

## DETERMINATION AND STATEMENT OF REASONS

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>DATE OF DETERMINATION</b>	8 June 2023
<b>DATE OF PANEL DECISION</b>	8 June 2023
<b>DATE OF PANEL MEETING</b>	6 June 2023
<b>PANEL MEMBERS</b>	Roberta Ryan (Chair), Tony McNamara, Stephen Leathley, Allison Burrows and Christine Buckley
<b>APOLOGIES</b>	Alison McCabe
<b>DECLARATIONS OF INTEREST</b>	Jason Pauling declared a non-pecuniary perceived conflict of interest as he has advocated for a development on an adjacent Council site.

Public meeting held by teleconference on 6 June 2023, opened at 2:30pm and closed at 2:50pm.

#### MATTER DETERMINED

PPSHCC-139 – Lake Macquarie – DA/1651/2022 - 114-120 Cary St, Toronto - 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 briefings listed at item 8 in Schedule 1.

#### 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), the Panel is not satisfied that it 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 not 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 E1 Local Centre zone.

#### 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 following reasons:

1. The request under Cl.4.6 of Lake Macquarie Local Environmental Plan 2015 to vary the development standard that has been established in respect to the maximum height of buildings in cl.4.3 of Lake Macquarie Local Environmental Plan 2015, is not supported. The request to vary

the development standard has failed to demonstrate that there are sufficient environmental planning grounds to justify the non-compliance with the development standard, that it would be unreasonable and unnecessary to require compliance in this instance with the development standard, or that the noncompliance with the height limit would result in a development that would be consistent with the objectives of the standard, the E1 Local Centre zone or the Environmental Planning and Assessment Act 1979.





2. In accordance with Subclause (1)(b) Section 2.8 and subclause (1)(a) of section 2.10 of State Environmental Planning Policy (Resilience and Hazards) 2021, the applicant has failed to provide information that would enable the Panel to be satisfied that the development would not significantly impact on the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland. Consequently, consent cannot be granted.
3. The proposed height and bulk of the building along Cary Street is dominating and would result in an unacceptable visual impact at the northern entrance to the Toronto town centre. The building height is also inconsistent with the local planning objectives for the area.
4. The proposal provides inadequate separation between upper levels, which is inconsistent with the SEPP 65 Apartment Design Guide. Additionally, the development has not provided adequate solar access to units; commercial premises are provided with insufficient ceiling height; the development presents a poor relationship with the public reserve to the south.
5. The proposal is inconsistent with the objectives and requirements of the Toronto Town Centre Area Plan/ Lake Macquarie Development Control Plan (DCP) 2014.
6. The proposal has not adequately addressed the traffic impacts of the development on surrounding streets and has not provided information to address concerns raised by Transport for New South Wales (TfNSW). The applicant has not demonstrated that TfNSW is satisfied with the proposal.
7. The proposal does not adequately address the narrow width of Arnott Avenue adjoining the site, the implications of this for the safe movement of vehicles and pedestrians, and the requirements for road widening.
8. The proposal has not resolved issues raised by Hunter Water, including relocation of the pipeline easement, and the Stormwater Management Plan Involving Council's operational land at 2A Bath Street has not been resolved with Council.
9. Approval of this proposal in its current form would not be in the public interest as it represents a major unsubstantiated variation to the maximum height of buildings development standard and is inconsistent with the Toronto Town Centre Area Plan.

## **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:

- Traffic impacts
- Parking
- Pedestrian safety
- Overdevelopment
- Building design and height
- Proposed development would create a need for upgraded infrastructure and essential services
- Amenity
- Toronto Wetlands and ground water impacts
- Flora and Fauna impacts
- Stormwater and flooding impacts
- Social and affordable housing
- Open space and acquisition

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	
 Roberta Ryan (Chair)	 Tony McNamara
 Stephen Leathley	 Christine Buckley

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-139 – Lake Macquarie – DA/1651/2022
2	PROPOSED DEVELOPMENT	Residential flat building and commercial premises (mixed use development)
3	STREET ADDRESS	114, 116, 118 and 120 Cary Street, 1, 2, 3 and 5 Bath Street 3 Arnott Avenue Toronto
4	APPLICANT OWNER	Fay Vranas Toronto Investments No. 1 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>Lake Macquarie Local Environmental Plan 2014</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Lake Macquarie Development Control Plan 2014</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council Assessment Report: 30 May 2023</li> <li>Clause 4.6 variation statement – maximum height (clause 4.3): 20 May 2022</li> <li>Written submissions during public exhibition: 97</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Susan Lear, Howard Dick, Bob Ireland and Jason Maxwell on behalf of Pat Collins and Movable</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Kick-off Briefing: 15 September 2022 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Sandra Hutton and Roberta Ryan</li> <li><u>Council assessment staff</u>: Glen Mathews and Scott Fatches</li> <li><u>Applicant representatives</u>: Fay Vranas, Jeff Mead and Stephen Coon</li> <li><u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>Briefing: 8 March 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Tony McNamara and Christine Buckley</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Council assessment staff</u>: Glen Mathews, Scott Fatches and Andrew Leese</li> <li>○ <u>Department staff</u>: Leanne Harris and Lisa Foley</li> <li>• Final briefing to discuss council's recommendation: 6 June 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Roberta Ryan (Chair), Tony McNamara, Stephen Leathley and Christine Buckley</li> <li>○ <u>Council assessment staff</u>: Glen Mathews, Nicole Sellen and Maddy Smith</li> <li>○ <u>Department staff</u>: Leanne Harris, Lisa Foley and Lisa Ellis</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided