

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

DATE OF DETERMINATION	10 May 2022
DATE OF PANEL DECISION	9 May 2022
DATE OF PANEL MEETING	5 May 2022
PANEL MEMBERS	Alison McCabe (Chair), Juliet Grant, Chris Wilson and Roberta Ryan
APOLOGIES	None
DECLARATIONS OF INTEREST	<p>Sandra Hutton declared a conflict of interest as one of the submitters was an employee of ADW Johnson while she was. Ms Hutton did not work closely with the submitter but has declared a conflict of interest so that there should be no perception of conflict.</p> <p>Jason Pauling declared a conflict of duties as he voted as a Councillor when the lease of the site to the applicant was approved by Council.</p> <p>Christine Buckley declared a conflict of duties as she voted as a Councillor when the lease of the site to the applicant was approved by Council.</p>

Public meeting held at Lake Macquarie City Council on 5 May 2022, opened at 4pm and closed at 6:20pm.

MATTER DETERMINED

PPSHCC-48 – Lake Macquarie – DA/872/2020 at 62 Hillsborough Road, Hillsborough – indoor basketball stadium (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 meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

This application was lodged in June 2020. It has been amended since its lodgement to address a number of issues that were raised by the Panel and Council.

The Panel has had the benefit of several detailed briefings including a public briefing in June 2021 where submitters and the applicant had the opportunity to present to the Panel.

The application seeks to construct a Regional Basketball facility to service the broader region and accommodate growth in the sport. The application seeks approval for the construction and operation of a typical basketball facility – accommodating school and recreational basketball, training, games, and competitions. In addition, the proposal also seeks approval to include an unquantified number of larger events. Key issues arising from the assessment have centred around traffic and transport and access, the intensity of the use and the potential for impacts on the amenity of the surrounding residential area.

The Panel considers that the site is not suitable for the scale and intensity of the development proposed.

The Panel, having regard to TfNSW comments, is not satisfied that the means of access to the proposed site is suitable. TfNSW does not support access to and from the Newcastle Inner City Bypass and is also not supportive of any form of time limited access.

TfNSW's preference that all access be via Waratah Avenue is not supported by the Panel as this would result in unreasonable impacts on the surrounding residential area.

The Panel is not satisfied that there is sufficient information to fully assess the impacts of the proposed events – which are understood to be a fundamental and integral aspect of the proposal. This extends to mitigation measures. The impacts associated with the proposed events are not matters that can be deferred and addressed as conditions of consent.

The Panel is not supportive of a development that results in the removal of high-quality trees on adjoining properties. This is indicative that the site cannot accommodate the functions of the development.

The Panel has considered the clause 4.6 Exception to Development Standards and is not satisfied that there are sufficient environmental planning grounds to justify the contravention and that the breach is not in the public interest.

The site abuts an established residential area, ecologically sensitive lands and a school. Access to the site is constrained. The site is constrained by both bushfire and ecological considerations. The area is not well serviced by public transport and the pedestrian and cycle network near the site is limited.

The site is not suitable for the proposed development and the impacts arising from the development cannot be adequately mitigated.

REASONS FOR REFUSAL

Development application

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* for the following reasons:

1. The site is not suitable for the scale and intensity of the development proposed.
2. The means of entrance and exit to the proposal results in unreasonable impacts on the operation of the transport network and results in unreasonable amenity and land use impacts on the surrounding environment.
3. The proposed development does not demonstrate that the safety and efficiency of the ongoing operation of the classified road network will not be adversely affected by the development. The effectiveness of time-based management arrangements to mitigate impacts is considered unreliable, and furthermore, is likely to necessitate a high and unreasonable level of regulatory oversight.
4. The clause 4.6 Exception Development Standards has not demonstrated that compliance with the clause 4.3 Height of Buildings is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the contravention. The development is not in the public interest.
5. There is insufficient and inadequate information to properly assess the impacts resulting from the operation of the proposal, specifically in respect to the number of 'events' and the measures to manage these events to mitigate potential impacts.
6. The loss of trees on adjoining properties is unreasonable and is indicative of an overdevelopment of the site.
7. The proposed development results in impacts on the amenity of the surrounding area in terms of noise, traffic and parking, and loss of on-street parking.
8. The site is not serviced by a reasonable level of public transport, and a cycle and pedestrian network to properly support a regional recreational facility.
9. The social impacts of the proposal have not been adequately assessed.
10. Consequently, the proposed development is not in the public interest.

The decision was unanimous.





REASONS FOR THE DECISION

The Panel determined to refuse the application for the reasons outlined above.

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:

- Traffic impacts to the state and local road network.
- Insufficient information regarding event traffic management.
- Acoustic impacts.
- Ecology impacts.
- Bushfire outcomes.
- Social impacts.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Juliet Grant
 Chris Wilson	 Roberta Ryan

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-48 – Lake Macquarie – DA/872/2020
2	PROPOSED DEVELOPMENT	<p>Recreation facility (major) – basketball facility</p> <ul style="list-style-type: none"> • 10 full-size basketball courts, including one show court seating for 2200 spectators • change rooms / amenities • canteen • administration areas • function room • storage • 355 car parking spaces (comprising 258 asphalt and 97 overflow spaces) and bus parking • landscaping • stormwater system including detention basin • earthworks • vegetation removal to facilitate access to Waratah Avenue • line marking, signage, and other works within the existing road reserve to accommodate for traffic impact upgrades.
3	STREET ADDRESS	<p>62 Hillsborough Road, Hillsborough (Lot 12 DP 879281) 62A Hillsborough Road, Hillsborough (Lot 11 DP 879281) 109 Waratah Avenue, Charlestown (Lot 6 DP 9594) 117 Waratah Avenue, Charlestown (Lots 7 and 8 DP 9594)</p>
4	APPLICANT OWNER	Basketball Association of Newcastle c/- Catalyst Project Consulting Lake Macquarie City Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development 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 (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ Lake Macquarie Local Environmental Plan 2014 • Draft environmental planning instruments: • Development control plans: <ul style="list-style-type: none"> ○ Lake Macquarie Development Control Plan 2014 • Planning agreements: Nil • 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: 28 April 2022 • Clause 4.6 variation request: August 2021 • Written submissions during public exhibition: 241 • Verbal submissions at the public briefing on 24 June 2021:

		<ul style="list-style-type: none"> ○ Steve Owens, Marcia Spitzkowsky, Stephen Reid, Marian Jenkins, Mark Spitzkowsky, John Broughton, Cameron Wright, Nicole Mammen, Maureen Boyle, Jordan Lowe, Daryl Hyslop, Wendy Marr, Neil Goffet, Doug Read, Kirby Read, Zdenek Vilimec, Wendy St-Cyr, David Read, Sam Nicholas, Enzo Pirillo, Tim Freeth and Terry Charlton ● Verbal submissions at the public meeting on 5 May 2022: <ul style="list-style-type: none"> ○ Marian Jenkins, Wendy Marr, Daryl Hyslop, Mark Spitzkowsky, Stephen Reid, Kirby Read, Douglas Read, Marcia Spitzkowsky, Cameron Wright, Zdenek Vilimec, Sam Nicholas, David Read, Nicole Mammen, Steven Wilson, Enzo Pirillo, Cr Brian Adamthwaite, Wendy St Cyr, John Broughton, Dr Barney Langford and Gunta Rasmanis ○ Council assessment officer – Amy Regado, Elizabeth Lambert ○ On behalf of the applicant – Neil Goffet and Kris Leck
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> ● Briefing: 18 August 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Sandra Hutton, Juliet Grant, Jason Pauling and Scott Anson ○ <u>Council assessment staff</u>: Anna Kleinmeulman ○ <u>Department staff</u>: Lisa Foley ● Briefing: 17 March 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Chris Wilson ○ <u>Council assessment staff</u>: Anna Kleinmeulman, Amy Regado and Elizabeth Lambert ○ <u>Department staff</u>: Leanne Harris and Lisa Foley ● Briefing: 24 June 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Chris Wilson ○ <u>Council assessment staff</u>: Amy Regado and Elizabeth Lambert ○ <u>Department staff</u>: Jane Gibbs, Leanne Harris and Lisa Foley ● Public Briefing: 24 June 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Chris Wilson ○ <u>Council assessment staff</u>: Amy Regado and Elizabeth Lambert ○ <u>Department staff</u>: Jane Gibbs, Leanne Harris and Lisa Foley ● Briefing: 28 July 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Chris Wilson and Roberta Ryan ○ <u>Council assessment staff</u>: Amy Regado and Elizabeth Lambert ○ <u>Department staff</u>: Leanne Harris ● Briefing: 10 February 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Chris Wilson and Roberta Ryan ○ <u>Council assessment staff</u>: Amy Regado and Elizabeth Lambert ○ <u>Department staff</u>: Lisa Foley and Jeremy Martin ● Site inspections: <ul style="list-style-type: none"> ○ <u>Alison McCabe (Chair)</u>: 10 November 2020 and 5 May 2022 ○ <u>Juliet Grant</u>: 9 October 2020 and 5 May 2022 ○ <u>Chris Wilson</u>: 6 May 2022

		<ul style="list-style-type: none"> ○ <u>Roberta Ryan</u>: 1 May 2022 • Final briefing to discuss Council's recommendation: 5 May 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Chris Wilson and Roberta Ryan ○ <u>Council assessment staff</u>: Amy Regado and Elizabeth Lambert ○ <u>Department staff</u>: Leanne Harris
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report