

DATE OF DETERMINATION	26 August 2024
DATE OF PANEL DECISION	26 August 2024
DATE OF PANEL BRIEFING	21 August 2024
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ned Wales and Pat Miller
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 9 August 2024.

MATTER DETERMINED

PPSNTH-248 – TWEED – DA23/0398 – 42 & 44 Enterprise Avenue and 13-17 Corporation Circuit, Tweed Heads South – Hardware & Building Supplies, associated works & 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 observed at site inspections 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 2014 (LEP), 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:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the E4 General Industrial and E3 Productivity Support zones; and
- c) the concurrence of the Secretary has been assumed.

In reaching its decision the Panel notes the application to vary the standard was made before amendments to cl4.6 in November 2023. The Panel has considered the request in accordance with cl4.6 as in force at the time.

Development application

The Panel determined to approve 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 approve the application for the following reasons:

1. The proposal is permissible with consent in the E4 General Industrial, RE2 Private Recreation and E3 Productivity Support zones of Tweed LEP 2014 and consistent with the relevant objectives of each zone.
2. The site of the proposed development is suitable for the intended use with adequate road and utilities services able to be provided and upgraded.
3. The Panel agrees the cl4.6 height limit variation request is justifiable on planning grounds having regard to built form outcomes and positive environmental impacts. These include:
 - a. The increase in height will not result in overshadowing impacts of neighbouring properties;
 - b. Visual impact assessment demonstrates the building will not be intrusive to surrounding areas;
 - c. Compliance with flood controls;
 - d. Limiting unnecessary excavation and transportation of soil off-site; and
 - e. Optimising site landscaping and vegetation retention/restoration
4. Proposed landscaping and habitat restoration works will protect and improve adjacent sensitive koala habitat and coastal environments. Asset protection zones will afford appropriate bushfire protection.
5. The Panel has imposed conditions in respect of EV charging infrastructure and bicycle parking providing a greater level of customer and staff amenity and contributing to overall sustainability.
6. The Panel has amended draft conditions relating to signage. These include:
 - a. Imposing a 2 year limit on the proposed pylon sign on Greenway Drive. The Panel considers 2 years is sufficient to inform potential customers of the change in location of the Bunnings store; and
 - b. Approving a 10m pylon sign adjacent the proposed development on Enterprise Avenue. The sign is compliant with the DCP and is lower than the final approved building height.

The Panel agrees with Council's assessment that three building signs be not approved to afford greater consistency with the DCP
7. The Panel is satisfied that impacts associated with the proposed development can be adequately mitigated through the imposition of conditions. The proposed development will generate employment and economic benefit to the region through construction and operation.
8. For the reasons given above the Panel concludes 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.

- Amend Condition 1 Approved plans and supporting documentation, to amend the date of the Biodiversity Development Assessment Report to 19 August 2024
- Amend Condition 4 General D15 requirements to be reinforced, to correct typographical error in 4th dot point, last sentence to replace 'they do' with 'it does'
- Amend Condition 8 Referral Agency comments/GTA conditions, to read as follows:

8 Referral agency comments

Refer to the attached comments from the following agency/agencies:

 - NSW Rural Fire Service (dated 2 July 2024)
 - Transport for NSW (dated 26 September 2023)

Condition reason: To ensure compliance with relevant agency requirements.
- Amend Condition 18 Native vegetation removal and Condition 19 Protection of site values, to update date of Biodiversity Development Assessment Report to the 19 August 2024
- Insert new Condition 20, which reads as follows:

20. **Signage**

The approved signage for the development is as proposed, with the exception of the following:

- The proposed Pylon sign on Lot 2145 is limited to a 2 year period to allow for a transition of the proposed development from one site to another.

The 3 wall signs on the south west elevation and north west elevation are not approved due to their limited utility and effect.

Condition reason: To ensure signage is consistent with the character of the area.

- Amend Condition 23 Detailed Stormwater Management Plan (SWMP) for Permanent Stormwater Treatment, by deleting the words 'Where possible' from the second sub section of the 4th dot point
- Amend Condition 34 Works in the Road Reserve, 3rd dot point to read as follows:
 - Improved linemarking and delineation at the intersection of Enterprise Avenue/Traders Way to reinforce sight distance requirements including a centre median (600mm x 10m) on Traders Way.
- Amend Condition 34 Works in the Road Reserve, by correcting typographical error 'Australian'
- Amend Condition 37 Off-street car parking provision, to read as follows:

37. Off-street car parking provision

The developer shall provide 514 customer and staff parking spaces (including 11 accessible parking spaces and 8 car/trailer bays) in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

Provision for six (6) bicycle parking spaces must also be provided.

Provision for 12 EV charging parking spaces must also be provided across the 514 parking spaces.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to the Certifier (Council or a Registered Certifier) with the Construction Certificate application.

The off street car parks shall provide a finished surface compliant with Council's DCP A2 "Site Access and Parking Code" current version.

Condition reason: To ensure compliance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code and to make provision for users of bicycles and electric vehicles in connection with this development.

- Amend Condition 41 Intersection linemarking, to read as follows:

41. Intersection linemarking

The linemarking at the intersection of Traders Way and Enterprise Avenue is to be improved and a centre median (600mm x 10m) on Traders Way is to be provided to cater for the expected increased traffic and detail design is to be submitted to Council and approved under s138 of the Roads Act 1993.

Condition reason: To ensure works within the road reserve comply with the Roads Act 1993

- Delete Condition 44 Signage Plan
- Amend Condition 117 **Creation of applicable 88B Instrument – maintenance of stormwater management system**, to correct the typographical error in the 2nd and 4th dot points 'Covenant'
- Amend Condition 128 Intersection Upgrades, to read as follows:

128. Intersection upgrades

Prior to issue of an occupation certificate, the applicant shall produce a copy of the final sign off from Transport for NSW to ensure the road upgrades as described in the Traffic and Parking Assessment Report prepared by Transport and Traffic Planning Associates dated February 2023 have been implemented.

The applicant must also produce a copy of the "Satisfactory Inspection Report" issued by Council for all works required under Section 138 of the Roads Act 1993.

Condition reason: To ensure the required intersection upgrades are operational prior to the opening of the development.

- Amend Condition 136 Delivery Hours, to read as follows:

136. Delivery Hours

All deliveries to the premises are to occur in accordance with the Environmental Noise Impact Assessment for Bunnings Tweed Heads South, prepared by Acoustic Dynamics Pty Ltd dated 13 December 2022 (Doc Id 5844R001.LM.221129/ECM Doc Set ID 7837934), unless otherwise approved by the Manager Environmental Health Unit or delegate.

Condition reason: To protect the amenity of the local area.

- Amend Condition 149 – Waste Collection Hours, to read as follows:



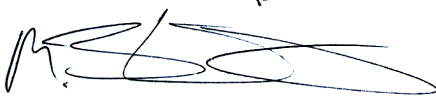


149. Waste Collection Hours

The servicing of waste facilities shall be in accordance with the Environmental Noise Impact Assessment for Bunnings Tweed Heads South, prepared by Acoustic Dynamics Pty Ltd dated 13 December 2022 (Doc Id 5844R001.LM.221129/ECM Doc Set ID 7837934), unless otherwise approved by the Manager Environmental Health Unit or delegate.

Condition reason: To protect the amenity of the local area.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel notes that no written submissions were made during public exhibition and therefore no issues of concern were raised.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-248 – Tweed – DA23/0398
2	PROPOSED DEVELOPMENT	Site preparation, vegetation removal, construction of a hardware & building supplies warehouse, habitat restoration, vegetation management & signage
3	STREET ADDRESS	42-44 Enterprise Avenue (Lots 2 and 3 DP 1077990) and 13- 17 Corporation Circuit (Lot 2145 DP 879149), Tweed Heads South
4	APPLICANT/OWNER	Harvey Norman Holdings Ltd Calardu Tweed Heads Traders Way Pty Limited and Calardu Tweed Heads Pty Ltd
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 (Planning Systems) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Industry and Employment) 2021 ○ Tweed Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Tweed Development Control Plan 2008 • Planning agreements: Draft Voluntary Planning Agreement – Enterprise Avenue and Greenway Drive, Tweed Heads South (parties being Tweed Shire Council, Bunnings Group Limited and Calardu Tweed Heads Pty Limited and Calardu Tweed Heads Traders Way Pty Limited) • 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: 8 August 2024 • Clause 4.6 variation: Cl.4.3 Height of Buildings • Written submissions during public exhibition: 0 • Total number of unique submissions received by way of objection: 0
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 12 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ned Wales and Pat Miller ○ <u>Council assessment staff</u>: Madaline Eltherington and Valerie Conway ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis • Site inspection: 4 June 20224

		<ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Ned Wales and Pat Miller ○ <u>Council assessment staff</u>: Colleen Forbes, Michael Banks and Hayley Nilon <ul style="list-style-type: none"> ● Applicant Briefing: 21 August 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ned Wales and Pat Miller ○ <u>Applicant representatives</u>: Brendan Cook, Kendal Mackay, Tim Wilkinson, Jason Eden, James Scott ○ <u>Council assessment staff</u>: Angie Cousens, Colleen Forbes, Dylan Catt, Hayley Nilon, Luciana Viera De Andrade, Michael Banks, Ray Clark, Terry Seymour ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis ● Final briefing to discuss Council's recommendation: 21 August 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ned Wales and Pat Miller ○ <u>Council assessment staff</u>: Angie Cousens, Colleen Forbes, Dylan Catt, Hayley Nilon, Luciana Viera De Andrade, Michael Banks, Ray Clark, Terry Seymour ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report