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| DATE OF DETERMINATION | 19 December 2023 |
| DATE OF PANEL DECISION | 19 December 2023 |
| PANEL MEMBERS | Dianne Leeson (Chair), Stephen Gow, Michael Wright, Paul Amos, Sally Townley |
| APOLOGIES | None |
| DECLARATIONS OF INTEREST | None |

Papers circulated electronically on 24 November 2023.

MATTER DETERMINED

PPSNTH-230 - Coffs Harbour - 0741/23DA at 9 and 11 Duke Street, Coffs Harbour – Boarding House and Boundary Alteration Subdivision (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 Coffs Harbour Local Environmental Plan 2013 (LEP), that has demonstrated that:

- compliance with cl. 4.4 Floor Space Ratio 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 exceedance of the floor space ratio is in the public interest because it is consistent with the objectives of cl. 4.4 Floor Space Ratio of the LEP, the objectives for development in the E2 Commercial Centre zone, and meets the objectives of cl.4.6 Exceptions to Development Standards; and
- the concurrence of the Secretary has been assumed.

Development application

The Panel determined to Choose an item. the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 4:1 in favour, against the decision were Stephen Gow.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variation to floor space ratio and approve the application for the reasons outlined in the Council Assessment Report and those listed below.

- The proposal is permissible in the E2 Commercial Centre zone under the LEP and the proposal is considered consistent with the zone objectives, in particular to promote the Coffs Harbour City Centre for higher density living to provide for housing diversity and choice that supports the changing needs of the population

- The Panel accepts the Applicant's reasoning that amalgamation of the site is not available and notes Council's advice that the reference to 'certain locations' in cl4.4(1)(b) is not particular to this site.
- The Panel notes that adherence to a FSR of 1:1 based on the lot size would result in a maximum development of 600 square metres which would not positively contribute to Council's objectives for the city centre precinct
- The Panel agrees the cl4.6 variation request in respect of floor space ratio is justifiable on planning grounds having regard to positive social impacts and built form outcomes, and is of the view that the proposed development represents a well-designed infill development contributing to the desired future character of the area
- The site of the proposed development is well located and suited to the intended use, being directly opposite a public cycleway that provides level connectivity to public open spaces
- The proposal will have positive social and economic benefits by increasing the affordable housing supply in Coffs Harbour, creating employment through construction and operation, and greater expenditure in the area
- The potential environmental impacts from the construction and operation of the proposed development have been properly examined and, subject to the imposition of conditions, will not result in unacceptable adverse impacts.
- The proposal is in the public interest as it will deliver an increase in affordable housing for the local Coffs Harbour area

The Panel has carefully considered all relevant issues raised in submissions and considers they have been satisfactorily addressed by conditions imposed by this approval.

Stephen Gow disagreed with the majority decision for the following reason:

Although he was satisfied that the proposed development had planning merit and a clear social benefit, he could not support the majority view for a technical reason.

Mr Gow was not persuaded by the applicant's revised request for variation of a development standard, or the assessment of the application, that the proposed development, which involves a significant departure from the 1:1 floor space ratio development standard for the subject site pursuant to cl. 4.4(2A) of the LEP, would be consistent with the objectives of LEP cl. 4.4(1). These are:

- (a) to define the allowable development density of a site, and
- (b) to encourage increased building densities through site amalgamation at certain locations.

In particular, the Panel had been advised by the applicant that no site amalgamation was possible.

Accordingly, as the consent authority must be satisfied under the provisions of LEP cl.4.6 (4)(a)(ii) – *as applicable at the date this application was made* - that a development which contravenes a development standard must still remain consistent with the objectives of the particular standard, he considered that a necessary pre-requisite for the granting of consent had not been achieved.

CONDITIONS


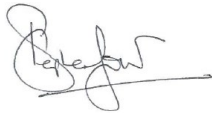
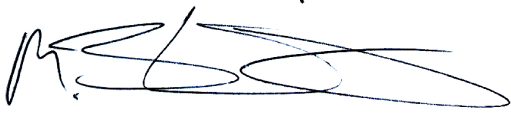


The Development Application was approved subject to the conditions in the Council Assessment Report.

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:

- Development characterisation, Compliance with LEP and Site amalgamation
- Height, Floor Space Ratio and Clause 4.6 variation
- Minimum street frontage and streetscape character
- Overshadowing impacts and Visual privacy
- Potential wind tunnelling
- Bulk and scale and Setbacks
- Construction impacts
- Building Dilapidation
- Land devaluation
- Future development of adjoining sites
- Carparking and Traffic management
- Acoustic impacts
- Waste management
- Consideration of hazards
- Social impact management plan

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

| PANEL MEMBERS | |
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|  Dianne Leeson (Chair) |  Stephen Gow |
|  Michael Wright |  Paul Amos |
|  Sally Townley | |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | PPSNTH-230 - Coffs Harbour - 0741/23DA |
| 2 | PROPOSED DEVELOPMENT | Boarding House and Subdivision (Boundary Alteration) |
| 3 | STREET ADDRESS | Lot 5 DP 5344 - 11 Duke Street, Coffs Harbour & Lot 12 DP 1265199 - 9 Duke Street, Coffs Harbour |
| 4 | APPLICANT/OWNER | Keiley Hunter Urban Planner Mission Australia Housing |
| 5 | TYPE OF REGIONAL DEVELOPMENT | Private infrastructure and community facilities over \$5 million |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity & Conservation) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development Coffs Harbour Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Coffs Harbour Development Control Plan 2015 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: 13 November 2023 Council Addendum Report: 8 December 2023 Council Supplementary Report: Clause 4.6 Request to vary Clause 4.4 Floor Space Ratio of Coffs Harbour Local Environmental Plan 2013 – updated 12 December 2023 (Version 3) Written submissions during public exhibition: Ten (10) Total number of unique submissions received by way of objection: Eight (8) Late submissions received 27th November 2023 – 30th November 2023: Seven (7) |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> Briefing: 26 September 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Paul Amos, Sally Townley <u>Council assessment staff</u>: Matthew Kelly and Kenneth Maguire <u>Department staff</u>: Carolyn Hunt and Lisa Ellis Site inspection: 16 October 2023 |

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| | | <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Paul Amos, Sally Townley ○ <u>Council assessment staff</u>: Matthew Kelly and Kenneth Maguire ○ <u>Applicant Representatives</u>: Keiley Hunter and Andrew Talbot <ul style="list-style-type: none"> • Applicant Briefing: 12 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Paul Amos, Sally Townley ○ <u>Applicant representatives</u>: Keiley Hunter, Andrew Talbot, Benny Zheng and Dean Gavrilovic ○ <u>Council assessment staff</u>: Matthew Kelly, Luke Perry, Kenneth Maguire and Emily Nugent ○ <u>Department staff</u>: Carolyn Hunt, Louisa Agbare and Lisa Ellis • Council briefing to discuss Council's recommendation: 12 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Paul Amos, Sally Townley ○ <u>Council assessment staff</u>: Matthew Kelly, Luke Perry, Kenneth Maguire and Emily Nugent ○ <u>Department staff</u>: Carolyn Hunt, Louisa Agbare and Lisa Ellis • Applicant Briefing: 15 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Paul Amos, Sally Townley ○ <u>Applicant representatives</u>: Keiley Hunter ○ <u>Council assessment staff</u>: Matthew Kelly, Luke Perry, Kenneth Maguire and Emily Nugent ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis • Final briefing to discuss Council's recommendation: 15 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Paul Amos, Sally Townley ○ <u>Council assessment staff</u>: Matthew Kelly, Luke Perry, Kenneth Maguire and Emily Nugent ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the Council Assessment Report |