

RECORD OF DEFERRAL

HUNTER & CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DEFERRAL	16 April 2024
DATE OF PANEL MEETING	9 April 2024
PANEL MEMBERS	Alison McCabe (Chair), Roberta Ryan, Tony McNamara, Robert Bisley
APOLOGIES	None
DECLARATIONS OF INTEREST	The Cessnock City Councillors and David Crofts have all declared a conflict of interest / conflict of duties due to previous involvement in rezoning process for this site.

Public meeting held by teleconference on 9 April 2024, opened at 2:00pm and closed at 3.50pm.

MATTER DEFERRED

PPSHCC-245 – Cessnock – DA 8/2016/557/2 at 1184 Wine Country Drive, Lovedale 2325 – Modification application (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 has had a number of briefings from the applicant and Council. The Panel has reviewed the legal advice received in respect to the provisions of section 4.55 modifications and the “substantially the same development” test and advice regarding the biodiversity framework applicable to the site.

The Panel understands that this application is a modification to a Concept Approval determined in December 2019. The Concept Approval satisfied the provision of clause 6.3 of the Cessnock LEP 2011 (CLEP 2011), in part through the reference to the Concept and Management Plan approved as part of the Concept Approval at condition 3.

This modification seeks to change the layout and configuration and increase the amount of residential lands, reconfigure the golf course, amend the staging, increase the Stage 1 community lot subdivision to seven (7) lots, and identify areas potentially to be avoided.

In addition, the application suggests that the changes will provide for improved ecological outcomes, but has not chosen (nor is it required to) to undertake a holistic approach to the environmental outcomes. Each subsequent stage will be subject to a separate DA and be accompanied by a BDAR under the Biodiversity Conservation Act 2016.

In addition to the consideration of s4.55(2)(a) and the changes proposed, the Panel in its deliberation has considered the following relevant matters:

- Flooding outcomes
- Aboriginal heritage and cultural outcomes
- Urban design and landscape outcomes
- Biodiversity outcomes
- Traffic impacts

While the proposal is a Concept Plan, it also seeks to set a framework for future development through satisfaction of clause 6.3 of CLEP 2011. The Panel is not satisfied that the amended version of the document adequately demonstrates an appropriate framework.

Based on the information contained in the application, the Panel is not satisfied that:

- Clause 5.21 of CLEP 2011 has been adequately addressed and that flooding impacts and suitability of the areas identified for development are appropriate, including an understanding of the extent of the fill and landform change needed to meet flood levels.
- There is no framework for how aboriginal cultural heritage and landscape will be protected or implemented across the site. The concept lacks a designing with Country framework.
- The modification alters the landscape and rural character elements of the proposal. It undermines some of the essential elements of the original approval. The integration of the golf course provided a landscape feel and setting and balanced the more urban elements of the Concept Plan.
- The guidelines and controls in the Concept and Management Plan do not reflect statements made and in their current form do not provide a framework for future stages to ensure appropriate landscape character.

To this end the Panel requires:

- i. Additional current technical flood information to satisfy clause 5.21 and the Concept and Management Plan updated to reflect current controls.
- ii. A designing with Country framework that demonstrates how aboriginal cultural heritage and landscape elements will be protected and considered in future DA's including how works including the golf course works can protect and compliment these elements.
- iii. Reduction in the size of the lots facing Wine Country Drive to closer reflect the size of lots originally proposed in the original consent. A minimum of 100 – 120 metres along Wine Country Drive should be landscaped as community lands – it does not need to be golf course. This will require a change in the size of Lot 1.
- iv. The design guidelines need to be amended and incorporated in the Concept and Management Plan. The plan needs to make reference to lot size and landscape outcomes and identify how they contribute to maintaining the landscape and character. The landscape strategy needs to provide an appropriate framework for future DA's.
- v. There needs to be consistency in documents.

The Panel agreed to defer the determination of the matter to provide the above information.

The decision to defer the matter was unanimous.





ACTIONS

The Modification Application be deferred for:

1. The Applicant to provide the information and amendments outlined at points (i) to (v).
2. A formal written request to amend the application is required to be uploaded to Planning Portal by the Applicant within four (4) weeks outlining:
 - a. Particulars sufficient to indicate the nature of the change of the development, as required under section 37 of the Environmental Planning and Assessment Regulation 2021
 - b. updated technical reports relied on in the amended application.
3. Council is requested to provide an addendum assessment report responding to the matters above, which is to be uploaded to the Planning Portal within four (4) weeks of the upload of the Applicants required information to the Planning Portal.

4. When the updated assessment report is received the Panel will determine the application by way of electronic determination.
5. The applicant is to advise Council whether the amendments/additional documents will be provided within seven (7) days of this decision.

If the applicant indicates that the information and amendments will not be provided, the Panel will determine the DA based on the information currently at hand.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Roberta Ryan
 Tony McNamara	 Robert Bisley

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-245 – Cessnock – DA 8/2016/557/2
2	PROPOSED DEVELOPMENT	Modification application
3	STREET ADDRESS	1184, 1054 and 1058 Wine Country Drive, Lovedale 2325
4	APPLICANT/OWNER	Hunter Development Brokerage Pty Limited Capital Hunter Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
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 Cessnock Local Environmental Plan 2011 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Cessnock Development Control Plan 2010 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Section 33(1) concept development applications 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: 27 March 2024 Written submissions during public exhibition: 16 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Ian Napier and Jennie Curran on behalf of Hunter Valley Wine and Tourism Association (HVWTA) Scott Franks on behalf of the PCWP Wonnarua Native Title claimants On behalf of the applicant – Kerry Nichols, Jim Hunter, David Moir, Jack Stevenson, Ross Duncan, Robert Monteath, Aprajita Gupta Total number of unique submissions received by way of objection: 10
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Preliminary Briefing: 14 November 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara, Robert Bisley <u>Council assessment staff</u>: Sue Page, Janine Maher <u>Applicant representatives</u>: Jim Hunter, Sam Petinsky, Alex Farmer, Clare Collett, Ross Duncan, Darius Oliver, David Moir, Kerry Nichols, Aprajita Gupta <u>Department</u>: Leanne Harris, Holly McCann Council Briefing: 7 February 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Robert Bisley

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Sue Page, Janine Maher, Marc Hope ○ <u>Department</u>: Leanne Harris, Holly McCann <ul style="list-style-type: none"> ● Site inspection: <ul style="list-style-type: none"> ○ Alison McCabe (Chair): 2 March 2024 ○ Roberta Ryan: 8 August 2023 ● Final briefing to discuss council's recommendation: 9 April 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara, Robert Bisley ○ <u>Council assessment staff</u>: Sue Page, Janine Maher, Jules Bosco, Brayden Luke and Peter Chrystal ○ <u>Department</u>: Leanne Harris, Holly McCann
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report