



## **ADDENDUM REPORT**

**To:** Northern Regional Planning Panel  
**CC:** Carolyn Hunt – Senior Case Manager  
**From:** Matthew Kelly, Development Assessment Officer  
**Date:** 15 December 2023  
**Subject:** PAN-333710 -0741/23DA - Lot 5 DP 5344 - 11 Duke Street & Lot 12 DP 1265199 - 9 Duke Street, Coffs Harbour  
**Panel Reference** PPSNTH-230

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Dear Panel

### **INTRODUCTION**

At the Northern Regional Planning Panel meeting on 12 December 2023, the Panel resolved to defer the determination of the Development Application to Friday 15 December to enable the applicant to provide additional information for consideration.

The panel raised the following key matters:

1. In accordance with Clause 7.1(3) of the LEP it is a jurisdictional precondition that an Acid Sulfate Soils Management Plan (ASSMP) is provided and considered satisfactory prior to approval. No ASSMP has been submitted for assessment.
2. The Clause 4.6 Written Request to vary the Clause 4.4 floor space ratio development standard inadequately addresses the matters required to be addressed.
3. Consideration of the use of a restriction on the title requiring that the proposed boarding house development at 11 Duke Street is utilised in conjunction with land at 9 Duke Street, which is owned by Mission Australia and operates as their office premises.

In addition to these matters:

- The Applicant has confirmed that the staging of the residential component is no longer proposed. The proposal will be undertaken in two stages being the subdivision component in the first stage and construction of both boarding house buildings in the second stage.
- A Modified Plan of Management has been submitted for assessment which addresses the matters raised at the meeting.

### **Purpose**

This addendum is provided to the Panel in response to the additional information submitted by the applicant and questions raised by the panel. The addendum is appended by revised schedule of conditions corresponding to additional information and the feedback received by the NRPP at the 12 December meeting.

### **1) Acid Sulfate Soils Management Plan**

An ASSMP prepared by Douglas Partners has been submitted in support of the proposal. The report recommends for the disposal and treatment of acid sulfate soils off site in accordance with the Acid Sulfate Soil Manual.

The City raises no objection to the submitted ASSMP. The implementation of the ASSMP is enforced through recommended Condition 32 (previously Condition 34).

### **2) Modified Clause 4.6 Written Request**

The amended Clause 4.6 Written Request provided by the applicant has adequately demonstrated that the variation of the floor space ratio development standard prescribed by Clause 4.4 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority may be satisfied that the written request has demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that sufficient environmental planning ground have been demonstrated to justify the contravention of the standard.

The consent authority may also be satisfied that the proposal is in the public interest as the proposal is consistent with the objectives of the floor space ratio development standard and the objectives of the E2 Commercial Centre zone.

The City therefore supports the amended Clause 4.6 Written Request.

### **3) Restriction on title affecting 11 Duke Street and 9 Duke Street**

At the NRPP meeting on 12 December, the Panel raised whether the intent of Clause 4.4(1)(b), to encourage increased building densities through site amalgamation, could otherwise be achieved through the use of a restriction on the title, requiring that the proposed boarding house development is utilised in conjunction with the land at 9 Duke Street, which comprises of the Mission Australia office building.

Clause 4.4(1)(b) is provided below:

*‘to encourage increased building densities through site amalgamation at certain locations’ was discussed during the NRPP meeting on 12 December’.*

The City sought the applicant’s feedback on this approach. A response received by the Applicant states that there can be no restrictions on use created on the title for legal and operational matters. The Applicant wishes to rely upon the modified Clause 4.6 written request in addressing Clause 4.4(1)(b). The Applicants response is provided below.

*“The two separate entities associated with 9 and 11 Duke Street are:*

- MAH Mission Australia Housing (ABN 13003683261) own Lot 5 DP 5344 – 11 Duke Street.*
- MA Mission Australia (ABN 15000002522) own Lot 12 DP 1265199 – 9 Duke Street*

*Mission Australia Housing’s property and legal office have confirmed that there can be no restrictions on use created on title that legally create obligations between the two properties.*

*Neither entity will (Mission Australia or Mission Australia Housing) approve a restriction to be placed over either property. There are operational and legal reasons for this.*

*Firstly, the Department of Community and Justice Funding Agreement is only available to a Community Housing Provider (CHP). MAH is a Tier One CHP.*

*MA is a not for profit non-government organisation (NGO) that provides community services on behalf of Government. The funding agreement is secured by a mortgage (or the like) to the MAH CHP. The governance (deeds of the NGO) of MA does not permit such a burden on title of any un-associated property.*

*The functions of each of the properties owned by MAH and MA are independent. If they were, in fact, co-dependent, then the relevant properties would have been amalgamated.*

*It is understood that this issue has arisen from the Panel's requirement to further justify in the Clause 4.6 Request for Variation that the object of Clause 4.4 to (a) to define the allowable development density of a site, and*

*(b) to encourage increased building densities through site amalgamation at certain locations, has been appropriately addressed.*

*The Clause 4.6 Request for Variation is being updated to address the Clause objectives more fully and will be provided as soon as it is completed".*

Notwithstanding the Applicants request for there to be no restriction on the use of the land, the City raises no objection to the imposition of the condition, should the Panel be of a mind to do so.

In such case the City has drafted the following condition for the Panels consideration:

**Recommended Condition:**

*"Restriction on Use – Boarding house*

*A restriction as to user (under the provisions of Section 88B of the Conveyancing Act) is to be created on the title of Lot 5 DP 5344 (No. 11 Duke Street).*

*The lot the subject of this Restriction on Use must be utilised as a boarding house in conjunction with the land in Lot 12 DP 1265199 (No. 9 Duke Street).*

*Coffs Harbour City Council shall be nominated as the party to release, vary or modify such restriction.*

*Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate*

***Reason: To ensure the boarding house is used in conjunction with the neighbouring lot".***

#### **4) Staging of Development**

A written statement has been submitted by the Applicant retracting the request for a staged construction approval as originally sought for Buildings 'a' and 'b'. The construction of the buildings are proposed in a single stage.

The recommended conditions of consent have been modified to reflect this arrangement as follows:

<b>Condition 3</b>	Staging Plan deleted from approved plans
<b>Condition 5</b>	The proposal will be undertaken in two stages being the subdivision component in the first stage and construction of both boarding house buildings in the second stage.
<b>Condition 14 &amp; 15</b>	Contributions updated (no staging proposed for boarding rooms)

#### **Modified Plan of Management**

Recommended Condition 51 required the submission of an updated Plan of Management incorporating the following information:

- a) *Temporary allocation of the 'on-site managers residence' within 'Building A' until 'Building B' is completed in Stage 3.*
- b) *Details of usage times for common areas*
- c) *A requirement that no amplified music is permitted within the common areas*
- d) *No Boarding Room will be occupied by more than 2 adult residents (excluding visitors).*

The updated Plan of Management is consistent with the requirements of Condition 51 and is considered satisfactory. Accordingly, Condition 51 has been deleted in the modified schedule of conditions.

#### **RECOMMENDATION**

That the Panel note the above further justifications for various elements of the proposal, and note the additional conditions appended to the Addendum.

#### **Appendix 1: Revised conditions of consent**