

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	22 December 2022
DATE OF PANEL DECISION	21 December 2022
DATE OF PANEL MEETING	20 September 2022
PANEL MEMBERS	Renata Brooks (Acting Chair), Chris Wilson, Tim Fletcher
APOLOGIES	None
DECLARATIONS OF INTEREST	Cr Russell Fitzpatrick, Cr Mitchell Nadin – DA relies on a council owned parcel of land between the 2 sites owned by the applicant.

Public meeting held Bega Valley Commemorative Civic Centre, Bega on 20 September 2022, opened at 2.15pm and closed at 4.38pm.

Papers circulated electronically on 7 September 2022 and 12 December 2022.

MATTER DETERMINED

PPSSTH-97 – Bega – DA2021.358 at 35-37 Quondola Street, Pambula – demolition of existing building and construction of a new commercial building (comprising supermarket, drive through bottle shop and licenced café) (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 development involves the demolition of the Royal Willows Hotel and the construction of a new commercial building comprising supermarket, drive through bottleshop and licensed café.

The Panel acknowledges that the proposal has generated significant community interest.

The Panel's decision has been informed by:

- a public briefing meeting held on 7 December 2021 at which the Panel heard the views of members of the community and the applicant's response;
- Council's assessment report which also addressed the issues raised by the Panel following the public briefing meeting;
- Matters raised by members of the community and the applicant at the public determination meeting held on 20 September 2022;
- Further information provided by the applicant and a supplementary assessment report prepared by Council in response to the matters listed in the Panel's record of deferral;
- Written advice prepared by an independent heritage consultant to the Panel; and
- Verbal advice from the independent heritage consultant in response to the revised plans and heritage impact statement provided by the applicant

The Panel engaged Mr Stephen Davies to provide independent Heritage advice with regard to;

- a) The veracity and completeness of the assessments of heritage conservation matters in the context of the requirements of Clause 5.10 (1), (2), (4), (5) and (6) of the Bega Valley Local Environmental Plan 2013;
- b) The appropriateness of the proposed bulk, scale, form and finishes of the proposed development, in the context of the Quondolo Street Conservation Area, relevant planning controls, history of the building and issues raised by the members of the public in public meetings and submissions; and
- c) The potential for alternative building forms and finishes which would be more compatible and appropriate to the relevant historical context and existing built form character of the village.

Mr Davies provided the Panel with a Heritage Report, dated 10th November 2022, addressing the above matters. In response to the report prepared by Mr Davies, the applicant provided an amended design and updated Heritage Impact Statement (HIS). Mr Davies reviewed the amended Heritage Impact Statement (HIS) and the revised plans provided by the applicant. He considered that the amended HIS now incorporates the recommended information and is a professional document that has assessed the proposal in terms of the relevant planning and heritage documents pertaining to the site.

In terms of the proposed design, he is satisfied that the front section of the proposal meets the required conservation objectives, however, he raised concerns in relation to the design of the southern supermarket wall and its external landscaped areas (green wall) and suggested its replacement with a sympathetic screen to break down the volume of the southern wall in a sympathetic material such as vertical timber louvres.

The Panel supports Council's decision not to re notify the amended plans, consistent with the discretionary provisions of Council's Community Participation Plan, noting that the amended plans improve design outcomes, reduce the overall impacts of the development and have been informed by concerns raised by submitters including at two public meetings as well as independent, external, expert architectural advice.

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 Council's Assessment and supplementary Assessment Reports.

Specifically:

- The Panel is satisfied that a thorough assessment of the proposal has been undertaken in accordance with Section 4.15 of the *Environmental Planning and Assessment Act, 1979*;
- The Panel is satisfied that the proposal, as amended, is consistent with the objectives of the Bega Valley Local Environmental Plan 2013, relevant State Environmental Planning Policies and the Bega Valley Development Control Plan 2013 subject to amendments to conditions as documented below.
- The demolition of the existing building has been appropriately justified and the design of the new building is of an appropriate scale and form for the site and the character of the locality;

- The concerns raised by submitters have been thoroughly considered and, where necessary, appropriately addressed through amendments to the design and application of conditions of consent; and
- The Panel concludes that, subject to the amended conditions, the development will not result in unacceptable adverse impacts upon the natural or built environments and is a suitable use of the site and therefore approval is in the public interest.

CONDITIONS

The Development Application was approved subject to the consolidated draft conditions in the supplementary Council Assessment Report with the following amendments;

General Administrative Changes

Replace dot points contained in subsections of conditions with sequential lower-case characters a), b), c), etc).

- **Condition 1 – Approved development plans**

Amend table reference to Architectural Plans to include dates and revision numbers to confirm references to amended plans dated 3/11/22

- **Condition 5 – Delivery vehicles**

Amend the condition to clarify arrangements for delivery vehicle servicing of the site as follows:

5. *Delivery vehicles*

All delivery vehicles for the supermarket shall enter and exit the site via Merimbola Street. All delivery vehicles for the bottle shop shall enter via Merimbola Street and exit via Quondolo Street. The maximum length vehicle permitted to service the bottle shop is 12.5 metres. The maximum length vehicle permitted to enter the site to service the supermarket shall be 20 metres articulated. All deliveries shall be undertaken consistent with the approved Traffic Operational Management Plan.

- **Condition 7 – Signs**

Amend the heading, condition, and formatting to clarify the intent of the condition as follows:

7. *Temporary Signs during construction works*

Temporary signs are to be provided at the front of the property or in a prominent location, and shall contain the following details: -

- owner's name, lot number and street number*
- a rural address number (when relevant) provided at the entrance of the property (eg. affixed to an entrance gate)*
- signage must clearly identify the Principal Certifying Authority (PCA) and contact number*
- that unauthorised entry to the work site is prohibited*
- details of the Principal Contractor (i.e. the coordinator of the building work).*

- **Renumber conditions 8-17 to 9-18**

- **New Condition - Condition 8 - CPTED Requirements**

Incorporate a new condition into the consent to ensure *Crime Prevention Through Environmental Design* (CPTED) recommendations of the NSW Police are implemented;

8. CPTED Requirements

The applicant shall demonstrate consideration and compliance with the CPTED comments provided by NSW Police in their construction certificate plans.

- **Condition 12 - Carparking Plan (former condition 11)**

Amend the condition to require that pavement markings and operational traffic management arrangements reinforce the availability of turning spaces for truck and service vehicles as follows:

The following design changes shall be included in the construction certificate plans and reviewed and approved by Council as per the approved architectural plans amended in red before the issue of a Construction certificate;

Of the total number of car parking spaces provided, four (4) shall be designed as disabled car parking spaces, six (6) shall be designated as seniors car parking spaces and four (4) car parking spaces shall be designated for parents with prams.

Remove Parking spaces 31-40 to ensure that this area is available for truck and service vehicles turning on-site to access the supermarket loading dock. The truck turning area must be clearly signposted, delineated and line marked with a different surface treatment. The Traffic Operational Management Plan must be amended to be consistent with this condition.

- **Condition 13 – Construction Environmental Management Plan (former condition 12)**

To clarify the requirements of the CEMP, amend sub-sections c) and d) as follows:

- c) *Demolition operations (including providing details of any resource recovery proposed) in compliance with AS-2601-2001 (The Demolition of Structures).*
- d) *Waste Management during demolition and construction.*

- **Condition 15 – Remediation Action Plan (RAP) (former condition 14)**

Amend to specify the extent of implementation of the RAP by adding the following at the end of the condition:

All requirements of the RAP shall be implemented.

- **Condition 18 - Colour and materials schedule (former condition 17)**

To ensure that final colours and materials are consistent with the Heritage Report prepared by Stephen Davies, dated 10th November 2022, and to remove the proposed green wall amend Condition 18 shall be amended as follows:

18. Colour and materials schedule

A final detailed colour and building materials schedule shall be submitted to and approved by Council's Heritage Advisor. The schedule shall include:

- a) *All external building finishes (including glazing treatments), a physical sample board of all external colours (especially samples of any tiles, paving finishes, and the like);*
- b) *A colour palette (including colour samples); and*
- c) *The replacement of the green wall (southern elevation) with an alternative vertical timber screened louver device of similar dimensions to the proposed green wall.*

Note: a physical sample board of all external colours and materials is required to consider the above.

- **New Condition 19 – Conservation Strategy**

Create a new condition to ensure a conservation strategy is prepared as follows:

Condition 19. Conservation Strategy

An archival recording of the building is to be submitted to Council for approval and an interpretation strategy is to be prepared for implementation within the development.

- **Renumber conditions 18-36 to 20-38**

- **Condition 20 – Detailed landscape plan by landscape architecture (former condition 18)**

Amend condition to specify the location of the additional street tree (consistent with amended plans) as follows:

A revised detailed landscape plan shall be submitted and approved by the Council. The landscape plan shall include the addition of two trees (being heritage evergreen species to match Covington's House 'park') within the planter box adjacent to the bottle shop. The trees must be capable of being planted in deep soil. The revised landscape plan shall also include an additional street tree at the southwestern corner and shall be prepared by a qualified landscape architect and be consistent with Council's adopted Landscaping Guidelines.

Note: The use of miniature trees such as a prunus placed in the planter box does not match the bulk and scale of the development

- **Condition 27 – Design of pavement re-construction/stabilisation (former condition 25)**

Amend to create certainty regarding specifications and an appropriate road surface to support increased traffic as follows:

The Merimbola St pavement and wearing course fronting Lot: 15 DP: 1204078 and including the intersection into the subject development, shall be re-constructed for a total length of 60m, 20m North and South of the lot boundaries, for the full width of the road formation with asphaltic concrete.

A design for these works, in accordance with BVSC Development Specifications, shall be submitted for approval by council under S138 of the Roads Act.

- **Condition 33 – Erosion and sediment control plan – greater than 2,500m² site disturbance (former condition 31)**

In the first paragraph, Remove superfluous text and specify works for which SWMP is required as follows:

A Soil and Water Management Plan (SWMP) is required for demolition and construction. The SWMP shall be prepared in accordance with the provisions of the NSW Government and Landcom, "Managing Urban Stormwater - Soils and Construction" (4th Edition 2004) and submitted for approval by the Principal Certifying Authority.

- **Delete Condition 38 – Demolition erosion and sediment control (original numbering)**

- **Delete condition which repeats requirements covered in other conditions.**

- **Delete Condition 43 – Validation report and relocate requirements to be carried out prior to issue of occupation certificate (original numbering)**

Replaced with new condition 73.

- **Condition 54 – Construction on hot days (former condition 53)**

Amend condition to reference “days predicted to be above 38° Celsius

- **Condition 56 – Pavement re-construction/stabilisation Merimbola Street (former condition 55)**

To clarify the standard of construction and ensure it is appropriate to withstand predicted traffic volumes, amend to include the following at the end of the condition:

“...formation and shall be constructed to an asphaltic concrete standard.”

- **New Conditions 71(A) and 71(B) – Unexpected finds protocols**

New conditions are to be created to specify the protocols for unexpected European Archaeological Finds or Relics and Aboriginal Cultural Heritage as follows:

71(A) Unexpected Archaeological Finds or Relics

The Applicant must ensure that if any unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified as required by s146 of the Heritage Act 1977. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery. Council's Heritage Staff must also be notified of the find concurrently.

71(b) Unexpected Finds of Aboriginal Cultural Heritage

The developer's attention is drawn to the requirements of the National Parks and Wildlife Act 1974 with respect to the conservation of Aboriginal archaeology.

As a landowner and/or developer you have a responsibility to not disturb or destroy any such item.

If any objects which are suspected of being Aboriginal, including human remains, are identified during development, the following procedure must be followed;

- a) Immediately cease all work at the particular location*
- b) The find and the immediate area must not be unnecessarily disturbed*
- c) The area of the find must be marked as a no-go area to ensure no inadvertent impacts occur*
- d) Notify Heritage NSW via the Environment Line on 131 555*
- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW*

- **New Condition 73 – Site Contamination Validation report and Site Contamination Audit Statement**

Creation of the following condition to ensure any site contamination is appropriately managed on site:

73. Site Contamination Validation report and Site Contamination Audit Statement

A validation report is to be prepared and submitted to the Council describing the removal of the underground storage tank, associated materials, and other materials if encountered during further investigations undertaken as part of the Remediation Action Plan.

The validation report shall verify that:

- a. *The underground storage tanks have been decommissioned and removed in accordance with the Underground Petroleum Storage Systems Regulation (Protection of Environment Operations) POEO 2019) and Guidelines for Implementing the POEO (Underground Petroleum Storage Systems) Regulation (NSW EPA 2020)*
- b. *The site is not affected by soil and/or groundwater contamination above the NSW EPA threshold criteria*
- c. *The site is suitable for the proposed development*

The report must be prepared by a contaminated land consultant who is a member and certified under one of the following certification schemes:

- *The Environment Institute of Australia and NZ Certified Environmental Practitioner (Site contamination) scheme*
- *The Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management certification.*

The submission of a site audit statement/final clearance certificate is also required from an accredited auditor pursuant to the provisions of Part 4 of the Contaminated Land Management Act 1997 confirming that the site has been satisfactorily remediated and is suitable for the proposed development.

- **Condition 76 – Lighting System (former condition 74)**

To minimise the impact of lighting on the Panboola Wetlands, include the following text at the end of the condition:

Any lighting must not be directed towards the Panboola Wetlands.

- **New Condition 82 - Interpretation Strategy**

Create a new condition to clarify the timing for the implementation of the Interpretation Strategy as follows:

The completed Interpretation Strategy is to be submitted to the Council's Heritage Advisor for approval and its recommendations are to be implemented and installed prior to the issue of an Occupation Certificate.

- **Condition 87 – Follow up dilapidation report (formerly condition 84)**

To clarify which property requires a follow up dilapidation report, amend to specify the follow up report is required for 33 Quondolo Street.

- **Amend Condition 105 to include a part (b) – (formerly condition 102)**

Create a new part to require review and appropriate response to any traffic issues which may be identified as follows:

- a) *The development shall comply with the Operational Traffic Management Plan*
- b) *The operators of the supermarket and bottle shop shall review the plan within 12 months of the commencement of operations taking into account any traffic issues identified by the Traffic Control Officer for the site and shall submit any revisions to Council within the specified period.*

- **New condition 106 Operational Waste Management Plan**

New condition to ensure waste management measures are implemented.

The approved Operational Waste Management Plan must be implemented at all times during the operation of the development

- **Re-number conditions 103 to 106 to 106 to 109.**

- **Condition 107 – Hours of operation for delivery vehicles. (Former condition 103)**

Amend the first paragraph to specify the type of vehicles as follows:

The hours of operation for delivery vehicles accessing the supermarket shall be confined to 7am to 8am for the 20m long Articulated Vehicle and the 12.5m long Heavy Rigid Vehicle and all other vehicles less than a 6.4m long Small Rigid Vehicle (SRV) confined to 7am to 10pm.

- **Remove the Notation regarding the National Parks and Wildlife Act**

Relocate the provisions relating to Aboriginal Archaeological Heritage into the body of the consent.




CONSIDERATION OF COMMUNITY VIEWS

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

- Heritage impacts and compliance with relevant provisions
- Bulk and scale of the proposed supermarket building
- Impact of the proposal on the streetscape
- Traffic impacts
- Acoustic impacts
- Flooding impacts
- Site contamination
- Impact on the adjacent Panboola Wetlands
- Sustainability in design
- Safety and security after hours
- Construction impacts
- Landscaping and tree removal
- Public artwork
- Need for a licensed cafe

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and Supplementary Assessment Report and that no new additional issues requiring assessment were raised during the public determination meeting. The Panel notes that in addressing these issues:

- Independent, external heritage advice was sought and amended plans and an amended heritage impact statement were provided by the applicant. Conditions will require further review of final details of materials and colours by Council's heritage advisor and also require archival recording and preparation and implementation of an interpretation strategy
- Further information was sought from the applicant in relation to servicing arrangements, site contamination and traffic impacts and assessment of the additional information was undertaken by Council's assessment officer. Conditions will require review of servicing arrangements after operations commence to respond to problems should they arise. A validation report will be required to verify suitability of the site for the development after remediation.
- Conditions have been imposed to address:
 - Potential impacts on Panboola wetlands
 - Need for public artwork
 - Acoustic impacts
 - Appropriate landscaping
 - Sustainability commitments

PANEL MEMBERS	
 Renata Brooks (Acting Chair)	 Chris Wilson
 Tim Fletcher	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-97 – Bega – DA2021.358
2	PROPOSED DEVELOPMENT	Demolition of existing building and construction of a new commercial building (comprising supermarket, drive through bottle shop and licensed café) and associated on-site carparking, landscaping, new culvert crossing, site services, waste management arrangements, access arrangements, off-site works and other works as documented in the development application
3	STREET ADDRESS	35-37 Quondola Street, Pambula
4	APPLICANT/OWNER	Elizabeth Slapp - Planned Town Planning Solutions for Kel and Jeanette Stolzenhein/Bega Valley Shire Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development 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 (Hazards and Resilience) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Bega Valley Development Control Plan 2013 Bega Valley section 94 and 94A Contributions Plan 2014 Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> including: <ul style="list-style-type: none"> Regulation 92(b) – demolition of building 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
<ul style="list-style-type: none"> 7 	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 16 August 2022 Written submissions during public exhibition: 115 Verbal submissions at the public meeting: 19 <ul style="list-style-type: none"> Kate Liston-Mills, Peter Reid, Dr Frances Perkins, Merrill Ralfs, Anthony McDonnell obo Martine Matheson, Maree Hawkins, Christopher Ralfs, Michael Brosnan, Michelle Richmond, Howard Jones, Frazer Buchanan, Andrew North obo Ian Thomas, Jody McKenzie Smith obo Dean Lewis, Cheryl Turner obo Angela George, Anthony McDonnell, Todd Wiebe, Katrina Woods, Matthew Crossley obo Ruth Hamilton, Shirley Bazley. <u>Council assessment staff</u>: Mark Fowler – Assessment Officer On behalf of the applicant – Mark Evans – Whiteacre Legal, Elizabeth Slapp – Planned Town Planning Solutions, , Katrina Keller – Phillip Leeson Architects, Matthew McCarthy – McLaren Traffic Total number of unique submissions received by way of objection: 115 and 2 Petitions
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<p>Briefing: 12 October 2021</p> <ul style="list-style-type: none"> <u>Panel members</u>: Gordon Kirkby (Chair), Tim Fletcher, Renata Brooks <u>Council assessment staff</u>: Keith Tull, Mark Fowler <u>DPE</u>: Sung Pak <ul style="list-style-type: none"> Site inspection: 30 November 2021 <ul style="list-style-type: none"> <u>Panel members</u>: Tim Fletcher, Chris Wilson <u>Council assessment staff</u>: Mark Fowler, Cecily Hancock <u>DPE</u>: Sung Pak <p>Briefing: 7 December 2021</p>

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Renata Brooks (Acting Chair), Chris Wilson, Tim Fletcher ○ <u>Council assessment staff</u>: Mark Fowler, Cecily Hancock ○ <u>DPE</u>: Sung Pak <ul style="list-style-type: none"> • Public Briefing: 7 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Renata Brooks (Acting Chair), Chris Wilson, Tim Fletcher ○ <u>Council assessment staff</u>: Mark Fowler, Cecily Hancock ○ <u>DPE</u>: Sung Pak • Site inspection: 6 April 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Renata Brooks (Acting Chair) ○ <u>Council assessment staff</u>: Cecily Hancock • Briefing: 11 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Renata Brooks (Acting Chair), Chris Wilson, Tim Fletcher ○ <u>Council assessment staff</u>: Mark Fowler, Cecily Hancock ○ <u>DPE</u>: Sung Pak • Final briefing to discuss council's recommendation: 20 September 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Renata Brooks (Acting Chair), Chris Wilson, Tim Fletcher ○ <u>Panel appointed</u>: Stephen Davies – Independent Heritage Advisor ○ <u>Council assessment staff</u>: Mark Fowler – Assessment Officer, Keith Tull – Planning Manager, Cecily Hancock – Planning Co-ordinator, Elizabeth Schindler – Strategic Planner, Jamie Picket – Council development engineer, Peter Kabaila – Council heritage advisor ○ <u>DPE</u>: Amanda Moylan • Council briefing and Public determination meeting: 20 September 2022 <ul style="list-style-type: none"> ○ <u>Verbal submissions at the public meeting</u>: 19 ○ <u>Member of the public</u>: Kate Liston-Mills, Peter Reid, Dr Frances Perkins, Merrill Ralfs, Anthony McDonell obo Martine Matheson, Maree Hawkins, Christopher Ralfs, Michael Brosnan, Michelle Richmond, Howard Jones, Frazer Buchanan, Andrew North obo Ian Thomas, Jody McKenzie Smith obo Dean Lewis, Cheryl Turner obo Angela George, Anthony McDonell, Todd Wiebe, Katrina Woods, Matthew Crossley obo Ruth Hamilton, Shirley Bazley. ○ <u>Council assessment staff</u>: Mark Fowler – Assessment Officer ○ <u>On behalf of the applicant</u> – Mark Evans – Whiteacre Legal, Elizabeth Slapp – Planned Town Planning Solutions, , Katrina Keller – Phillip Leeson Architects, Matthew McCarthy – McLaren Traffic ○ <u>DPE</u>: Amanda Moylan • Final Council briefing to discuss Councils Supplementary Assessment Report: 15 December 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Renata Brooks (Acting Chair), Chris Wilson, Tim Fletcher ○ <u>Panel appointed</u>: Stephen Davies – Independent Heritage Advisor ○ <u>Council assessment staff</u>: Mark Fowler – Assessment Officer, Keith Tull – Planning Manager, Cecily Hancock – Planning Co-ordinator, Jamie Picket – Council development engineer ○ <u>DPE</u>: Amanda Moylan
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the supplementary council assessment report

