

<b>DATE OF DETERMINATION</b>	27 June 2024
<b>DATE OF PANEL DECISION</b>	27 June 2024
<b>DATE OF PANEL MEETING</b>	26 June 2024
<b>PANEL MEMBERS</b>	Chris Wilson (Chair), Juliet Grant, Stephen Davies
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held by videoconference on 26 June 2024, opened at 4pm and closed at 4.40pm.  
Papers circulated electronically on 17 June 2024.

**MATTER DETERMINED**

PPSSTH-326 – Shoalhaven – RA23/1002 at 120, 122 Queen St, 77, 79,81, 83 Princes St, Berry – Alterations and additions to the Berry Hotel at 120 Queen Street Berry, expansion of the Berry Hotel into 122 Queen Street, construction of new hotel accommodation at 79-83 Princess Street, consolidation of 4 lots, associated parking and landscaping, formalisation of access and parking on 77 Princess St, owned by Council. No works to the existing building at 122 Queen Street (former bank) or the Berry Inn at 17 Prince Alfred Street. (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.

**Written request to justify a contravention of a development standard**

The Panel considered a written request from the applicant, made under cl 4.6 (3) of the Shoalhaven Local Environmental Plan 2014 (LEP), that the applicant had demonstrated:

- 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

However, the Panel was not satisfied that:

- a) the applicant’s written request adequately addressed 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(2) (development standard) of the LEP and the objectives for development in the E1 Local Centre zone.

**Development application**

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

The decision was unanimous.

**REASONS FOR THE DECISION**

As identified above, the Panel determined:

- not to uphold the request to contravene the development standard under Clause 4.6 (building height); and

- to refuse the application for the reasons outlined in the Council Assessment Report (refer to Schedule 2 attached).

The Panel noted that the applicant had not responded to Council’s request for information. Under these circumstances, many of the outstanding issues remained unresolved.

The Applicant has had ample opportunity to respond to the concerns of the Panel and Council regarding the assessment of the development application.

The Panel further noted that the applicant had lodged deemed refusal proceedings in the Land & Environment Court. These proceedings have no bearing on the Panel’s consideration of the development application currently before it.

Finally, the Panel was satisfied that Council had undertaken a thorough assessment of the material available as required under Section 4.15 of the *Environmental Planning and Assessment Act, 1979*

**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 relate to:

- Heritage Impacts
- Noise & Amenity
- Traffic and Parking
- Future Desired Character of Berry
- Compliance with Statutory Controls
- Community Impacts
- Bulk and Scale
- Overdevelopment of the Site
- Alcohol & Gambling
- Social Impacts
- Lack of Relevant Information
- Cumulative Impacts
- Operational Concerns
- Infrastructure Contributions

The Panel considers that concerns raised by the community have not been adequately addressed which in part informed the Council’s recommendation for refusal.

PANEL MEMBERS	
 Christopher Wilson (Chair)	 Juliet Grant
 Stephen Davies	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-326 – Shoalhaven – RA23/1002
2	PROPOSED DEVELOPMENT	Alterations and additions to the Berry Hotel at 120 Queen Street Berry, expansion of the Berry Hotel into 122 Queen Street, construction of new hotel accommodation at 79-83 Princess Street, consolidation of 4 lots, associated parking and landscaping, formalisation of access and parking on 77 Princess St, owned by Council. No works to the existing building at 122 Queen Street (former bank) or the Berry Inn at 17 Prince Alfred Street.
3	STREET ADDRESS	120, 122 Queen St, 77, 79,81, 83 Princes St, Berry
4	APPLICANT /OWNER	Applicant: Feros Hotel Group Pty Ltd Owners: FAIRSERV PTY LIMITED, VIRGINIA GAYE WATSON, MATTHEW JAMES WATSON, KAREN SUSAN STIEPER, STEPHEN JEFFREY FELLOWS, PALINAT PTY LTD, LILOTTE PTY LTD, SHOALHAVEN CITY COUNCIL, The Owners – Strata Plan. No 93194
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazard) 2021</li> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ Environmental Planning and Assessment Act 1979</li> <li>○ Environmental Planning and Assessment Regulation 2021</li> <li>○ Shoalhaven Local Environmental Plan 2014</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Shoalhaven Development Control Plan 2014</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 17 June 2024</li> <li>• Written request to justify a contravention of a development standard – Cl 4.6(3) – (Height of Building) Shoalhaven LEP 2014</li> <li>• Written submissions during public exhibition: 378</li> <li>• Information provided in support of verbal submissions provided by Stuart Coughlan and Judith Ball</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Stuart Coughlan (obo The Berry Forum)</li> <li>○ Cassandra Harris</li> <li>○ Judith Ball</li> <li>○ Council Consultant Assessment Planner – Jeremy Swan (The Planning Hub)</li> <li>○ On behalf of the applicant – David Rippingill (Design Collaborative)</li> </ul> </li> <li>• Total number of unique submissions received by way of objection: 378</li> </ul>

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Public Briefing Meeting: 9 February 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Stephen Davies</li> <li>○ <u>Council assessment staff</u>: Jeremy Swan (Consultant Assessment Planner), Justin Lamerton, Paul Cashel, James Ruprai.</li> <li>○ <u>Other</u>: Amanda Moylan (DPHI), Tim Mahoney (DPHI), Tracey Gillet (DPHI)</li> <li>○ <u>Verbal Submissions</u>: <ul style="list-style-type: none"> <li>Session 1: <ul style="list-style-type: none"> <li>• Jeremy Swan – Independent Assessment Planner Obo Shoalhaven City Council</li> <li>• Stuart Coughlan Obo Berry Forum</li> <li>• Megan Pikett</li> <li>• Catherine Barlow</li> <li>• Ron Kerr obo: Parish Council and members of St Luke's Anglican Church</li> <li>• Cassandra Harris</li> <li>• George Waddell</li> <li>• Narelle Barry</li> <li>• Peter O'Reilly</li> <li>• Judith Ball</li> </ul> </li> <li>Session 2: <ul style="list-style-type: none"> <li>• Jeremy Swan – Independent Assessment Planner obo Shoalhaven City Council</li> <li>• Roslyn Pratt</li> <li>• Peter Holcombe</li> <li>• Patrick De Gabriele</li> </ul> </li> </ul> </li> </ul> </li> <li>• Site inspection: 1 -7 November 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Juliet Grant, Stephen Davies, Chris Wilson</li> <li>○ <u>Council assessment staff</u>: Rebecca Lockart, Cathy Bern</li> </ul> </li> <li>• Briefing: 1 November 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Stephen Davies</li> <li>○ <u>Council assessment staff</u>: Jeremy Swan (Consultant Assessment Planner), Rebecca Lockart, Cathy Bern</li> <li>○ <u>Applicant representatives</u>: Chris Feros (Feros Group), David Stubbs (The Berry View Hotel), Matt Hall (D.velop.R), James Lidis (Design Collaborative), Chris Grinham (H&amp;E Architects), John Oultram (John Oultram Heritage and Design)</li> <li>○ <u>DPHI</u>: Amanda Moylan , Tim Mahoney, Tracey Gillett</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 26 June 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Chair), Juliet Grant, Stephen Davies</li> <li>○ <u>Council assessment staff</u>: Justin Lamerton</li> <li>○ <u>Council Consultant Assessment Planner</u>: Jeremy Swan (The Planning Hub)</li> <li>○ <u>DPHI</u>: Amanda Moylan, Tracey Gillett</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	NA

## SCHEDULE 2 – Reasons For Refusal

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development contravenes clause 4.3 – Height of buildings of the SLEP 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfactorily address the objectives of the E1 Local Centre zone under the SLEP 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfactorily address clause 4.6 – Exceptions to development standards of the SLEP 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfactorily address clause 5.10 – Heritage conservation of SLEP 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with Clause 7.1 of the SLEP 2014.
6. Pursuant to Section 4.15(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with the objectives of Section 3.2, Chapter 2 of the SDCP 2014.
7. Pursuant to Section 4.15(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with the objectives, controls, performance criteria and acceptable solutions specified in Section 4, Section 5.2, and Section 5.9.1 of Chapter N2 of the SDCP 2014.
8. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not satisfactorily address the Objectives, Performance Solutions and Acceptable Solutions provided in Section 5.1, Chapter G2 of the SDCP 2014.
9. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with the performance criteria and acceptable solution of Section G17 in that the height of the fencing along Princess Street inhibits natural surveillance.
10. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated compliance with Chapter G21 of the SDCP 2014 in relation to car parking, loading facilities and pedestrian connectivity.
11. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated that the proposal would not have an adverse impact upon the natural and built environment.
12. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed development has not satisfactorily demonstrated that the proposal would not have an adverse social impact upon the surrounding locality.
13. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, the information submitted with the development application does not satisfactorily demonstrate that the site is suitable for the proposed use.
14. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, and having regard to the above matters, the granting of development consent is not considered to be in the public interest.