

DATE OF DETERMINATION	28 June 2024
DATE OF PANEL DECISION	28 June 2024
DATE OF PANEL BRIEFING	25 June 2024
PANEL MEMBERS	Alison McCabe (Chair), Tony McNamara, Roberta Ryan, Giacomo Arnott
APOLOGIES	Ryan Palmer
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 18 June 2024.

MATTER DETERMINED

PPSHCC-241 – Port Stephens – DA 16 -2023 – 384 - 1 at 1154 Clarence Town Road, Seaham 2324 – Battery Energy Storage System (BESS) (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 briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

This application is one (1) of five (5) applications for a Battery Energy Storage System (BESS) lodged on the same site in the southwestern corner of the site. Each application abuts the other so as to form a compound. Each BESS has a 5MW capacity, can operate independently and has separate connections to the grid. They have all been lodged at a similar time.

The Panel has considered these applications both individually and cumulatively. The Panel has had a number of briefings from both Council and the applicant and heard from a number of submitters. The Panel had raised a number of issues that needed to be addressed in the initial briefing and at its meeting on 14 May 2024.

The Panel at its meeting on 14 May 2024 deferred the determination of the matter for the applicant to provide additional information and amended documents that:

1. Clarify the extent of disturbed and undisturbed area on a plan that reconciles and explains the numbers in the Ecological Assessment Report. A plan showing the actual trees to be removed is also required.
2. Clarification that all engineering works are captured in the ecology report for the access road.
3. Clarification of the standard of road construction and detailed in plan.
4. An updated Fire Incident Management Plan that reflects the application lodged and is consistent with how the site is to be operated.
5. Clarification whether the 11KW under boring works on the site are part of the Part 5 Authorisation by Ausgrid or are part of this application.
6. Clarification of nighttime lighting (i.e. is it controlled by sensor)
7. Extent of access to the site during a flood and the height of the road required to access site in the event of flood.
8. Details of materials proposed for the acoustic fence.
9. Clarification of the status of other applications for BESS in the vicinity of the site.
10. Finished RL's of the individual BESS compound.

11. Potential measures that could be implemented to ensure appropriate rehabilitation and recycling at the end of the facilities operational life.

This information has now been submitted and is the subject of an addendum report dated 18 June which the Panel has considered.

The report before the Panel recommends approval of the application and has considered the cumulative effect of the proposal in the context of the other four (4) applications.

The Panel considers that the site is suitable for the proposed development. In its deliberation the Panel requires additional and amended conditions regarding:

- (i) Approval of the Fire Incident Management Plan by Fire & Rescue NSW.
- (ii) Revision of the decommissioning and rehabilitation plan to require review at 3, 10, and 20 years, and to include a requirement for rehabilitation if land is found to be contaminated as a result of use.
- (iii) Amendment to ecological condition to require reference to additional material.
- (iv) Correct the grammar in condition 39.

The Panel acknowledges the need for these facilities and considers that the proposal has responded to the constraints and characteristics of the site. The proposed development has merit, and the potential impacts are acceptable.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979 subject to the conditions in the council assessment report and the following additional and amended conditions:

- a) Add to condition 3 the following:

“Prior to the issue of a Construction Certificate, the Fire Incident Management Plan is to be approved by Fire & Rescue NSW. The Plan is to incorporate any additional recommendations from Fire & Rescue NSW including but not limited to back to base fire alarm monitoring, if recommended.”

- b) Delete the first sentence of condition 4 and replace with the following:

“Construction and development must comply with the recommendations of the ‘Ecological Assessment Report for the proposed installation of a Battery Energy Storage System (BESS) at Lot 1 DP 1265736 No. 1154 Clarence Town Road, Seaham NSW 2324’, Report No. 12785, dated 21 March 2024, and the letter dated 18 June 2024, both prepared by Wildthing Environmental Consultants, detailed as follows.”

- c) Delete condition 8 and replace with the following:

Updated Decommissioning Strategy

“8. Prior to the issue of a Construction Certificate the decommissioning strategy is to be updated to include requirements for:

- (a) A site contamination investigation to be prepared by an appropriately qualified person, prior to the battery decommissioning. This investigation should identify any site contamination present at the site that would limit potential future uses and make recommendations to remediate any site contamination.*
- (b) Where site contamination requiring remediation is identified by the site contamination investigation, the sites final decommissioning is required to:*
 - i. Undertake remediation work required by the site contamination investigation. Where such work is undertaken as part of the site decommissioning the person acting on this*

consent is to ensure that they have obtained any approval relevant for the carrying out of that work which may be required under the NSW planning system at the time of decommissioning.

Reason: *to ensure that appropriate investigations are completed at the end of the developments life and to ensure the site is free of contamination and in a state to support future use."*

d) Addition of new condition 8A to read:

Decommissioning and Rehabilitation

"8A. Within 3 years of the commencement of operation, the Applicant must update the Decommissioning Strategy for the development. The strategy is to be updated by the Applicant at year 10, year 20, and within 2 years prior to decommissioning and forwarded to Council. The plan must describe the measures that would be implemented to:

- (i) decommission the development and rehabilitate the site;*
- (ii) minimise and manage the waste generated by the decommissioning of the development;*
- (iii) include a program to monitor and report on the implementation of these measures; and*
- (iv) ensure that best practice is being employed in respect of available recycling technologies.*

All infrastructure including above and below ground is to be decommissioned and removed. Within 12 months of the cessation of operations, the Applicant must decommission, rehabilitate the site and restore land capability to pre-existing production capacity in accordance with the Decommissioning Strategy.

Vegetation screening implemented under this consent is to be retained."

e) Amended condition 39 to delete the word 'No' at beginning of the condition.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the following reasons:

1. The site is suitable for the proposed development.
2. The potential impacts arising from the development can be appropriately mitigated.
3. The proposed development will contribute towards the transition to renewable energy.

CONDITIONS





The development application was approved subject to the conditions in the council assessment report with the following amendments:

- Amend condition 3 – to require Fire & Rescue NSW to approve Fire Incident Management Plan.
- Amend condition 4 – to reference additional ecological information.
- Delete and replace condition 8 – to require updated decommissioning strategy.
- New condition 8A – to provide further detail regarding decommissioning and rehabilitation.
- Amended condition 39 – to correct grammar.

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:

- The lodgement of 5 separate applications
- Council being the consent authority
- Non-compliance with the RU2 zone objectives
- Visual impacts and landscaping
- Ecological impacts included limited field surveys, non-compliance with the Biodiversity Act, impacts on koalas and bats and impacts associated with under-boring.
- Noise impacts
- Fire impacts
- Lack of information on decommissioning
- Light spill,
- Flooding
- Project justification

PANEL MEMBERS	
 Alison McCabe (Chair)	 Tony McNamara
 Roberta Ryan	 Giacomo Arnott

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-241 – Port Stephens – DA 16 -2023 -384 – 1
2	PROPOSED DEVELOPMENT	Battery Energy Storage System (BESS)
3	STREET ADDRESS	1154 Clarence Town Road, Seaham 2324
4	APPLICANT/OWNER	Hunter Development Brokerage Pty Limited John Leslie Fisher / Fishben Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities 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 (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 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: 7 May 2024 Council addendum assessment report: 18 June 2024 Written submissions during public exhibition: 6 Total number of unique submissions received by way of objection: 6 Submitter briefing: <ul style="list-style-type: none"> Caitlin Spiller on behalf of Koala Coalition, Econetwork Port Stephens Inc. Margarete Ritchie, President, on behalf of Voice of Wallalong and Woodville (V.O.W.W.) David Banham on behalf of NSW Farmers
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Preliminary Briefing: 12 October 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Ryan Palmer, Giacomo Arnott <u>Applicant Representatives</u>: Mark Ihlein, Kerry Nichols, Aprajita Gupta, Ron Lucerne-Knight, Rob Ashdown, Ian Boake, Patrick Gardiner, Renton Parker <u>Council assessment staff</u>: Ryan Falkenmire, Rean Lourens, Courtney Sargent <u>Department</u>: Leanne Harris, Holly McCann

		<ul style="list-style-type: none"> • Site inspection: <ul style="list-style-type: none"> ○ <u>Panel members</u>: ○ Alison McCabe (Chair): 6 May 2024 ○ Tony McNamara: 21 June 2024 ○ Roberta Ryan: 10 February 2024 ○ Giacomo Arnott: 8 June 2024 • Final briefing to discuss council's recommendation: 14 May 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara, Giacomo Arnott, Ryan Palmer ○ <u>Council assessment staff</u>: Ryan Falkenmire, Rean Lourens, Courtney Sargent ○ <u>Applicant representatives</u>: Joanna Leigh, Rob Ashdown, Josephine Kamau, Jason Costa, Mark Ihlein, Aprajita Gupta ○ <u>Department</u>: Leanne Harris, Holly McCann • Final briefing to discuss council's addendum report: 25 June 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara, Giacomo Arnott ○ <u>Council assessment staff</u>: Ryan Falkenmire, Rean Lourens, Courtney Sargent ○ <u>Department</u>: Holly McCann
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report