

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	24 October 2022
DATE OF PANEL DECISION	24 October 2022
DATE OF PANEL MEETING	13 October 2022
PANEL MEMBERS	Juliet Grant (Chair), Sandra Hutton and Roberta Ryan
APOLOGIES	Alison McCabe
DECLARATIONS OF INTEREST	Jason Pauling and Christine Buckley declared conflicts of interest. As Councillors of Lake Macquarie City Council, the applicant for this development application, Cr Pauling and Cr Buckley have been involved in discussions and voting related to the proposed development.

Public meeting held by videoconference on 13 October 2022, opened at 3pm and closed at 3:13pm.

MATTER DETERMINED

PPSHCC-110 – Lake Macquarie – DA/3015/2021 – Fernleigh Track extension - Belmont (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.

In response to queries from the Panel, a supplementary memo was prepared by Council to provide:

- Further information regarding the likely impacts of the development, including conditions to manage those impacts;
- Consideration of the public interest in Council's assessment of the applicant's Clause 4.6 written submission; and
- Information regarding the changes made to draft conditions in response to the Applicant's comments.

The Panel considers the proposed development is appropriate for the site and any impacts can be reasonably mitigated via the conditions of consent. The Panel is satisfied the proposed approach to lighting will be sensitive to the receiving environment within which it is located and will not negatively impact upon local fauna, whilst providing appropriate safety for visitors.

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:

- a) compliance with cl. 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and

- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the C2 Environmental Conservation zone; and
- c) 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 following reasons:

- The site is suitable for the proposed development and subsequent use;
- The potential construction and operational impacts can be mitigated and managed via conditions, as outlined in the assessment report;
- The project is the result of meaningful engagement with the Indigenous community; and
- The project will provide public benefit.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments:




- A new **Condition 4** embodying the mitigation measures and associated timeframe as proposed in the Environmental Impact Assessment; and
- A new **Condition 51** regarding lighting, including placement and management of potential impacts

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:

- Suitability of access locations;
- Traffic impact and safety;
- Proximity of the track to residences; and
- Potential environmental impacts.

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	
 Juliet Grant (Chair)	 Sandra Hutton
 Roberta Ryan	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-110 – Lake Macquarie – DA/3015/2021
2	PROPOSED DEVELOPMENT	Road (Fernleigh track extension, Belmont)
3	STREET ADDRESS	34 Alick Street, 50C Alick Street, 11 Brandt Close, 12 Andra Close, 1A Andra Close BELMONT NSW 2280, 7A Ocean Park Road and 36 Ellen Street BELMONT SOUTH NSW 2280 Lot 101 DP 1263047, Lot 802 DP 1066865, Lot 82 DP 733198, Lot 35 DP 253148, Lot 36 DP 253148, Lot 4 DP 556338, Lot 1 DP 553216
4	APPLICANT OWNER	Lake Macquarie City Council All lots are owned by Lake Macquarie City Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development 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 (Resilience and Hazards) 2021 (Previously SEPP No. 33 - Hazardous and Offensive Development & Coastal Management) State Environmental Planning Policy (Planning Systems) 2021 (previously SEPP State and Regional Development 2011) Lake Macquarie Local Environmental Plan 2014 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Lake Macquarie Development Control Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> 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: 5 October 2022 Clause 4.6 exception to development standard request Supplementary Council assessment memorandum: 14 October 2022 Written submissions during public exhibition: two (2) Verbal submissions at the public meeting: <ul style="list-style-type: none"> On behalf of the applicant – Tess Dziwulski and Tony Farrell
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 16 February 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant and Roberta Ryan <u>Applicant</u>: Tony Farrell and Tess Dziwulski <u>Council assessment staff</u>: Jonathan Ford, Glen Mathews and Rosie Turner <u>Department staff</u>: Leanne Harris <u>Other</u>: Riley Hungerford Site inspection and briefing: 12 May 2022 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Sandra Hutton <u>Council assessment staff</u>: Glen Mathews and Jonathon Ford <u>Applicant representatives</u>: Tony Farrell and Tess Dziwulski

		<ul style="list-style-type: none"> ○ <u>Bahtabah Local Aboriginal Land Council</u>: Kentan Procter and Carol Procter ○ <u>Department staff</u>: Leanne Harris <ul style="list-style-type: none"> ● Briefing: 15 September 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant and Roberta Ryan ○ <u>Council assessment staff</u>: Jonathan Ford, Scott Fatches and Glen Mathews ○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley ● Final briefing to discuss council's recommendation: 13 October 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Juliet Grant (Chair), Sandra Hutton and Roberta Ryan ○ <u>Council assessment staff</u>: Glen Mathews, Jonathon Ford and Louise Cooper ○ <u>Department staff</u>: Leanne Harris and Lisa Foley
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report