

DATE OF DETERMINATION	4 November 2024
DATE OF PANEL DECISION	3 November 2024
DATE OF PANEL MEETING	22 October 2024
PANEL MEMBERS	Chris Wilson (Chair), Juliet Grant, Grant Christmas
APOLOGIES	None
DECLARATIONS OF INTEREST	None

MATTER DETERMINED

PPSSTH-415 – Shoalhaven – DA2024/1457 at 102 & 106 Hillcrest Avenue SOUTH NOWRA – Construction and occupation of new single storey building for a health services facility including landscaping, carparking and consolidation of two lots (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 for the reasons outlined in the Addendum Council Assessment Report and as follows:

- Whilst the proposal is prohibited in the R1 General Residential Zone under the Shoalhaven LEP 2014, in accordance with section 2.60 of State Environmental Planning Policy (SEPP) (Transport and Infrastructure) 2021, development for the purpose of a Health Services Facility may be carried out with consent on land zoned R1 General Residential. The subject site is zoned R1 General Residential.
- The development proposal will provide facilities and services that meet the needs of the Aboriginal community consistent with the objectives of the R1 General Residential zone.
- The site and context of the proposed development is suitable for the intended use.
- The scale of the proposed buildings and the operation of the facility responds to the site constraints and is compatible with both existing and emerging surrounding land uses.
- The proposal will have positive social and economic benefits for the Shoalhaven region as it will provide wellbeing and support services for the Aboriginal community and facilities for Aboriginal women to birth on country.
- The potential amenity, environmental and land use planning impacts likely to result from the proposed development have been properly considered in accordance with section 4.15 of the *Environmental Planning and Assessment Act, 1979* and found to be acceptable subject to the imposition of conditions of consent.

CONDITIONS

With the agreement of Council and the applicant, the Panel requested several amendments to the draft conditions of consent as follows:

- Condition 1 was amended to include reference to correspondence dated 15 Oct 2024 from the Department of Climate Change, Energy, the Environment and Water (Biodiversity, Conservation and Science) which grants concurrence for a full credit obligation reduction under the BC Act.
- Conditions 6 and 9 were deleted as they are now redundant following the amendment to Condition 1.
- Condition 8 was amended to provide clarification of the intent and reason for the condition relating to the Green and Golden Bell frog.
- Conditions 12(e), 61 and 66 were amended to correct minor typographical errors.
- Condition 12 (c) was amended to correct a minor typographical error and remove the second line.
- Condition 14 was amended to ensure consistency with Condition 75 regarding noise impacts by:
 1. specifying that the established PNGs are to be met at specific sensitive receivers.
 2. Including a requirement for periodic monitoring after commissioning to ensure compliance.
 3. To include a requirement for additional mitigation measures to be adopted if levels are not being met.
- Condition 16 was amended to provide clarification regarding the number of parking spaces (66) required.
- Condition 19 was amended to insert and read “certified by a professional” for clarity.
- Conditions 16, 17, 21 (and any other reference in the conditions apart from condition 19) were amended by replacing text which requires approval by certifier AND Council with “certifier OR Council”.
- Condition 27 was amended to provide confirmation that the Housing and Productivity Contribution (HPC) should only be calculated based on the commercial space and the condition amended to reflect the correct amount if applicable.
- Condition 80 was included to ensure transparency by reproducing the hours of operation articulated in the Statement of Environment Effects (including office hours and the birthing operation hours).
- Condition 39 (c) was amended to clearly specify provisions regarding haulage routes during construction.
- Condition 43 was amended to require the waste management plan identified in Condition 1 to be finalised to the satisfaction of the Certifier and to include appropriate matters that need to be addressed in the plan.

The applicant advised that it agreed to the amended conditions. The Development Application was subsequently approved subject to the conditions contained in the Addendum Council Assessment Report (25 October 2024), with the following change required by the Panel to ensure any future storm water drainage requirements were considered and endorsed by Council to ensure orderly development:

- Condition 19 (Stormwater – Major Development Design Standards (Urban)) to be amended to remove the reference to the Certifier.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that issues of concern included:

- Noise
- Incompatible use
- Traffic & infrastructure
- Impact on native wildlife
- Potential reduced amenity & privacy

After the publication of Council’s Addendum Assessment report on 25 October 2024, the Panel received and considered a late submission from a neighbouring landowner which raised the following concerns:

1. Stormwater discharge requirement contained in condition 19

- The impacts of the temporary stormwater arrangement on neighbouring property.

- The unknown extent of stormwater discharge that will occur across neighbour's land and associated impacts of concentrating stormwater discharge across neighbouring properties where no modelling has been undertaken or is required for this arrangement.
- Approval of stormwater plans by a Certifier or Council, and the appropriateness of a Certifier approving future Public Infrastructure.
- The transfer of the cost of connecting future infrastructure for neighbouring lots.
- Obtaining landowners' consent from neighbouring properties in the future if drainage infrastructure has not been dedicated to Council.
- The unreasonable burden on neighbouring land in the creation of easements and the like over all affected properties.
- The Panel should consider that no temporary arrangements for stormwater be made.
- The development site at 102-106 Hillcrest Ave should be connected into the stormwater system at 70 Hillcrest Avenue via 94 and 98 Hillcrest Ave.
- The design be supported by stormwater calculations or a DRAINS model to ensure the system has been appropriately sized.

2. The existing dam

- Lack of structural engineering or approvals in place for existing dam and concerns regarding structural adequacy.
- Concentration of flows to dam, capture of water from the development site and risk of spill/overflow impacting on adjoining property.
- It was requested the Panel consider a condition requiring the decommissioning of the dam.

Shoalhaven City Council provided a response to the above submission. The Panel noted that the Council's Engineering Officer has reviewed the submitted stormwater concept plan and had no objections subject to the conditions as amended and imposed.

The Panel notes that:

- Condition 21 (Water Sensitive Urban Design – Water Quality, Retention and Reuse) requires the submission and certification of an Integrated Water Cycle Management Plan for approval by Council. The plan must determine the need or otherwise for permanent stormwater infrastructure to ensure appropriate stormwater treatment, retention and re-use across the site, including the need or otherwise for permanent stormwater management with adjoining sites.




The Panel is satisfied that:

- The development proposal is unlikely to result in unacceptable offsite stormwater impacts.
- The preparation of the Integrated Water Cycle Management Plan required by Condition 21 will confirm the detailed stormwater management required for the site and adjoining properties (if necessary) noting that it requires the approval of the Council.
- The implementation of Council's infrastructure contributions plan relevant to the site and adjoining lands provides the framework for broader stormwater drainage matters. The applicant is required by condition to contribute appropriate monies towards the implementation of the Plan.
- The provision of temporary stormwater infrastructure should it be necessary is appropriate given the lack of detail relevant to future development on adjoining land.
- Under these circumstances it would be unreasonable and premature for the consent authority to impose a requirement for the construction of drainage infrastructure at this stage.

Further, the Panel is satisfied that:

- The legality of the dam is a compliance matter and not one for consideration as part the Panel's consideration of this development application.
- There are sufficient mechanisms which provide protection to the adjoining lots for any adverse amenity impacts from potential overflow issues.

The Panel considers that concerns raised by the community have been adequately addressed in the Council Addendum Assessment Report, proposed conditions of consent, and the response provided by Council assessment staff.

PANEL MEMBERS	
 Chris Wilson (Chair)	 Juliet Grant
 Grant Christmas	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-415 – Shoalhaven – DA2024/1457
2	PROPOSED DEVELOPMENT	Construction and occupation of new single storey building for health services facility including landscaping, carparking and consolidation of two lots
3	STREET ADDRESS	102 & 106 Hillcrest Avenue SOUTH NOWRA – Lot 72 DP31078 & Lot 4 DP561605
4	APPLICANT/OWNER	Applicant: Papesch Architecture Owner: Waminda South Coast Women's Health & Wellbeing Aboriginal Corp
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 (Planning Systems) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ Shoalhaven Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Shoalhaven Development Control 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: 18 October 2024 • Council Addendum Assessment Report: 25 October 2024 • Council response to late submission: 29 October 2024 • Late further submission: 29 October 2024 • Written submissions during public exhibition: Five (5) • Total number of unique submissions received by way of objection: Three (3)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 11 September 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Grant Christmas ○ <u>Council assessment staff</u>: Bryan Netzler ○ <u>Applicant representatives</u>: Dan Edwards (Papesch Architecture), Kristine Falzon (Waminda), Cleone Wellington (Waminda), Melinda Lawton (Eleven Eleven), Melanie Briggs (Waminda) ○ <u>DPHI</u>: Tim Mahoney, Tracey Gillett • Site inspection: 17 September 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Grant Christmas ○ <u>Council assessment staff</u>: Bryan Netzler

		<ul style="list-style-type: none">• Final briefing to discuss council’s recommendation: 22 October 2024<ul style="list-style-type: none">○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Grant Christmas○ <u>Council assessment staff</u>: Bryan Netzler, Bruce Gibbs○ <u>Applicant representatives</u>: Dan Edwards (Papesch Architecture), Lisa Papesch (Papesch Architecture), Kristine Falzon (Waminda), Cleone Wellington (Waminda), Faye Worner (Waminda), Melanie Briggs, Melinda Lawton (Eleven Eleven)○ <u>DPHI</u>: Amanda Moylan, Tracey Gillett
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Addendum Council Assessment Report