

<b>DATE OF DETERMINATION</b>	5 May 2023
<b>DATE OF PANEL DECISION</b>	5 May 2023
<b>PANEL MEMBERS</b>	Dianne Leeson (Chair), Stephen Gow, Michael Wright and Daniel Walsh
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Dominic King declared a conflict of interest as he made a video supporting the development as a political candidate.

Papers circulated electronically on 11 April 2023.

#### **MATTER DETERMINED**

PPSNTH-183 – Bellingen - DA2022/00130 at 15 Watson Street & 4 Rawson Street BELLINGEN – 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 Bellingen Local Environmental Plan 2010 (LEP), that has demonstrated that:

- compliance with cl. 4.3 (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 (Height of Buildings) of the LEP and the objectives for development in the R1 General Residential 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 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 and below.

- The proposal is permissible in the R1 General Residential Zone under the Bellingen LEP 2010 and the affordable housing project is considered consistent with the zone objectives to provide for the housing needs of the community with provision of a diversity of housing types.

- The proposal will have positive social and economic benefits by increasing the affordable housing supply in Bellingen, creating employment through construction and greater expenditure in the area.
- The site of the proposed development is well suited to the intended use and is an extension of the first stage to the east. It is in good proximity and walking distance to the town centre.
- The proposal, as conditioned by this approval, satisfies the relevant provisions of the applicable SEPPs.
- The height and scale of the proposed building is greater than nearby single storey residential development, however, the Panel agrees the cl.4.6 height limit variation request is justifiable on planning grounds having regard to social impacts and built form outcomes. These include:
  - Provision of affordable housing – viability of the development for a social infrastructure purpose. Panel accepts applicant's statements that a 2 storey development is not financially viable.
  - Whilst raising of the site level by 800mm will have a consequential impact on the height of building it will ensure ground floor is above FPL.
  - The site is at a lower level than the remainder of Watson Street to the east and south – mitigating impact.
  - The increase in height will cause minimal overshadowing of neighbouring properties.
  - Building setbacks, façade treatments (including balcony design to avoid privacy issues) and landscape treatments.
  - Use of a hipped roof design to mitigate height.
  - Architectural features sympathetic to heritage precinct – noting the site itself is not within the LEP heritage conservation area.
- Adequate services are available to the site. Stormwater runoff can be adequately managed for the development as a whole (Stage 1 and 2).
- The finished ground floor level is above the General Flood Planning Level of 13.8m and incorporates a 500mm freeboard.
- The potential environmental impacts from the proposed development have been properly examined and found to be within acceptable limits.
- Socio-economic benefits.
- The Panel has carefully considered all relevant issues raised in submissions and concludes they have been resolved by design of the proposal or conditions imposed by this approval.

## CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the Panel amending the following conditions as detailed in Annexure 1:

- Amend Condition 1 by deleting the first dot point and inserting the schedule of relevant document schedule and a new part B, with the second dot point becoming Part C.
- Amend Condition C5 by adding 3 additional dot points to the previous list of matters to be included in the plan
- Amend Condition 9 to insert additional wording at the end of the condition relating to arrangements with Essential Energy
- Amend Condition 11 outlining the required road works, security payment, concept design and costings
- Amend Condition 12 to delete the wording relating to the cladding and other non-structural components and include an AHD level
- Amend Condition 14 to reference the relevant legislation
- Insert new Condition 20
- Amend Condition 21 (previously 20) to clarify the requirement for an inspection and certificate in accordance with identified legislation
- Delete previous Condition 21 – Construction Noise Management Plan
- Delete previous Condition 28 – Compliance with Construction Noise Management Plan
- Amend Condition 34 (previously Condition 35) by inserting reference to nominated Principal Certifier
- Amend Condition 36 (previously Condition 37) to include reference to excavation





- Amend Condition 41 (previously Condition 42) by inserting reference to the relevant Australian Standard
- Amend Condition 42 (previously Condition 43) to nominate an AHD level
- Insert new Conditions 54 and 55
- Amend Condition 58 (previously Condition 57) to reference the relevant legislation

#### 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:

- Building height
- Loss of privacy
- Loss of outlook (view of treescape)
- Devaluation of adjoining/nearby properties
- Excessive traffic and congestion
- Overbearing scale
- Noise and light pollution
- Not in character with 1 storey neighbourhood
- Lack of off street parking
- Site management during construction (dust, asbestos, truck movements)
- Conflict with use of Watson Street by St Marys School as a drop off/pick up zone

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 submitter briefing. The panel notes that in addressing these issues appropriate conditions have been imposed.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Gow
 Michael Wright	 Daniel Walsh

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-183 – Bellingen - DA2022/00130
2	PROPOSED DEVELOPMENT	Demolition of existing buildings and construction of a new residential flat building comprising 3 x 3 storey linked buildings accommodating 12 x 1 bedroom apartments and 6 x 2-bedroom apartments. It is Stage 2 of an affordable housing development with Stage 1 comprising 23 x 1 bedroom apartments with basement parking for 24 vehicles on adjoining land being approved by the Northern Regional Planning Panel on 12 September 2022. Stage 2 is reliant on the off-street parking provided as part of Stage 1.
3	STREET ADDRESS	15 Watson Street, Bellingen (Lot 1 DP 863743) and 4 Rawson Street, Bellingen (Lot 4 DP 21520)
4	APPLICANT/OWNER	Royal Freemasons' Benevolent Institution (RFBI)
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Housing) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>Bellingen Local Environmental Plan 2010</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Bellingen Shire Development Control Plan 2017</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>Council assessment report: 27 March 2023</li> <li>Request to Vary LEP Clause 4.3 Development Standard: 24 March 2023</li> <li>Addendum Council assessment memorandum: 17 April 2023</li> <li>Written submissions during public exhibition: six (6)</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Site inspection: 10 March 2023 <ul style="list-style-type: none"> <li><u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow and Michael Wright</li> <li><u>Council assessment staff</u>: Michael Coulter</li> <li><u>Applicant representatives</u>: Stephen Ellitt, Bill McGarry and Simon Waterworth</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Briefing: 15 March 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright and Daniel Walsh</li> <li>○ <u>Council assessment staff</u>: Michael Coulter</li> <li>○ <u>Department staff</u>: Carolyn Hunt</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: 18 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright and Daniel Walsh</li> <li>○ <u>Council assessment staff</u>: Michael Coulter</li> <li>○ <u>Department staff</u>: Carolyn Hunt</li> </ul> </li> <li>• Submitter Briefing: 18 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright and Daniel Walsh</li> <li>○ <u>Council assessment staff</u>: Michael Coulter</li> <li>○ <u>Department staff</u>: Carolyn Hunt</li> <li>○ <u>Submitters</u>: Robert Capararo</li> </ul> <p><u>Note</u>: Submitter briefing was requested to inform the Panel of any further concerns not raised in written submissions and to respond to the recommendation in the council assessment report</p> </li> <li>• Applicant Briefing: 18 April 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright and Daniel Walsh</li> <li>○ <u>Council assessment staff</u>: Michael Coulter</li> <li>○ <u>Department staff</u>: Carolyn Hunt</li> <li>○ <u>Applicant representatives</u>: Steven Ellitt, Bill McGarry, Simon Waterworth, Emma Anderson, Jin Soon and James Shaw</li> </ul> <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the council assessment report</p> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report