

NORTHERN JOINT REGIONAL PLANNING PANEL

STATEMENT OF REASONS **for decision under the *Environmental Planning and Assessment Act 1979*** **(NSW)**

The Northern Joint Regional Planning Panel (JRPP) provides the following Statement of Reasons for its decision under section 80 of the *Environmental Planning and Assessment Act 1979* (NSW)(the Act) to:

Refuse to grant consent to the development application

For:

Construction of tourist accommodation development comprising of 355 tourist units, ancillary communal recreational facilities, on-site carparking for 375 vehicles and associated bulk earthworks, with access from the western extension of Kirkwood Road connecting to Fraser Drive.

JRPP Reference: 2012NTH020 – Council Reference: DA12/0364

Made by:

Proportional Property Investment Ltd Atf

Type of regional development:

The proposal has a Capital Investment Value of over \$20 million.

A. Background

1. JRPP meeting

Northern Joint Regional Planning Panel meeting held:

Date: Tuesday 6 May 2014

Time: 11.30am

Location: Tweed Heads Civic Centre, Brett Street, Tweed Heads

Panel Members present:

Garry West	Chair
John Griffin	Panel Member
Pam Westing	Panel Member
Ned Wales	Panel Member
Steven Phillips	Panel Member

Council staff in attendance:

Vince Connell

Lindsay McGavin
Colleen Forbes
Danny Rose
Jacqui Cord
Michael Banks

Apologies:
NIL

Declarations of Interest:

Pam Westing advised she was an expert witness for Port Stephens Shire Council involved with the District Court case of 2002 referenced in both the Tweed Shire Council Assessment Report and the Applicant's subsequent submissions.

2. JRPP as consent authority

Pursuant to s 23G(1) of the Act, the Northern Joint Planning Panel (the Panel), which covers the Tweed Shire Council area, was constituted by the Minister.

The functions of the Panel include any of a council's functions as a consent authority as are conferred upon it by an environmental planning instrument [s23G(2)(a) of the Act], which in this case is the *State Environment Planning Policy (State and Regional Development) 2011*.

Schedule 4A of the Act sets out development for which joint regional planning panels may be authorised to exercise consent authority functions of councils.

3. Procedural background

Due to inclement weather an informal site visit was undertaken by some members of the panel with a briefing meeting on 19 February 2013.

A determination meeting was held on 19 February 2013, where the decision was deferred for the following reasons:

That the determination of DA12/0364 be deferred with sufficient time for the applicant to prepare a cultural heritage assessment and for the applicant to respond to the issues raised in council's assessment report.

A final briefing meeting was held with council on 6 May 2014 and Pam Westing conducted her own site visit.

B. Evidence or other material on which findings are based

In making the decision, the Panel considered the following:

Environmental Planning and Assessment Act, 1979

s.79C (1) Matters for consideration—general

(a)(i) *the provisions of the following environmental planning instruments:*

- State Environmental Planning Policy (SEPP) (North Coast Regional Environmental Plan) 1988
- SEPP No. 14 - Coastal Wetlands
- SEPP No. 36 - Manufactured Home Estates
- SEPP No. 44 - Koala Habitat Protection
- SEPP No. 55 - Remediation of Land
- SEPP No. 64 – Advertising and Signage
- SEPP No 71 – Coastal Protection
- SEPP (State and Regional Development) 2011
- SEPP (Infrastructure) 2007
- Tweed Local Environmental Plan 2000

(a)(ii) any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority

- Draft Tweed Shire Local Environment Plan 2012

(a)(iii) the provisions of the following development control plan:

- Tweed Development Control Plan
- Section A1-Residential and Tourist Development Code

(a)(iia) any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F

- Not applicable

(a)(v) any coastal zone management plan

- Not applicable

(iv) relevant regulations:

- Not applicable

The Panel was provided with 3 submissions of objection relating to the proposal made in accordance with the Act or the regulations. In making the decision, the Panel considered all of those submissions.

In making the decision, the Panel also considered the following material:

1. Council's Assessment Report on the application received 28 April 2014
2. Amended plans in Annexure 1 of the report.
3. Statement of Landscape intent prepared by Deborah Carlile and Pail MJatelski Pty Ltd.
4. Waste Management report prepared by Solo Resource Recovery.
5. Revised Ecological Assessment prepared by JWA Pty Ltd.
6. Engineering Report and Stormwater Management Plan prepared by Knoble Consulting.
7. Visual Impact Statement prepared by LVO Pty Ltd.
8. Transport Impact Assessment and Acoustic Report prepared by CRG.
9. Cultural Heritage Report prepared by Everick Heritage Consultants Pty Ltd.
10. Test Excavation Report prepared by Everick Heritage Consultants Pty Ltd.

In making the decision, the Panel also considered the Response to the Assessment Report on 2 May 2014 by Darryl Anderson Consulting Pty Ltd on behalf of the Applicant and the following submissions made at the meeting of the Panel on 6 May 2014:

1. submissions addressing the Panel against the application:
 - Des Williams – on behalf of the Tweed Byron Local Aboriginal Land Council
2. submissions addressing the Panel in favour the application:
 - Brad Lane – Consultant Town Planner for Applicant
 - Tim Robbins – Everick Heritage Consultants
 - Trent Purdon – Knoble Consulting – Engineering and Land Forming
 - James Warren – James Warren and Associates – Ecological Issues
 - Leslie Curtis – LVO Architecture – Visual Impact
 - Jay Carter – CRG Consulting – Aircraft Noise
 - Julie Nutting – Applicant representative
 - Bill Tatterall – Destination Tweed

C. Findings on material questions of fact

The Panel has carefully considered all of the material referred to in Section B.

(a) *Environmental planning instruments.* The Panel has noted each of the environmental planning instruments referred to in Section B and Council's assessment of those instruments.

(b) *Development control plan.* The Panel has noted the Tweed Development Control Plan and Section A1-Residential and Tourist Development Code and Council's assessment of the DA under these DCPs.

The majority of the Panel agrees with and adopts the analysis in Council's Assessment Report in relation to the Development Control Plans.

(c) *Likely environmental impacts on the natural environment.* In relation to the likely environmental impacts of the development on the natural environment, the Panel's findings are as follows.

The majority of the Panel agrees with and adopts the analysis in relation to the likely environmental impacts of the development on the natural environment on pages 67 to 72 of Council's Assessment Report.

(d) *Likely environmental impacts of the development on the built environment.* In relation to the likely environmental impacts of the development on the built environment, the Panel's findings are as follows.

The majority of the Panel agrees with and adopts the analysis in relation to the likely environmental impacts of the development on the built environment on pages 67 to 72 of Council's Assessment Report.

(e) *Likely social and economic impacts.* In relation to the likely social and economic impacts of the development in the locality, the Panel's findings are as follows.

The majority of the Panel agrees with and adopts the analysis in relation to the likely social and economic impacts of the development on pages 67 to 72 of Council's Assessment Report.

(f) *Suitability of site.* Based on a consideration of all of the material set out in Section B and given the Panel's findings in this Section C, the majority of the Panel found that the site is not suitable for the proposed development.

(g) *Public Interest.* Based on a consideration of all of the material set out in Section B and given the majority of the Panel's findings in this Section C, the Panel's finding is that granting consent to the development application is not in the public interest.

D. Why the decision was made

That Development Application DA12/0364 for a construction of tourist accommodation development comprising of 355 tourist units, ancillary communal recreation facilities, onsite carparking for 375 vehicles and associated bulk earthworks, with access from the western extension of Kirkwood Road connecting to Fraser Drive (JRPP) at Lot 1 DP 1168904; Firetail Street TWEED HEADS SOUTH, was refused by the majority of the Panel (4 to 1 – see Decision) for the following reasons: -

1. The development application is contrary to Clause 5 of the Tweed Local Environmental Plan 2000, in that the proposed development would have an unacceptable adverse impact on the natural environment.
2. The development application is contrary to Clause 8(1) (b) and (c) of the Tweed Local Environmental Plan 2000, in that: the proposed development is not considered to have satisfactorily considered the aims and objectives of other relevant clauses of the Tweed Local Environmental Plan; and the proposed development is considered to have an unacceptable cumulative impact upon the surrounding environment.
3. The proposed development is of a nature that is inappropriate within the 25 or higher ANEF contour.
4. The development application is contrary to Clause 44(1) of the Tweed Local Environmental Plan 2000, in that the proposed development has not satisfactorily assessed how the development will affect the conservation of the site and any relic known or reasonably likely to be located at the site.
5. The development application is contrary to Clause 8 (d), (g), (l) and (n) of the State Environmental Planning Policy No 71 - Coastal Protection, with regard to suitability and cultural heritage.
6. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(ii) - *the provisions of any Draft Environmental Planning Instruments* in that the development does not satisfy all relevant provisions of the Draft LEP 2012.
7. The development application does not comply with Section 79C (1) (b) of the Environmental Planning and Assessment Act 1979 as it relates to the likely impacts of the development - there is no certainty that the development will not have an adverse impact on the locality.
8. The development application does not comply with Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979, in that the development is not considered to be suitable for the subject site.
9. The development application is not considered to be in the public interest.

Panel member, Garry West voted in favour of the development application as he considered the application should be approved for the following reasons:

1. The development was not contrary to the aims and objectives of the Tweed Local Environment Plan and the Council DCP for the site.
2. The development was compliant in regard to aircraft noise as it was proposed as tourist accommodation and therefore permissible.
3. The Cultural Heritage Assessment had been completed and outstanding issues could be addressed through conditions.
4. The ecology issues raised in Council's Assessment Report could be mitigated through appropriate conditions.
5. The essential services required for the site could be conditioned so that the developer was responsible for all costs.
6. The development sought to increase a specific tourism segment of the market.



JRPP member (chair)



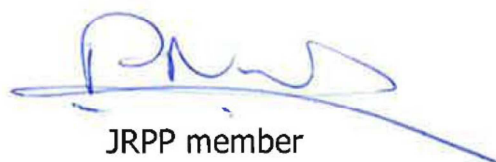
JRPP member



JRPP member



JRPP member



JRPP member