

DATE OF DETERMINATION	3 October 2023
DATE OF PANEL DECISION	1 October 2023
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright
APOLOGIES	None
DECLARATIONS OF INTEREST	Councilors Peter Johnstone, Greg Clancy and Ian Tiley declared a conflict of interest as they have voted on the redevelopment of Maclean community centre as an elected Councilors.

Papers circulated electronically on 12 September 2023.

MATTER DETERMINED

PPSNTH-217 – Clarence Valley – DA2023/0300 at 48-50 River Street Maclean – Redevelopment of Maclean community centre (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 Clarence Valley Local Environmental Plan 2011 (CVLEP 2011), that has demonstrated that:

- a) Compliance with cl 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- b) 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 CVLEP 2011; and
- The development is in the public interest because it is consistent with the objectives of cl 4.3 (Height of Buildings) of the CVLEP 2011 and the objectives for development in the E1 Local Centre zone; and
- The concurrence of the Secretary is assumed.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, subject to conditions, for the reasons outlined in the Council assessment report and supported by the independent peer review.

The Panel's decision was unanimous.

The Panel agrees with the assessment that:

- The development complies with the Clarence Valley LEP 2011 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 residents and visitors
- The public benefit in providing a purpose-built community centre for the area outweighs the benefits in maintaining the height limit standard as it allows the provision of ground level car parking at MacNaughton Place and a gabled roof to compliment the heritage conservation area while providing an auditorium with 297 seats
- the provision of basement car parking is more desirable than building a lower stepped down structure to conform with height limits
- the proposal, subject to conditions, will not negatively impact on the amenity of residents in terms of privacy or overshadowing
- The site can be adequately serviced and adequate provision is made for car and bicycle parking

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.

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.

CONDITIONS

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

- Include the following additional definitions and alphabetise accordingly:
 - CMP** means Construction Management Plan
 - CEMP** means Construction Environmental Management Plan
 - DSI** means Detailed Site Investigation
 - RAP** means Remediation Actions Plan
 - NIA** means Noise Impact Assessment
 - OEH** means NSW Office of Environment and Heritage
- Amend Condition 17 to read as follows:

17. Contaminated Site Investigation

Prior to issue of the Construction Certificate a Detailed Site Investigation (DSI) is to be submitted and approved by Council. The detailed site investigation must be conducted after demolition.

If required by the DSI, a Remediation Action Plan (RAP) is to be submitted and approved by Council prior to commencement of remediation works. The required remediation works must be undertaken in accordance with the approved RAP.

A Validation Report is required to be submitted to and approved by Council upon completion of any remediation works and prior to issue of the Construction Certificate. The Validation Report must verify that the land is suitable for the proposed use, and that the remediation and validation of the site has been undertaken in accordance with the Approved RAP.

The DSI, remediation action plan and validation report must be prepared, or reviewed and approved by an appropriately qualified and certified environmental consultant, certified by one of the NSW EPA recognized schemes identified in Section 5.6 of Council's Contaminated Land Policy. The front cover of the report must include the details of the consultant's certification.

The detailed site investigation, remediation action plan and validation report must be carried out in accordance with:

- i. Council's Contaminated Land Policy,
- ii. Managing Land Contamination Planning Guidelines (1998),
- iii. Relevant EPA Guidelines, in particular NSW OEH (2011) Guidelines for Consultants Reporting on Contaminated Sites, and
- iv. National Environment Protection (Assessment of Site Contamination) Measure (ASC NEPM, 1999 as amended 2013).

The detailed site investigation, remediation action plan and validation report provided to Council must be accompanied by a report summary, presenting (as a minimum) project background, scope, objectives, key issues, investigation findings, conclusions and recommendations.

All contaminated site reports provided to Council must exempt Council from any claim for copyright that may restrict Council's ability to provide information to the public in accordance with the Government Information (Public Access) Act 2009.

- Amend Condition 19 to read as follows:
 19. Prior to the issue of a Construction Certificate, details of how the following significant heritage fabric and elements, identified in the Statement of Heritage Impact, prepared by Virtus Heritage, 28 April 2023, will be reused and/or displayed, must be submitted to Council for approval:
 - a. The weatherboard exterior and the brick sub structure on the northern side to be reused.
 - b. The curved Wunderlich pressed metal ceiling in the hall and stage.
 - c. The original stage lights.
 - d. The former Maclean Shire Council timber sign from 1957.
 - e. Items located below the stage storage area that have been identified as significant, as approved by Council under the requirements of Condition 31.

Reuse of the material must be maximised. In the event that heritage fabric or moveable elements cannot be reused, full justification must be submitted to and approved by Council.

- Amend Condition 27 to replace PC with Principal Certifier in the second paragraph
- Amend Condition 31 to read as follows:
 31. Prior to commencement of demolition, details of how the following significant heritage fabric and elements, identified in the Statement of Heritage Impact, prepared by Virtus Heritage, 28 April 2023, will be preserved and protected, must be submitted to Council for approval:
 - a. The weatherboard exterior and the brick sub structure on the northern side to be reused.
 - b. The curved Wunderlich pressed metal ceiling in the hall and stage.
 - c. The original stage lights.
 - d. The former Maclean Shire Council timber sign from 1957.
 - e. Items located below the stage storage area. A list of items found and deemed to be of no significance must be submitted to Council and approved before the items are discarded.
- Amend Condition 32 to include 4 Short Street, Maclean
- Amend Condition 58 to replace WAE with Work as Executed Plans
- Insert new Condition 62 that reads as follows and renumber the remaining conditions accordingly:
 62. A glazing design or treatment for windows on the South Elevation (Drawing No. DA-201) facing MacNaughton Place is to be provided to address privacy to residents on MacNaughton Place.

Any window treatments or glazing on windows shown on the East Elevation (Drawing No. DA-200) facing River Street must provide visibility to the street from inside.

Design of abovementioned window glazing treatments must be approved by the General Manager or appointed delegate prior to installation.

- Amend Condition 63 (formerly Condition 62) to read as follows:

63. Heritage Interpretation Strategy

A Heritage Interpretation Plan is to be prepared by a suitably qualified person to identify significant themes and narratives for interpretation, and identify locations, media and indicative content for interpretation of the site. This may include the repurposing of significant heritage fabric and moveable elements salvaged from the original hall (required by Condition 19). Detailed drawings of interpretation devices, and content for the subject site are to be submitted to and approved by Council prior to approval of the Occupation Certificate. The Draft Wayfinding Strategy and Concepts, prepared by Dotdash and dated 13/04/2023, may form part of this strategy but does not fully address the interpretation of the site.



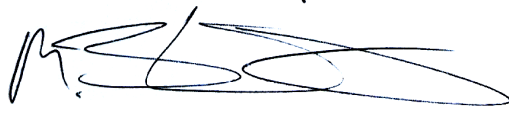
- Amend Condition 64 (formerly Condition 63) to include the words ‘under Condition 63’ in the first sentence after the words – ‘Interpretation Plan’
- Amend Condition 68 (formerly Condition 67) to read as follows:
68. Prior to the issue of the Occupation Certificate, 16 bicycle spaces must be installed, with a minimum of 50% installed within the Basement car parking level. All bicycle parking spaces must comply with AS2890.3 (2015), or as amended

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that issues of concern included:

- Noise impacts during construction and events
- Overlooking and privacy of private open space
- Design of building and historic character
- Vehicle access and speed of vehicles
- Impacts on neighbouring residents during demolition and construction
- Potential damage on surrounding infrastructure and property during demolition and construction
- Light spill from the Council car park
- Seating capacity

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Gow
 Michael Wright	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPNSTH-217 – CLARENCE VALLEY – DA2023/0300
2	PROPOSED DEVELOPMENT	Demolition of existing buildings and landscaped area and the construction of a new Community Centre including an auditorium with 297 seats, a function room, meeting rooms, a kitchen, basement car parking, signage and a public open space area. The use for a Community Centre is proposed to replace the existing Civic Hall and will function as a performance space with community function and meeting rooms.
3	STREET ADDRESS	Lot 1 DP 667217, Lot 8 DP 758631, Lot 9 DP 758631, Lot 1 DP 821976, Lot 10 DP 813746, 48 River Street, Maclean
4	APPLICANT OWNER	Ben Creighton – The trustee for The Think Planners Unit Trust Clarence Valley Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> a. State Environmental Planning Policy (Biodiversity and Conservation) 2021 b. State Environmental Planning Policy (Industry and Employment) 2021 c. State Environmental Planning Policy (Planning Systems) 2021 d. State Environmental Planning Policy (Resilience and Hazards) 2021 e. State Environmental Planning Policy (Transport and Infrastructure) 2021 f. Clarence Valley Local Environmental Plan 2011 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> a. Clarence Valley Council Development Control Plan – Development in Business Zones 2011 • Planning agreements: Nil • 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: 12 September 2023 • Independent Consultant Planner Peer Review: 25 August 2023 • Clause 4.6 variation request: Clause 4.3 Height of Buildings • Written submissions during public exhibition: eight (8) • Total number of unique submissions received by way of objection: three (3)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 1 August 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), and Stephen Gow ○ <u>Council assessment staff</u>: Maya Dougherty, James Hamilton, Murray Lane, Jessica Summerhayes and Adam Cameron ○ <u>Department staff</u>: Carolyn Hunt, Louisa Agyare, and Lisa Ellis

		<ul style="list-style-type: none"> • Site inspection: 13 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright and Stephen Gow ○ <u>Applicant Representatives</u>: Ben Creighton and Daniel Ramsden ○ <u>Council assessment staff</u>: Maya Dougherty, Kelsey Wilkes, Murray Lane • Applicant Briefing: 27 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright and Stephen Gow ○ <u>Applicant representatives</u>: Ben Creighton, Daniel Ramsden, Jesse Mowbray, Rick Johnson ○ <u>Council assessment staff</u>: Maya Dougherty, Adam Cameron, Deborah Wray, James Hamilton and Chris Dear ○ <u>Independent Consultant Planner</u>: Mike Svikis ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis • Final briefing to discuss council’s recommendation: 27 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright and Stephen Gow ○ <u>Council assessment staff</u>: Maya Dougherty, Adam Cameron, Deborah Wray, James Hamilton and Chris Dear ○ <u>Independent Consultant Planner</u>: Mike Svikis ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report