

<b>DATE OF DETERMINATION</b>	15 January 2025
<b>DATE OF PANEL DECISION</b>	15 January 2025
<b>DATE OF PANEL BRIEFING</b>	14 January 2025
<b>PANEL MEMBERS</b>	Alison McCabe (Chair), Tony McNamara, Roberta Ryan
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Giacomo Arnott and Ryan Palmer – Due to previously voting on a Planning Proposal for a Rezoning on this site.

Papers circulated electronically on 6 January 2025.

#### **MATTER DETERMINED**

PPSHCC-261 – Port Stephens – DA 16 -2023 -685 -1 at 42 Fullerton Cove Road, Fullerton Cove 2318 – Commercial premises (Neighbourhood Shopping Centre) including Signage, Sewer Extension and Demolition (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.

On the 18<sup>th</sup> of November 2024 the Panel deferred determination of this Development Application. The Panel required the following information for the Panel to be satisfied that the proposal would be suitable for the site and that impacts can be appropriately managed and the provisions of PSLEP 2013 and the Biodiversity Conservation Act 2016 are satisfied:

- (i) Amended plans that reduce the commercial premises GFA to meet the requirements of clause 7.24(3) or submit a clause 4.6 Exception to Development Standards.
- (ii) A Flood Emergency Response Strategy to address the provisions of clause 5.21 of the PSLEP 2013.
- (iii) Additional detail in terms of the nature of contamination and anticipated remediation strategy and a statement that the site can be remediated and made suitable for the use.
- (iv) Analysis of the vegetation and ecology, specific to the E1 Local Centre zone lands and the avoidance and minimisation undertaken.
- (v) Demonstration that engineering, landscape and ecological outcomes are integrated and consistent.

The Panel required Council to prepare a supplementary assessment report that considers the above, and relevant conditions, including any required in respect to management of the C2 Environmental Conservation lands and private sewer lines.

The applicant provided the above information and Council's supplementary report was provided on the 20<sup>th</sup> of December 2024. Upon review of the supplementary information and assessment report the Panel is now satisfied that the proposal is suitable for the site and that impacts can be appropriately managed and the provisions of PSLEP 2013 and the Biodiversity Conservation Act 2016 are satisfied. The impacts associated with works external to the site in respect of the private sewer line are considered acceptable.

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

The Panel is satisfied that:

- a) the applicant has demonstrated that compliance with clause 4.3 (2) (height of buildings) and clause 7.24 (FSR) is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard;

- b) compliance with the development standard is unreasonable and unnecessary in the circumstances for the reasons outlined in the clause 4.6 written document; and
- c) there are sufficient environmental planning grounds to justify contravening the development standard for the reasons outlined in the clause 4.6 written document.

### **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 variations to building height and FSR and approve the application for the following reasons:

- (i) The Panel is satisfied that the variation to the FSR development standard related wholly to circulation space and was within the bulk of the building.
- (ii) The development is consistent with the strategic framework for the site and will provide improved facilities to meet the growing population.
- (iii) The development will result in the management of ecologically sensitive areas.

### **CONDITIONS**




The Development Application was approved subject to the conditions in the Council's supplementary reports.

### **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered the 5 written submissions made during public exhibition. The Panel notes that issues of concern included:

- Need for cycling facilities
- No demand for the proposal
- Traffic impacts
- Support for the proposal
- Ecological impacts

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

PANEL MEMBERS	
 Alison McCabe (Chair)	 Tony McNamara
 Roberta Ryan	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-261 – Port Stephens – DA 16 -2023 -685 -1
2	PROPOSED DEVELOPMENT	Construction of a Shop (supermarket), 5 x Commercial Premises, a Medical Centre, Signage, Sewer Extension and Demolition of existing dwelling
3	STREET ADDRESS	Lot 14 DDDP 258848 42 Fullerton Cove Road, Fullerton Cove 2318
4	APPLICANT/OWNER	Canaan PD 2 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
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 (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Sustainable Buildings) 2022</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Industry and Employment) 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 2013</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: s61(1) – demolition of buildings</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: 4 November 2024</li> <li>Council supplementary assessment report: 20 December 2024</li> <li>Clause 4.6 request - Height of Buildings</li> <li>Clause 4.6 request - Floor Space Ratio</li> <li>Written submissions during public exhibition: 5</li> <li>Total number of unique submissions received by way of objection: 5</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Preliminary Briefing: 16 January 2024 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara</li> <li><u>Council assessment staff</u>: Courtney Sargent, Ryan Falkenmire</li> <li><u>Applicant representative</u>: Jamie Graham, Lachlan Sims, Phillip Hendrie, Charlotte Allen, Angus Brien, Kelly Drysdale, Kirwan Williams, Geoffrey Rock, Darcy Kilvert, Meeka Prince, Itto Vukeni</li> <li><u>Department</u>: Leanne Harris</li> </ul> </li> <li>Briefing: 29 May 2024 <ul style="list-style-type: none"> <li><u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Council assessment staff</u>: Ashley Bacales, Ryan Falkenmire</li> <li>○ <u>Department</u>: Leanne Harris, Holly McCann</li> </ul> <ul style="list-style-type: none"> <li>• Briefing: 7 August 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara</li> <li>○ <u>Council assessment staff</u>: Courtney Sargent, Ryan Falkenmire, Dylan Mitchell, Emily Allen</li> <li>○ <u>Department</u>: Leanne Harris</li> </ul> </li> <li>• Site inspection: <ul style="list-style-type: none"> <li>○ Alison McCabe: 6 May 2024</li> <li>○ Roberta Ryan: 28 July 2024</li> <li>○ Tony McNamara: 5 February 2024</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 13 November 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara</li> <li>○ <u>Council assessment staff</u>: Courtney Sargent, Emily Allen</li> <li>○ <u>Applicant representatives</u>: Jamie Graham, Meeka Prince, John Streeter, Phillip Hendrie, Charlotte Allen, Angus Brien, Cathy Thomas, Kelly Drysdale, Kate Hopoi</li> <li>○ <u>Department</u>: Holly McCann</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 14 January 2025 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Alison McCabe (Chair), Roberta Ryan, Tony McNamara</li> <li>○ <u>Council assessment staff</u>: Courtney Sargent, Ryan Falkenmire</li> <li>○ <u>Department</u>: Leanne Harris, Holly McCann</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council assessment report and supplementary assessment reports