

DATE OF DETERMINATION	Wednesday, 18 September 2019
PANEL MEMBERS	Jason Perica (Chair), Kara Krason, Michael Leavey, Cr. Jason Pauling and Justin Hamilton
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held at Lake Macquarie City Council on 18 September 2019, opened at 2.30pm and closed at 3.30pm.

MATTER DETERMINED

2019HCC013 – Lake Macquarie City Council – D/458/2019 at 45 Pendlebury Road, Cardiff – Residential Flat Building and Demolition of Existing Car Park (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.

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Lake Macquarie Local Environmental Plan 2014 (LEP), that has demonstrated that:

- compliance with cl. 4.3 (Building Height development standard) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

The panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 of the LEP and the objectives for development in the B4 Mixed Use zone; and
- the concurrence of the Secretary has been assumed.

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 generally agreed with the environmental assessment and conclusions by Council staff in their assessment report;
- Relevant to being Integrated Development, the amended plans have been stamped by Subsidence Advisory NSW;
- The use was suited to the land, and would provide a community benefit in the provision of affordable housing;
- The design was suited to the use and site;
- The siting, height, form and modulation was acceptable for the site;
- The parking provision was appropriate for the use; and

- The proposal would have minimal impact on surrounding land and the environment.

CONDITIONS






The development application was approved subject to the conditions in the Council assessment report, as amended by Memorandum dated 16 September 2019 from Council to the Panel, and with the following further amendments. These additional conditions were imposed to improve internal amenity for the development and allow a potential future link to the south.

- A New Condition 2A to state:
The west facing window openings shall include external fixed shading devices, which may need to include vertical elements, in order to provide appropriate sun shading from the western sun. Details shall be included in the application for a Construction Certificate, with appropriate supporting documentation from the architect to demonstrate the effectiveness of the proposed shading, to the satisfaction of the Certifying Authority.
- A New Condition 2B to state:
The applicant may amend the design to include window or door openings from bedrooms to balconies within units, if desired, in the application for a Construction Certificate.
- A New Condition 2C to state:
A detailed landscape plan shall be provided with the application for a Construction Certificate, generally consistent with the Landscape Plan approved by Condition 1, and shall include:
 - (i) *details of measures within the eastern communal area that maximise use and enjoyment of such space, such as a permanent shade structure, tap(s), BBQ, seating and planter beds for a community garden/vegetable patch:*
 - (ii) *the provision of pedestrian connectivity along the open space/ setback area adjacent to the northern boundary, including the provision of stairs if required; and*
 - (iii) *the provision of a path that has the potential to link to the adjoining southern site, to allow a potential future pedestrian linkage, although acknowledging this is subject to an adjoining owner's agreement and future development of that site.*

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions (1) made during public exhibition and heard from all those wishing to address the panel (none registered). The panel noted the issues raised included concerns regarding height, impact on future development, lack of parking and crime concerns.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and did not warrant refusal of the application.

PANEL MEMBERS	
 Jason Perica (Chair)	 Kara Krason
 Michael Leavey	 Cr. Jason Pauling
 Justin Hamilton	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019HCC013 – Lake Macquarie City Council – D/458/2019
2	PROPOSED DEVELOPMENT	Residential Flat Building (Affordable Housing) & Commercial
3	STREET ADDRESS	45 Pendlebury road, Cardiff Lot 2 DP 240602
4	APPLICANT/OWNER	Applicant: Equity Development Management c/- Barr Property and Planning Owner: 45 Pendlebury Road Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Lake Macquarie Local Environmental Plan 2014 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Affordable Rental Housing) 2009 State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development Development control plans: <ul style="list-style-type: none"> Lake Macquarie Development Control Plan 2014 Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: 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 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: 26 September 2019 Memo dated 11 September 2019 for Amended Plans Memo dated 16 September 2019 for Additional Information and Amendment to Draft Conditions 4.6 variation requests regarding Building Height Written submissions during public exhibition: 1 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Council assessment officer – Andrew Leese On behalf of the applicant – Bruce Wallis, Rick Megna, Stephen Barr, Michael Nolan, Brenton Porter and Emily Allen
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Site inspection: Wednesday, 18 September 2019 Final briefing to discuss council's recommendation, Wednesday, 18 September 2019, 1:30pm. Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Jason Perica (Chair, Kara Krason, Michael Leavey, Jason Pauling and Justin Hamilton <u>Council assessment staff</u>: Andrew Leese
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report