

RECORD OF DEFERRAL

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DEFERRAL	Wednesday, 23 October 2019
PANEL MEMBERS	Michael Leavey (Chair), Kara Krason, Julie Savet Ward, Giacomo Arnott and Ryan Palmer
APOLOGIES	Jason Perica
DECLARATIONS OF INTEREST	Paul LeMottee – Le Mottee Group is currently doing some work for an adjoining owner.

Public meeting held at Port Stephens Council – 116 Adelaide Street, Raymond Terrace on 23 October 2019, opened at 2:45pm and closed at 4:20pm.

MATTER DETERMINED

2018HCC046 – Port Stephens Council – DA16-201-775-1 at 6B Waropara Road, Medowie – Educational establishment including demolition of existing building, remove demountable buildings and construct new 3 level building (no increase to student numbers) (as described in Schedule 1)

REASONS FOR DEFERRAL

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.

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

The Panel resolved to defer determination of the development application, pending further advice, as outlined below.

The decision was unanimous.

The Panel was conceptually supportive of the proposed new school building, and its siting and design, subject to further conditions of consent relating to light management and use of smart technologies, capture and reuse of roof water, adjustments to the landscape plan and provision of after hours contact details.

While the Panel generally agreed with the assessment of issues outlined in the Council staff report, and the recommended deferred commencement requirement to secure a legal point of stormwater discharge, the Panel noted the applicant's submission that to secure the stormwater easement could take in the order of 4 – 5 months to complete, and such a delay to construction would put the school's funding of \$1.6M in jeopardy, with the applicant submitting that the funding requires a construction certificate to be obtained before the end of the year. The Panel also had regard to the MOU between the school and an adjoining landowner to work towards an easement to secure a legal point of downstream discharge.

While it was the Panel's view that requirements to secure downstream easements for stormwater are, as a matter of common practice, required as deferred commencement conditions, the Panel was mindful of the potential loss of funding for the project, particularly if there was another lawful mechanism to require the easement and works to be in place through a condition of consent, and without resulting in additional impacts on other downstream properties until such time as an easement and works were in place. In this regard the applicant requested prior to the meeting that the easement and works be required to be in place prior to the issue of an Occupation Certificate. The panel had concerns with the occupation certificate stage being the trigger as by that stage the building would have been completed potentially without an

easement in place. A verbal submission was heard at the meeting that the funding is tied to obtaining a construction certificate.

TERMS OF DEFERRAL






Having regard to the issues raised by the applicant, and issues raised by downstream landowners, determination of the development application is **deferred** for the Panel to seek legal advice on the capacity of the Panel to lawfully defer the securing of a downstream easement and associated works to being a requirement of a condition of consent, rather than a deferred commencement condition, while also ensuring there is no additional impact on downstream landowners as a result of such a deferral.

The Panel will seek this advice as a matter of priority, and following consideration of the advice and any further advice from Council, the matter will be determined electronically.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included downstream drainage/ flooding, siting of the building, light glare and after hours contact.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and recommended conditions of consent, and with further potential conditions of consent once the matter is determined, and, in particular addressing light glare and management.

PANEL MEMBERS	
 Michael Leavey (Chair)	 Kara Krason
 Julie Savet Ward	 Giacomo Arnott
 Ryan Palmer	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018HCC046 – Port Stephens Council – DA16-201-775-1
2	PROPOSED DEVELOPMENT	Educational establishment including demolition of existing building, remove demountable buildings and construct new 3 level building (no increase to student numbers)
3	STREET ADDRESS	6B Waropara Road, Medowie
4	APPLICANT/OWNER	Medowie Christian School
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No.55 – Remediation of Land State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 State Environmental Planning Policy (State and Regional Development) 2011 Port Stephens Local Environmental Plan 2013 (LEP2013) Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Port Stephens Development Control Plan 2014 (DCP2014) 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	<ul style="list-style-type: none"> Council assessment report: 25 September 2019 Applicant's MOU for downstream drainage, provided by Council staff Written submissions during public exhibition: 2 Verbal submissions at the public meeting: <ul style="list-style-type: none"> In support – Nil In objection – Leanne White, Peter Boshev Council assessment officer – Ryan Falkenmire, Rean Lourens On behalf of the applicant – Stephen Barr, Simon Heard, Justin Pearson
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 24 July 2019 <ul style="list-style-type: none"> <u>Panel members</u>: Jason Perica (Chair), Kara Krason, Michael Leavey, Giacomo Arnott <u>Council assessment staff</u>: Ryan Falkenmire Site inspection: Wednesday, 23 October 2019 at 1:00pm <ul style="list-style-type: none"> <u>Panel members</u>: Michael Leavey (Chair), Kara Krason, Julie Savet Ward and Ryan Palmer <u>Council assessment staff</u>: Ryan Falkenmire Final briefing to discuss council's recommendation, Wednesday, 23 October 2019 at 2:15pm <ul style="list-style-type: none"> <u>Panel members</u>: Michael Leavey (Chair), Kara Krason, Julie Savet Ward, Giacomo Arnott and Ryan Palmer <u>Council assessment staff</u>: Ryan Falkenmire and Rean Lourens

9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report