

<b>DATE OF DEFERRAL</b>	13 December 2023
<b>DATE OF PANEL BRIEFING</b>	6 December 2023
<b>PANEL MEMBERS</b>	Tony McNamara (Acting Chair), Stephen Leathley, Ryan Palmer, Giacomo Arnott
<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.

#### **MATTER DEFERRED**

PPSHCC-197 – Port Stephens – DA 16- 2023 -259 - 1 at 36 Elkin Avenue, Heatherbrae 2324 – Alterations and Additions to Educational Establishment (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. There are two consent conditions that are currently not agreed:

##### **1. Section 7.12 Contributions**

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 \$96,892).

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.

## 2. Landscaping

The Panel also seek to impose an amendment to the landscape condition on the DA as follows:

- (19) **Landscape Amendments** - *The approved landscape plans identified in condition 1.0(3) of this consent are to be submitted to the Crown certifier and Council for approval, incorporating the following amendments:*
- I. *Additional compensatory Jacaranda Mimosifolia plantings along the southern boundary of the site, adjacent the Pacific Highway. The plantings are to be a minimum pot size of 45L and be wholly contained within the site boundary.*





The Crown Applicant have not agreed to the specific wording of this condition and instead specify the following amendments:

- (19) **Landscape Amendments** - *The approved landscape plans identified in condition 1.0(3) of this consent are to be submitted to the Crown certifier and Council for approval prior to commencement of any landscape works, incorporating the following amendments:*
- I. *Compensatory Jacaranda Mimosifolia plantings along the southern boundary of the site, adjacent the Pacific Highway. The plantings are to be a minimum pot size of 45L and be wholly contained within the site boundary.*

The Panel's position is that any amendment should not reduce the existing obligations for native habitat compensatory plantings and are concerned that with the deletion of the word 'additional' this may not be achieved.

The Panel has therefore deferred the determination of the DA to refer to matter under Section 4.33 to the Minster for further direction in relation to both proposed consent conditions.

The decision to defer the matter was unanimous.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-197 – Port Stephens – DA 16- 2023 -259 - 1
2	PROPOSED DEVELOPMENT	Alterations and Additions to Educational Establishment
3	STREET ADDRESS	36 Elkin Avenue, Heatherbrae 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: 29 November 2023</li> <li>Written submissions during public exhibition: 2 <ul style="list-style-type: none"> <li>Total number of unique submissions received by way of objection: 2</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Preliminary Briefing: 18 July 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Tony McNamara, Ryan Palmer, Giacomo Arnott</li> <li><u>Council assessment staff</u>: Dylan Mitchell, Ryan Falkenmire</li> <li><u>Applicant Representatives</u>: Rebecca Johnston, Katrina Walker, Simon Davies, Mina Gadelrab, Mina Ibrahim, Timothy Field, David Wheeler, Jessie Webb and David Lewis <ul style="list-style-type: none"> <li><u>DPE</u>: Leanne Harris, Lisa Foley</li> </ul> </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> <li>Final briefing to discuss council's recommendation: 6 December 2023</li> </ul>

		<ul style="list-style-type: none"><li>○ <u>Panel members</u>: Tony McNamara (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>○ DPE: Leanne Harris, Holly McCann</li></ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report