

DATE OF DETERMINATION	21 December 2022
DATE OF PANEL DECISION	20 December 2022
DATE OF PANEL MEETING	12 December 2022
PANEL MEMBERS	Paul Mitchell (Chair), Stephen Gow, Penny Holloway, Paul Amos and Sally Townley
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 12 December 2022, opened at 4pm and closed at 6pm.

MATTER DETERMINED

PPSNTH-161 – Coffs Harbour – PAN-225655 at 97 Sealy Lookout Drive, Korora - Eco-tourist 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 Coffs Harbour Local Environmental Plan 2013 (LEP), that has demonstrated that:

- compliance with cl. 4.3(2) (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3(2) (Height of Buildings) of the LEP and the objectives for development in the R5 zone; and
- 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 3:2 in favour, against the decision were Stephen Gow and Sally Townley.

REASONS FOR THE DECISION

The majority of the Panel determined to uphold the Clause 4.6 variation to building height; and approve the application for the following reasons:

- The specified requirements for Aboriginal Cultural heritage assessment have been fully satisfied and will be subject to further AHIP requirements.
- The proposed use falls within the definition of an eco-tourism facility and is permissible in the R5 zone. The zone objectives deal mainly with residential use and are therefore not directly relevant; notwithstanding, the proposal is not antipathetic to any of the objectives. The

- proposal is consistent with nearly all the applicable standards and guidelines except for building height where the variation is minor and of no consequence.
3. The proposal is consistent with the relevant provisions of all applicable SEPPs.
 4. The site of the proposed development is suited to the intended use in terms of its location and outlook but is constrained by steep gradients and visual exposure. These challenges have been addressed by sensitive design particularly small building footprints and use of subdued external colour schemes, meaning potential impacts will be minimised and, specifically the provisions of clause 5.13 of the CHLEP will be satisfied- the site's environmental and cultural attributes will be protected through sensitive design.
 5. The site's steep gradients present geotechnical challenges but the Panel is satisfied that the proposal has appropriately addressed these challenges by careful design of roads, pathways, building foundations, the sewage irrigation area and other relevant aspects.
 6. Proposed access arrangements to and within the site are generally satisfactory. The Panel notes that most on-site access will be via small buggy type vehicles which require only a small carriageway. Off-site access is generally appropriate given the conditions to be imposed and the minimal traffic volumes the proposal will generate; concerns about safety at the intersection of Bruxner Park Road and the Pacific Highway were resolved by requiring safe turning advice to be included on the facility's plan of management and safety controls associated with the Coffs Harbour by-pass currently being implemented at the intersection
 7. Overall, the Panel believes the proposal's environmental impacts will be minor and acceptable and its socio-economic impacts will be positive because of the additional tourism opportunities and employment generated.
 8. The Panel has carefully considered all issues raised in submissions and believes they have been addressed by the sensitive design of the proposal and/or conditions to be imposed. There are no unresolved or residual issues that warrant refusal of the application.
 9. For the reasons given above, the Panel believes that approval of the application is in the public interest.

Stephen Gow disagreed with the majority decision for the following reasons:

1. Mr Gow was unable to be satisfied that the assessment had adequately resolved traffic issues related to this development proposal:
 - a. Firstly, in advance of the intended reconstruction of the intersection of Bruxner Park Road with the Pacific Highway as part of the proposed Coffs Harbour bypass project, considerable risks appear to exist for motorists at this location, which is required for road access to and from the proposed development. In particular, it is foreseeable that many of the intended guests as well as staff and visitors at the proposed eco-tourism complex will use the intersection to return to Coffs Harbour. However, the right hand turn movement from Bruxner Park Road at this intersection (also a crossroads with James Small Drive) is not provided with any sheltered right hand turn facility. Although the traffic generated by the proposed development may constitute a relatively low percentage of vehicles currently travelling eastbound down Bruxner Park Road, resort guests are likely to be unfamiliar with local traffic conditions and the difficulty of turning south across a number of travelling lanes into the southbound fast lane. The Panel has not had the benefit of recent level of service nor (post 2018) accident data for this intersection and has not received advice from Transport for NSW about the current intersection, or the timing for its intended reconstruction.
 - b. Secondly, while the assessment recommended a road safety audit for the intersection of Bruxner Park Road with Sealy Lookout Drive (proposed Condition 14), until such an audit is complete there remains uncertainty as to potential deficiencies with the current operation of the intersection. Moreover, it is unclear how any upgrading of the intersection which may be recommended arising from the audit could reasonably be required in connection with this specific development proposal.
2. Accordingly, for the reasons given above, Mr Gow considers that the granting of consent at this time is not in the public interest.

Sally Townley disagreed with the majority decision for the following reasons:

1. Cr Townley concurs with Stephen Gow that the uncertainty regarding a safety audit at the intersection of Bruxner Park Road and Sealy Lookout is problematic. Without the completion beforehand of the safety audit to inform the decision, Cr Townley considers that it is not possible to make a complete assessment of the risks.
2. Cr Townley also concurs that potentially requiring the proponent to carry out works on the intersection after the approval is granted may be unreasonable depending on the scope of works required. The Council assessment report did not provide specifics as to what an appropriate level of safety might entail at this intersection so it is challenging for the proponent to have a reasonable level of confidence about what may be required.
3. Without this information in place prior to the determination, Cr Townley was unable to support approval of the application

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendment:



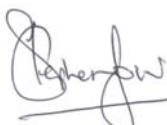


- Condition 52, which requires preparation of a Plan of Management for the facility, is to be amended to require that the Plan of Management include a requirement that advice be given to all guests that the Pacific Highway/Bruxner Park Road intersection is difficult to navigate at times and, when such conditions apply, guests should turn left at the highway and perform a U-turn at a safe location further to the north. The amended condition should state that this clause in the Plan of Management can be removed once current upgrading works at the subject intersection have been completed.

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:

- Bushfire-prone land
- Building height
- Slope
- Aboriginal heritage
- Access road (Sealy Lookout Drive)

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that the issues raised have been addressed by the design of the proposal and/or conditions imposed and that no unresolved issues warrant refusal of the application.

PANEL MEMBERS	
 Paul Mitchell OAM (Chair)	 Penny Holloway
 Stephen Gow	 Sally Townley
 Paul Amos	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-161 – Coffs Harbour – PAN-225655
2	PROPOSED DEVELOPMENT	Eco-tourist facility
3	STREET ADDRESS	Lot 21 DP 869885 97 Sealy Lookout Drive, Coffs Harbour 2450
4	APPLICANT OWNER	Clark Webb on behalf of Bularri Muurlay Nyanggan Aboriginal Corporation Bularri Muurlay Nyanggan Aboriginal Corporation
5	TYPE OF REGIONAL DEVELOPMENT	Eco-tourist facilities 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 (Biodiversity and Conservation) 2021, ○ State Environmental Planning Policy (Resilience and Hazards) 2021, ○ State Environmental Planning Policy (Planning Systems) 2021, ○ Coffs Harbour Local Environmental Plan 2013 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Coffs Harbour Development Control Plan 2015 • 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: 20 October 2022 • Clause 4.6 request for variation to height of building standard: 17 May 2022 • Written submissions during public exhibition: 20 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Rob Poulton, Brian Vernon, Anthony Dootson on behalf of the Garby Elders, Tina Powell on behalf of the Garlambirla Guyuu Girrwa Aboriginal Elders Corporation, Stephen Brailsford, Line Cohen-Solal and Ricki Brideoake, Tony Perkins on behalf of Tony Perkins on behalf of the Jagun Elders Corporation ○ On behalf of the applicant – Clark Webb and Jaya Param
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection and briefing: 5 December 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Paul Amos and Sally Townley ○ <u>Council assessment staff</u>: Luke Perry • Final briefing to discuss council's recommendation: 12 December 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, Paul Amos and Sally Townley

		<ul style="list-style-type: none">○ <u>Council assessment staff:</u> Luke Perry, Marion Rhodes, Emma McClellan, Ben Oliver and Rachel Baker○ <u>Department staff:</u> Carolyn Hunt and Lisa Foley
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report