

DATE OF DETERMINATION	18 May 2017
PANEL MEMBERS	Jason Perica (Chair), Kara Krason, Micheal Leavey, John Gilbert, and Sandra Hutton
APOLOGIES	None
DECLARATIONS OF INTEREST	Councillor Gilbert declared a non-pecuniary Conflict of Interest which arose and was realised during the meeting, as an objector (Mr Dowling) was a former business colleague and this may give rise to a reasonably perceived Conflict of Interest. Councillor Gilbert was part of the meeting when verbal submissions were made to the Panel, but took no part in the subsequent Panel discussions and deliberations during the adjournment, nor the decision that was made.

Public meeting held at Lake Macquarie City Council, 126-138 Main Street Speers Point on Thursday, 18 May 2017, opened at 3:30pm and closed at 5.50pm.

MATTER DETERMINED

2016HCC055 – Lake Macquarie - DA/1443/2016 at 14 Halyard Way, Belmont (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 the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*.

During the meeting Council staff advised there was a typographical error in the assessment report, in that it stated there was 24 objections. Rather, the 36 objections (as contained in the covering sheet) was correct.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The decision on the applicant's request for deferral was 2-2, with the Chair using his casting vote to not agree to deferral. The subsequent decision to refuse the proposed development was unanimous.

REASONS FOR THE DECISION

There were two aspects to the decision: (a) whether to agree to the applicant's request for deferral; and (b) the determination of the proposed development.

The decision to defer the application was split 2-2, with Mr Perica (Chair) using his casting vote to not defer consideration and determination of the application. Michael Leavey and Sandra Hutton supported the request for deferral, given the unique circumstances of an enabling savings provision in the LEP (Clause 7.12(4)), which has since lapsed, and to allow the applicant opportunity to explore options to address concerns within the Council report, noting the identified need for aged housing in East Lake Macquarie. However, they both noted that the changes to address concerns were likely to be significant and there was real risk that concerns may not be able to be resolved. Kara Krason and Jason Perica did not support the request for deferral due to fundamental concerns with the unsuitability of the site for the proposal, and the time and cost to the applicant and public authorities in considering revisions to a scheme which would still have fundamental issues, particularly related to ecological and vegetation impacts, slope, cut/fill and lack of access to services/shops/public transport. The significant shortcomings in the proposal and uncertainties regarding any suitable ecological outcome (including possible bio-banking) would be very time-consuming, with no reasonably-perceived prospect of a successful outcome.

Having decided not to defer consideration, the Panel unanimously decided to refuse the application. The reasons for refusal are outlined below and inherent in the terms of the determination.

In terms of existing Reason 7 for refusal in the Council assessment report, the Panel noted that there was some dispute regarding the calculation of the percentage of development/slope between the Council and applicant, although retained the recommended reason, based on the Council's assessment.

The Panel noted that while Clause 7.12 of LMLEP 2014 did provide an ability to consider additional land for Seniors Housing, it did not follow that all "eligible land" was suitable for such development.

The Panel also noted that insufficient information had been provided with the application to demonstrate that the proposal was for "serviced self care housing" within the meaning of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 as referred to in Clause 7.12 of Lake Macquarie LEP 2014. Accordingly, the Panel added this to the reasons for refusal given uncertainty relating to permissibility depending on what type of seniors housing was proposed and whether it satisfied the provisions of clause 7.12 of the LEP.

DETERMINATION

The development application was refused subject to the recommended reasons in the Council Assessment Report with the following amendments:

- Reason 6 be expanded to include 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 encourage activities that meet conservation objectives;*
 - *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values;*
 - *To ensure that residential development does not have an adverse effect on those values;*
 - *To encourage rehabilitation and conservation of environmentally important land.*
- Reason 9 to be amended to make reference to the Clause 4.6 variation request being deemed to not be well founded
- Reason 10 be amended to make reference to Lake Macquarie Development Control Plan 2014 and to add Sections 2.10 (Watercourses) and 3.3 (Building Bulk) as areas where the application has failed to meet objectives and provisions.
- Reason 12 be expanded to include:
 - *Lack of access to services and shops;*
 - *Lack of access to public transport; and*
 - *The slope of the land and surrounding land.*
- The following new reasons for Refusal be added:
 12. *The site is inconsistent with the Objects of the Environmental Planning and Assessment Act 1979 (Section 5) and Section 5A of the Environmental Planning and Assessment Act 1979 relating to "Significant effect on threatened species, populations or ecological communities, or their habitats".*
 13. *The proposal is unsatisfactory when considering the objective and considerations in Clause 7.2 (Earthworks) of Lake Macquarie LEP 2014.*
 14. *Insufficient information was provided to ensure the proposal met the permissibility requirements of "Serviced Self Care" housing within the meaning of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, as referred to in Clause 7.12 of Lake Macquarie LEP 2014.*

PANEL MEMBERS	
 Jason Perica (Chair)	 Kara Krason
 Michael Leavey	 Sandra Hutton

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2016HCC055 – Lake Macquarie - DA/1443/2016
2	PROPOSED DEVELOPMENT	Seniors Housing - Retirement Village, 118 Dwelling Units and Community Building with Roads Associated Infrastructure.
3	STREET ADDRESS	14 Halyard Way, Belmont
4	APPLICANT/OWNER	Bob Lander (Director) Tattersall Lander Pty Ltd / W H Hudson Developments Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million
6	RELEVANT MANDATORY CONSIDERATIONS	- Environmental planning instruments: - State Environmental Planning Policy (Infrastructure) 2007 - State Environmental Planning Policy No. 55 – Remediation of Land - Lake Macquarie Local Environmental Plan 2014 - Development control plans: - Lake Macquarie Development Control Plan 2014 - Planning agreements: Nil - Provisions of the Environmental Planning and Assessment Act 1979 and Regulation 2000: Nil - Coastal zone management plan: Nil - 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 Environmental Planning and Assessment Act 1979 or regulations - The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	- Council assessment report: 13 April 2017 - Written submissions during public exhibition: 36 - Verbal submissions at the public meeting: - Object – Don Edwards, Donna Edwards, Lee Baines, Paul Munday, Greg Dowling - On behalf of the applicant – Chris Speek, Sam Luccitti, John McNaughton.
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	- Panel Briefing: 8 December 2016 - Site Visit: 8 December 2016 and 18 May 2017 - Final Briefing Meeting: 18 May 2017 Attendees: <u>Panel members:</u> Jason Perica (Chair), Kara Krason, Michael Leavey, John Gilbert, Sandra Hutton <u>Council assessment staff:</u> Andrew Leese
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A