

DETERMINATION AND STATEMENT OF REASONS

NORTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	11 December 2023
DATE OF PANEL DECISION	11 December 2023
DATE OF PANEL MEETING	30 November 2023
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Stephen McCarthy and Jeff Johnson
APOLOGIES	Eva Ramsey
DECLARATIONS OF INTEREST	Sharon Cadwallader declared a non-significant non-pecuniary interest in this DA as she voted on a previous application for the same site, from the same proponent, that was previously submitted to Ballina Shire Council.

Public meeting held at Council Chambers, 40 Cherry Street, Ballina and by teleconference on 30 November 2023, opened at 9.05am and closed at 10.33am. The Panel undertook an adjournment to deliberate at 10.00am until 10.29am.

MATTER DETERMINED

PPSNTH-207 – Ballina – 2022/721/1 at 6 Burns Point Ferry Road and 550-578 River Street West Ballina 2478 – Erection of a Seniors Housing Development under State Environmental Planning Policy Housing 2021 in five stages including 148 independent living units (four x two bedroom and 144 x 3 bedroom units), community facilities, managers residence, earthworks (filling) and retaining walls, removal of vegetation, stormwater management and infrastructure works, landscaping and outdoor recreation areas. Vehicular access to the development is proposed via Burns Point Ferry Road with an emergency access via River Street (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7, the material presented at meetings and briefings, and the matters listed at item 8 in Schedule 1.

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 refuse the application for the reasons outlined in the Council Assessment Report.

The Panel notes the proposed development would assist in providing housing diversity in Ballina; and that a significant portion of the greater site is proposed to be managed for biodiversity conservation.

In summary, the Panel's reasons for refusal include:

- necessary General Terms of Approval required under s4.47 of the Environmental Planning and Assessment Act 1979 have not been obtained from NSW Department of Primary Industries (Fisheries).
- the Panel agrees with Council's assessment that the Application is deficient in many respects and that insufficient information has been provided to satisfy the Panel that the Application can be approved.

- all necessary Owners' Consents have not been obtained.
- that, based on the plans available at the date of determination, the Panel agrees the entirety of the proposed development footprint is not appropriately zoned.

In particular, the Panel is not satisfied that sufficient information has been provided to satisfy the Panel that:

- the site is suitable for the intended development
- flooding is adequately assessed and related impacts can be mitigated
- acceptable safe evacuation measures are proposed: the Panel notes the findings and recommendations of the Flood Inquiry of 2022 that 'shelter in place' not be supported
- serious and irreversible ecological impacts are avoided
- earthworks, drainage, acid sulfate soils, construction management and traffic impacts are satisfactory
- building design and form meets the objectives and requirements of relevant instruments
- that visual impact has been satisfactorily addressed

The Panel agrees that insufficient information has been provided to assess the proposal in accordance with the provisions of the State Environmental Planning Policy (Housing) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, the Ballina Local Environmental Plan 2012 and Ballina Shire Development Control Plan 2012 or the relevant provisions of the Fisheries Management Act or the Biodiversity Conservation Act.

The Panel considered the Applicant's request that should the Panel defer determination, it would offer to work through the issues raised in the Assessment Report with Council ahead of the scheduled Land and Environment Court proceedings. The Panel formed the view that the number and substance of the issues raised are unlikely to be satisfactorily addressed ahead of those proceedings. The Panel did not accept the Applicant's request.

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:

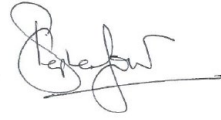
- Flood risk and impact
- Environmental Impact
- Land concerns
- Aquatic impact
- Traffic and congestion
- Drainage and stormwater runoff
- Community interest
- Impact of fill on surface water
- Aboriginal cultural significance sites
- Appropriateness of site
- Bulk and scale

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.

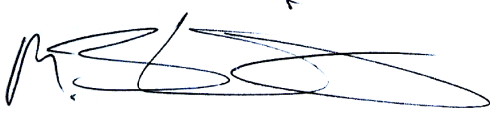
PANEL MEMBERS



Dianne Leeson (Chair)



Stephen Gow



Michael Wright



Stephen McCarthy



Jeff Johnson

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-207 – Ballina – 2022/721/1
2	PROPOSED DEVELOPMENT	Erection of a Seniors Housing Development in five stages including 148 independent living units (four x two bedroom and 144 x three-bedroom units), community facilities, manager's residence, earthworks (filling) and retaining walls, removal of vegetation, stormwater management and infrastructure works, landscaping and outdoor recreation areas. Vehicular access to the development is proposed via Burns Point Ferry Road with an emergency access via River Street
3	STREET ADDRESS	Lot 1 DP 522558 6 Burns Point Ferry Road, and Lot 1 DP 124173 550-578 River Street, WEST BALLINA
4	APPLICANT OWNER	Simon Pollock (GTH Resorts Pty Ltd) GTH Resorts Pty Ltd & Chris and Joanne Elliott
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Primary Production) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Industry and Employment) 2021 Ballina Local Environmental Plan (BLEP) 2012 Draft environmental planning instruments: <ul style="list-style-type: none"> Draft BLEP 2012 Amendment (Planning Proposal No. 22/007) Draft State Environmental Planning Policy (Housing) 2021 Development control plans: <ul style="list-style-type: none"> Ballina Shire Development Control Plan (BLEP) 2012 Planning agreements: Yes Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</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: 16 November 2023 Written submissions during public exhibition: Seventy-three (73) Total number of unique submissions received by way of objection: Seventy-two (72) One (1) late submission – dated 16 November 2023 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Colin Bienke and Vivienne Gorec Council assessment officer – Jessica Hutley and Patrick Knight On behalf of the applicant – Simon Pollock

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 25 May 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Sharon Cadwallader and Stephen McCarthy ○ <u>Council assessment staff</u>: Jessica Hutley, Andrew Smith, Patrick Knight, Caitlin Foulis and Kristy Bell ○ <u>Department staff</u>: Carolyn Hunt, Louisa Agyare and Lisa Foley • Site inspection: 29 November 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Stephen McCarthy and Jeff Johnson ○ <u>Council assessment staff</u>: Jessica Hutley, Andrew Smith, Patrick Knight, Kristy Bell, Caitlin Foulis and Ian Gaskell ○ <u>Applicant Representative</u>: Simon Pollock and Daniel McKenzie • Final briefing to discuss council's recommendation: 29 November 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Stephen McCarthy and Jeff Johnson ○ <u>Council assessment staff</u>: Jessica Hutley, Andrew Smith, Patrick Knight, Kristy Bell, Caitlin Foulis and Ian Gaskell ○ <u>Council's Consultant Planner</u>: Hayley Tasdarian ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not Applicable