

DATE OF DEFERRAL	13 December 2023
DATE OF PANEL BRIEFING	6 December 2023
PANEL MEMBERS	Tony McNamara (Acting Chair), Stephen Leathley, Giacomo Arnott and Ryan Palmer
APOLOGIES	Roberta Ryan
DECLARATIONS OF INTEREST	Alison McCabe - non-pecuniary conflict of interest as the applicant is Schools Infrastructure NSW who are clients of unrelated jobs for SJB Planning.

Papers circulated electronically on 29 November 2023.

MATTER DEFERRED

PPSHCC-184 – Port Stephens – DA 16-2023-42-1 at 80 Mount Hall Road, Raymond Terrace 2324 – Alterations and additions to school (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 the meetings observed at the site inspection listed at item 8 in Schedule 1.

The Panel had the benefit of a final briefing with the Council and the Applicant and is generally supportive of the proposed development.

The Panel notes however that as this is a Crown DA, pursuant to Section 4.33 of the Environmental Planning and Assessment Act a consent authority must not impose a condition of consent without the approval of the Applicant or the Minister. The Crown Applicant has advised that they do not agree to the imposition of the condition requiring the payment of Section 7.12 Contributions (currently \$192,151).

The Council have recommended that the condition be imposed in accordance with the policy provisions of their adopted 7.12 Contributions Plan.





The Crown Applicant however states *“Planning Circular D6 represents the consistently held view that the Department of Education, as a Crown authority, provides critical community infrastructure and that to levy any developer contribution on provision of public education facilities increases the cost of such infrastructure for all taxpayers in the State.”*

The Panel note there is a published Practice Note February 2021 in relation to Section 7.12 fixed development consent levies which indicates that Council’s may choose to exempt types of development from s7.12 levies and that such exemptions are at the discretion of the Council. The Council Section 7.12 Contribution Plan was recently updated (November 2023) in line with this Practice Note and education facilities were not exempted from the application of S.7.12 contributions.

The Crown Applicant has also indicated that their position is supported by a recently released Draft Practice Note which is currently on exhibition (Draft for Exhibition – section 7.12 levies December 2023). This draft refers back to Circular D6 for guidance on Crown Applications.

The Panel supports the Council’s position in relation to the consistent application of their Section 7.12 Contributions Plan noting it is consistent with the current policy framework and therefore has deferred the determination of the DA to refer the matter under Section 4.33 to the Minster for further direction.

The decision to defer the matter was unanimous.

PANEL MEMBERS	
 Tony McNamara (Acting Chair)	 Stephen Leathley
 Ryan Palmer	 Giacomo Arnott

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-184 – Port Stephens – DA 16-2023-42-1
2	PROPOSED DEVELOPMENT	Alterations and additions to school
3	STREET ADDRESS	80 Mount Hall Road, Raymond Terrace 2324
4	APPLICANT/OWNER	School Infrastructure NSW Department of Education / School Infrastructure NSW
5	TYPE OF REGIONAL DEVELOPMENT	Crown 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 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ Port Stephens Local Environmental Plan 2013 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Port Stephens Development Control Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2021</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: 29 November 2023 • Clause 4.6 variation for height • Written submissions during public exhibition: 1 • Total number of unique submissions received by way of objection: 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Preliminary Briefing: 4 April 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Ryan Palmer, Giacomo Arnott ○ <u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire, Mia Gallaway ○ <u>Applicant Representatives</u>: Rebecca Johnston, Katrina Walker, Simon Davies, Jessica Webb, Timothy Field, Mina Gadelrab, Mina Ibrahim, David Lewis, Russell Humble, Rebecca Lehman, Grant Schultz, Cathy Gresham, Ross Duncan, Simone-Louise Yasui ○ <u>DPE</u>: Leanne Harris, Lisa Foley • Site inspection: <ul style="list-style-type: none"> • Tony McNamara 17 July 2023 • Ryan Palmer 28 November 2023 • Final briefing to discuss council's recommendation: 6 December 2023

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Roberta Ryan (Acting Chair), Tony McNamara, Ryan Palmer, Giacomo Arnott ○ <u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire; ○ <u>Applicant representatives</u>: Rebecca Johnston, Simon Davies, Jessica Webb, , Mina Gadelrab, David Lewis, Ashley Barnes, Allan McCully, Adrian Connell, Kazi Anwar, ○ <u>DPE</u>: Leanne Harris, Holly McCann
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report