

DATE OF DETERMINATION	9 July 2025
DATE OF PANEL DECISION	8 July 2025
DATE OF PANEL MEETING	16 June 2025
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ned Wales, and Pat Miller
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by teleconference on 16 June 2025, opened at 2.33pm and closed at 3.20pm.

MATTER DETERMINED

PPSNTH-306 – Tweed – DA24/0196 – 3, 5 & 7 River Terrace, Tweed Heads – Construction of shop-top housing comprising three levels of basement carparking, ground floor retail premises, 72 residential units, podium level pool, signage and associated vegetation removal (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 inspection 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 City Centre Local Environmental Plan 2012 (LEP), the Panel is satisfied that the applicant has demonstrated that:

- a) compliance with cl 4.3 (Height of Buildings) and cl 4.4(2C) (Floor Space Ratio) is unreasonable or unnecessary in the circumstances because the objectives of the standards are achieved notwithstanding the non-compliance. The site is identified as a Key Site in the LEP and part of the Southern Boat Harbour precinct under the Tweed Development Control Plan (2008) (DCP), the aim of which is to create a revitalised southern gateway to Tweed City Centre. The proposal has been the subject of an iterative design review process resulting in a slim residential tower in the transitional zone to low density development to the south. In respect of height, the Panel notes that roof top structures are generally not visible from the public domain and will not contribute to overshadowing or impact privacy or view lines. Notwithstanding, the residential floor space exceeds that permitted by cl 4.4(2C), the overall floor space proposed is lower than that permitted by cl 4.4(2B) in respect of land zoned MU1 Mixed Use. Having regard to the objectives of the standards, the Key Site designation and the aims of the DCP, the Panel is satisfied that compliance with height of building and residential floor space ratio (FSR) standards is unreasonable in the circumstances, and
- b) there are sufficient environmental planning grounds to justify contravening the development standard as the proposed variation to building height is numerically minor, the residential FSR exceedance does not result in a greater gross floor area (GFA) and building form than would be permitted under cl 4.4 (2B), a high quality design has been achieved through an iterative design review process, and there are no material adverse amenity or environmental impacts.

Development application

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

In considering submissions from the community the Panel has made amendments to a number of recommended conditions and imposed additional conditions to address construction and operational issues.

These include:

- a Construction Community Engagement Plan – to ensure neighbouring businesses and residents of Monastery Lane are provided with advance notice of disruptive activities such as road closures, services interruptions and fortnightly updates of progress and any anticipated disruptions
- Construction Environmental Management Plan and Construction Traffic Plan - to include requirements for construction vehicle parking, personnel transportation and access to the site, site access from River Terrace, and emergency vehicle access to Monastery Lane
- A Building Operations Management Plan – to include loading dock management and hours, common area management and management of waste storage and collection.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variations to building height and floor space ratio 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:

- Amend Condition 2 approved documents table, to read as follows:

Approved documents			
Document title	Version number	Prepared by	Date of document
Statement of Environmental Effects and supporting documents and appendices	N/A	Sutherland & Associates Planning	24 May 2024
Letter subject: Development Application DA24/0196 - 3-7 River Terrace, Tweed Heads	N/A	Sutherland & Associates Planning	15 April 2025
Access Review Report	N/A	Morris Goding Access Consulting	25 March 2024
Acid Sulfate Soil Investigation Report	1	Soil Surveys Engineering Pty Limited	5 December 2023
Arborists Report	N/A	TPZ Project Arborists	31 January 2024
BASIX Certificate 1746832M	N/A	Aspire Sustainability Consulting Pty Ltd	9 May 2024
Building Services Infrastructure Report	D (noting Document Revision History	Intrax Projects	15 April 2024 (noting Document Revision History refers to a date

	refers to Revision E)		of 27 February 2025 for Revision E)
Civil Design Report	4	AT&L	1 April 2025
Civil DA Package	C	AT&L	31 March 2025
Landscape Package	B	Arcadia	03 April 2025
NATHERS Certificate No. 0009336100	N/A	Aspire Sustainability Consulting Pty Ltd	27 March 2024
Noise Impact Assessment	1	Pure White Noise Acoustics	17 February 2025
Pedestrian Wind Environment Statement	2	WindTech Consultants	2 April 2024
Preliminary Geotechnical Investigation	1	Soil Surveys Engineering Pty Ltd	7 February 2024
Remediation Action Plan	2	Range environmental consultants	1 April 2025
Traffic Impact Additional Information Response	N/A	Bitzios Consulting	15 April 2025
Waste Management Plan	2	MRA Consulting Group	13 March 2025

- Amend Condition 13 to read as follows:

13. Basement compliance with AS2890

The basement levels must be compliant with the relevant provisions of AS2890. This includes (but is not limited to) vehicle access, aisle widths, ramp gradients, car parking space dimensions and traffic management arrangements including the provision of any traffic control measures.

Condition reason: To ensure compliance with relevant requirements of AS2890.

- Amend Condition 14 to read as follows:

14. Provision of Car Parking

The developer shall provide parking spaces in accordance with the Traffic Impact Assessment IR Response prepared by Bitzios Consulting, including:

- 96 car parking spaces, comprised of 69 residential spaces, 15 residential visitor spaces, 4 showroom premises' spaces and 8 food and drink premises' spaces;
- 6 motorbike parking spaces, comprised of 4 residential spaces, 1 showroom premises' space and 1 food and drink premises' space; and
- 88 bicycle parking spaces, comprised of 72 residential Class 2 spaces, 11 residential Class 3 spaces, 2 showroom premises' Class 2 spaces and 3 food and drink premises' spaces.

The developer shall provide for accessible parking, in accordance with the Tweed Development Control Plan 2008 and Apartment Design Guide (as applicable).

Full design detail of the proposed parking and manoeuvring areas shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate for Building Works. The detail is to include (but is not limited to) clear indication of all proposed marking and/or signage to clearly indicate the proposed visitor and retail parking bays.

Condition reason: To ensure parking is provided in accordance with the relevant requirements.

- Amend Condition 24 to read as follows:

24. Access Control

Access control measures are to be provided as follows:

1. secure electronic access is to be provided to all residential exclusive areas and the basements except for daytime access to the retail and residential visitor car parking spaces on basement level 01; and
2. an audio/visual intercom system is to be provided for the residential units.

Condition reason: To ensure access control measures are implemented.

- Insert new Condition 36.1 which reads as follows and renumber the remaining conditions accordingly:

36.1. Separate consent requirement for strata subdivision

Strata subdivision is not approved under this consent. Any strata subdivision is to be the subject of a separate development application.

Condition reason: To ensure approval is obtained for relevant signage.

- Amend Condition 37 to remove the words ‘the principal certifier or’ and ‘(where a certifier is not required)’ in the first sentence and insert at the end of part d ‘(including River Terrace as the nominated demolition and construction access point unless otherwise agreed by the General Manager or his delegate)’
- Amend Condition 40 to read as follows:

40. Geotechnical Engineering Report

A detailed geotechnical report from a suitably accredited Geotechnical Engineer is to be submitted to the Certifier (Council or a Registered Certifier) for assessment and approval which details recommendations in respect to stormwater disposal, structural design, and certifying that the foundation material and the site are capable of supporting the development and associated works given the site conditions/topography of the area.

Condition reason: To address geotechnical stability issues and surface water runoff of a site.

- Amend Condition 41 to read as follows:

41. Geotechnical Certification

The building elements are to be designed by a practising Structural Engineer in accordance with the recommendations of the geotechnical report approved under Condition 40. The plans (accompanied by certification that the recommendations have been compiled with) shall be submitted to and approved by the Certifier (Council or a Registered Certifier) before the issue of a Construction Certificate.

Condition reason: To ensure the structural design of the foundation/floor system has been designed according to the soil characteristic of the site.

- Amend Condition 50, to reads as follows:

50. Submission of Construction Environmental Management Plan (CEMP)

Before the issue of a Construction Certificate for each stage of the project, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved by Council. The CEMP shall be consistent with the Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004). A copy of the approved plan shall be submitted to Council. The Plan shall address, but not be limited to, the following matters where relevant:

- Hours of work;
- Contact details of site manager;
- Traffic and pedestrian management (all demolition and construction access to be from River Terrace unless otherwise agreed by the General Manager or his delegate)
- Noise and vibration management;
- Construction waste management;
- Erosion and sediment control;
- Flora and fauna management; and
- Construction Traffic Management Plan (CTMP);
 - Parking of construction vehicles and the transportation of construction personnel to the site, including detailing a common location for the parking of construction vehicles and the utilisation of shuttle buses for the transportation of construction personnel and their equipment to the site;
 - Details of site personnel parking, including consideration of public transport options to minimise on-street parking;
 - Locations of construction zones and delivery access, including pedestrian/traffic management;
 - Details of proposed access to the site from River Terrace during the excavation and construction phases (unless otherwise agreed by Council);
 - Proposed traffic control measures which will be in place during the construction phase of each stage of the development to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity, including but not limited to the use of Monastery Lane by emergency services, members of the public and public authorities; and
 - Construction hours, including hours for deliveries;
 - Details of crane locations, and any other equipment being used in association with the excavation or construction.
- Construction Community Engagement Plan for Excavation and Construction Stages
The plan shall include (but is not limited to the following):
 - The applicant shall nominate a Community Liaison Officer as an ongoing means of addressing community concerns during the excavation and construction phase of the development.
 - Prior to issue of a Construction Certificate and any other works on the site (whichever occurs first), the applicant is to advise adjoining businesses and residents on Monastery Lane and River Terrace, and Council, of the name and contact details of the officer.
 - The officer shall be available during nominated working hours.
 - Neighbouring businesses and residents on Monastery Lane (which is to include all properties on Monastery Lane) and on River Terrace must be provided with advance notice (minimum of 5 business days via text message, email or drop letter) of any road closures, planned interruptions to services, etc which may impact on the businesses/residents. Fortnightly updates of progress and anticipated disruptions must also be provided following commencement of works.
- A register of community concerns/complaints relating to the on-site operations and the action taken in response is to be kept and made available to Council officers upon request.
- Upon receipt of a complaint that Council deems to be reasonable, the officer is to investigate, and a report is to be submitted within a reasonable period to the satisfaction

of Council's General Manager or delegate and include recommendations for attenuation measures. The officer is to implement the recommendations as approved by Council.

Where construction work is to be undertaken in stages, the Proponent may, subject to agreement with the Certifier (Council or a Registered Certifier), stage the submission of the Construction Environmental Management Plan (CEMP) consistent with the staging of activities relating to that work. The Proponent shall submit a copy of the approved plan to Council.

Note: The CTMP is to be prepared by an appropriately qualified person (Transport for NSW accredited) with a Design and Audit Traffic Control Plans Certificate in accordance with Australian Standard 1742.3:2019 - Manual of uniform traffic devices – traffic control for works on roads.

Condition reason: To ensure an appropriate Construction Environmental Management Plan (CEMP) is prepared and submitted to Council for endorsement.

- Amend Condition 64 to insert at the start of the condition, the words 'Prior to issue of a construction certificate'
- Amend Condition 70 title to read as 'Impact upon electrical supply infrastructure'
- Amend Condition 71 to insert the heading 'Residential' at the top of the table and insert the following at the bottom of the table:

Commercial	
Contribution Plan No 4 - Tweed Road Contribution Plan:	
140 trips @ \$1,177.18 per trip (\$815.00 base rate + \$362.18 indexation) (\$65922 has been subtracted from this total as this development is deemed an "Employment Generating Development")	\$98,882.54
CP04 Road Contributions (1-Tweed Heads)	
Contribution Plan No 18 - Council Administration Offices and Technical Support Facilities:	
0.4334 ETs @ \$2,824.46 per ET (\$1,759.90 base rate + \$1,064.56 indexation)	\$1,224.06
CP18 Council Admin Facilities	

- Insert new Condition 76.1 which reads as follows:

76.1 Electric vehicle circuitry and electric vehicle charging points requirements

Before the issue of the first Construction Certificate for the development (i.e. whether for part or whole of a building), an electrical plan including details and specifications for all off-street car parking and any electric kiosk requirements prepared by a suitably qualified and experienced person (such as an electrical engineer) is to be submitted to the Certifier (Council or a registered certifier) demonstrating that each off-street car parking space will be provided with electrical circuitry to support the installation of a 'Level 2' or higher standard electric vehicle charger point.

The Construction Certificate plans are to:

- identify the power capacity to each car parking space;
- identify the EV Distribution Board and EV Load Management System on each level of parking;
- locate EV Distribution Board(s) so that no future EV Ready connection will require a cable of more than 50 metres from the parking bay to connect; and

- identify the conduit system to allow each car space to install an electric vehicle charger point – such as cable trays and/or buried cables underground. This system should allow future installation of cabling to power electric vehicle charger points and allow internet access (run Ethernet cable or install 4G modem).

Note 1: The minimum electric circuitry requirements for 'Level 2' electric vehicle charging points are:

- Privately available spaces: 'Level 2' slow – single phase 7kW power; and
- Public spaces: 'level 2' fast – three-phase 11-22kW power.

Note 2: While the installation of a charging point is not required by this condition.

The proponent is encouraged to provide a minimum of one 'Level 2' electric charger and 'Level 2' electric chargers at a rate of not less than 5% of all car parking spaces. The location of all electric vehicle chargers must be shown on the construction certificate plans.

Condition reason: To ensure the basement levels are ready to supply EV charging.

- Amend Condition 89 to insert after the words 'Gold Coast Airport Pty Ltd', '(and any other relevant approval body such as the Department of Infrastructure, Transport, Regional Development, Communications & the Arts)'
- Amend Condition 93 at the end of the condition, the words 'and EPA Guidelines.'
- Delete Conditions 148 and 164
- Insert new Conditions 178.1, 178.2 and 178.3

178.1 Evidence of correct installation of EV charging

Before the issue of each Occupation Certificate for the development (i.e., whether for part or whole of a building), the principal contractor or owner-builder must submit to the satisfaction of the principal certifier, certification by a suitably qualified and experienced person that the electric vehicle charger points and/or electric vehicle circuitry, has been installed in accordance with the Construction Certificate plans and specifications as required by the appropriate conditions of consent that have been included in the determination.

Condition reason: To ensure electric vehicle circuitry is provided.

178.2 Car park marking

Before the issue of the first Occupation Certificate for the development (i.e., whether for part or whole of a building), all parking bays (including visitor bays) are to be clearly indicated by means of signs and/or pavement markings. Loading bays and visitor parking facilities must also be clearly indicated by signs.

Condition reason: To ensure car park marking is provided. To ensure retail and residential visitor bays are permanently marked.

178.3 Building Operations Management Plan

Prior to issue of an Occupation Certificate, a Building Operations Management Plan (BOMP) is to be prepared and submitted to Council's General Manager or delegate for approval appointing a site manager responsible for monitoring compliance with the conditions of consent and detailing their responsibilities. The BOMP is to address the following (but is not limited to):

- The contact phone number of the site manager or caretaker and display of same within the site in a prominent location;
- Any recommendations or relevant procedures detailed in the Site Management Plan approved in accordance with these conditions of consent;

- Managing of waste storage and collection, including transfer of the waste bins between the waste collection point and onsite storage areas in accordance with these conditions of consent;
- Keeping of the loading dock roller doors closed when not in use and operation in accordance with the hours of operation permitted in these conditions of consent;
- The management of hours of operation for common areas;
- Site security, building and landscaping maintenance; and
- Responding to and resolving complaints.

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

- Amend Condition 213 to read as follows:

213. Land Contamination – Environmental Management Plan

The land owner must comply with the ongoing obligations of any Environmental Management Plan (EMP) and Site Audit Statement (SAS) for the site.

In the event of any encapsulated/remaining contaminated materials, a covenant shall be registered on the title of the land binding the owners and future owners to be responsible for ongoing maintenance and any future rehabilitation works, including the discharge or prevention of discharge from any contaminants, or for any works subsequently required by the NSW Environment Protection Authority (EPA) or Council.

Condition reason: To ensure the site is suitable for the proposed land use and is safe for future occupants.

The Panel also noted the corrections to the formatting and spelling and grammatical errors in Conditions 11, 25, 29, 31, 36, 46, 74, 75, 80, 86 and 181.

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:

- Vehicle conflict and traffic on Monastery Lane, Wharf Street and River Terrace
- Inadequate car parking
- Inadequate hydraulic and ground testing investigations and construction impacts on structural integrity of neighbouring buildings
- Solar access to neighbouring buildings
- Stormwater and rubbish impacts on the river
- Loss of vegetation
- Non-compliance with setbacks, height standard and floor space ratio standard
- Impact on native wildlife
- No public transport impact statement
- Non-compliances with the National Construction Code
- Impacts to residents during construction
- Privacy impacts
- Impacts on lot boundaries
- Location of power poles
- Trades parking during construction stage
- Stormwater drainage Potential obstruction of nearby signage

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. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

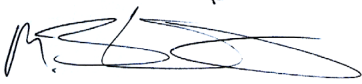
PANEL MEMBERS



Dianne Leeson (Chair)



Stephen Gow



Michael Wright



Ned Wales



Pat Miller

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-306 – Tweed – DA24/0196
2	PROPOSED DEVELOPMENT	Construction of shop-top housing comprising three levels of basement carparking, ground floor retail premises, 72 residential units, podium level pool, signage and associated vegetation removal
3	STREET ADDRESS	3, 5 & 7 River Terrace, Tweed Heads
4	APPLICANT OWNER	Aaron Sutherland – Sutherland & Associates Planning Pty Ltd E.G Briscoe & SL Briscoe
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 (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Resources and Energy) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy Transport and Infrastructure) 2021 Tweed City Centre Local Environmental Plan 2012 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Tweed Development Control Plan 2008 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: 5 June 2025 Section 4.6 variation: 4.3 (Height of Buildings) and S.4.4(2C) (Floor Space Ratio) of Tweed City Centre Local Environmental Plan, 2012 Written submissions during public exhibition: 11 (and additional submission received after closure of notification period) Verbal submissions at the public meeting: <ul style="list-style-type: none"> Andrea Quinn and Russell Frewin Council assessment officer – Paul Weaver and Ray Clark On behalf of the applicant – Aaron Sutherland Total number of unique submissions received by way of objection: 11 (and additional submission received after closure of notification period)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 11 December 2024 <ul style="list-style-type: none"> Panel members: Dianne Leeson (Chair), Michael Wright, Ned Wales and Pat Miller

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Valerie Conway, Jonathan Lynch and Ray Clark ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis <ul style="list-style-type: none"> ● Site inspection: 03 June 2025 <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>: Paul Weaver, Valerie Conway and Jonathan Lynch ○ <u>Applicant Representatives</u>: Ed Brisco and Dan Szwaj ● Final briefing to discuss Council's recommendation: 16 June 2025 <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>: Paul Weaver, Valerie Conway, Ray Clark, Angie Cousens, Jonathan Lynch ○ <u>Department staff</u>: Carolyn Hunt and Ilona Ter-Stepanova
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report and updated on 16 June 2025