

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	13 December 2022
DATE OF PANEL DECISION	12 December 2022
DATE OF PANEL MEETING	5 December 2022
PANEL MEMBERS	Alison McCabe (Chair), John Brockhoff, Chris Wilson, Jason Pauling and Roberta Ryan
APOLOGIES	None
DECLARATIONS OF INTEREST	Sandra Hutton declared a conflict of interest as her recent employer, ADW Johnson, has been involved with these DAs. Juliet Grant has declared a conflict of interest as her employer, Gyde Consulting, is undertaking work for the applicant in relation to another site.

Public meeting held by teleconference on 5 December 2022, opened at 3:35pm and closed at 5:35pm.

MATTER DETERMINED

PPS-2019HCC021 – Lake Macquarie City Council – DA/2087/2018 at 10 & 10C Woodford Street, Cameron Park – subdivision (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.

The Panel has had the benefit of a number of briefings from Council, the Applicant and TfNSW, over the assessment period. The Panel has also had the benefit of a comprehensive site inspection including the surrounding areas.

The application has a high level of complexity given it is a Part 4 Application arising from a Part 3A Concept Approval granted in 2013. It is the subject of two (2) Voluntary Planning Agreements for Environmental Offsets and State Infrastructure Contributions. The site benefits from a s34A(3) Certificate under the Biodiversity Conservation (Savings and Transitional) Regulation 2017.

The application has been under assessment for five (5) years. The application has been amended over the assessment period to respond to Further Environmental Assessment Requirements (FEARs) of the Concept Approval, Statement of Commitments, jurisdictional requirements and responses to requests for further information.

The application is one (1) of two (2) applications being considered by the Panel under the Concept Approval. The other application is within the City of Newcastle Local Government Area and adjoins this application to the north (PPS-2019HCC006). The applications are inherently linked. For this reason, the Panel has considered these matters at the same meeting.

The strategic framework for this application is found in the Concept Approval which has approved the site for urban development similar to that occurring in surrounding suburbs.

This application is required to address the detailed requirements of the FEARs and the various requirements such as, but not limited to, contamination, biodiversity, engineering design, traffic impacts and urban design considerations, typical of any subdivision application. The size of the subdivision proposed has required extensive and detailed documentation.

The Panel recognises the importance of the site to deliver much needed housing for the growing regional community and the economic benefits arising from the development of a new suburb.

However, the Panel is required to be satisfied of the merits or otherwise of the application before it.

The Council Assessment Report recognises a number of issues that with further information and amended documentation may be able to be resolved and recommends deferral of the determination to provide the opportunity for the outstanding matters to be addressed.

One of the fundamental elements of this application is the potential impact the development may have on the regional road network.

FEAR 1.31 of the Concept Approval is required to be met by the first development application for each stage. It requires details of traffic generation and distribution, intersection analysis and microsimulation modelling to determine impact, proposed timing of up-grades of key intersections, and timing and funding arrangements of proposed upgrades to the road system.

The applicant contends that they have provided sufficient documentation for the Panel to be satisfied of the impacts, and impose a “Grampian” style condition to ensure that works are in place before release of lots at specified times.

TfNSW, the authority responsible for the regional road network, contends that the Panel and TfNSW does not have sufficient information to assess the impacts of the development. TfNSW says it is inappropriate to impose a condition where the impacts of the proposed development cannot be assessed because of the absence of appropriate modelling. This is required to inform appropriate mitigation measures and conditions. TfNSW says that FEAR 1.31 has not been met.

The Panel has received clarification that TfNSW has reviewed all traffic related material formally lodged with the application.

Having regard to the information in front of the Panel, it is the Panel’s view that there is inadequate information to assess the traffic impacts of the development including works that arise from and are required by the proposal to mitigate and manage traffic impacts.

The Panel cannot be satisfied about:

- What works are required;
- When works are needed;
- Who is responsible for the works; and
- Impacts arising from works specifically required by this development.

It is understood that no works can occur without upgrades to the regional network occurring.

For this reason, the Panel considers that FEAR 1.31 has not been satisfied. The Panel cannot assess the impacts on the surrounding road network or the required mitigation measures. The Panel is also of the view that a resolution of what the impacts are to the regional road network, upgrades required and assessment of impacts, and a funding mechanism, are matters that will not be finalised in a timely manner.

A further implication of FEAR 1.31 not being satisfied is that there is not a sufficient basis for considering whether public interests in the allocation and timing of costs of future regional network upgrades are addressed in relation to this development.

The Panel agrees with the need for further information outlined in the report. The Panel agrees that a greater level of detail around mines subsidence is required noting that Subsidence Advisory NSW is not satisfied with the documentation to date.

The Panel also acknowledges the relationship of the proposed development to the Summerhill Waste Management Centre (SWMC) and the competing land use. This is an important regional facility. There is a difference of opinion over the interpretation of FEAR 1.34.

The Panel agrees with the requirement for further consideration of odour impact.

The Panel does not agree that FEAR 1.34 requires access through a residential release area for what is essentially a haulage route.

Provision does need to be made for typical garbage trucks to access the SWMC site.

The Panel understands SWMC planning for a southern access point – but notes that the road configuration proposed does not preclude this occurring – albeit with a degree of negotiation.

The Panel notes that nine (9) years after the issue of Concept Approval and five (5) years into a DA assessment process, the regional traffic requirements and funding mechanism for this development to proceed have not been satisfactorily resolved.

The solution to regional traffic upgrades requires a government lead, strategic approach and cannot be addressed on a DA by DA basis – given the extent of works required. The lack of a strategic transport solution and funding mechanism for regional transport upgrades is preventing the delivery of housing to the market.

The Panel in its deliberation has considered the matters required to be considered in the determination of the development application under section 4.15 of the *Environmental Planning and Assessment Act 1979*.

The Panel considered the applicant's request to defer the determination of the application, but given the length of time the application has been under assessment and the timeframes involved in resolving the traffic and transport impacts, upgrades required and funding mechanisms, it sees no purpose in delaying the determination.

The Panel is of the view that the application should be refused.

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 4:1 in favour of refusing the DA. Against the decision was Jason Pauling, who voted to defer the determination in accordance with the recommendation of the Council report.

REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons at Schedule 2.

Jason Pauling disagreed with the majority decision for the following reasons:



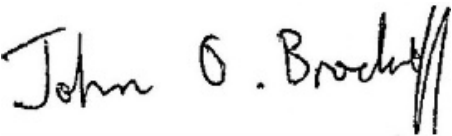


- Lake Macquarie staff recommendation was that although there were matters as yet unresolved (per assessment report) their view was that the matters remained resolvable given further time.
- The applicant should be given sufficient time to address the matters identified in the report.
- The development is needed to provide housing for the region and notwithstanding the Newcastle Council objections, Lake Macquarie Council staff remained supportive of the development (per the assessment report and recommendation).

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:

- Impact to operations of the Summerhill Waste Management Centre as a regional waste facility and access points.
- Inconsistency with Concept Approval condition 1.34.
- Impact to Blue Gum Hills Regional Park.
- Lack of pedestrian and cycle facilities that connect to existing networks.
- Lack of public transport network in the development.
- Impact on wildlife and biodiversity

The Panel considers 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)	 Chris Wilson
 John Brockhoff	 Roberta Ryan
 Jason Pauling	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPS-2019HCC021 – Lake Macquarie City Council – DA/2087/2018
2	PROPOSED DEVELOPMENT	Subdivision of two lots into 1079 residential lots, five future development lots, one development lot for a future school, and associated infrastructure including two parks.
3	STREET ADDRESS	10, 10C and 144 Woodford Street, Cameron Park M1 Pacific Motorway, Lake Macquarie Lot 2 DP 877349, Lot 1 DP 1156243, Part Lot 100 DP 1252590, Lot 22 DP 816113
4	APPLICANT OWNER	Winten (No 21) Pty Ltd Winten (No 21) Pty Ltd Lake Macquarie City Council Transport for NSW
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> Environmental Planning and Assessment (Savings, Transitional and Other Provisions 2017) State Environmental Planning Policy (Biodiversity & Conservation) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience & Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Lake Macquarie Local Environmental Plan 2014 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Minmi Precinct Development Guidelines Lake Macquarie Development Control Plan 2014 Previous Planning Agreements with the NSW State Government in relation to dedication of biodiversity offsets land and State Infrastructure Contributions. Draft VPA for contribution to sporting fields, land dedication, shared pathway and monetary contributions. Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: <ul style="list-style-type: none"> Clause 92(1) demolition Clause 93 fire safety Clause 94 Building Code of Australia 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"> TfNSW advice: 2 November 2022 Council Assessment Report: 28 November 2022 Written submission from applicant received: 2 December 2022 Various email exchanges between applicant and TfNSW Legal advice – privileged Written submissions during public exhibition: eight (8) Verbal submissions at the public meeting:

		<ul style="list-style-type: none"> ○ Jeremy Bath, Alissa Jones, Michael Head, Elizabeth Adamczyk, Kathleen White, Ronnie O’Leary (statement read by Kathleen White), Brian Purdue on behalf of Green Corridor Coalition, Geraldine Furphy, Christine Baker on behalf of the residents and Delilah Welland ○ On behalf of the applicant – Christina Renner, Alex Biscan and Bill Sarkis
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 11 August 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, Jason Pauling (Lake Macquarie LGA only), Roberta Ryan (Lake Macquarie LGA only), John MacKenzie (Newcastle LGA only) and Peta Winney-Baartz (Newcastle LGA only) ○ <u>Lake Macquarie City Council assessment staff</u>: David Pavitt, Amy Regado and Elizabeth Lambert ○ <u>City of Newcastle Council assessment staff</u>: Brian Cameron, Priscilla Emmett, Tracey Webb and Olivia Magrath ○ <u>Department staff</u>: Leanne Harris, Jane Gibbs and Lisa Foley • Site inspection and applicant briefing: 1 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), John Brockhoff, Chris Wilson (briefing only), Jason Pauling (briefing only - Lake Macquarie LGA only) and Roberta Ryan (briefing only - Lake Macquarie LGA only), ○ <u>Lake Macquarie City Council assessment staff</u>: David Pavitt and Amy Regado ○ <u>City of Newcastle Council assessment staff</u>: Brian Cameron, Priscilla Emmett, Paul McMurray, Ian Gregson (consultant – part of briefing) and Olivia Magrath (part of briefing) ○ <u>Transport for NSW</u>: Damien Pfeiffer, Marg Johnston and Liz Smith (part of briefing) ○ <u>Applicant representatives</u>: Bill Sarkis, Alex Biscan, Lincoln Gibbs and Jessica Bailey ○ <u>Department staff</u>: Leanne Harris and Jane Gibbs <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> • Site inspection and applicant briefing: 26 April 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, John Brockhoff, Jason Pauling (Lake Macquarie LGA only) and Roberta Ryan (Lake Macquarie LGA only), ○ <u>Lake Macquarie City Council assessment staff</u>: Glen Mathews, David Pavitt and Amy Regado ○ <u>City of Newcastle Council assessment staff</u>: Brian Cameron, Priscilla Emmett, Damian Jaeger, Steven Masia and Olivia Magrath ○ <u>Applicant representatives</u>: Bill Sarkis, Christine Renner, Alex Biscan, Lincoln Gibbs and Jessica Bailey ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> • Applicant Briefing: 3 August 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Chris Wilson, John Brockhoff, Roberta Ryan (Lake Macquarie LGA only), Peta

		<p>Winney-Baartz (Newcastle LGA only) and John Mackenzie (Newcastle LGA only)</p> <ul style="list-style-type: none"> ○ <u>Lake Macquarie City Council assessment staff</u>: Glen Mathews, David Pavitt and Amy Regado ○ <u>City of Newcastle Council assessment staff</u>: Brian Cameron, Priscilla Emmett and Steven Masia ○ ○ <u>Department staff</u>: Leanne Harris, Jane Gibbs, Carolyn Hunt and Lisa Foley <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> <ul style="list-style-type: none"> • Applicant briefing: 13 September 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), John Brockhoff, Chris Wilson, Jason Pauling (Lake Macquarie LGA only), Peta Winney-Baartz (Newcastle LGA only) and John Mackenzie (Newcastle LGA only) ○ <u>Lake Macquarie City Council assessment staff</u>: Glen Mathews and Elizabeth Lambert ○ <u>City of Newcastle Council assessment staff</u>: Brian Cameron, Priscilla Emmett, Steven Masia and Michelle Bisson ○ <u>Transport for NSW</u>: Damien Pfeiffer and Marg Johnston ○ <u>Applicant representatives</u>: David Rothwell, Bill Sarkis, Christina Renner, Alex Biscan, Jessica Bailey and Lincoln Gibbs ○ <u>Department staff</u>: Jane Gibbs, Carolyn Hunt and Lisa Foley <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> <ul style="list-style-type: none"> • Final briefing to discuss Council's recommendation: 5 December 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), John Brockhoff, Chris Wilson, Peta Winney-Baartz (Newcastle LGA only), John Mackenzie (Newcastle LGA only), Roberta Ryan (Lake Macquarie LGA only) and Jason Pauling (Lake Macquarie LGA only) ○ <u>Newcastle City Council assessment staff</u>: Brian Cameron, Ian Gregson (Consultant), Chris Thomas (Consultant), Roland Payne, Steven Masia, Michelle Bisson, Damian Jaeger, Paul McMurray, Priscilla Emmett ○ <u>Lake Macquarie City Council assessment staff</u>: Amy Regado and David Pavitt ○ <u>Department Staff</u>: Leanne Harris, Kate McKinnon and Lisa Foley
9	COUNCIL RECOMMENDATION	Deferral
10	DRAFT CONDITIONS	Not provided

Schedule 2

REASONS FOR REFUSAL

1. The development is not generally consistent with the terms of the approval of the concept plan (MP10_0090) dated 6 August 2013. [Clause 3B(2)(d) in Schedule 2 '*Transferred transitional arrangements on repeal of Part 3A – former Schedule 6A to the Act*' of *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.
2. The development fails to demonstrate that the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of the design of the vehicular access to the land or the nature, volume or frequency of vehicles using the classified road to gain access to the land. [Section 4.15(1)(a)(i) *Environmental Planning and Assessment Act 1979*].
3. The development is contrary to the public interest as it has not been demonstrated that there will be no impacts on traffic safety, efficiency or ongoing operation of the classified or wider regional road network or that any impacts can be appropriately mitigated to the satisfaction of Transport for NSW. [Section 4.15(1)(e) *Environmental Planning and Assessment Act 1979*].
4. The application does not include sufficient information to demonstrate the impact on the natural or built environment resulting from works associated with any road upgrades required to mitigate the impacts of the development on traffic safety, efficiency or ongoing operation of the classified or wider regional road network. [Section 4.15(1)(b) *Environmental Planning and Assessment Act 1979*].
5. The application does not include a sufficient basis for considering whether public interests in the allocation and timing of costs of future regional network upgrades are addressed in relation to this development.
6. The application does not contain sufficient information to consider the provision of Clause 2.122 of *State Environmental Planning Policy (Transport and Infrastructure) 2021*.
7. The application has not provided sufficient information to determine that the risk of mine subsidence can be eliminated or mitigated to the requirements of *Subsidence Advisory NSW* and the impact on the natural and built environment of any works required to meet the requirements of *Subsidence Advisory NSW* have not been adequately demonstrated. [Section 4.15(1)(b) *Environmental Planning and Assessment Act 1979*].
8. The application has not provided sufficient information to demonstrate that there will be no significant adverse impacts on sensitive noise receivers in regard to road traffic noise or sufficient details provided on how any proposed mitigation measures are to be implemented. [Section 4.15(1)(b) *Environmental Planning and Assessment Act 1979*].
9. The development does not satisfy requirements of FEAR 1.14, FEAR 1.20, FEAR 1.30, FEAR 1.31 and FEAR 1.34 of the *Concept Approval (MP10_0090)*.
10. The development does not satisfy the provisions of Clause 4.6 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*.
11. The proposed development does not contain sufficient information to assess the impacts of earthworks across the site, the extent of retaining walls, and condition at interfaces with adjoining lands and proposed public domain and the Blue Gum Hills Regional Park. The proposed development fails to satisfy Clause 7.2 of the *Lake Macquarie Local Environmental Plan 2014*.

12. The presentation and height of proposed retaining walls at public interfaces has not been adequately documented.
13. There is insufficient information to understand the extent of earthworks and retaining walls on steeply sloping sites.
14. The proposed urban footprint has not been designed to reflect the physical and ecological limitations of the site.
15. The application does not contain sufficient information for an assessment of the biodiversity impacts of the proposed development required under saved provisions of the *Environmental Planning and Assessment Act 1979* as provided by the Biodiversity Conservation (Savings and Transitional) Regulation 2017.
16. The provision of appropriate recreational facilities to serve the needs of the anticipated population has not been demonstrated.
17. There is insufficient information to assess the potential for odour impacts from the Summerhill Waste Management Centre (SWMC) and the suitability of the site for residential development at the interface.
18. The application does not contain sufficient information to demonstrate a connection to the boundary of the SWMC.
19. The application does not contain sufficient information to assess the impact on the natural and built environment arising from infrastructure work required to service the development.