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| <b>DATE OF DETERMINATION</b>    | 12 February 2024  |
| <b>DATE OF PANEL DECISION</b>   | 8 February 2024   |
| <b>PANEL MEMBERS</b>            | Tony McNamara (Acting Chair), Stephen Leathley, Giacomo Arnott and Ryan Palmer  |
| <b>APOLOGIES</b>                | Roberta Ryan  |
| <b>DECLARATIONS OF INTEREST</b> | 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 and 8 February 2024.

#### **MATTER DETERMINED**

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)

#### **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 deferred determination of this DA in December 2023 to refer the matter to the Minister under Section 4.33 of the Environmental Planning and Assessment Act due to the Crown applicant not agreeing to the imposition of a condition of consent requiring the payment of monetary contributions under Section 7.12 of the Act.

The Crown applicant advised in a letter dated 8 February that the condition was now accepted. This was the only reason that the matter had been deferred as the Panel previously supported the merits of the proposal.

#### **Application to vary a development standard**

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Port Stephens Local Environmental Plan 2013 (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 R2 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 reasons outlined in the council assessment report.

**CONDITIONS**

The development application was approved subject to the conditions in the council assessment report and as agreed to by the Crown applicant.

**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered the one written submission made during public exhibition. The Panel notes that issues of concern included stormwater, noise and fencing.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report.

| PANEL MEMBERS   |   |
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| <br>Tony McNamara (Acting Chair) | <br>Stephen Leathley |
| <br>Giacomo Arnott             | <br>Ryan Palmer   |

| 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                          | <b>Crown development over \$5 million</b>  |
| 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 (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ Port Stephens Local Environmental Plan 2013</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Port Stephens Development Control Plan 2014</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2021</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: <b>29 November 2023</b></li> <li>• Clause 4.6 variation for height</li> <li>• Letter from Applicant dated 8 February 2024 agreeing to the disputed consent condition.</li> <li>• Written submissions during public exhibition: 1</li> <li>• Total number of unique submissions received by way of objection: 1</li> </ul>  |
| 8          | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> <li>• Preliminary Briefing: 4 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Ryan Palmer, Giacomo Arnott</li> <li>○ <u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire, Mia Gallaway</li> <li>○ <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</li> <li>○ <u>DPE</u>: Leanne Harris, Lisa Foley</li> </ul> </li> <li>• Site inspection: <ul style="list-style-type: none"> <li>• Tony McNamara 17 July 2023</li> <li>• Ryan Palmer 28 November 2023</li> </ul> </li> </ul>   |

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|           |                               | <ul style="list-style-type: none"> <li>• Final briefing to discuss council’s recommendation: 6 December 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Tony McNamara (Acting Chair), Stephen Leathley, Ryan Palmer, Giacomo Arnott</li> <li>○ <u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire;</li> <li>○ <u>Applicant representatives</u>: Rebecca Johnston, Simon Davies, Jessica Webb, , Mina Gadelrab, David Lewis, Ashley Barnes, Allan McCully, Adrian Connell, Kazi Anwar,</li> <li>○ <u>DPE</u>: Leanne Harris, Holly McCann</li> </ul> </li> </ul> |
| <b>9</b>  | <b>COUNCIL RECOMMENDATION</b> | <b>Approval</b>   |
| <b>10</b> | <b>DRAFT CONDITIONS</b>       | Attached to the council assessment report   |