

<b>DATE OF DETERMINATION</b>	5 October 2023
<b>DATE OF PANEL DECISION</b>	5 October 2023
<b>DATE OF PANEL BRIEFING</b>	26 September 2023
<b>PANEL MEMBERS</b>	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ned Wales, Pat Miller
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 15 September 2023.

#### **MATTER DETERMINED**

PPSNTH-190 – TWEED – DA22/0793 at 208 Lundberg Drive South Murwillumbah – Construction of a Council works depot (including depot fuel station), a Public Administration Building, two (2) large General Industrial buildings, external hardstand storage areas and ancillary development including parking, landscaping and signage (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 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 Tweed Local Environmental Plan 2011 (TLEP 2014), 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 TLEP 2014; and
- The development is in the public interest because it is consistent with the objectives of cl 4.3 (Height of Buildings) of the TLEP 2014 and the objectives for development in the E4b General Industrial Zone; and
- The concurrence of the Secretary is assumed.

#### **Development application**

The Panel determined to approve the 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, subject to conditions, for the reasons outlined in the Council assessment report and supported by the independent peer review.

The Panel agrees with the assessment that:

- The development complies with the Tweed LEP 2014 and the relevant development control plan applicable to the proposed development
- The development is consistent with the objectives of the zone
- The development subject to the recommended conditions will not result in unacceptable adverse impacts upon the natural or built environments
- the development is consistent with the objects of the Environmental Planning and Assessment Act 1979

In particular, the panel agrees that:

- The proposal provides facilities and services to meet the needs of Council in providing services to community
- The public benefit in providing a purpose-built council depot above the flood plain, and with laydown areas for the SES in emergency situations, outweighs the benefits in maintaining the height limit standard
- The proposal as designed will deliver a built form appropriate to the surrounding industrial precinct
- The proposal will not negatively impact on the amenity of neighbouring developments in terms of noise, privacy or overshadowing
- The site can be adequately serviced, and adequate provision is made for car and bicycle parking
- Satisfactory provision is made for future sustainability initiatives – EV charging and solar power

The Panel is satisfied that the impacts associated with the construction and operation can be mitigated or managed by the imposition of conditions as recommended by Council and as amended by the Panel. The proposal is in the public interest.

## CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments.

- Delete Condition 3 and renumber the remaining conditions accordingly
- Insert new Condition 10 , which reads as follows and renumber the remaining conditions accordingly:
  10. Prior to the issue of a Construction Certificate and pursuant to Section 4.17(1)(b) of the *Environmental Planning and Assessment Act 1979*, the applicant is to modify development consent DA 02/1685.27 in Notice of Determination dated 7 April 2021 as prescribed by Clause 67 of the *Environmental Planning and Assessment Regulation 2021* in the following manner:
    - (a) Condition 11C – update as follows:
      - 11C. Access to the rear of all lots shall be provided for fire fighting purposes and a perimeter fire trail or access road complying with the publication *Planning for Bushfire Protection* Section 4.2.2 shall be provided on the bushland side of any significant structures located on Lots 5, ~~32, 33 and 45~~. An 88B Restriction is to be placed on the relevant titles to give effect to this condition and is to include provisions for a 20 metre wide asset protection zone where relevant. The draft 88B Instrument is to be submitted to Council for approval prior to release of the subdivision certificate.
  - Amend Condition 12 by removing the words ‘(as required)’ and ‘as follows’ and inserting the words ‘the Australian Standard (AS) 2890.6:2009 after ‘approved plans’ in the first sentence.
  - Amend Condition 18, by removing parts (d)(iv)-(v)
  - Amend Condition 49 to read as follows:
    49. Access to the building shall be constructed in accordance with the requirements of Section D4 of the National Construction Code Volume 1. Particular attention is to be given to the provisions of Part D4 and their requirement to comply with the Australian Standards (AS)1428 suite.

- Amend Condition 59 to remove the words 'of sanitary fixtures' from the first sentence and 'nursing homes or similar' from the first dot point
- Amend Condition 75 to change the hours of operation for Mondays to Fridays to 5.00am to 7.00pm
- Delete Condition 82 and renumber the remaining conditions accordingly

#### CONSIDERATION OF COMMUNITY VIEWS


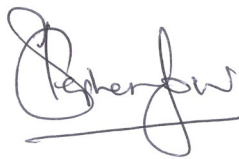



In coming to its decision, the Panel considered the one written submission made after the public exhibition.

The Panel notes the issues of concern included:

- Stormwater and flooding Impacts on downstream farmland
- Height Exceedance
- Land Use Conflict
- Noise Impacts
- Waste Management

To mitigate potential adverse impacts, the Panel has imposed a condition that peak stormwater discharge is not to exceed pre-development flow rates.

The Panel considers the concerns raised have been adequately addressed in the assessment report and conditions imposed.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Gow
 Michael Wright	 Ned Wales
 Pat Miller	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-190 – TWEED – DA22/0793
2	PROPOSED DEVELOPMENT	Construction of a Council works depot (including depot fuel station), a Public Administration Building, two (2) large General Industrial buildings, external hardstand storage areas and ancillary development including parking, landscaping, and signage on Proposed Lots 703 and 711 created from subdivision of Lot 604 DP 1244954
3	STREET ADDRESS	Lot 604 DP1244954 208 Lundberg Drive South Murwillumbah
4	APPLICANT OWNER	Jarrold Gillies – Zone Planning Group Pty Ltd Tweed Shire Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development 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 (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Industry and Employment) 2021</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ Tweed Local Environmental Plan 2014</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Tweed Development Control Plan 2008</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</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 Revised Assessment Report: 13 September 2023</li> <li>• Clause 4.6 variation requests – Height of Buildings (Cl. 4.3 of Tweed Local Environmental Plan, 2014)</li> <li>• Independent Consultant Planner Peer Review: 15 September 2023</li> <li>• Written submissions during public exhibition: one (1) (late submission)</li> <li>• Total number of unique submissions received by way of objection: one (1)</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<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, Ned Wales, Pat Miller</li> <li>○ <u>Council assessment staff</u>: Hannah Van de Werff and Colleen Forbes</li> <li>○ <u>Department staff</u>: Carolyn Hunt</li> </ul> </li> <li>• Site inspection: 12 September 2023</li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ned Wales, Pat Miller</li> <li>○ <u>Council assessment staff</u>: Pooja Chugh, Colleen Forbes and Mick Denny</li> <li>○ <u>Applicant</u>: Danny Rose, David Blinco and Nic Cull</li> <li>○ <u>Independent Consultant Planner</u>: Kim Johnston</li> </ul> <ul style="list-style-type: none"> <li>● Applicant Briefing and Final briefing to discuss council's recommendation: 26 September 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ned Wales, Pat Miller</li> <li>○ <u>Council assessment staff</u>: Pooja Chugh, Colleen Forbes, Nicholas Darwin, Angie Cousens, Leon McLean and Brenden Schwarz.</li> <li>○ <u>Independent Consultant Planner</u>: Kim Johnston</li> <li>○ <u>Department staff</u>: Lillian Charlesworth and Lisa Ellis</li> <li>○ <u>Applicant representatives</u>: Jarrod Gillies, Darren Gibson, Peter Gardiner, Josh Wheeldon and Danny Rose</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Revised Council Assessment Report (13 September 2023)