

RECORD OF DEFERRAL

HUNTER & CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DEFERRAL	27 October 2021
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant, Stephen Leathley and Roberta Ryan
APOLOGIES	None
DECLARATIONS OF INTEREST	Sandra Hutton declared a conflict of interest as her employer, ADW Johnson, has previously provided advice to the landowner relating to the site and the project within the last few years. Jason Pauling and Luke Cubis declared conflicts of interest as they had participated in related matters previously within Council.

Papers circulated electronically on 6 October 2021.

MATTER DEFERRED

PPSHCC-35 – Lake Macquarie– DA/2238/2017 at 1A Flowers Drive, Catherine Hill Bay – residential subdivision (as described in Schedule 1).

The application before the Panel is a Part 4 application arising from a Part 3A Concept Approval issued in July 2012. This current application has been under assessment for nearly five (5) years. The application was clearly lodged without the comprehensive suite of information to enable a complete and efficient assessment. There has been a piecemeal approach to the lodgement of information. The Panel understands that a separate DA also has been lodged for the demolition of the workshop buildings and note that this was not based on the advice of Council.

The Panel has had the benefit of the Council report, multiple briefings with Council and a briefing with the applicant as well as a site visit.

The recommendation in the report before the Panel is not supported. Five (5) years into an assessment process there remains outstanding and threshold issues that have yet to be resolved. A number of these matters are clearly identified as being required to be addressed in the lodgement of any subdivision DA. They are not matters that can be conditioned or left for later detail in a subdivision works certificate and/or construction certificate.

The Panel, based on the information in front of it, could not support the application in its current form.

The Panel has identified the following outstanding matters:

- The provisions of SEPP 55 need to be properly addressed - the remediation strategy needs to be specific and if involving containment on site, detail the location and how it is to be contained, and include implications for earthworks and construction traffic and management;
- Construction impacts need to be properly addressed – there is no construction management plan;
- Interface of lands with the National Park are not satisfactorily resolved – including consultation with Office of Environmental and Heritage (OEH). Liaison and endorsement of the OEH regarding the management of the interface between the development area and adjoining National Park has not been provided;
- Landscape and vegetated outcomes along Flowers Drive to satisfy the intent and objectives of the Urban Design Guidelines (UDG) have not been demonstrated – including how they accommodate APZ requirements, and any road upgrades;
- Social Impact Assessment has not been undertaken including consultation with the local community;

- The landscape treatment of retaining walls over 1 metre in height when viewed within the subdivision has not been considered or provided – this has implications for the general amenity of the future neighbourhood;
- Details of the design for the whole of the heritage pathway have not been provided – including opportunities for an east west linkage to the heritage walkway from Flowers Drive;
- Landscape details of Workshop Park and Lemon Tree Park have not been provided – including how they are to be managed;
- Whether the application includes retention of the workshop building or its demolition should be addressed as part of this application – including justification one way or another;
- Extent of earthworks, ground water impacts and impacts to the retention of heritage structures has not been adequately addressed;
- Matters raised by submitters – regarding tenancy and pedestrian access to the beach; and
- Matters required to be submitted with the DA by condition of the Concept Approval are to be addressed specifically and provided.

The Panel accepts there has been significant investment in the application to resolve issues. For this reason only the Panel is prepared to defer the matter to allow outstanding issues to be addressed. However, if this package of information is not comprehensively addressed and submitted in a timely manner, agreed by Council, the Panel will determine the matter based on the information at hand.

It is noted that additional information was lodged in the days before the meeting that has not yet been reviewed.

An amended assessment report will need to be prepared that comprehensively addresses any amended package and the statutory and policy framework including LEP 2014 and the whole of the UDG.

The report is to include an analysis of the subdivision and public domain, including the visual impacts and aesthetics and relationship of retaining walls to finished levels and public domain, and the need for improved landscape outcomes if walls of any height are to be considered.

REASONS FOR DEFERRAL

The Panel agreed to defer the determination of the matter for the submission of the following information and amendments:





1. Amended DA Package that includes:

- (a) Detailed site investigation, Remediation Action Plan and Site Auditor's Statement;
- (b) Specific details of whether remediation is to be contained on site or taken off site. If retained – identification of general area of contaminant and methods proposed. This is to include recommended restrictions on future use of land;
- (c) Construction and Environmental Management Plan – required by Condition 1.47 of the Concept Approval – including any implication for truck movements arising from a particular remedial strategy;
- (d) Revised Earthworks Plan/s incorporating remediation and grouting works;
- (e) Documented evidence of consultation and agreement from the Office of Environmental and Heritage regarding the management of the interface between the development area and adjoining National Park;
- f) Revised (fully dimensioned) Landscape Plan/s demonstrating:
 - (i) landscape and vegetated outcomes along Flowers Drive to satisfy the intent and objectives of the Urban Design Guidelines, APZ requirements and any road upgrades;
 - (ii) details of Workshop Park and Lemon Tree Park, including how they are to be managed; and
 - (iii) treatment of retaining walls over 1 metre in height when viewed from within the subdivision;

- (g) A Social Impact Assessment including community consultation;
 - (h) Details of the design for the whole of the heritage pathway, including provision of an east west linkage to the heritage walkway from Flowers Drive;
 - (i) Updated Heritage Impact Assessment clarifying whether the application includes retention of the workshop building or its demolition;
 - (j) Details of tenancy agreements; and
 - (k) Compliance with the conditions of the Concept Approval that specified lodgement/or consideration of specific matters in any subdivision DA.
2. The applicant is to confirm in writing within 2 weeks of this decision of their intention to provide a response that addresses the full extent of Point 1, the scope of works involved and indicative timeframe for lodgement.
 3. If the applicant intends to genuinely explore additional solutions that addresses the Panel's concerns, the Council is to advise the Panel of the timeframe in which the applicant can appropriately and properly undertake the work and submit to Council for re-exhibition (if required) and a further assessment report.
 4. In the event that additional information identified at Point 1 is received, Council is to prepare a further comprehensive assessment report for the Panel.

The Panel will determine the matter electronically. If a response is not received or is received in the negative, the Panel will proceed to determine the matter based on the information before the Panel at the time of the original report being publicised.

The decision to defer the matter was unanimous.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Stephen Leathley	 Roberta Ryan

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-35 – Lake Macquarie– DA/2238/2017
2	PROPOSED DEVELOPMENT	Subdivision of two lots into 210 residential lots, associated infrastructure and heritage walkway
3	STREET ADDRESS	1A, 2B, 41 and 69A Flowers Drive, Catherine Hill Bay
4	APPLICANT/OWNER	Monteath and Powys Pty Ltd / Wallalong Land Development Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Coastal subdivision
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (State and Regional Development) 2011 ○ State Environmental Planning Policy (Infrastructure) 2007 ○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ○ State Environmental Planning Policy 44 - Koala Habitat Protection ○ State Environmental Planning Policy No. 55 – Remediation of land ○ State Environmental Planning Policy 71 - Coastal Protection. • Draft environmental planning instruments: <ul style="list-style-type: none"> ○ Draft SEPP Coastal Management 2018 ○ Draft Environment SEPP ○ Draft Design and Place SEPP ○ Draft Environmental Planning and Assessment Regulation 2022 • Development control plans: <ul style="list-style-type: none"> ○ Urban Design Guidelines • Planning agreements: <ul style="list-style-type: none"> ○ Planning agreement entered into under section 93F between Minister for Planning and Infrastructure, Minister administering <i>National Parks and Wildlife Act 1974</i>, Coal & Allied Operations Pty Ltd, and Catherine Hill Bay Land Pty Ltd. • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</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: 6 October 2021 • Council memorandum: 7 October 2021 • Council memorandum: 12 October 2021 • Written submissions during public exhibition: four (4) • Documents tabled during submitter briefing: 13 October 2021
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 3 June 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant ○ <u>Council assessment staff</u>: David Pavitt, Heath Robertson, Elizabeth Lambert, Amy Regado and Michael Little • Applicant briefing: 9 September 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Scott Anson ○ <u>Council assessment staff</u>: David Pavitt and Elizabeth Lambert

		<ul style="list-style-type: none"> ○ <u>Applicant representatives</u>: Darren Nicholson, Jason Wasiak, Greg Williams and Kosta Flamiatos <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> <ul style="list-style-type: none"> • Briefing: 14 July 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Roberta Ryan ○ <u>Council assessment staff</u>: Elizabeth Lambert, Amy Regado, David Pavitt and Alex Bennett ○ <u>Department staff</u>: Leanne Harris, Carolyn Hunt and Lisa Foley • Site inspections: <ul style="list-style-type: none"> ○ <u>Alison McCabe (Chair)</u>: 9 September 2020 ○ <u>Juliet Grant</u>: 9 September 2020 • Briefing to discuss Council's recommendation: 13 October 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Stephen Leathley and Roberta Ryan ○ <u>Council assessment staff</u>: Elizabeth Lambert, Amy Regado, David Pavitt and Alex Bennett ○ <u>Department staff</u>: Leanne Harris and Lisa Foley • Submitter Briefing: 13 October 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Stephen Leathley and Roberta Ryan ○ <u>Council assessment staff</u>: Elizabeth Lambert, Amy Regado, David Pavitt and Alex Bennett ○ <u>Department staff</u>: Leanne Harris and Lisa Foley ○ <u>Submitters</u>: Sue Whyte, Paul Myors, Jann Kinsela and Sandy Bourke <p><u>Note</u>: Submitter briefing was requested to respond to the recommendation in the Council assessment report</p> • Applicant Briefing: 13 October 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Stephen Leathley and Roberta Ryan ○ <u>Council assessment staff</u>: Elizabeth Lambert, Amy Regado, David Pavitt and Alex Bennett ○ <u>Department staff</u>: Leanne Harris and Lisa Foley ○ <u>Applicant representatives</u>: Kosta Flamiatos, Geoffrey Rock, Darren Nicholson, Greg Williams and Jason Wasiak <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the Council assessment report</p>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council assessment report