

Page 1326 RTI 120/011

From: Patricia Jensen

Sent: Monday, 4 June 2018 4:19 PM

To: Marc Cornell;James Ruprai

Cc: Stephen Whitby Subject:

RE: Yaroomba Report - Officer recommendation

Hi Marc James and I have reviewed the assessment and consider that the sufficient planning grounds can be met based on the public and economic benefits associated with the proposal.

The proposal clearly aligns with Councils Sunshine Coast - The Natural Advantage: Regional Economic Development Strategy 2013-2033 by reinforcing our region Game Changer projects (particularly the Airport and the new CBD) as well as contributing towards our existing high value tourism industry by providing an international 5 star hotel with associated conference facilities.

The research compendium associated with this Strategy outlines that our local tourism is overly reliant on the domestic tourist market and that we need to encourage future investment in new accommodation stock which opens the international tourist market. This compendium states:

As outlined previously, for the Sunshine Coast as both a tourism and investment destination, the expansion of the Sunshine Coast Airport and the upgrading of the Bruce Highway are critical to opening up new tourism, trade and business opportunities and improving accessibility for the region for visitation and export purposes. In addition, the upgrade or future development of 'Destination Infrastructure' for the Sunshine Coast, such as a convention centre, five-star hotel accommodation, visitor facilities or national parks, will attract and facilitate new tourism visitation to the region and help to generate a wider mix of economic, social and environmental returns.

I would also rely on advice previously provided by Strategic Planning Branch on their assessment of the proposal and sufficient planning grounds.

Happy to discuss the above further if necessary.

Regards

Trisha

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From: Marc Cornell
Sent: Friday, 1 June 2018 11:21 AM Council
To: James Ruprai; Patricia Jensen
Cc: Stephen Whitby
Subject: Yaroomba Report - Officer recommendation

Hi James and Trisha,

As you know, we are still in the throes of pulling the report together, and we are obviously time poor with this process given we are planning to have a report with you by Monday afternoon (and may go to the three of you at the same time) depending on some weekend hours.

As I have highlighted to you previously, I am of the view that the development has mitigated the impacts associated with the development such as visual impacts, traffic, built form etc.

However, in my opinion, the development will not comply with the purpose and overall outcomes of the Height of buildings and structures overlay. This pushes the decision to the Strategic Framework, which does not support something of this nature (this was removed by Council as part of their consideration of the recent height amendment which allowed for consideration of community benefits).

S326 of SPA then provides that a development application may be decided in a way that conflicts with a relevant instrument only in certain circumstances:

- (a) the conflict is necessary to ensure the decision complies with a State planning regulatory provision; or
- (b) there are sufficient grounds to justify the decision, despite the conflict; or
- (c) the conflict arises because of a conflict between—
 - (i) 2 or more relevant instruments of the same type, and the decision best achieves the purposes of the instruments; or

Example of a conflict between relevant instruments— a conflict between 2 State planning policies

- (ii) 2 or more aspects of any 1 relevant instrument, and the decision best achieves the purposes of the instrument.

Example of a conflict between aspects of a relevant instrument— a conflict between 2 codes in a planning scheme

In my opinion, (a) and (c) do not apply, leaving the option for (b) being sufficient grounds.

The term grounds is defined in the SPA to mean matters of public interest. It does not include considerations such as the personal circumstances of the applicant, the owner of the land or another interested party.

The term sufficient grounds has been considered by the Planning and Environment Court historically and most recently with the Supreme Court decision in Toowong - <https://archive.sclqld.org.au/qjudgment/2018/QCA18-084.pdf>. Paras 66 – 78 are noteworthy and refer to the sufficient grounds test, which are different to the community benefits test.

The terms used in the sufficient grounds test are found in the DSDMIP statutory guidelines, where examples are given such as:

- Relevant instrument is out of date - due to its age or changing circumstances in the area and the proposal reflects or responds to these changed circumstances
- Relevant instrument is incorrect - in terms of its substance or underlying assumptions for the circumstances of the particular proposal
- Relevant instrument inadequately addresses development - type of development proposed is not adequately addressed by the relevant instrument

- Relevant instrument does not anticipate specific or particular development - type of development proposed may be of international, national, state or regional significance and may not have been anticipated by the relevant instrument
- There is an urgent need for the proposal - an exceptional and urgent need for the proposal to occur.

In regards to whether any of these circumstances can apply, I do not agree that the development can meet this test (more so in a technical sense rather than addressing impacts):

- The scheme was gazetted in 2014 and is updated regularly, and height was only recently considered by Council;
- Hard to determine that a scheme is incorrect given above;
- The scheme does adequately identify the tourism zone, but sets a parameter for the height of these tourism nodes, through the Prelim Approval (which we should be recognising in our schemes in any case);
- Plausible as the regional significance, but not sure I can use this provision for height alone on the basis of state or regional significance;
- We have not received advice from our expert that there is an urgent need for this proposal.

To this end, any report authored by myself would be forwarded to you with a recommendation for refusal based on not meeting the sufficient grounds test.

In the interests of time, I would prefer to draft one report rather than modify late in the piece if others hold a different view. This is certainly not an easy judgement to make and I am well aware that others may hold different views (which again, I'm am perfectly okay with given this is my opinion and isn't tested anywhere else).

If you are of a different view, can you please give an indication of this (I'm not seeking your direction to take a particular course, just providing your professional opinion in representing the CEPS team and Council), such that we can draft a report that meets your requirements. I am happy to draft the report for either of you depending on your views.

If you hold a similar view, I'll continue with the report as per normal practices.

If you could advise by COB today, I'll use this information to draft and complete a report over the weekend.

Cheers,
Marc

Marc Cornell | Principal Development Planner

Planning Assessment | Development Services
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