

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	26 February 2024
DATE OF PANEL DECISION	26 February 2024
DATE OF PANEL MEETING	20 February 2024
PANEL MEMBERS	Chris Wilson (Chair), Susan Budd, Natasha Harras, Neil Reilly
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by videoconference on 20 February 2024, opened at 2pm and closed at 3.20pm.
Papers circulated electronically on 9 February 2024.

MATTER DETERMINED

PPSSTH-269 – Kiama – DA10.2023.59.1 at Dido Street KIAMA – Demolition, bulk earthworks, roads & drainage, construction of 67 dwellings, landscaping, local park and subdivision with a community road and drainage lot – refer to S.4.15 report for full description (also described in Schedule 1).

BACKGROUND

The Panel undertook a site inspection and was briefed by Council on the 1 August 2023. Both Council and the Applicant briefed the Panel on 8 August 2023. An additional update briefing was provided by both Council and the Applicant on 21 November 2023 (as described item 8 of Schedule 1). On each of these occasions the Panel raised several issues which it considered were fundamental to the determination of the application. These included:

- Flood free access, frequency of events, evacuation constraints and bridge design;
- The location of the APZ and its encroachment onto Council land and the Council's willingness to grant landowners consent; and
- To a lesser extent site specific issues relating to the gradient of the site including geotechnical concerns, retaining walls, road design, flora and fauna impacts, and community title arrangements.

On 14 January 2024 the Applicant sought a deferral of the scheduled determination meeting in order to lodge additional supporting information for the Panel's consideration. The Panel subsequently advised that it would consider a request for deferral on the scheduled determination day.

On 7 February 2024, Council uploaded an assessment report which included a recommendation for refusal. On the 19 February 2024, the Applicant uploaded information in support of its application including proposed amendments to the lot design (to remove any APZ encroachment onto Council land), additional flood impact analysis, and information relating to relevant Land & Environment Court cases.

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 also carefully considered the Applicant's request to defer the determination which the Applicant considers would *"enable the Council and PSEC to resolve the outstanding matters and avoid a costly and time-consuming appeal process and facilitate the delivery of new homes in Kiama"*.

The Panel is acutely aware of the need for additional housing within the Kiama municipality and in NSW in general. The subject land has been predominantly zoned residential for several decades. The Applicant argues that the subject site is flood free and that modelling demonstrates that a defined flood event only

inundates the Dido Street Bridge for a total 117 minutes. Under these circumstances the Applicant is of the opinion that a shelter-in-place strategy is appropriate. The Applicant also argues that similar approaches have been adopted by the Land & Environment Court.

Following consideration of all information before the Panel, including the Council's Assessment Report and recommended reasons for refusal, and the Applicant's request to defer determination of the Application, the Panel ultimately determined to refuse the application for the reasons provided below and in Schedule 2.

The Panel considers that without a material resolution of the flood free access matter it cannot support the application. The Panel's primary concern is that the development would facilitate up to 200 residents who on occasion (5% AEP event) would need to decide whether it is safe to either leave or access the site, a decision which carries an element of risk to human safety. Under these circumstances, the Panel considers that the site is currently unsuitable for residential intensification, particularly of the scale proposed. It is noted that the Applicant's offer to contribute to a study to investigate options for the upgrade of the bridge is considered inadequate and has not been accepted by Council.

The Panel further believes that the development proposal should include a suitable alternate and feasible flood free emergency access. The Applicant has proposed that emergency evacuation could take place 450 metres to the east to Riddell Street. However, the Panel questions whether this is both practical and legal noting the route traverses private grassed paddocks and fences.

In coming to its decision, the Panel was also mindful of the following:

- There is no evidence to suggest that flooding and flood free access was considered at the time the land was rezoned;
- The site is isolated from the broader community and does not contain any services for people who may be required to shelter-in-place;
- Shelter-in-place strategies and the Department of Planning's *Draft Shelter-in-place Guideline*;
- The identified L&E Court approvals identified by the Applicant as relevant to the determination; and
- The uniqueness of this proposal and the need to treat it on its merits.

The Panel notes that the Applicant has demonstrated the landowners consent issue may be capable of being resolved through an amendment to the application. The Panel also considers that other issues beyond flooding require further consideration once the issue of flood access is resolved. Any outstanding issues are also likely to be capable of being resolved through amendments or additional information.

Ultimately however, the Panel determined that the development application was premature given there are no apparent acceptable measures relating to flood free access that could be adopted (in the short term) to enable the development to proceed. Discussions between Council and the Applicant in this respect should have been undertaken well before the lodgement of the application.

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.

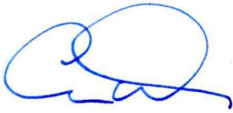
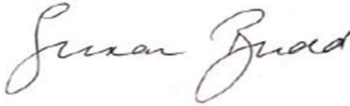


CONSIDERATION OF COMMUNITY VIEWS

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:

- Potential impacts of blasting from nearby quarry on site stability for sloping areas.
- Impacts on solar access and amenity to adjacent landowners, particularly those immediately adjoining the site to the south.
- Flood affected access / egress – lack of flood free egress in an emergency.
- Pedestrian safety – increased traffic on Glenbrook Drive with no footpath.
- Stormwater impacts.

- Owners consent not sought for APZ required on neighbouring land.

The Panel considers that in general, concerns raised by the community have been adequately addressed in the Assessment Report, although the Panel considers that further information or amended plans would be required to demonstrate an appropriate interface with adjoining development to the south.

PANEL MEMBERS	
 Christopher Wilson (Chair)	 Susan Budd
 Natasha Harras	 Neil Reilly

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-269 – Kiama – DA10.2023.59.1
2	PROPOSED DEVELOPMENT	Demolition, bulk earthworks, roads & drainage, construct 67 dwellings, landscaping local park and subdivision with Community road and drainage lot – refer to S.4.15 Report for full description
3	STREET ADDRESS	Dido Street KIAMA
4	APPLICANT/OWNER	Rick Wang / PSEC Project Services 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"> Water Management Act 2000 S.91 Rural Fires Act 1997 S.100B Planning for Bushfire Protection 2019 State Environment Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environment Planning Policy (Planning Systems) 2021 SEPP BASIX Kiama LEP 2011 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Kiama DCP 2020 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: 7 February 2024 List any council memo or supplementary report received: <ul style="list-style-type: none"> 19 February 2024 – Applicant response to Council assessment report and reasons for refusal 20 February 2024 – Council assessment planner response to further Council submission Written submissions during public exhibition: 21 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Jennifer Russell, John Sherwood obo Denise Berry. Ros Davies was an apology to address the Panel and provided photographs (uploaded to the portal) and videos. Council Consultant assessment planner – Ben Rourke On behalf of the applicant – Jim Murray (Ethos Urban) Ben Porges (Ethos Urban), Eric Chan (PSEC Project Services), Rick Wang (PSEC Project Services), Rudy Vandrie (Flood engineer) Total number of unique submissions received by way of objection: 21

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 1 August 2023 <ul style="list-style-type: none"> • <u>Panel members</u>: Chris Wilson (Chair), Susan Budd, Natasha Harras • <u>Council assessment staff</u>: Jessica Rippon, Joel Harris • <u>Council Consultant Assessment Planner</u>: Ben Rourke • <u>DPHI</u>: Amanda Moylan, Tim Mahoney • Site inspection: 1 August 2023 <ul style="list-style-type: none"> • <u>Panel members</u>: Chris Wilson (Chair), Susan Budd, Natasha Harras • <u>Council assessment staff</u>: Jessica Rippon, Joel Harris • <u>Council Consultant Assessment Planner</u>: Ben Rourke • <u>DPHI</u>: Amanda Moylan, Tim Mahoney • Council / Applicant Briefing: 8 August 2023 <ul style="list-style-type: none"> • <u>Panel members</u>: Chris Wilson (Chair), Susan Budd, Natasha Harras • <u>Council assessment staff</u>: Jessica Rippon • <u>Council Consultant Assessment Planner</u>: Ben Rourke • <u>Applicant representatives</u>: Rick Wang & Eric Chan (PSEC Project Services), Tom Goode & Ben Porges (Ethos Urban) • <u>DPHI</u>: Amanda Moylan, Tim Mahoney • Council Briefing: 21 November 2023 <ul style="list-style-type: none"> • <u>Panel members</u>: Chris Wilson (Chair), Susan Budd, Natasha Harras • <u>Council assessment staff</u>: Jessica Rippon, Joel Harris, Cheryl Lappin • <u>Council Consultant Assessment Planner</u>: Ben Rourke • <u>DPHI</u>: Amanda Moylan, Tim Mahoney • Final briefing to discuss council's recommendation: 20 February 2024 <ul style="list-style-type: none"> • <u>Panel members</u>: Chris Wilson (Chair), Susan Budd, Natasha Harras, Neil Reilly • <u>Council assessment staff</u>: Joel Harris, Harry Brizga, Jessica Rippon, • <u>Council Consultant Assessment Planner</u>: Ben Rourke • <u>DPHI</u>: Amanda Moylan, Tim Mahoney, Tracey Gillett
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	NA

REASONS FOR REFUSAL

The Development Application was refused for the following reasons:

1. The lack of flood free access/egress in the event of an emergency evacuation from the development during a defined flood is unacceptable having regard to the EP&A Act S.4.15(1)(b) – social and economic impacts in the locality, and S.4.15(1)(c) the suitability of the site for the development.
2. Pursuant to the EP&A Act S.4.15(1)(a)(iii) the provision of any Development Control Plan, the proposal does not provide flood free access/egress as required pursuant to Kiama Development Control Plan - Objective O:3.6.44 – Property Access
3. Pursuant to EP&A Act S.7.4 Planning agreements, the proposed Planning Agreement to fund a flood free access study is considered inadequate to address the critical issue of flood free access/egress.
4. Pursuant the EP&A Act S.4.15(1) (d) and (e) The proposal is considered unsatisfactory having regard to having regard to issues raised in submissions, and the public interest.
5. Pursuant to the EP&A Act S.4.15(1)(a)(i) the provision of any environmental planning instrument, the proposal does not satisfactorily demonstrate how protection and maintenance of terrestrial biodiversity will be achieved having regard to Clause 6.4 Terrestrial biodiversity of Kiama LEP 2011.
6. The development requires an Asset Protection Zone over neighbouring land Lot 3 DP805229 with owners consent not obtained for this as required pursuant to cl.23 of the Environmental Planning and Assessment Regulation 2021.
7. The proposal involving 67 Torrens title residential lots and one Community lot does not satisfactorily demonstrate binding arrangements for the maintenance of the Community lot drainage, roads and park, pursuant to the *Community Land Development Act 2021* clause 8 Establishment of community scheme.