

<b>DATE OF DETERMINATION</b>	5 July 2023
<b>DATE OF PANEL DECISION</b>	5 July 2023
<b>PANEL MEMBERS</b>	Dianne Leeson (Chair), Michael Wright and Stephen Gow
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Sharon Cadwallader declared a non-pecuniary conflict of interest as she voted on the project as a Councillor of Ballina Shire Council. Stephen McCarthy was informed by the Chair that he had a perceived conflict of interest as he is a Ballina Shire councillor and Council is the Applicant.

Papers circulated electronically on 21 June 2023.

#### **MATTER DETERMINED**

PPSNTH-180 – Ballina – 2022/218/1 at 42-46 Commercial Road, Alstonville – Alterations and additions to the existing Community Facility (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.

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

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Ballina Local Environmental Plan 2012 (LEP), that has submitted that:

- a) compliance with cl. 4.3 (Height of Building) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Building) of the LEP and the objectives for development in the R2 zone; and
- c) the concurrence of the Secretary has been assumed.

#### **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 variation to building height and approve the application for the reasons outlined in the council assessment report, including:

- The proposed community centre development is permissible with consent on land zoned R2 Low Density Residential.

- The proposed development comprises alterations and additions to the existing community facility and demolition and replacement of existing one storey library
- The proposed final height of the library of 8.95m is a minor exceedance of the maximum building height of 8.5m and will be below that of the adjoining sports hall
- The site is below street level and adjoins the public open space of the Alstonville Showground
- The alterations and additions provide a well-proportioned and articulated building that will create a suitable design to the streetscape and improved pedestrian access along Commercial Road
- Appropriate landscaping and car parking is provided.
- Traffic and parking impacts are considered negligible as the development is an enhancement and extension of the existing facility
- Adequate services are available to the site and stormwater, wastewater and waste can be adequately managed
- The Panel has carefully considered all relevant issues raised in submissions and believes they have been satisfactorily resolved by design amendments and/or conditions imposed by this approval
- The proposal is in the public interest as it will deliver enhanced community facilities for the local area with improved access for people with disabilities, contribute to employment opportunities and impacts can be managed by imposition of conditions

## CONDITIONS

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

- Amend Condition 1 to add the following sentence at the end of the condition:  
'Where there is any inconsistency between the conditions, and any supporting plans or documents, the conditions will prevail.'
- Amend Condition 4 by deleting condition title 'Disabled Access' and replacing with 'Accessibility' and deleting the word 'Disabled' as the start of the condition
- Amend Condition 8 to read as follows:  
'The remaining parts of the existing building are to be brought into conformity with the Building Code of Australia in relation to parts C, D, E and F for fire resistance, access, egress, emergency services and equipment, health and amenity. As prescribed by the BCA, the Performance Requirements are permitted to be satisfied by demonstrating a compliance solution is achieved through adoption of a combination of Performance Solutions and Deemed-to-Satisfy requirements.'
- Delete Condition 10 titled Smoke Free Environment and renumber the remaining conditions accordingly
- Insert new Condition 19:  
**19. Crime Prevention**  
Prior to the issue of a Construction Certificate details of crime prevention measures shall be provided to and approved by the Principal Certifier. This is to include the installation of Closed-Circuit Television (CCTV) and lighting in accordance with the Australian Standard AS 1158 (Public Lighting Code) and the NSW Police 'Safer by Design' guidelines.
- Amend Condition 21 by deleting condition title 'Car parking for disabled' and replacing with 'Accessible Parking' and insert at the end of the second sentence after the plan reference (Rev B), the wording 'except as modified by condition 20'.
- Insert Condition 43 and renumber the following conditions accordingly, which reads as follows:  
**43. Discovery of Relics**  
'Upon discovery of any additional Aboriginal relics within the meaning of the National Parks and Wildlife Act, 1974 within the subject site, the developer shall immediately notify the NSW Department of Planning and Environment - Heritage and the Jali Local Aboriginal Land Council and shall cease works within the vicinity thereof until such time as the consent from the Heritage NSW is obtained for the destruction, removal or protection thereof and the Developer has complied with the direction of the Heritage NSW in that respect.'
- Delete former Condition 57 titled Equipment Storage
- Amend Condition 72 by deleting condition title 'Car parking (disabled)' and replacing with 'Car parking (Accessible)'

- Insert new Condition 76, which reads as follows and renumber the remaining conditions accordingly:

**76. Crime Prevention**

Prior to the issue of an Occupation Certificate the development shall be completed in accordance with the approved crime prevention measures including the installation of Closed-Circuit Television (CCTV) and lighting in accordance with the Australian Standard AS1158 (Public Lighting Code) and the NSW Police 'Safer by Design' guidelines.

- Insert Condition 87 which reads as follows:

**87. Hours of Operation**

The hours of operation of the Alstonville Cultural Centre are limited to 6am-12am (midnight) on any day of the week, in accordance with the Noise Impact Assessment prepared by Palmer Acoustics dated 10 March 2023. Any event and occupation of the facility must be arranged and managed to ensure events have ceased and staff and patrons have left the facility prior to midnight.

- Insert Condition 88 which reads as follows and renumber the remaining conditions accordingly:

**88. Hours of Operation - Courtyards**

The hours of operation and use of the ground floor and first floor courtyards along the northern property boundaries are limited to 7am-6pm on any day of the week, in accordance with the Noise Impact Assessment prepared by Palmer Acoustics dated 10 March 2023.


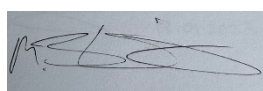

- Delete Advisory Note 3 and renumber the remaining note accordingly
- Delete Advisory Note 5
- Update Schedule 1 fees to be reference 2023-2024 Council's Fees and Charges

**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:

- Served space is poorly planned
- Concerns regarding use of the sports hall for sports only
- Recommendation for café and EV charging station

The panel considers that concerns raised by the community have been adequately addressed in the assessment report. There were no submitters registered to address the panel at its meeting. The panel notes that in addressing these issues, appropriate conditions have been imposed. The panel further notes an independent peer review of Council's assessment report was undertaken.

PANEL MEMBERS	
Dianne Leeson (Chair) 	Michael Wright 
 Stephen Gow	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-180 – DA 2022/218
2	PROPOSED DEVELOPMENT	Alterations and additions to the existing Community Facility (Alstonville Cultural Centre) comprising: • Demolition of existing entry foyer, library, amenities and outdoor patio area; • Replacement of the existing roof and cladding to the sports hall, foyer and theatre; • Erection of a new two-storey library, centralised amenities, accessible bathrooms, sports storage and umpires changeroom; • Erection of a new office, reception and kitchenette; • Erection of a new entrance foyer and servery; • Extension to the existing sports hall; and Associated earthworks, infrastructure works, vegetation management works and landscaping
3	STREET ADDRESS	42-46 Commercial Road, Alstonville Lot 1 DP 611789
4	APPLICANT/OWNER	Newton Denny Chapelle / Ballina Shire Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ Ballina Local Environmental Plan (BLEP) 2012</li> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Industry and Employment) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Ballina Development Control Plan (BDCP) 2012</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></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>• Statement of Environmental Effects prepared by Newton, Denny Chapelle: April 2022</li> <li>• Council assessment report: 29 June 2023</li> <li>• Peer Review report prepared by Charles Hill Planning: 7 June 2023</li> <li>• Clause 4.6 Request to vary Clause 4.3 Height of Buildings of the Ballina Local Environmental Plan 2012</li> <li>• Written submissions during public exhibition: Three (3)</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 23 November 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, Sharon Cadwallader, and Stephen McCarthy</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Council assessment staff</u>: Jessica Hutley, Peter Drew, Naomi McCarthy, and Andrew Smith</li> <li>○ <u>Department staff</u>: Carolyn Hunt</li> </ul> <ul style="list-style-type: none"> <li>● Site inspection: 16 June 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow, and Stephen McCarthy</li> <li>○ <u>Council assessment staff</u>: Jessica Hutley, Peter Drew, Naomi McCarthy, and Andrew Smith</li> </ul> </li> <li>● Final briefing to discuss council's recommendation: 29 June 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright and Stephen Gow</li> <li>○ <u>Council assessment staff</u>: Jessica Hutley, Peter Drew, David Kelly, Kristy Bell</li> <li>○ <u>Council's Peer Review Consultant</u>: Charles Hill</li> <li>○ <u>Department staff</u>: Carolyn Hunt, Louisa Agyare and Lisa Ellis</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the council assessment report