

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	15 October 2020
PANEL MEMBERS	Alison McCabe (Chair), Brian Kirk, Julie Savet Ward and Stephen Leathley
APOLOGIES	None
DECLARATIONS OF INTEREST	Sandra Hutton declared a conflict as her employer has been involved in the site from project management and civil engineering discipline perspective. Ms Hutton was not personally involved in the application. Juliet Grant and Robert Bisley declared a conflict of interest as their Newcastle office of City Plan had submitted an objection. Bob Pynsent, Anne Sander, Mark Lyons and Allan Stapleford declared conflicts because of their involvement with the rezoning of the site as councillors

Public meeting held by teleconference on 15 October 2020, opened at 2pm and closed at 4pm.

MATTER DETERMINED

PPS-2019HCC009 – Cessnock – 8/2018/539/1 at 337 Black Hill Road Black Hill – Large Lot Industrial Subdivision (as described in Schedule 1).

The Panel in their determination of this matter has benefited from a briefing from Council, Transport for NSW (TfNSW) and the applicant.

Further information was submitted by the applicant for consideration. Given the extent and timing of the additional information neither Council nor the Panel was in a position to review these documents in any detail. A letter from TfNSW dated 12 October 2020 and a finalised Black Hill Traffic Modelling Report prepared by SMEC on behalf of TfNSW dated 9 October 2020 was made available to the Panel. Again because of the date of receipt and complexity of issues, the Panel was not in a position to review the information or have the benefit of a supplementary assessment report.

The Panel noted that the application has been pending for over two (2) years. It has been the subject of a series of additional information which has the effect of amending aspects of the application, specifically the degree and extent of traffic related mitigation work – the impacts of which have not been fully assessed. These works alone would require readvertising of the proposal. The recent TfNSW letter continues to raise issues with the proposal, to an extent that would require fundamental changes to both the application, mitigation works and potentially the strategic framework currently in place.

Notwithstanding their recommendation for refusal, Council requested that the Panel defer the matter for the opportunity to consider the additional material.

The applicant indicated that they wanted the matter determined and that the traffic mitigation measures outlined in the GTA May 2020 report and their letter dated 12 October 2020 regarding contribution towards those works was what they sought the Panel to approve.

The Panel considered the Council's request to defer the matter. However given the degree of difference between the applicant and TfNSW, the need to substantially amend and re-exhibit the proposal, the Panel was of the view that there was unlikely to be a timely resolution of such threshold issues. The Panel was also concerned that the SEARS had not been properly addressed and a comprehensive site analysis had not

been presented. Furthermore, the applicant had contended that stage 1 involved a six (6) lot 'super lot' subdivision and this was not clearly set out in the EIS and other documentation accompanying the development application making the proposal unclear. There was also significant cut and fill with insufficient consideration of the site's rural landscape context, retention of any vegetation for screening, and interface with sensitive land uses.

The Panel also noted that the TfNSW position regarding access also raises broader strategic matters regarding how this site and the adjoining site are accessed.

The Panel therefore has determined the application based on the information which is the subject of the assessment report.

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.

Development application

The Panel determined to refuse 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 refuse the application for the reasons outlined in the Council assessment report and for the following additional reasons:

- The extent of cut and fill is excessive and the relationship of finished levels to the boundary interfaces result in unreasonable impacts and poor amenity outcomes.
- The Environmental Impact Statement (EIS) inadequately describes the proposed development, in terms of offsite works and lacks an assessment of those works as required under Section 4.15 of the *EPA Act 1979*.
- The EIS inadequately analyses feasible alternatives to carrying out the proposed development and the consequences of not carrying out the proposed development. The EIS has not satisfied the requirements of Schedule 2 of the Environmental Planning and Assessment Regulation 2000.
- The complete removal of all vegetation in the IN2 zoned lands results in a lack of landscape space for the development and inadequate visual screening of the development to the rural landscape setting.
- The application and accompanying documentation is not clear regarding a proposed stage 1 6 lot super lot subdivision and the EIS and accompanying reports do not address this element of the proposal.

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:

- Environmental/Ecological
- Traffic and access
- Character
- Amenity
- Design, layout and requirements
- Legislation/planning policy
- Archaeological and geotechnical

The Panel considered that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

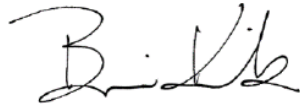
PANEL MEMBERS



Alison McCabe (Chair)



Julie Savet Ward



Brian Kirk



Stephen Leathley

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPS-2019HCC009 – Cessnock – 8/2018/539/1
2	PROPOSED DEVELOPMENT	Subdivision of land to create 39 light industrial lots and 1 environmental conservation lot, to be delivered in six stages, including the remediation of the site and removal of vegetation to ensure that the site is suitable for future occupation for industrial use.
3	STREET ADDRESS	337 Black Hill Road Black Hill
4	APPLICANT/OWNER	Broaden Management Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	• Environmental planning instruments: - o State Environmental Planning Policy (State and Regional Development) 2011 - o State Environmental Planning Policy (Infrastructure) 2007 - o State Environmental Planning Policy No 55 – Remediation of Land - o State Environmental Planning Policy No 44 – Koala Habitat Protection - o State Environmental Planning Policy (Koala Habitat Protection) 2019 - o Cessnock Local Environmental Plan 2011 • Draft environmental planning instruments: - o Draft Remediation of Land SEPP • Development control plans: - o Cessnock Development Control Plan 2010 • 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: 8 October 2020 • Memorandum on Planning Agreement: 14 October 2020 • Written submissions during public exhibition: 21 • Written submissions received outside public exhibition: three (3) • Verbal submissions at the public meeting: - o Terry Lewin on behalf of The Black Hill Environment Protection Group and Janet Mario - o Council assessment officer – Janine Maher - o On behalf of the applicant – Stephen Barr, Rhys Hazel, Richard Kerr and Matt Doherty • Total number of unique submissions received by way of objection: 19
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Briefing: 22 July 2020 - o <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Stephen Leathley and Robert Bisley - o <u>Council assessment staff</u>: Janine Maher, Kerry Porter and Peter Giannopoulos

		• Site inspections: - o Alison McCabe: 25 July 2020 - o Stephen Leathley: 14 October 2020 • Applicant Briefing: 5 August 2020 - o <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Stephen Leathley and Robert Bisley - o <u>Applicant representatives</u>: Stephen Barr, Phil De Gail and Mark Giese - o <u>Council assessment staff</u>: Janine Maher and Peter Giannopoulos <u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues • Briefing from Transport for NSW: 8 September 2020 - o <u>Panel members</u>: Alison McCabe (Chair) and Stephen Leathley - o <u>Council assessment staff</u>: Peter Giannopoulos, Janine Maher, Martin Johnson - o <u>Transport for NSW</u>: Anna Zycki, Marc Desmond, Peter Marler and Christophe Steinbach (consultant) - o <u>Newcastle City Council</u>: Brian Cameron • Final briefing to discuss council's recommendation: 15 October 2020 - o <u>Panel members</u>: Alison McCabe (Chair), Brian Kirk, Julie Savet Ward and Stephen Leathley - o <u>Council assessment staff</u>: Peter Giannopoulos, Janine Maher, Martin Johnson - o <u>Transport for NSW</u>: Marc Desmond
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not supplied