



DATE OF DETERMINATION	7 September 2022
DATE OF PANEL DECISION	6 September 2022
DATE OF PANEL MEETING	30 August 2022
PANEL MEMBERS	Paul Mitchell (Chair), Stephen Gow, Penny Holloway and Peter Jeuken
APOLOGIES	None
DECLARATIONS OF INTEREST	Robert Hayes declared a conflict of interest as in 2013 he moved a notice of motion related to the site as a Councillor of Richmond Valley Council.

Public meeting held at Club Evans RSL on 30 August 2022, opened at 11:05am and closed at 5:40pm.

MATTER DETERMINED

PPS-2014NTH020 – Richmond Valley – DA 2015.096 at 240 Iron Gates Rd Evans Head - 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 and the matters observed at site inspections 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 notes that much of the land proposed for development is zoned R1 General Residential under the Richmond Valley Local Environmental Plan 2012 (RVLEP) and that limited residential land supply and high housing costs are key issues at Evans Head. However, the land in question contains an environmentally important rainforest area, is surrounded by other environmentally valuable land and is only accessible by a single road which is severed by floods. Accordingly, the Panel believes that a suitable scale of development at Iron Gates could be appropriate, but only if its design and scale were compatible with the site's setting and the application fully addressed the applicable environmental and cultural values, as well as other constraints, particularly emergency access and egress. A suitable application would be responsive to the site's topography and ecological setting, incorporate good practice bushfire protection measures and adequate buffers such as those in the LUCRA guidelines (2007), and provide satisfactory access to and within the site by ensuring general consistency with the design standards specified for the Northern Rivers (2019), provide effective stormwater management measures and ensure satisfactory arrangements are available to deal with fire and flood emergencies.

In the above context, the Panel believes the current application is unsatisfactory and should be refused for the following reasons:

1. The proposal is unsatisfactory from a bushfire risk perspective. While being mindful of the fact that the Rural Fire Service has issued its General Terms of Approval, the Panel believes that the application has failed to demonstrate that the risks given below have been resolved:
 - Iron Gates Drive provides the only vehicular access to the site. It has a constrained carriageway for a significant length in particular where it passes through wetland and a narrow bridge. The Panel is not satisfied that suitable access for firefighting and other emergency service vehicles concurrent with evacuation of residents could occur safely and effectively.
 - The absence of a perimeter road around all the proposed residential area is not consistent with good practice in subdivision design, and the proposed fire trail on the eastern side of the proposed subdivision appears inadequate because of restricted space for vehicle movements, including turning, and level variations between the proposed fire trail, adjacent allotments and land to the north. Consequently, the Panel is not satisfied that sufficient protection for future residents would be available.
 - The intrusion of Asset Protection Zones into a large number of proposed residential lots, combined with the lack of ready public access to these lots means that maintenance of low fuel loads in these areas is likely to be problematic and difficult for regulators to monitor, meaning the practical effectiveness of these measures cannot be assured.
 - The narrow width of some important access roads and the consequent need to ban on-street parking there to provide access for firefighting and emergency vehicles is likely to be operationally impractical.
2. The proposal is likely to have unacceptable ecological impacts, principally because of the substantial earthworks and filling required, insufficient buffers adjoining littoral rainforests, wetlands and the foreshore and poor subdivision design, particularly an excessive development footprint and the road which separates proposed Lots 136 and 137.
3. The proposed stormwater management system, particularly incorporation of on-site infiltration, is unsatisfactory because it would create risks of standing water, sodden ground and mosquito breeding.
4. The application does not include satisfactory arrangements for evacuation of residents or shelter-in-place during flood events. A specific concern is that the latter may be impractical because no on-site retail or necessary community facilities are proposed.
5. The design of the proposed subdivision is unsatisfactory. It relies on excessive earthworks and filling creating the need for overly high retaining walls, has insufficient buffers to ecologically important rainforest, wetland and foreshore areas, and is unsatisfactory from a bushfire protection perspective.
6. The development application is unsatisfactory in that it does not satisfy several applicable statutory requirements including SEPP 55 in relation to land contamination because further contamination investigations were recommended but not conducted, SEPP 71 in relation to potential for conflict between land and water based activities, Threatened Species Conservation Act requirements in relation to proper assessment of impacts on koalas, littoral rainforests and other important species or communities, and the RVLEP and DCP in relation to subdivision design, especially incorporation of appropriate buffers, suitable road design and effective measures for management of risks and ecological impacts.
7. For the reasons given above the proposal does not represent orderly development nor is it consistent with the principles of ecologically sustainable development and its approval would not be in the public interest.

CONDITIONS

Not applicable.


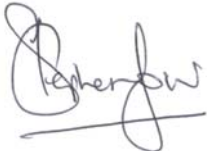


CONSIDERATION OF COMMUNITY VIEWS

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:

- Adequacy of flora and fauna assessment
- Potential for significant impacts on the koala
- Aboriginal Cultural Heritage will be adversely impacted and consultation was not adequate
- Infrastructure capacity
- Proposed density of development
- Bushfire safety
- Likelihood of flooding on the site and issues with evacuation along Iron Gates Drive (including from recent history in March 2022)
- Traffic impacts arising from the proposal and construction traffic, particularly along Wattle Street
- Impact on the Evans River and the SEPP 14 wetlands
- Lack of social services in Evans Head for future population on the site
- Previous illegal works and court orders issued for the site
- Loss of community/village feel of Evans Head
- Concern with planning process, length of assessment.

There were several verbal submissions of support, which raised issues regarding the shortage of housing in Evans Head and the likely increase in economic activity in the area arising from the proposal.

The Panel considers that concerns raised by the community and in the Malcolm Scott Independent Assessment Report, 29 June 2022 and the KJ Planning Peer Review of the Independent Assessment Report to the Northern Regional Planning Panel, July 2022 have been addressed by the Panel's determination to refuse the application.

PANEL MEMBERS	
 Paul Mitchell OAM (Chair)	 Stephen Gow
 Penny Holloway	 Peter Jeuken

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPS-2014NTH020 – Richmond Valley – DA 2015.096
2	PROPOSED DEVELOPMENT	<p>Concept Integrated Development Application</p> <p>Stage 1 –</p> <ul style="list-style-type: none"> • Subdivision of land to create 147 lots - including 135 residential lots (Lots 1 to 135), 4 public reserves (Lots 139 to 142), 1 sewer pump station lot (Lot 144), 1 drainage reserve lot (Lot 143), 3 Super Lots (Lots 145 to 147), 1 residue lot (Lot 138) and 2 rainforest lots (Lots 136 & 137) • Embellishment of the proposed public reserves adjacent to the Evans River • Upgrading of Iron Gates Drive, including vegetation clearing work • Subdivision works for Stages 1 and 2 including, but not limited to: clearing and earthworks, roadworks and drainage, sewer and water supply (including service connections to Stage 1 lots and Stage 2 lots) and electricity and communications (including service connections to Stage 1 lots and Stage 2 lots) <p>Stage 2 – Subject to a further Development Application</p> <ul style="list-style-type: none"> • Subdivision of the Super Lots (Lots 145 to 147) to create 40 residential lots (Lots 148 to 187) (no subdivision work is required for Stage 2 as all subdivision infrastructure will be provided within Stage 1)
3	STREET ADDRESS	240 Iron Gates Drive Evans Head
4	APPLICANT/OWNER	Goldcoral Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Coastal subdivision
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No 14 – Coastal Wetlands (as saved) ○ State Environmental Planning Policy No 44 – Koala Habitat Protection (as saved) ○ State Environmental Planning Policy (State and Regional Development) 2011 (as saved) ○ State Environmental Planning Policy (Infrastructure) 2007 (as saved) ○ State Environmental Planning Policy No 55 – Remediation of Land (as saved) ○ State Environmental Planning Policy No 71 – Coastal Protection (as saved) ○ State Environmental Planning Policy (Rural Lands) 2008 (as saved) ○ Richmond Valley Local Environmental Plan 2012 • Draft environmental planning instruments: <ul style="list-style-type: none"> ○ Draft amendments to State Environmental Planning Policy (Infrastructure) 2007, SEPP (Environment) and Remediation of Land SEPP • Development control plans: <ul style="list-style-type: none"> ○ Richmond Valley Development Control Plan 2012 (as saved) ○ Richmond Valley Council Section 94A Development Contributions Plan 2010 • Planning agreements: Nil • Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2000 (as saved)</i> • Coastal zone management plan: Nil

		<ul style="list-style-type: none"> • 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: 30 June 2022 • Peer review of assessment report: July 2022 • Written submissions during public exhibition: 928 and a petition with 947 signatories • Verbal submissions at the public meeting: <ul style="list-style-type: none"> Session 1: <ul style="list-style-type: none"> ○ Dr Richard Gates on behalf of the Evans Head Memorial Aerodrome Committee Inc, Gary McDonald, Alison Joy, Roy O’Hara, Dr Peter Ashley, Catherine Flint, Paul Brecht, Maria Matthes on behalf of Friends of the Koala, Brian O’Farrell, Doug Luke on behalf of Dr Hanabeth Luke, Dylan Ingles on behalf of Gayle Turner, Jocelyn Reece on behalf of Megan Boyd, Tim Smith, Elaine Saunders on behalf of Evans Head Residents for Sustainable Development Inc, Simone Barker on behalf of Bandjalang Aboriginal community, Al Oshlack on behalf of the Indigenous Justice Advocacy Network, Carmel Flint, Ian Rankin on behalf of Leanne Clarkson, Jocelyn Reece, Sherie Burrows, Melita McLeary, Jocelyn Reese on behalf of Joyce Frater, Lynden Murray, ○ On behalf of the applicant – Darryl Anderson, Aaron Gadiel and Graeme Ingles Session 2: <ul style="list-style-type: none"> ○ Elaine Saunders, Ian Rankin on behalf of Community Against Iron Gates Development, Ian Rankin on behalf of Lisa Davis and Leanne Clarkson, Warrem Williams, Chair of Bandjalang Nation, Kez Henderson, Jocelyn Reece on behalf of Wendy Roberts, Ian Rankin on behalf of Jamie Brown, Stephen Totterman, Karen Bryant, Sunny Graeme on behalf of Kevin Clark, Sunny Graeme and James Morrison on behalf of North Coast Environment Council ○ Council assessment officer – Malcolm Scott and Travis Eggins ○ On behalf of the applicant – Aaron Gadiel and Darryl Anderson
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 18 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Stephen Gow and Robert Hayes ○ <u>Council assessment staff</u>: Tony McAteer, Angela Jones and Andy Edwards ○ <u>Department staff</u>: Kim Johnston, Sung Pak, Amanda Moylan, Lisa Foley and Jane Gibbs • Applicant Briefing: 6 September 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Stephen Gow and Robert Hayes ○ <u>Council assessment staff</u>: Tony McAteer, Angela Jones and Andy Edwards ○ <u>Department staff</u>: Kim Johnston, Amanda Moylan, Sung Pak, Lisa Foley and Jane Gibbs

		<ul style="list-style-type: none"> ○ <u>Applicant representatives</u>: Aaron Gadiel, Graeme Inglis and Darryl Anderson <u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues ● Briefing: 17 June 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway and Stephen Gow ○ <u>Council assessment staff</u>: Angela Jones ○ <u>Department staff</u>: Stuart Withington, Carolyn Hunt and Lisa Foley ● Site inspection: 22 July 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway and Peter Jeuken ○ <u>Council assessment staff</u>: Angela Jones, Andy Edwards, Tony McAteer, Travis Eggins, Brian Eggins and Malcolm Scott ○ <u>Department staff</u>: Stuart Withington ● Final briefing to discuss council's recommendation: 30 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway and Peter Jeuken ○ <u>Council assessment staff</u>: Angela Jones, Andy Edwards, Tony McAteer, Travis Eggins, Malcolm Scott and Jessica Ind ○ <u>Independent planning consultant engaged by the Department of Planning & Environment</u>: Kim Johnston
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided