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| <b>DATE OF DETERMINATION</b>    | 30 November 2021                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>DATE OF PANEL DECISION</b>   | 30 November 2021                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>DATE OF PANEL MEETING</b>    | 25 November 2021                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>PANEL MEMBERS</b>            | Paul Mitchell (Chair), Stephen Gow, Penny Holloway, David Crofts and Tony McNamara                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>APOLOGIES</b>                | None                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>DECLARATIONS OF INTEREST</b> | <p>David Crofts wished to place on the record that he has a relative who owns property nearby in Burrawan St. Mr Crofts stated he did not have an interest in the property. Mr Crofts noted that his relative has not put in a submission and that he has not discussed the merits or otherwise of the development with that relative. Mr Crofts stated that this will not influence his opinion on the matter.</p> <p>The Panel considered this and agreed that this did not constitute a conflict of interest that precluded his participation in the determination.</p> |

Public meeting held by teleconference on 25 November 2021, opened at 4:05pm and closed at 7:05pm.

#### **MATTER DETERMINED**

PPSNTH-105 – Port Macquarie-Hastings Council – DA2021-219.1 at 10 & 13 Pacific Drive, Port Macquarie – residential flat building (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 Port Macquarie-Hastings Local Environmental Plan 2011 (LEP), that has **not** demonstrated that:

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

the Panel is **not** satisfied that:

- 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 would be in the public interest because it is inconsistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the R3 zone.

Accordingly, the Panel declines to uphold the applicant's request to vary the height of buildings standard given in cl 4.3 of the LEP.

### **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 not uphold the Clause 4.6 variation to building height; and to refuse the application for the following reasons:

- The proposed development is inconsistent with the R3 zone objectives which encourage medium density development, whereas the proposal has a high density built form.
- The proposal would cause unacceptable loss of privacy and overshadowing to the west and south of the development site.
- The proposal has excessive height and bulk when viewed from the west and south and would create an unsatisfactory transition with these areas.
- The proposal is not consistent with the existing and desired future character of the locality due to its excessive height and bulky form.
- The proposal would have adverse visual impacts especially from important outlooks, including the coastal walkway and Pacific Drive to the east.
- The proposal is in a Coastal Use Area under State Environmental Planning Policy (Coastal Management) and is inconsistent with clause 14(1)(a)(3) of the policy because of its adverse impacts on the visual amenity and scenic quality of the coast.
- The Panel is not satisfied that adequate evidence has been provided to demonstrate that the provisions of the Apartment Design Guide (NSW Department of Planning and Environment, July 2015) have been properly addressed.
- The Panel is not satisfied that the Floor Space Ratio has been correctly calculated and that the standard has been met.

### **CONDITIONS**

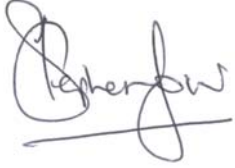
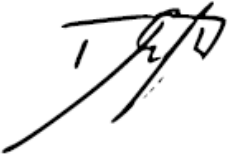
Not applicable.

### **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 and parking and safety of vehicles, cyclists and pedestrians.
- Ecology, in particular koalas
- Size and scale of the development and its inconsistency with the desired character
- Non- compliance with DCP and ADG
- Not consistent with the desired character
- Conflicts of interest and probity concerns
- Sunlight access concerns
- Potential noise impacts

- Loss of privacy and amenity
- Reduced property values
- Stormwater concerns
- View loss concerns
- Light pollution
- Damage to adjoining properties during construction.

| PANEL MEMBERS                                                                                              |                                                                                                      |
|------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| <br>Paul Mitchell (Chair) | <br>Penny Holloway |
| <br>Stephen Gow           | <br>Tony McNamara  |
| <br>David Crofts          |                                                                                                      |

| SCHEDULE 1 |                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| 1          | PANEL REF – LGA – DA NO.          | PPSNTH-105 – Port Macquarie-Hastings Council – DA2021-219.1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 2          | PROPOSED DEVELOPMENT              | Residential Flat Building and Strata Subdivision including Clause 4.6 variation to Clause 4.3 (Height of Buildings) of the Port Macquarie-Hastings Local Environmental Plan 2011                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 3          | STREET ADDRESS                    | Pacific Drive, Port Macquarie                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 4          | APPLICANT/OWNER                   | Laurus Projects Pty Ltd                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 5          | TYPE OF REGIONAL DEVELOPMENT      | General development over \$30 million                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 6          | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>o State Environmental Planning Policy (Koala Habitat Protection) 2020</li> <li>o State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>o State Environmental Planning Policy (Infrastructure) 2007</li> <li>o State Environmental Planning Policy (Coastal Management) 2018</li> <li>o State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development</li> <li>o State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>o State Environmental Planning Policy No 64 - Advertising and Signage</li> <li>o Port Macquarie-Hastings Local Environmental Plan 2011</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>o Port Macquarie-Hastings Development Control Plan 2013</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</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>• Council assessment report (independent report prepared by external consultant): 17 November 2021</li> <li>• Clause 4.6 variation request (Height of Building): 28 October 2021</li> <li>• Written submissions during public exhibition: 20</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>o Krissa Wilkinson, Ed Coleman, Lyndall Nairn, Carole Field, Fiona Conlon, Lisa Intemann, Malcolm McNeil, Daryl Summerfield, Bradley Burrows, Andrew Stoner and Brian Johnson</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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|    |                                                              | <ul style="list-style-type: none"> <li>o Council assessment officer – Rob Dwyer</li> <li>o On behalf of the applicant – Donna Clarke and Karl Robertson</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 8  | <b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b> | <ul style="list-style-type: none"> <li>• Briefing: 22 September 2021 <ul style="list-style-type: none"> <li>o <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, David Crofts and Tony McNamara</li> <li>o <u>Council assessment staff</u>: Rob Dwyer, Ben Roberts and Dan Croft</li> <li>o <u>Department staff</u>: Amanda Moylan and Lisa Foley</li> </ul> </li> <li>• Site inspection: 25 November 2021 <ul style="list-style-type: none"> <li>o <u>Panel members</u>: Paul Mitchell (Chair), David Crofts and Tony McNamara</li> <li>o <u>Council assessment staff</u>: Rob Dwyer, Ben Roberts and Dan Croft</li> <li>o <u>Department staff</u>: Jane Gibbs</li> </ul> </li> <li>• Final briefing to discuss Council’s recommendation: 25 November 2021 <ul style="list-style-type: none"> <li>o <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, David Crofts and Tony McNamara</li> <li>o <u>Council assessment staff</u>: Rob Dwyer, Grant Burge, Ben Roberts and Dan Croft</li> <li>o <u>Department staff</u>: Jane Gibbs and Lisa Foley</li> </ul> </li> </ul> |
| 9  | <b>COUNCIL RECOMMENDATION</b>                                | Approval                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 10 | <b>DRAFT CONDITIONS</b>                                      | Attached to the council assessment report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |