

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	11 November 2020
PANEL MEMBERS	Clare Brown (acting Chair), Nicole Gurran, John Brockhoff, Jason Pauling and Scott Anson
APOLOGIES	Justin Hamilton
DECLARATIONS OF INTEREST	Alison McCabe, the appointed Chair, declared a conflict of interest as she sat on the Design Review Panel on a number of occasions for this property and this application Sandra Hutton declared a conflict of interest because she has given planning advice for this site to the landowner several years ago. Juliet Grant declared a conflict of interest as her employer, CityPlan, prepared a submission during public exhibition of this DA in 2017.

Public meeting held by teleconference on 11 November 2020, opened at 10:32am and closed at 11:13am.

MATTER DETERMINED

PPS-2017HCC002 – Lake Macquarie – DA/11/2017 at 5 Edgar Street, Belmont – mixed use development (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.

Application to vary a development standard

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 (maximum building height) 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 (maximum building height) 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 determined to uphold the Clause 4.6 variation to building height; and approve the application for the reasons outlined in the council assessment report.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments.

- Condition 2 – to be amended to include reference to the Flood Study Investigation prepared by Forum Consulting Engineers and so set the base for flood mitigation works.
- Conditions 14, 57 and 95 to be amended to clarify that an updated geotechnical report is required that reflects the revised proposal presented to the panel and that the recommendations of the revised geotechnical report are to be complied with during the construction phase.
- Condition 22 to be amended to reference the BASIX Certificate numbered 747948M 03 as it relates to the proposal considered by the panel.
- Condition 29 – to be amended to reflect the requirements of Australia Post as it relates to the provision of boxes for mail delivery in a residential building and to include a requirement for the provision of CCTV within the basement car park s identified in the CPTED assessment.
- Include a new condition requiring landscape details to be submitted prior to the release of the construction certificate which identifies the provision of irrigation, water proofing and drainage to the landscaped communal areas including the roof top terraces. It was considered that given the exposed nature of the site and the extensive nature of the landscape area that it irrigation was required in order to support the health and growth of the proposed landscaping.
- Condition 59 – to be amended to reflect that the internal podium will be planted with 21 x45 litre trees consistent with the landscape plan. The condition to identify the requirement for irrigation as reflected in the new condition to achieve consistency between conditions
- Condition 94 – to be amended to require the submission of a Flood Management Plan to Council for approval that demonstrates the process for installation, preparedness and failsafe management/activation of the proposed water barrier system and other flood maintenance and management measures. Such measures to include details of evacuation, maintenance , and a review of procedures over time to ensure that the mitigation works are maintained in good operational order for the life of the development.
- Condition 110 - to be amended to require the Operational Management Plan to be amended to reflect the requirements of the Flood Management Plan, to be prepared under condition 94, in terms of implementation, maintenance and monitoring of the approved flood mitigation measures to achieve consistency and achieve an adaptive management and maintenance regime to implement the Flood Management Plan".

CONSIDERATION OF COMMUNITY VIEWS

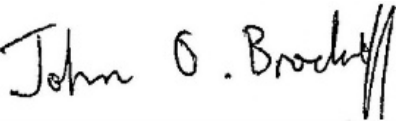
In coming to its decision, the panel considered written submissions made during public exhibition. While no submitters addressed the panel during the meeting the panel notes that issues of concern included:

- Compliance with planning controls (LMLEP 2014 and DCP 2014)
- Building height, including justifying increased height relative to Belmont Tower development from 1960s
- Loss of views
- Visual impacts
- Loss of vegetation
- Adequacy of car parking for commercial/retail units
- Impact of loading dock on Sharp Street streetscape and amenity of neighbouring properties
- Viability of the development
- Access to basement car park and potential queuing impacts
- Acid sulphate soils
- Affordable housing
- Construction impacts and public safety
- Impacts of increased traffic movements and on-street parking
- Increased overshadowing to the south due to increased height
- Amenity impacts (privacy, loss of views) on residents to the south
- Accessibility of visitor parking spaces

- Apartment mix - number of one-bedroom apartments
- Impacts of waste collection
- Safety and security
- Impacts of lighting
- Setbacks to Sharp Street and Brooks Parade

The panel considers that concerns raised by the community during the three exhibition periods have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The panel notes that in addressing these issues:

- The proposal has been amended to reduce the height of Building A which in turn has reduced the potential overshadowing when compared to the original design. The revised plan set includes detailed shadow diagram which demonstrate that the dwellings in Belmont Towers adjacent to the site will achieve three hours of solar access.
- A detailed landscape plan has been prepared for landscape treatment and plantings in the public domain and the communal spaces on site and a condition requires this to be updated to require irrigation of the on-site landscaping.
- The current design includes a truck turntable within the site to enable trucks to enter and leave the site in a forward direction.
- The basement has been redesigned to identify the allocated car parking spaces which meets the Council's total numerical requirements, accessibility and access by visitors to the site, and to incorporate waste storage and collection areas. The revised scheme also includes a waste management plan that addresses waste collection within the site.
- The current proposal has been considered by the Council's development engineer and Transport for NSW. The development application was supported by a Traffic Impact Assessment which confirmed the existing road network and intersections are capable of accommodating traffic generated by the development.
- A condition is proposed that requires adequate lighting is provided throughout the development in a manner that provides for adequate safety and security whilst not impacting upon the amenity of neighbouring residents.
- The panel considers that the apartment mix and building setbacks as proposed are appropriate.
- A Visual Impact Assessment was submitted with the development application that demonstrates that the proposal provides for view sharing and will appear as contextually appropriate when viewed in the context of the Belmont Centre when viewed from the adjacent public places and from distances.

PANEL MEMBERS	
 Clare Brown (Chair)	 Nicole Gurran
 John Brockhoff	 Jason Pauling
 Scott Anson	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPS-2017HCC002 – Lake Macquarie – DA/11/2017
2	PROPOSED DEVELOPMENT	Demolition, commercial premises, residential flat building, and subdivision
3	STREET ADDRESS	5 & 7 Edgar Street, Belmont (Lot 10 & 11 Sec B DP 585) 9 & 11 Edgar Street, Belmont (Lot A & B DP 400644) 2, 4 & 6 Sharp Street, Belmont (Lot 4, 5 & 6 DP 12898) 8 & 10 Sharp Street, Belmont (Lot 1 & 2 DP 353066) 32 & 36 Brooks Parade, Belmont (Lot 3 & 4 Sec B DP 585) 38 & 40 Brooks Parade, Belmont (Lot A & B DP 339105) 42 & 44 Brooks Parade, Belmont (Lot 7 & 8 DP 12898)
4	APPLICANT/OWNER	Applicant: Monteath & Powys Pty. Ltd. Owner: Allbeach Pty. Ltd., BSE Corporation Pty. Ltd., A Brown, K. Brown and M. Brown
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	- Environmental planning instruments: - State Environmental Planning Policy (Infrastructure) 2007 - State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 - State Environmental Planning Policy No. 55 – Remediation of Land - State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development - State Environmental Planning Policy No. 71 – Coastal Protection - Lake Macquarie Local Environmental Plan 2014 - Draft environmental planning instruments: Nil - Development control plans: - Lake Macquarie Development Control Plan 2014 - Planning agreements: Nil - Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: 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 - 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	- Council assessment report: 9 November 2017 - Additional commercial in confidence information provided by the applicant to Council, received on 13 November 2017, concerning valuations and an offer made to the owner of 44 Brooks Parade, Belmont dated 10 November 2017 - Written submissions during public exhibition: 30, during three notification periods - Verbal submissions at the public meeting on 23 November 2017: - Monty Hughes and Dean Allison - On behalf of the applicant – Konrad Grinlaubs, Belinda Charlton and Charles De Bono

		• Council assessment report: 8 October 2018 • Additional information from Council, including a late submission, received by the Panel on 17 October 2018 • Verbal submissions at the public meeting on 18 October 2018: - o Council assessment officer – Brian Gibson - o On behalf of the applicant – Charles De Bono & Darren Holloway • Council assessment report: 28 October 2020 • Clause 4.6 variation request to vary building height • Updated recommended conditions of consent: 9 November 2020 • Verbal submissions at the public meeting on 11 November 2020: - o Council assessment officer - Anna Kleinmeulman - o On behalf of the applicant – Clint Forrester and Charles De Bono
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing: 16 March 2017 - o <u>Panel members</u>: Michael Leavey, Justin Hamilton and Nick Jones - o <u>Council assessment staff</u>: Brian Gibson, Robyn Pollack, Susie Young, Elizabeth Lambert • Site inspections: - o Clare Brown: 23 November 2017 and 8 November 2020 - o John Brockhoff: 8 November 2020 - o Jason Pauling: 18 October 2018 - o Scott Anson: 18 October 2018 • Final briefing to discuss council's recommendation: 23 November 2017 - o <u>Panel members</u>: Michael Leavey (acting Chair), Lindsay Fletcher and Clare Brown - o <u>Council assessment staff</u>: Brian Gibson, Elizabeth Lambert, Greg Field, Chris Dwyer, Robyn Pollock and Susie O'Neill • Final briefing to discuss council's recommendation: 18 October 2018 - o <u>Panel members</u>: Michael Leavey (acting Chair), Lindsay Fletcher, Jason Pauling and Scott Anson - o <u>Council assessment staff</u>: Brian Gibson, Elizabeth Lambert and Georgie Williams • Briefing: 16 September 2020 - o <u>Panel members</u>: Juliet Grant (acting Chair), Clare Brown, Nicole Gurran and Jason Pauling - o <u>Council assessment staff</u>: Anna Kleinmeulman and Elizabeth Lambert • Final briefing to discuss council's recommendation: 11 November 2020 - o <u>Panel members</u>: Clare Brown (acting Chair), Nicole Gurran, John Brockhoff, Jason Pauling and Scott Anson - o <u>Council assessment staff</u>: Anna Kleinmeulman, Cameron Evans, Amy Regardo and Robyn Pollock
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Provided on 9 November 2020