing structures, tree removal and construction of a permanent group home, centre-based childcare facility, and respite day care centre, with associated basement car parking, roadworks and landscaping (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.

The Panel noted that during the assessment of the application, the withdrew the nomination of the application as Integrated Development. As a result, a Bush Fire Safety Authority was not required under the *Rural Fires Act 1997*. The specifications and requirements of *Planning for Bush Fire Protection 2019* were subsequently considered under section 4.15 (1)(c) of the *Environmental Planning and Assessment Act, 1979*.

The Panel acknowledged the need for group housing, childcare, and respite day care and the broader community benefits that these facilities would provide. However, following consideration of all of the information before it, including the Council's Assessment Report and recommended reasons for refusal, 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.

In coming to its decision, the Panel considered the following:

- The assessment undertaken by Council in accordance with section 4.15 of the *Environmental Planning and Assessment Act, 1979*;
- The relationship between the proposed development and site constraints including extensive tree removal, bulk and scale, the desired future character of the area, and both internal and external amenity;
- Impacts resulting from tree removal associated with the creation of the Asset Protection Zone for bush fire protection purposes;

- The uncertainty associated with potential on site air quality impacts on the proposed childcare facilities resulting from stockpiled material immediately to the north of the site; and
- The broader financial impost on the community associated with the ongoing maintenance of the proposed retaining/crib wall adjacent to the Princes Hwy.

Whilst noting the desire of the applicant to make last minute design changes to reduce the bulk and scale of the development by removing the respite day care component of the development, the Panel was not privy to any detail relating to these changes and determined that there was insufficient reason to defer its decision. Ultimately, the Panel made its decision on the information before it and determined that the proposal represented an over development of the site and was not in the public interest.

The decision of the Panel was unanimous.

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 Wollongong Local Environmental Plan 2009 (WLEP), 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 consistent with the objectives of cl. 4.3 (height of buildings).

REASONS FOR THE DECISION

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

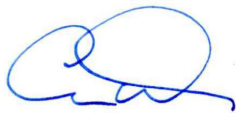
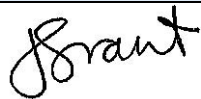


CONSIDERATION OF COMMUNITY VIEWS

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

- Insufficient time frame for submissions
- Site description
- Traffic impacts
- Deceleration lane
- Vehicular access and parking for the group home
- Vehicular access and parking for the childcare/respite day care centre
- Impacts of construction
- Tree removal
- Overdevelopment of the site with respect to height exceedance, front and side setbacks, impacts on vegetation, alteration to Princes Hwy, visual impact and traffic impacts
- Impact on adjoining properties
- Location of proposal in relation to South Bulli Colliery
- Impact on existing water supply mains (Midgley St)
- Stormwater plans – insufficient detail

- Pedestrian access
- Waste collection
- Emergency evacuation procedures
- Suitability of proposed hours of operation

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
 Grant Christmas	 David Brown

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-222 – Wollongong - DA-2022/1357
2	PROPOSED DEVELOPMENT	Mixed-use - demolition of existing structures, tree removal and construction of a mixed-use development comprising a permanent group home, centre-based childcare facility and respite day care centre, with associated basement car parking, roadworks and landscaping.
3	STREET ADDRESS	85 Midgley Street Corrimal (Lot 6 DP 29329)
4	APPLICANT/OWNER	Ayse Sevgin / Nasice Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> ○ Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy (Housing) 2021 ○ State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ Wollongong Local Environmental Plan (WLEP) 2009 ○ Draft environmental planning instruments: Nil ○ Development control plans: <ul style="list-style-type: none"> ○ Wollongong Development Control Plan 2009 ○ 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: 16 August 2023 ● The application includes a Clause 4.6 Exception to development standard request for Wollongong Local Environmental Plan 2009 - Clause 4.3 Height of buildings on R2 Low Density Residential zoned land. ● Written submissions during public exhibition: 25 ● Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Belinda Woodford, Shaela McRae, Morrie Gallina, Brendan White, Dennis Gallagher, Cherylyn Fenton – obo Corrimal Community Action Group

		<ul style="list-style-type: none"> ○ Council assessment officer – Nicole Ashton ○ On behalf of the applicant – Brendon Clendenning (CPS Planning), Anthony Nolan (Kennedy Assoc), Carl Ellassal (Thrive Edu - proponent), Ramy Selim (Hemanote Consultants) ● Total number of unique submissions received by way of objection: 24
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> ● Council / Applicant Briefing: 28 March 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Grant Christmas, David Brown ○ <u>Council assessment staff</u>: Andrew Kite, Mark Adamson ○ <u>Applicant representatives</u>: Brendon Clendenning (CPS Planning), Carl Ellassal (Thrive Edu), Anthony Nolan (Kennedy Assoc), Mahshid Karami (Kennedy Assoc) ○ <u>Other</u>: Amanda Moylan (DPE), Tracey Gillett (DPE) ● Site inspection: 28 March 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Grant Christmas, David Brown ○ <u>Council assessment staff</u>: Andrew Kite ○ <u>Other</u>: Amanda Moylan (DPE) ● Final briefing to discuss council's recommendation: 29 August 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Grant Christmas, David Brown ○ <u>Council assessment staff</u>: Nicole Ashton, Mark Adamson, John Wood, Rod Thew , Andrew Heaven, Amanda Kostovski ○ <u>Other</u>: Amanda Moylan (DPE), Timothy Mahoney (DPE)
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not Applicable

SCHEDULE 2

1. Insufficient information has been provided to enable a complete assessment of the environmental impacts of the proposed development. The consent authority is not satisfied that the development can conform to the specifications and requirements of Planning for Bushfire Protection 2019 and therefore the site is not considered to be suitable for development pursuant to section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

2. Pursuant to the provisions of Section 1.7 of the *Environmental Planning and Assessment Act 1979*, the proposal is not consistent with the mitigation hierarchy established by the *Biodiversity Conservation Act 2016* (sections 1.3 and 6.4) in that appropriate measures have not been taken to avoid biodiversity impacts from the development.

3. Pursuant to the provisions of Section 1.7 of the *Environmental Planning and Assessment Act 1979*, the application submission fails to fully consider the extent to which the development exceeds the biodiversity offsets threshold and fails to consider the full impact of the proposed development arising from vegetation removal (40 large trees) in the deceleration lane.

4. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application submission fails to demonstrate the development is consistent with State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development with respect to the principles of the Apartment Design Guide.

5. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application submission fails to demonstrate the development is consistent with State Environmental Planning Policy (Transport and Infrastructure) 2021 with respect to the principles and matters of consideration of the Child Care Planning Guideline

6. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application submission fails to demonstrate the development is consistent with State Environmental Planning Policy (Biodiversity and Conservation) 2021 and may result in adverse impacts on core Koala habitat.

7. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposal is not consistent with the objectives of the R2 zone of Wollongong Local Environmental Plan 2009 as the application submission fails to demonstrate the development provides for a low density residential environment and is consistent with existing and desired future character of the area.

8. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application submission fails to demonstrate consistency with Wollongong Local Environmental Plan 2009 with respect to:

- a. Clause 1.2 Aims of Plan (d), (e), (f) and (g)
- b. Clause 2.3 Zone Objectives
- c. Clause 4.3 Height of buildings
- d. Clause 4.6 Exceptions to development standards
- e. Clause 5.10 Heritage Conservation
- f. Clause 7.2 Natural resource biodiversity – biodiversity
- g. Clause 7.4 Riparian Lands
- h. Section 7.6 Earthworks

9. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal fails to demonstrate consistency with the provisions of the Wollongong Development Control Plan 2009 with respect to the following chapters:

Chapter B1 - Residential Development

- Chapter C5 - Child Care Centres
- Chapter D1 - Character Statements
- Chapter E2 - Crime Prevention through Environmental Design
- Chapter E3 - Car Parking, Access, Servicing/ Loading Facilities and Traffic Management
- Chapter E6 - Landscaping
- Chapter E7 - Waste Management
- Chapter E11 - Heritage Conservation
- Chapter E17 - Preservation and Management of Trees and Vegetation
- Chapter E18 - Native Biodiversity Impact Assessment
- Chapter E19 - Earthworks
- Chapter E23 - Riparian Land Management

10. Pursuant to the provisions of Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979*, the application submission fails to demonstrate the likely impacts of the proposed development will not be adverse with respect to:

- bulk and scale and vegetation removal on the amenity and character of the area
- ambulance parking and waste collection from the deceleration lane on road safety
- the proposed infrastructure works for the deceleration lane on the public domain
- vegetation removal and the proposed height variation on the adjoining heritage item and its curtilage
- vegetation removal on the riparian corridor and water quality
- air quality for the occupants of the development
- vegetation removal on biodiversity
- waste management impacts on road safety
- addressing natural hazards on the existing vegetation, biodiversity, riparian corridors and the character of the area
- safety, security and crime prevention for the occupants of the development and visitors to the site
- social and economic impacts arising from the ongoing maintenance burden and costs associated with the retaining wall in the road reserve
- cumulative impacts

11. Pursuant to the provisions of Section 4.15 (1)(c) of the *Environmental Planning and Assessment Act 1979*, the application submission fails to demonstrate the site is suitable for the development proposed.

12. Pursuant to the provisions of Section 4.15 (1)(d) of the *Environmental Planning and Assessment Act 1979*, it is considered that having regard for public submissions, the development proposal is unsuitable with respect to:

- Character of the area
- Overdevelopment of the site
- Vegetation removal
- Impacts on road safety
- Pedestrian access to the group home
- Privacy/overlooking impacts
- Proximity of the child care centre to South Bulli Colliery
- Waste collection
- Emergency Evacuation procedures