

DATE OF DETERMINATION	Wednesday 11 December 2019
PANEL MEMBERS	Michael Leavey (Chair), Kara Krason, Julie Savet Ward, Nick Jones, Scott Anson
APOLOGIES	Jason Perica
DECLARATIONS OF INTEREST	Justin Hamilton declared a non-pecuniary conflict as the architect for the development is a personal friend. Jason Pauling declared a perceived conflict of interest as Council is investigating a development on an adjacent block.

Public meeting held at Lake Macquarie City Council 126-138 Main Road Speers Point on 11 December 2019, opened at 4:00pm and closed at 7:40pm.

MATTER DETERMINED

2018HCC010 – Lake Macquarie – DA419/2018 at 114-120 Cary Street Toronto for a residential flat development (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.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

Development application

The Panel determined to refuse 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 refuse the development application for the following reasons:

1. The proposed height and visual impact of the building along Cary Street is inappropriate, and is contrary to the allowed building height under Lake Macquarie LEP 2014 and local planning objectives for the area.
2. The submitted clause 4.6 variation request for building height is not well founded, does not demonstrate sufficient environmental planning grounds to justify contravening the standard and does not demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.
3. The proposal has not considered and addressed the potential environmental effects on the adjacent SEPP 14 wetland (Wetland 863), nor has it demonstrated compliance with the relevant requirements and considerations under SEPP 14. In addition, Council's Ecologist indicated significant uncertainty regarding the Applicant's Environmental Management Plan.
4. The proposal provides inadequate setbacks to the northern side boundary which are inconsistent with the SEPP 65 Apartment Design Guide, and result in inadequate building separation to the adjoining property, including separation from the existing use of that property and any future redevelopment of the land. Additionally, the inadequacy of the northern side setback is exacerbated by the non-complying building height along part of this elevation and the limited articulation of the side elevation, particularly as viewed from Cary Street.






5. The proposal has not adequately addressed acoustic and odour impacts from the adjoining McDonalds restaurant, including the drive-through service area adjacent to the subject land. Relevant considerations include impacts on future residents and impacts on the approved restaurant use operations.
6. The proposal is inconsistent with the objectives and requirements of the Toronto Town Centre Area Plan/ Lake Macquarie DCP 2014.
7. The proposal has not adequately addressed the traffic impacts of the development on surrounding streets, and having regard to other uses in the area (including the Yacht Club, Toronto Public School, McDonalds, other residential uses), and has not provided additional information as requested by Roads & Maritime Services (RMS). The applicant has not demonstrated that the RMS is satisfied with the proposal.
8. The proposal does not adequately address the narrow width of Arnott Avenue adjoining the site, the implications of this for the safe movement of vehicles and pedestrians, and requirements for road widening.
9. The proposal does not meet the visitor parking requirements of Lake Macquarie DCP 2014, including the use of shared spaces, which is likely to impact on car parking in surrounding streets.
10. The proposal has not resolved issues raised by Hunter Water, including relocation of the pipeline easement, and the Stormwater Management Plan involving Council's operational land at 2A Bath Street has not been resolved with the Council.
11. Approval of the proposal in its current form would not be in the public interest.

In reaching its decision the Panel noted the Council's deferred commencement recommendations, however was of the opinion that there remain a number of unresolved issues to be addressed, which lack certainty, together with substantial design changes required, which are beyond the capacity of a deferred commencement. Additionally, the Panel raised additional concerns with the proposal through its consideration and determination of the application.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition, including 1 submission in support, and heard from all those wishing to address the Panel. The Panel notes there are a number of issues of concern, as detailed in the assessment report, and including, but not limited to the scale and appropriateness of the development, traffic, safety and access concerns, groundwater/ wetlands/ environmental impacts, relationship with surrounding land and uses and heritage impacts.

The Panel considers that concerns raised by the community have been considered and addressed through the Panel's decision, and reasons for refusal, with other matters addressed through the Council assessment report.

PANEL MEMBERS	
 Michael Leavey (Chair)	 Kara Krason
 Julie Savet Ward	 Scott Anson
 Nick Jones	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018HCC010 – Lake Macquarie – DA419/2018
2	PROPOSED DEVELOPMENT	Mixed use development with commercial premises and residential flat building.
3	STREET ADDRESS	114-120 Cary Street, 1, 2, 3, 5 Bath Street and 3 Arnott Avenue, Toronto
4	APPLICANT/OWNER	Toronto Investments No.1 PTY LTD C/- Mark Lawler Architects
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
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 (Building Sustainability Index) 2004 ○ State Environmental Planning Policy No.14 (Coastal Wetlands) ○ State Environmental Planning Policy No. 55 (Remediation of Land) ○ State Environmental Planning Policy No.65 (Design Quality of Residential Apartment Development) ○ State Environmental Planning Policy No.71 (Coastal Protection) ○ Lake Macquarie Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • 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>: Nil • 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 November 2019 • Clause 4.6 Variation Request • Council memo received: 10 December 2019 • Visual Impact Statement: 9 December 2019 • Written submissions during public exhibition: 19 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support – Nil ○ In objection – Suzanne Tillitzki, Bob Ireland, Suzanne Pritchard, Rosalia Heffernon ○ Council assessment officer – Georgie Williams, Kim add Council EHO/ acoustic guy ○ On behalf of the applicant – Stephen Coon, Matthew deWitt, Mark Lawler, Tom Steal
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL/PAPERS CIRCULATED ELECTRONICALLY	<ul style="list-style-type: none"> • Briefing: 1 May 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Michael Leavey (Chair), Kara Krason, Julie Savet Ward and Scott Anson ○ <u>Council assessment staff</u>: Georgie Williams, Elizabeth Lambert • Site inspection: 11 December 2019

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Michael Leavey (Chair), Kara Krason, Julie Savet Ward, Nick Jones and Scott Anson ○ <u>Council assessment staff</u>: Georgie Williams, Elizabeth Lambert, Greg Jones, Chris Baker ● Final briefing to discuss council’s recommendation, 11 December 2019 at 3pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Michael Leavey (Chair), Kara Krason, Julie Savet Ward, Nick Jones and Scott Anson ○ <u>Council assessment staff</u>: Georgie Williams, Elizabeth Lambert, Greg Jones, Robyn Pollock
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report