



DATE OF DETERMINATION	21 December 2022
DATE OF PANEL DECISION	20 December 2022
DATE OF PANEL MEETING	15 December 2022
PANEL MEMBERS	Paul Mitchell (Chair), Penny Holloway, Marcia Doheny and Angela Jones
APOLOGIES	Stephen Gow
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 15 December 2022, opened at 4pm and closed at 5:20pm.

#### MATTER DETERMINED

PPSNTH-88 – Lismore – 5.2021.221.1 at 101, 103, 103A, 103B, 103C, 103D, 263, 273 & 273A Dunoon Road, 15 Pagottos Ridge Road, 177a Hewitt Road, 9, 11, 41, 43, 54, 54A, 84 McLeay Road NORTH LISMORE – subdivision (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 listed at item 8 in Schedule 1.

#### 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.

#### REASONS FOR THE DECISION

The Panel determined to refuse the application for the following reasons:

1. The proposed development is **not consistent** with certain directions in the *North Coast Regional Plan 2036* namely:

*Direction 2: Enhance biodiversity, coastal and aquatic habitats, and water catchments.*

The proposed development has not demonstrated that it would enhance biodiversity or affected riparian zones or adequately protect water catchments.

*Direction 3: Manage natural hazards*

The subject site is bushfire prone, the development has not proposed adequate arrangements to maintain a necessary perimeter access track that is a key component of the proposed bushfire protection plan.

*Direction 18: Respect and protect the North Coast's Aboriginal heritage*

The proposed development has not adequately addressed potential impacts on Aboriginal cultural heritage values.

2. The proposed development is nominated integrated development and **has not been granted** General Terms of Approval (GTA) from the *NSW Office of Water* and a controlled activity approval from

*Natural Resources Access Regulator* ('NRAR') in accordance with Part 3 of Chapter 3 *Water Management Act 2000*.

3. The proposed development is integrated development and **has not been granted** general terms of approval from the *NSW Department of Planning and Environment (Heritage)* in accordance with section 58 of the *Heritage Act 1977*.
4. The proposed development is integrated development and **has not been granted** concurrence from *Transport for NSW (TfNSW)* under section 138 (2) of *Roads Act 1993*.
5. Whilst General Terms of Approval have been received by NSW RFS, one key component of the approved protection plan remains unresolved being how effective maintenance of the external perimeter fire trail can be achieved.
6. The proposed development does not satisfy, or is inconsistent with, the following provisions of *Lismore Local Environmental Plan 2012*, clause(s);

1.2 – Aims of the Plan, the proposed development is **inconsistent with** the following aims of the Plan:

(a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, (namely non compliances with Lismore Development Control Plan – Part B North Lismore Plateau Urban Release Area).

(e) to protect, sustain and enhance Lismore's natural environment, particularly native fauna and flora.

(f) to minimise the adverse effects of natural hazards, particularly flooding, bush fire and land instability.,

(g) to ensure that development is consistent with the principles of ecologically sustainable development.

2.3 – Zone objectives and Land Use Table, the proposed development is **inconsistent with** the following zone objectives:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To retain areas of unique natural vegetation, particularly rainforest remnants and ecologically endangered communities.
- To encourage the retention of wildlife habitats and associated vegetation and wildlife corridors.

5.10 - Heritage conservation, the proposed development is considered **inconsistent with** the following objectives of this clause:

(c) to conserve archaeological sites.

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

and has not satisfied cl.5.10 (8)a being:

(8) Aboriginal places of heritage significance, the consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance—

(a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement),

6.2 – Earthworks, (1) there is **insufficient information** provided to determine whether the application will have detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land or disturbing relics.

(3) In its current form, the proposal has the potential to:

(a) detrimentally effect drainage patterns and soil stability in the locality of the development,

(f) impact on or disturb Aboriginal artefacts,

(h) adversely impact waterways, including the Wilsons River drinking water catchment.

6.4 - Drinking water catchments, (1) the proposed development **does not achieve** the objective of this clause to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

(4) the Panel is **not satisfied** that:

(a) the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows, or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

6.9 - Essential services, the Panel is **not satisfied** that adequate arrangements have been made for the supply of water, management and disposal of sewage, management of stormwater drainage and suitable vehicular access.

7. Clause 2.119 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* for development with frontage to classified road. **Insufficient information** has been provided to satisfy the Panel that the safety, efficiency and ongoing operation of a classified road will not be adversely affected.
8. The Biodiversity Development Assessment Report (BDAR) submitted with the application is no longer accessible on the Biodiversity Offset Assessment Management System (BOAMs) and consequently the BAM Credit calculations cannot be assessed and the required number of credits is thus unknown. An updated BDAR is required.
9. The proposed development has **not demonstrated** acceptable solution(s) (or provided sufficient information) to the following sections of *Lismore Development Control Plan, Part A Chapter 1 – Residential Development* –
  - *4.1 Element – Setbacks, Design, Density and Height*
  - *4.4 Element - Open Space and Landscaping*
  - *4.5 Element – Earthworks, Retaining Walls and Erosion controls*
  - *4.6 Element – Off Street Car Parking, Carports, Garages, Outbuildings and Driveways*
10. The proposed development has **not provided** acceptable solution(s) to the following sections of *Lismore Development Control Plan, Part A, Chapter 5A Urban Residential Subdivision* –
  - *Element 4.3 – Street Design, Construction and On-Street Parking*
  - *Element 4.5 – Public Transport*
  - *Element 4.6 – Public Open Space*
  - *Element 4.7 - Essential Services*
  - *Element 4.8 - Water Quality Management*
  - *Element 4.10 - Biodiversity Conservation*
  - *Element 4.11 – Aboriginal Cultural Heritage*
11. The proposed development is not consistent with principles 1, 5, 7, 8, 9 of *Lismore Development Control Plan, Part B, Chapter 10 - North Lismore Plateau Urban Release Area*.
12. The proposed development has **not demonstrated** acceptable solution(s) to the following sections of *Lismore Development Control Plan, Part B - North Lismore Plateau Urban Release Area* –
  - *Element 4.1 – Aboriginal Cultural Heritage Identification, Assessment & Management*
  - *Element 5.1 - Cultural Heritage Identification, Assessment & Management*
  - *Element 6.1 – Stormwater Management*
  - *Element 6.2 - Flora and Fauna Conservation*

- *Element 6.3 - Landscape Planning & Environmental Management*
- *Element 6.4 - Public Open Space*
- *Element 6.6 - Staging of infrastructure delivery*
- *Element 6.7 - External road works*
- *Element 6.8 - Internal street design*

13. The proposed development has **not demonstrated** acceptable buffer distances consistent with the *Lismore Development Control Plan, Part A, Chapter 11- Buffer Areas*.

14. The proposed development has **not demonstrated** acceptable solution(s) to the relevant sections of *Lismore Development Control Plan, Part A, Chapter 14 – Vegetation 14 –*

- *Information required for development applications*
- *Clearing of vegetation on rural land and high biodiversity value land*

15. The proposed development has **not demonstrated** acceptable solution(s) regarding clause 22.6 *Water sensitive Design Measures of Lismore Development Control Plan, Part A Chapter 22 – Water Sensitive Design*

16. Insufficient information has been provided about likely environmental impacts, including traffic noise from vehicles on Dunoon Road. A further assessment of this matter is required (EP&A Act Cl 4.15 1(b)).

17. For the preceding reasons approval of the application would not be in the public interest (EP&A Act Cl 4.15 (e)).

**CONDITIONS**





Not applicable.

**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:

- Aboriginal cultural heritage
- Ecology
- Landslip
- Stormwater
- Traffic impact

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 public meeting.

PANEL MEMBERS	
 Paul Mitchell OAM (Chair)	 Penny Holloway
 Marcia Doheny	 Angela Jones

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-88 – Lismore – 5.2021.221.1
2	PROPOSED DEVELOPMENT	To undertake staged subdivision comprising 742 residential lots, 2 neighbourhood business lots, 1 residue lot (future residential), 14 public reserve lots and associated infrastructure, 45 new roads, road widening and road closures, bulk earthworks, essential services (water, sewer, power & telecommunications), stormwater management facilities, landscaping and environmental rehabilitation.
3	STREET ADDRESS	101 Dunoon Road NORTH LISMORE, 103 Dunoon Road NORTH LISMORE, 103A Dunoon Road NORTH LISMORE, 103B Dunoon Road NORTH LISMORE, 103C Dunoon Road NORTH LISMORE, 103D Dunoon Road NORTH LISMORE, 263 Dunoon Road NORTH LISMORE, 273 Dunoon Road NORTH LISMORE, 273A Dunoon Road NORTH LISMORE, 177A Hewitt Road NORTH LISMORE, 15 Pagottos Ridge Road NORTH LISMORE, 9 McLeay Road NORTH LISMORE, 11 McLeay Road NORTH LISMORE, 41 McLeay Road NORTH LISMORE, 43 McLeay Road NORTH LISMORE, 54 McLeay Road NORTH LISMORE, 54A McLeay Road NORTH LISMORE, 84 McLeay Road NORTH LISMORE
4	APPLICANT OWNERS	Michael Hercus and Allura Parklands Pty Ltd Mr A J & Mrs D L Purtle Mrs V Giacomini Giacmor Pty Limited Mr F Basso & Ms S Novkovic Mrs M L & Mr G & Mrs L Mazzorana Mrs L Massorana Mr A R & Mrs F M Riordan
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ North Coast Regional Plan 2036</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Koala Habitat Protection) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Primary Production) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ Lismore Local Environmental Plan 2012</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Lismore Development Control Plan – Part A <ul style="list-style-type: none"> <li>▪ Chapter 1 Residential Development</li> <li>▪ Chapter 5A Urban Residential Development</li> <li>▪ Chapter 8 Flood Prone Lands</li> <li>▪ Chapter 11 Buffer Areas</li> <li>▪ Chapter 13 Crime Prevention Through Environmental Design</li> <li>▪ Chapter 14 Vegetation Protection</li> <li>▪ Chapter 15 Waste Minimisation</li> <li>▪ Chapter 22 Water Sensitive Design</li> </ul> </li> <li>○ Lismore Development Control Plan – Part B</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>▪ Chapter 10 North Lismore Plateau Urban Release Area</li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• Coastal zone management plan: Nil</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	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Council Assessment Report: 28 November 2022</li> <li>• Written submissions during public exhibition: 84</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Ian Gillespie, Ros Irwin, Helen Robinson, Kathleen Lord, Rosanne Coutts and Dot Moller</li> <li>○ On behalf of the applicant – Clyde Treadwell and Tony Hart</li> </ul> </li> <li>• Total number of unique submissions received by way of objection: 30</li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Briefing: 15 February 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway and Angela Jones</li> <li>○ <u>Council assessment staff</u>: Sue Thatcher, Lucas Myers, Neville Baker, Mick Lacey, Peter Whittaker, Rachelle Longstaff, Chris Watts, Lachlan Stace, Virginia Seymour and Matthew Kelly</li> <li>○ <u>Applicant</u>: Tony Riordan, Stephen Fletcher, Andrew Purtle, Vilma Giacominni, Leanne Mazzorana and Frank Basso</li> <li>○ <u>Department representative</u>: Kim Johnston, Stuart Withington, Lisa Foley and Cameron Brooks</li> </ul> </li> <li>• Briefing: 24 August 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Penny Holloway (Acting Chair) and Stephen Gow</li> <li>○ <u>Council assessment staff</u>: Sue Thatcher, Craig Bradridge, Lucas Myers, Chris Watts, Lachlan Stace, Virginia Seymour and Sandy Strachan</li> <li>○ <u>Applicant</u>: Michael Hercus</li> <li>○ <u>Department representative</u>: Carolyn Hunt, Lisa Foley and Mary Francis</li> </ul> </li> <li>• Final briefing to discuss council’s recommendation: 15 December 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Marcia Doheny and Angela Jones</li> <li>○ <u>Council assessment staff</u>: Craig Bradridge, Brendan Logan, Scott Turner, Mick Lacey, Lucas Myers and Virginia Seymore</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Refusal
10	<b>DRAFT CONDITIONS</b>	Not provided