

DETERMINATION AND STATEMENT OF REASONS

WOLLONGONG CITY COUNCIL – WOLLONGONG LOCAL PLANNING PANEL (WLPP)

DATE OF DETERMINATION	12 December 2023
PANEL MEMBERS	Sue Francis (Chair), Robert Montgomery, Larissa Ozog, Bernard Hibbard (Community Representative)

Public meeting held at Wollongong City Council, Level 10 Council Chambers, 41 Burelli Street, Wollongong on 12 December 2023 opened at 5:00pm and closed at 6:51pm.

MATTER DETERMINED

DA-2023/402 – Lot 3 DP 1136814 and Stuart Park, George Hanley Drive, North Wollongong (as described in detail in schedule 1).

PUBLIC SUBMISSIONS

The Panel heard from the applicant and their representatives.

PANEL CONSIDERATION AND DECISION

The Panel considered the matters listed at item 7, and the material presented at the meeting and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to approve the development application as described in Schedule 1 pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous

REASONS FOR THE DECISION

The reasons for the decision of the Panel were:

- The Panel had consideration of DA 2021/300 for the use of the first floor of the premises as a restaurant. In approving this application, the council required, inter alia, a subsequent DA for the fit out of that restaurant so approved. The subject DA is that application.
- In considering this application it became apparent to the Panel that DA 2021/300 for the use of the first floor of the premises did not seek any use of the ground floor as a restaurant. The current application likewise does not seek consent for use of the ground floor as a restaurant. This was confirmed by the applicant's planner at the meeting.
- The application before the Panel however seeks consent to use part of the ground floor for the storage of kegs (or for it to be a keg room which 'pipes' beer from kegs to the upper first floor bar area). This was unclear. In this respect, the plans for the first floor show a keg room and the plans for the ground floor show a storage room but no plans appear to propose a keg room on the ground floor only and one which 'delivers' the beer to the first floor through pipes, through the floor.
- This being the case, the Panel is not in a position to grant consent as requested by the applicant to the ground floor keg room and 'delivery mechanism' for the restaurant as that is not proposed nor is the use for a restaurant approved on the ground floor.
- Notwithstanding above, prior to consideration of the matter by the Panel and following the publishing of the assessment report, the surf club was included on the State heritage Register.
- Council has objected to the use of the ground floor for the purposes of a restaurant to ensure that ongoing and future surf club operations are not compromised by the restaurant use. Condition 10 clarifies that the "Proposed Storage Area" on Dwg 04-C is not approved.

The Heritage Act and Prescribed Applications

Section 67 'An approval given by a consent authority to a prescribed application before the Heritage Council's determination of the application has been notified to the consent authority is void.

A "prescribed application" is defined under Section 56 of the Heritage Act as including any development application under the Environmental Planning & Assessment Act 1979 (EP&A Act), but not including, relevantly, an application relating to integrated development.

Integrated Development

Clause 4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides that "integrated development" is development requiring development consent and approval under Section 58 of the Heritage Act before it can be carried out.

At the time DA-2023/402 was lodged, it was not integrated development. Since the listing on the State Register on 24 November 2023, DA-2023/402 is an application relating to "integrated development" and the WLPP can determine the application without it being void under Section 67 of the Heritage Act.

- In summary, the heritage listing currently prevents steps to be taken to act on any consent granted, however it does not prevent determination of DA-2023/402. In any consent Council has recommended the following condition be applied: -

Separate approval under the Heritage Act 1977

- Unless covered by the gazetted site specific exemptions that apply to the site, separate approval from Heritage NSW must be obtained under the Heritage Act 1977.*
 - Where approval under the Heritage Act 1977 is required, the development consent holder must obtain the necessary approval/s from Heritage NSW and submit written evidence of this approval to the Principal Certifier prior to issue of a Construction Certificate*
 - The development shall be implemented at all times in accordance with the terms of any approval issued under the Heritage Act 1977. In the event that the terms of the Heritage NSW approval impact on the approved plans identified in Condition 1 and/or conditions of this consent, an application under Section 4.55 of the Environmental Planning and Assessment Act 1979 to modify DA-2023/402 will be required.*
- In other matters, the Panel also considered the extent of screening and fixed umbrellas proposed on the balcony. It is accepted that the side screens may be warranted due to windy conditions. Likewise, the Panel accepts the need for shade devices. However, as designed the proposed umbrellas act as a permanent roof over the balcony, particularly on the north-eastern end of the balcony. Accordingly, the Panel considers that the proposed 10 umbrellas shown on plan 06/C at the NE end of the balcony be reduced to no more than 6 umbrellas (of the size shown) and that they be lowered when not in use. This to be an additional condition of consent.

CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments.

An additional condition to accommodate the State heritage listing of the premises:

Separate approval under the Heritage Act 1977





- Unless covered by the gazetted site specific exemptions that apply to the site, separate approval from Heritage NSW must be obtained under the Heritage Act 1977.*

- b. *Where approval under the Heritage Act 1977 is required, the development consent holder must obtain the necessary approval/s from Heritage NSW and submit written evidence of this approval to the Principal Certifier prior to issue of a Construction Certificate*
- c. *The development shall be implemented at all times in accordance with the terms of any approval issued under the Heritage Act 1977. In the event that the terms of the Heritage NSW approval impact on the approved plans identified in Condition 1 and/or conditions of this consent, an application under Section 4.55 of the Environmental Planning and Assessment Act 1979 to modify DA-2023/402 will be required.*

An additional condition requiring the reduction in umbrellas on the north-eastern side of the balcony as following:

The 10 fixed umbrellas shown on plan 06/C dated 29/11/23 from Southworth Architects be reduced to no more than 6 umbrellas of the same size. These umbrellas and the remaining umbrellas proposed on the balcony to be lowered when not in use. Details to be provided and approved on the Construction Certificate.

Should the decision be legally appealed, the Panel delegates any function of the Panel to defend the matter in accordance with S2.20(8) of the Act to Council.

PANEL MEMBERS	
 <p>Sue Francis (Chair)</p>	 <p>Robert Montgomery</p>
 <p>Larissa Ozog</p>	 <p>Bernard Hibbard (Community Representative)</p>

SCHEDULE 1		
1	DA NO.	DA-2023/402
2	PROPOSED DEVELOPMENT	Fit-out of North Wollongong Surf Club for restaurant
3	STREET ADDRESS	North Wollongong Surf Club, Stuart Park, George Hanley Drive, NORTH WOLLONGONG
4	APPLICANT	Mr Terry Wetherall
5	REASON FOR REFERRAL	The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. Under Clause 4(b) of Schedule 2 of the Local Planning Panels Direction of 6 September 2023, the proposal is for works on Crown land under the control and management of Council.
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Industry and Employment) 2021 Wollongong Local Environment Plan 2009 Wollongong Development Contributions Plan Draft environmental planning instruments: None of relevance Development control plans: <ul style="list-style-type: none"> Wollongong Development Control Plan 2009 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: 61, 64, and 66A Coastal zone management plan: Wollongong Coastal Zone Management Plan 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 dated 12 December 2023 Written submissions during public exhibition: 38 Addendum report from Development Assessment and certification team dated 12 December 2023 related to the State heritage listing of the premises. Verbal submissions at the public meeting: Nil
8	SITE INSPECTIONS BY THE PANEL	Site inspection 12 December 2023. Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Sue Francis (Chair), Robert Montgomery, Larissa Ozog, Bernard Hibbard (Community Representative) <u>Council assessment staff</u>: Rebecca Welsh, Joel Thompson
9	COUNCIL RECOMMENDATION	Approve
10	DRAFT CONDITIONS	Attached to the council assessment report