

RECORD OF DEFERRAL

HUNTER AND CENTRAL COAST JOINT REGIONAL PLANNING PANEL

DATE OF DETERMINATION	7 December 2017
PANEL MEMBERS	Jason Perica (Chair), Michael Leavey, Kara Krason, Cr. John Gilbert
APOLOGIES	None
DECLARATIONS OF INTEREST	Sandra Hutton, declared a non-participating conflict of interest (COI) as the firm she works for is the planning consultancy for the applicant. Justin Hamilton declared a non-participating conflict of interest as he did an original architectural scheme for the site that was purchased by the owners.

Public meeting held at Lake Macquarie City Council, 126-138 Main Road, Speers St on 7 December 2017, opened at 5pm and closed at 8.10pm.

MATTER DEFERRED

2017HCC010 – Lake Macquarie - DA/675/2017 - 482 The Esplanade, Warners Bay – 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 the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to defer determination of the development application, to allow the applicant to consider submitting amendments to address concerns with the proposal by the Panel and further analysis by Council staff. This further information may be considered and determined by electronic means.

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

The decision was 3:1, against the decision was Ms Kara Krason who considered the proposal should be refused.

REASONS FOR THE DECISION

The Panel was not satisfied with core aspects of the proposal related to the interface of the building with the southern boundary, the carparking allocation and some matters of detail.

The site is subject to a height limit of 22m, for which there are some relatively minor non-compliances. The variation(s) are supported by a Clause 4.6 Variation request, which Council staff considered was justified and well founded. The Panel viewed the site and considered the applicant's variation request. The proposal did include an additional level beyond the number of storeys nominated in the Council's DCP, which was achieved by floor-floor heights which will make achieving ceiling height compliance with the Apartment Design Guide ("ADG") challenging. Despite this, there were other aspects of good or high internal amenity and the height and scale was generally as encouraged by the detailed planning controls within the DCP (with the exception of some setback controls).

There is no FSR standard for the site. There are envelope controls in the DCP, as well as within *State Environmental Planning Policy 65 (Design Quality for Residential Apartment Development)* and associated ADG, with the latter having greater statutory weight. Careful consideration was given to the non-compliance with the setbacks to the southern boundary. While there is discretion to consider podium

development built to the southern side boundary without openings, the nature of the site and the adjoining development to the south was such that this was not desirable or appropriate. The site would be highly visible and adjoining development to the south warranted a different approach in relation to the southern boundary. Requiring compliance, or closer compliance, with the guidelines within SEPP 65 was warranted. It was noted that the applicant had undertaken detailed analysis of overshadowing impacts. However, side setbacks are not just to consider overshadowing, but also general amenity between buildings and also the relationship with the public domain.

The carparking allocation was also a concern. The zone objectives encourage public transport use and employment provision. Despite this, there is an over-provision of parking and an under-allocation towards employment uses and visitors. There is some merit in a “shared” arrangement of residential/commercial visitor spaces, although it is expected there may be some overlapping of peak demand in the early evenings and weekends and the shared allocation was not considered sufficient. Any tandem spaces should be allocated to the same apartment and may provide opportunities for storage/cages. The allocation of parking and its management should be guided by a management plan.

Some matters of detail required further consideration and revision, including the glass line of the western ground level to allow and encourage outdoor dining and the colour of glazing, especially given the prominent location.

Some other aspects also required further advice from Council staff and time for the Panel to consider, including applicable draft SEPPs, late correspondence from NSW Water, revised conditions, revisions to hours of operation and any change in RMS’s position regarding pedestrian barriers.

This combination of concerns with aspects of the proposal and matters of detail warranted deferral of the application. Consideration was given to refusal, although it was noted the proposal had been the subject of considerable iteration and engagement between the applicant, Council and its Design Review Panel, the proposal included some positive elements and was capable of being acceptable subject to revision and refinement regarding specific matters. As such, deferral was preferred.

Kara Krason disagreed with the majority decision for the following reasons:

- Proposal does not satisfactorily meet the design quality principles of SEPP 65, including context, built form and scale, landscape, amenity and aesthetics.
- The proposed additional storey to the DCP provision is not supported due to impacts on the amenity of surrounding properties and visual impact from the waterway.
- The proposal fails to adequately respond to the site’s proximity and visibility from the waterway both in terms of function and aesthetics.
- The proposal provides insufficient landscaping within the site, particularly side and front setbacks.
- Concern over hours of operation sought for non-residential tenancies and potential noise impacts on neighbouring dwellings.

CONDITIONS

The determination of the development application was deferred and the applicant is invited to submit revised plans and supporting information in response to the following matters, as soon as practicable:

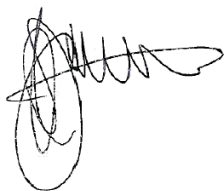
- (a) Increasing the southern side setback of both building forms to The Esplanade and Howard Street to achieve a minimum of 3m for the lowest two levels, 6m to 4 levels above ground (to the edge of the building, avoiding side balconies and generally retaining the approach of orienting outlook to the streets or within the site) and 9m above 4 levels (which may include openings and some side return balconies generally oriented to the street(s) or within the site);
- (b) Inclusion of landscaping within the revised southern side setbacks and associated details and planting depth to provide effective visual screening between buildings;
- (c) Revision of the parking allocation to achieve a minimum of 37 shared spaces, 7 spaces for commercial tenancies and the remainder for residents;
- (d) An appropriate management plan for the allocation of parking and access thereto;
- (e) Revision of the glass-line to The Esplanade to align with the landscaped beds provided, increasing the setback to encourage outdoor dining;

- (f) Details of glazing (which should be clear, not tinted green); and
- (g) Provision for kitchen exhaust to be vented internally to the roof via the building core.

Council staff shall consider the plans and information provided and provide the Panel with a further assessment report. This shall also provide advice on:

- Applicable draft SEPPs;
- SEPP 55
- Advice from all public authorities (and any change in RMS position regarding pedestrian barriers, for which the Panel concurs with staff is undesirable); and
- Appropriate conditions including hours of operation and advice on operating hours within the centre nearby.

Upon receipt of this information, the Panel may determine the application by electronic means.

PANEL MEMBERS	
 Jason Perica (Chair)	 Kara Krason
 Michael Leavey	 Cr. John Gilbert

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017HCC010 – Lake Macquarie - DA/675/2017
2	PROPOSED DEVELOPMENT	Mixed Use Development (Residential Flat Building, Commercial Premises and Associated Works)
3	STREET ADDRESS	482 The Esplanade, Warners Bay
4	APPLICANT/OWNER	YPI Yahov Property Investments (Warners Bay) Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million
6	RELEVANT MANDATORY CONSIDERATIONS	• Environmental planning instruments: ○ State Environmental Planning Policy No 71 – Coastal Protection ○ State Environmental Planning Policy (Infrastructure) 2007 ○ Lake Macquarie Local Environment Plan 2014 • Draft environmental planning instruments: TBC • Development control plans: ○ Lake Macquarie Development Control Plan 2014 • Planning agreements: Nil • Section 79C of the EPA Act 1979 • Provisions of the Environmental Planning and Assessment Regulation 2000 • 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 Environmental Planning and Assessment Act 1979 or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	• Draft Conditions (Version 2) dated 7 December 2017 • Clause 4.6 Variation Request • Council assessment report: 16 November 2017 • Written submissions during public exhibition: 18 Submissions from 13 Authors • NSW Water GTA dated 7 December 2017 (late correspondence) • Verbal submissions at the public meeting: ○ Object – Andrew Boychuk and Lyle Dalton ○ On behalf of the applicant – Marcus Graham, Brett Stein, Peter Bowyer
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing Meeting 27 July 2017 • Site inspection 7 December 2017 • Final briefing meeting to discuss council's recommendation, 7 December 2017, 3pm. Attendees: ○ <u>Panel members</u>: Jason Perica (Chair), Michael Leavey, Kara Krason, John Gilbert ○ <u>Council assessment staff</u>: Brian Gibson and Chris Dwyer
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment, revised by a document circulated to the Panel from Council staff "Draft Conditions (Version 2)" dated 7 December 2017.