

Panel Members

Chairperson	Jason Perica
Panel Experts	Kevin Hoffman Lindsey Dey
Community Representative/s	Robert Carter

Central Coast Council Staff Attendance

Amy Magurren	Senior Development Planner Residential Assessments
Robert Eyre	Principal Development Planner Residential Assessments
Rebecca Samways	Development Planner Employment and Urban Release
Salli Pendergast	Principal Development Planner Employment and Urban Release
John Noakes	Section Manager Development Engineering
Andrew Roach	Unit Manager Development Assessment
Emily Goodworth	Section Manager Employment and Urban Release
Brendan Dee	Principal Development Assessment Engineer Development Engineering
Karen Unsted	Civic Support Officer

The Chairperson, Jason Perica , declared the meeting open and advised in accordance with the Code of Meeting Practice that the meeting is being recorded by Council. Mr Perica made it clear at the beginning of the meeting that any other recording of the meeting needed prior approval of the panel and this had not been sought nor given. The Panel became aware of an AI platform which recorded the meeting by an unauthorised external party and this matter has been referred to Council staff, requesting that both Council IT staff and Governance staff

investigate the matter further, take appropriate action and report back to both the main panel chair and the panel members for this meeting.

The Chair read an Acknowledgement of Country statement.

Apologies

No Apologies.

Public Forum

The following people addressed the Panel:

Item 1.1 DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots

1. Stephanie Van Dissel (Planning Consultant) - FOR
2. Jason Yeo (Engineer) - FOR

Item 1.2 DA/42661/2012/E - 69-71 Avoca Drive, Avoca Beach – Alterations & Additions to existing Theatre

1. Elaine Norling – FOR
2. Beth Hunter - FOR
3. Karen Zeuschner – FOR

Item 2.2 DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application)

1. Robyn Parker – AGAINST
2. Kate Monaghan – AGAINST
3. Janine Sugars - AGAINST
4. Giovanni Cirillo – Planning Lan – FOR
5. Aaron Gadiel (Mills Oakley Lawyers)– FOR
6. Evan Pearson – FOR

PROCEDURAL ITEMS

1.1 Disclosures of Interest

The Panel Members confirmed that they had each signed a declaration of interest form in relation to each matter on the agenda. There were no conflict of interests declared by Kevin Hoffman, Lindsey Dey or Robert Carter.

Jason Perica declared a non-pecuniary reasonably-perceived conflict of interest for item DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application), as the applicant's planner is a friend of Mr Perica, although they have no business or financial relationship. Mr Perica was not part of the Panel that considered or determined this item and Mr Hoffman acted as the Chair for this item (with a quorum of 3), as Mr Perica left the meeting.

PLANNING REPORTS AND DECISIONS

1.1 **DA/1892/2021 - 15-35 Warnervale Rd & 95-10 Virginia Rd, 107-171 Virginia Rd Warnervale - Proposed Residential Subdivision (216) Lots**

Site Inspected	Mr Carter inspected the site and other Panel members attended virtually (Google Earth) and with the further aid of photographs.
Relevant Considerations	As per the Council assessment report.
Material Considered	<ul style="list-style-type: none">• Documentation with the application• Council assessment report and attachments• Council staff memorandum dated 22 August 2024 and associated updated recommended conditions of consent dated 22 August 2024.
Council Recommendation	Approval subject to conditions.
Panel Decision	<p>That the Panel approve determination of DA/1892/2021 at 15-35 Warnervale Road & 95-105 Virginia Road, 107-171 Virginia Road, Warnervale for a residential subdivision including 216 lots and associated works including earthworks, servicing and roads infrastructure in stages in accordance with Section 4.16 of the Environmental Planning and Assessment Act 1979, subject to the conditions contained in a document dated 22 August 2024, prepared by Council staff and circulated to the Panel by email (which included some changes to conditions within Attachment 2 to the Council staff assessment report in the business papers), subject to the following amendments:</p> <ul style="list-style-type: none">• Condition 2.13 – Amend the condition to state at the end of the Condition: “<i>The Waste Management Plan must be submitted to and approved by Council in writing</i>”.• Condition 3.2 be amended to state at the end of the Condition: “<i>The approved permit shall be provided to Council within 7 days of receipt, for Council’s records</i>”.
Reasons	<ol style="list-style-type: none">1 The Panel agreed with the reasons within Council staff assessment report to the Panel meeting of 22 August 2022 (pg. 59 of the agenda papers).2 While there were variations to DCP controls regarding lot sizes and widths, a range of lot sizes were provided to support a

variety of housing forms, and consistent with the envisaged density within Council's planning controls.

- 3 While some concerns were held regarding smaller lot sizes under the minimum lot size of 700sqm within the Residential R1 zone, particularly as residential flat buildings are permissible, the Apartment Design Guide and other DCP controls will still apply such that amalgamation of lots may be needed if residential flat buildings are proposed.
- 4 The Panel noted advice from Council that developer contributions, related to additional habitable lots, have been appropriately indexed since lodgement of the DA.
- 5 In terms of the consideration of submissions, the Panel noted no submissions were made regarding the proposal.

Votes

The decision to approved the DA with conditions (as amended) as above was unanimous.

There was some discussion by the Panel about including an advisory note to the Council about reviewing the DCP. Ms. Lindsey Dey was of the view that in the future, Council should consider small and no through subdivisions having lesser road widths and wider shared paths (3 metres plus). This would be with the intention of creating better places for residents, visitors and other users to safely move to and from their homes around their neighbourhood and to recreation and other amenities. However, this was not supported by Jason Perica, Kevin Hoffman or Robert Carter, particularly in relation to reducing road carriageway widths. So this advice was not included in the Panel decision/advice.

1.2 DA/42661/2012/E - 69-71 Avoca Drive, Avoca Beach - Alterations & Additions to existing Theatre

Site Inspected

Mr Carter inspected the site and other Panel members attended virtually (Google Earth), and with the further aid of photographs.

Relevant Considerations

As per Council assessment report

Material Considered

- Documentation with application
- Council assessment report
- Submissions

Council

Approval, subject to Conditions

Recommendation

Panel Decision

PART A

- 1 That the Local Planning Panel grant consent to DA/42661/2012/E – 69 Avoca Drive, Avoca Beach – Proposed Alterations and Additions to an existing Theatre, in accordance with Section 4.55 of the Environmental Planning and Assessment Act 1979.**
- 2 That the consent be modified by:**
 - a. The amendment of conditions 1.1A, 1.1, 2.2, 2.7, 2.9 and 2.13;**
 - b. The addition of conditions 1.5, 2.22, 5.23 and 5.24; and**
 - c. The deletion of condition 6.14.**

Note – the details of the modifications to the development consent endorsed by the Panel as outlined above, apart from the deletion of Condition 6.14, are as contained in Appendix 7 of the Council staff report to the Panel meeting of 22 August 2024.

- 3 That Council advise those who made written submissions of the Panel's decision.**
- 4 That Council advise relevant external authorities of the Panel's decision**

Part B

Sperate to the determination of the subject Modification Application, the Panel noted that upgrade to the surrounding area, including car parking and contributions from the proposed development through a Planning Agreement need to be carefully planned and coordinated in a timely way so that parking facilities in the surrounding area are improved to align with expected increased demand. The Panel recommends the Council review its CAPEX program and expected timing of the contribution from this development to ensure appropriate and timely road and parking upgrades around the site occur.

Reasons

1. The Panel agreed with the assessment of the proposal contained in the report (and attachments) to the Panel

meeting of 22 August 2024.

2. The proposed development is considered to be substantially the same development as originally approved.
3. The proposed modifications are relatively minor and are not considered to result in any significant additional impacts on surrounding properties or the environment.
4. The proposed reduction in seating of cinemas is a preferred outcome compared to relying on reduced ticket sales during busier times to moderate parking impacts, and this warrants deletion of Condition 6.14.
5. The proposal will continue to provide a mix of uses, including cinema and café to support the social capital of the area.
6. The recommended endorsed conditions appropriately manage and mitigate potential impacts related to the approved proposal.
7. In terms of the submissions received against the proposal, the Panel agreed with the assessment of issues raised as contained in the Council staff assessment report(s). The Panel also noted there were submissions in support of the proposal.

Votes The decision was unanimous

PLANNING REPORTS- OUTSIDE OF PUBLIC MEETING

2.1 DA/2048/2023 - 22 Clairvoux Road Wamberal - Alterations and Additions (Existing Dwelling)

Site Inspected Mr Carter inspected the site and other Panel members attended virtually (Google Earth) and with the further aid of photographs.

Relevant Considerations As per Council assessment report

Material Considered

- Documentation with application
- Council assessment report
- Submission

Council Recommendation Approval, subject to Conditions

Panel Decision **1 The Local Planning Panel is satisfied that the Applicants Clause 4.6 written request regarding the contravention of the Height of Buildings**

development standard within Clause 4.3 of Central Coast Local Environmental Plan 2022 has demonstrated that compliance with that development standard is unreasonable in the circumstances of this case and there are sufficient environmental planning grounds to justify the proposed contravention. Further, the panel considers that the proposed development will be in the public interest because it is consistent with the objectives of the Height of Buildings development standard and the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out.

- 2 The Local Planning Panel grant consent to DA/2048/2023- 22 Clairvoux Road Wamberal for alterations and additions to an existing dwelling in accordance with Section 4.16 of the Environmental Planning and Assessment Act 1979, subject to the conditions contained in Schedule 1 of the Council staff report to the Panel meeting of 22 August 2022, and subject to the inclusion of the following additional condition in the appropriate Schedule to the consent:
*"The proposed roof top garden located above the existing garage shall only be used for landscaping and horticultural purposes and must not be used as a balcony or private open space. Access to the rooftop garden should be limited to designated temporary maintenance only."***
- 3 That Council advise the person who made a written submission of the Panel's decision.**

Reasons

1. The Panel agreed with the reasoning within the Council assessment report and summary of reasons on page 502 of the agenda papers.
2. The Panel imposed an additional condition regarding the landscaped garden rooftop to ensure it is used for its intended purpose and is not used as a trafficable terrace, also having regard to potential privacy impacts.
3. In terms of submissions, the Panel noted that the one submission received raised concerns about potential view impacts from a side balcony enclosure and that aspect of the proposal has since been removed from the

proposed/approved plans.

Votes The decision was unanimous.

2.2 Supplementary Report - DA/1849/2005/B - 2-6 Fairport Avenue & 46-48 Ocean Parade, The Entrance - Residential Flat Building and Demolition of Existing Structures (Amended Application)

Site Inspected Mr Carter inspected the site and other Panel members attended virtually (Google Earth) and with the further aid of photographs.

Relevant Considerations As per Council assessment report

Material Considered

- Documentation with application
- Council assessment report
- Submission

Council Recommendation Approval, subject to Conditions

- Panel Decision**
- 1 The Council obtain an advice from suitably experienced counsel, within 21 days, as to whether:**
 - a. physical commencement of the development consent DA/1849/2005, granted on 19 June 2006, has been established in accordance with section 95(4) (now section 4.53) of the Environmental Planning and Assessment Act 1979,**
 - b. estoppel by representation arises from the letter provided by Council dated 29 September 2009, and**
 - c. the proposed modification will result in substantially the same development as the development for which the consent was originally granted, within the meaning of s4.55(1A) of the Environmental Planning and Assessment Act 1979.**
 - 2 That the Local Planning Panel defer this matter for electronic determination, pending provision of the advice referred to in item 1.**
 - 3 The Council advise those who made written submissions of the Panel's decision.**

Reasons

1 The Panel has received conflicting legal advice on the physical commencement and estoppel issues.

2 The Panel has not received written legal advice on the question of whether the development as modified is substantially the same as the originally approved development.

Votes

The decision was unanimous.