

# Report to the Legislative Assembly

Ministerial call in under the Planning Act 2016 - Esplanade Jewel development at 35, 37 and 39 Esplanade, 2 Burkitt Street and 4 and 6 See Street, Barga  
April 2019



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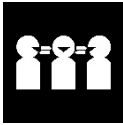


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**REPORT TO BE TABLED IN THE LEGISLATIVE ASSEMBLY ABOUT  
MINISTER'S DECISION ON A CALL IN OF A DEVELOPMENT APPLICATION  
UNDER THE *PLANNING ACT 2016***

**DEVELOPMENT APPLICATION FOR THE ESPLANADE JEWEL  
DEVELOPMENT AT BARGARA MADE BY SAUNDERS HAVILL GROUP ON  
BEHALF OF ESPLANADE JEWEL PTY LTD**

**CALLED IN BY THE MINISTER FOR STATE DEVELOPMENT,  
MANUFACTURING, INFRASTRUCTURE AND PLANNING THE HONOURABLE  
CAMERON DICK MP ON 21 DECEMBER 2018**

**AND**

**DECIDED BY THE MINISTER FOR STATE DEVELOPMENT,  
MANUFACTURING, INFRASTRUCTURE AND PLANNING THE HONOURABLE  
CAMERON DICK MP ON 16 APRIL 2019**

**THIS REPORT HAS BEEN PREPARED PURSUANT TO SECTION 106 OF THE *PLANNING ACT 2016***

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## 1.0 Introduction

On 21 December 2018 I, as Minister for State Development, Manufacturing, Infrastructure and Planning, called in the development application made to Bundaberg Regional Council (the council) by Saunders Havill Group on behalf of Esplanade Jewel Pty Ltd (the applicant), for a mixed use development at 35, 37 and 39 Esplanade, 2 Burkitt Street and 4 and 6 See Street, Bargara.

On 16 April 2019, I decided to approve the development application, as changed by the applicant, subject to conditions.

Pursuant to section 106(1) of the *Planning Act 2016* (Planning Act), this report:

- explains the nature of my decision
- explains the matters I considered in making my decision to approve the development application.
- includes a copy of my decision notice (**Annexure A**).

Section 106(2) of the Planning Act requires that I table a copy of this report in the Legislative Assembly within 14 sitting days after I gave my notice of decision to the council and to the applicant.

## 2.0 Background

The development application I called in to assess and decide comprised the following key features:

- 60 apartments and 10 townhouses
- one apartment building fronting Esplanade with a maximum height of nine storeys
- three storey townhouses fronting Burkitt and See Streets
- ground level retail and commercial uses
- a rooftop bar.

On 11 January 2019, I issued a confirmation notice and a further advice notice to the applicant. The further advice notice raised concerns with the proposed building height and scale, the potential lighting impacts on sea turtle nesting areas and the potential impact of stormwater on turtle nests.

In response to the further advice notice, a number of meetings were held between the Department of State Development, Manufacturing, Infrastructure and Planning (the department) and the applicant to investigate modifications that could be made to the proposal to better align the development with the outcomes sought by the planning scheme.

The applicant made a minor change to the development application, as well as changes in response to the further advice notice. These are discussed in section 4.0 of this report.

## 3.0 Decision

On 16 April 2019, I:

- agreed that the change made by the applicant to the development application to remove the retail and commercial uses was a minor change, as provided for under section 52 of the Planning Act and as defined in Schedule 1 of the Planning Act

- agreed that the further changes made by the applicant to the development application were in response to my further advice notice, as provided for under section 52 of the Planning Act and section 26.1 of the Development Assessment Rules (DA Rules)
- approved the development application, as changed by the applicant, for a development permit for a material change of use for multiple dwelling (55 units and 10 townhouses), subject to conditions.

The approved development application comprises:

- two discrete apartment buildings, one of which fronts Esplanade and one set back 50 metres from the Esplanade
- a maximum building height of six storeys with a maximum height of part of the apartment building fronting the Esplanade being five storeys
- two and three storey townhouses fronting Burkitt and See Streets
- fifty-five apartments and 10 townhouses
- no provision for retail or commercial uses
- all apartments incorporating a range of architectural and design features to minimise lighting impacts on turtle nesting areas.

A copy of my decision notice, including approved plans and documents, is at **Annexure A**.

## 4.0 Matters considered

Section 105(5) of the Planning Act states that, in deciding a called in development application, I may consider anything I consider relevant.

The key matters I considered in making my decision included:

- building height and scale
- impacts on sea turtle nesting areas
- impacts on the Bargara local centre.

In considering these matters, I had regard to the following:

- development application material provided to the council by the applicant on 8 March 2018 and 4 June 2018 in support of the development application
- material provided to me by the applicant during my assessment of the development application
- Bundaberg Regional Council Planning Scheme 2015 (the planning scheme)
- *Planning Act 2016*
- Planning Regulation 2017
- DA Rules
- State Planning Policy July 2017
- Wide Bay Burnett Regional Plan September 2011
- comments I received in response to my invitation to interested parties to comment on the development application
- the council's Development Assessment Report dated 24 September 2018
- the Planning Assessment Report prepared by the department.

## 4.1 Building height and scale

The development application that I called in proposed a maximum building height of nine storeys in one apartment building fronting Esplanade, with three storey townhouses fronting Burkitt and See Streets.

Early in the assessment of the development application, a range of factors pertaining to the building's height and scale were considered. These included:

- PO5, PO6 and PO7 of the High density residential zone
- the Development Assessment Report prepared by officers of the council
- a site inspection undertaken by departmental officers
- existing built form analysis of Bargara undertaken by departmental officers.

I considered the analysis of the existing building heights in the surrounding area undertaken by the department. This analysis demonstrated that, although there are a number of vacant sites and building heights of up to three storeys along the Esplanade, building heights of the more recent multiple dwelling developments along the Esplanade vary between three and five storeys, with some being six storeys in part. Having regard to this material, I accepted advice from the department that the proposal would not comply with PO5 of the High density residential code.

This view was reflected in my further advice notice to the applicant dated 11 January 2019.

During the assessment, the department sought specialist advice in relation to building height and scale from Deicke Richards (architects and urban designers). I accepted advice from the department that, having regard to the analysis of the existing built form along the Esplanade and the physical characteristics of the Bargara foreshore in the vicinity of the site, including existing foreshore vegetation, a maximum building height of five storeys directly fronting the Esplanade would comply with PO5. Having regard to views and vistas from prominent and frequented parts of Bargara, a slightly taller built form beyond the five storeys fronting the Esplanade could also be supported.

The applicant changed the proposal in response to the further advice notice, which resulted in:

- two discrete apartment buildings, one of which fronts Esplanade and one which is set back 50 metres from the Esplanade
- a maximum building height of six storeys, with a maximum height of part of the building fronting Esplanade being five storeys.
- two and three storey townhouses fronting Burkitt and See Streets
- fifty-five units and 10 townhouses, with a change in the unit and townhouse mix, a reduction in the residential density and a reduction in residential gross floor area of 304m<sup>2</sup>
- changed vehicular access points from both Burkitt and See Streets in response to the changed built form.

Section 52 of the Planning Act provides for changes to be made to a developmental application before a decision is made, and section 26.1 of the DA Rules states that the development assessment process does not stop if the assessment manager is satisfied the change is in response to a further advice notice.

I was satisfied that the changes to the development application were in response to the further advice notice.

I considered the above matters, including comments received in response to my invitation to comment on the development application. This informed my view that the development application, as changed by the applicant in response to my further advice notice, complies with PO5, PO6 and PO7 of the High density residential zone code, in that:

- the proposed height of three storeys, five storeys and six storeys over part of the site, are compatible with the existing and intended scale and character of the surrounding area

- the development contributes positively to the streetscape, including through articulated heights, reduction in the scale of the scale and built form fronting Esplanade and through the location of residential uses at street level
- the development provides a high level of residential amenity, including to properties adjoining the site to the north, by:
  - providing adequate daylight and ventilation to habitable rooms
  - locating the medium rise buildings so as to minimise the extent and duration of overshadowing, with no overshadowing of the residential properties to the north occurring
  - incorporating design measures including privacy screens and 1.5 metre high window sills to minimise privacy and overlooking impacts, in particular impacts on adjoining residential properties to the north of the site
- the resultant building mass and scale as seen from Esplanade is significantly reduced
- the development is responsive to the sub-tropical climate by achieving a minimum 6-star National House Energy Rating Scheme (NatHERS) rating for the townhouses and a minimum 5-star NatHERS rating for the units.

## 4.2 Impacts on sea turtle nesting areas

The site is located in the Sea turtle sensitive area of the Coastal protection overlay of the planning scheme, and the development application therefore triggered assessment against the Nuisance code of the planning scheme.

I considered PO8 and acceptable outcome AO8.1 of the Nuisance code and PO4 of the Works, services and infrastructure code in making my decision regarding the impacts of the development on turtle nesting areas.

Following a preliminary assessment of the development application, I adopted the view that the proposal would not comply with PO8. This view was reflected in my further advice notice to the applicant dated 11 January 2019.

During the assessment, the department sought specialist advice in relation to impacts on sea turtle nesting areas from Australian Coastal and Marine Ecology.

In the course of the assessment, the applicant made a range of modifications to the proposal aimed at minimising the impact of artificial lighting from the buildings and the impact of the stormwater on sea turtle nesting areas.

I was satisfied that the changes to the development application were in response to the further advice notice and in accordance with section 52 of the Planning Act and section 26.1 of the DA Rules.

I considered the above matters, including comments received in response to my invitation to comment on the development application. This informed my view that the development application, as changed by the applicant in response to my further advice notice, meets PO8 of the Nuisance Code by providing effective design and lighting measures that limit impacts of lighting on turtle nesting areas, and PO4 of the Works, services and infrastructure code. Compliance with these provisions is evidenced through:

- two discrete apartment buildings, one of which fronts Esplanade and one set back 50 metres from the Esplanade
- a maximum building height of six storeys with a maximum height of part of the apartment building fronting the Esplanade being five storeys
- limited number of windows and openings facing Bargara Beach
- screens/shutters on balconies
- glazing on windows, doors and balustrades

- effective external lighting measures included in the Lighting Design Concept Report
- relocating the stormwater pipe further south on Bargara Beach, and its construction outside of turtle nesting and hatching periods.

## 4.3 Impacts on the Bargara local centre

The development application which I called in proposed two food and drink outlets and a shop at ground level, and a food and drink outlet at rooftop level (rooftop bar).

The site is located in the High density residential zone of the planning scheme. Sites to the north of the site on the Esplanade, as well as sites to the south and west, are also located in this zone.

I considered PO3 of the High density residential zone code, as well as comments made in response to my invitation to provide comments on the development application, in my assessment and decision.

To assist in forming a view on whether the development application complied with PO3, the department sought specialist advice from urban economists - Foresight Partners. I agreed with advice from the department that:

- there is no demonstrated market demand for retail or commercial space outside of the town centre area and the land zoned for local centre uses
- establishing retail or commercial uses on the site would likely be to the detriment of existing retail and commercial uses in the local centre
- the called in development application does not comply with PO3 of the High density residential zone code
- the more appropriate use of the ground level of the proposed apartment complex would be for residential uses.

During the assessment, the applicant removed the non-residential uses from the development application.

Section 52 of the Planning Act provides for changes to be made to a developmental application before a decision is made, and that, if the change is a minor change, the change does not affect the developmental assessment process.

I considered that the change to the development application to remove the retail and commercial uses was a minor change, as defined in Schedule 2 of the Planning Act.

After considering the above matters, as well as matters raised in comments both in support of and against the proposed retail and commercial uses, I considered that the changed application complies with PO3 of the High density residential zone code, as the residential uses do not undermine the Bargara local centre.

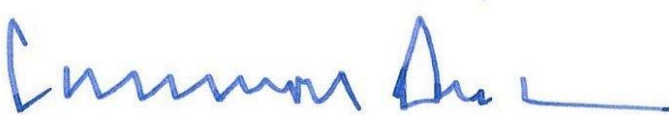
## 5.0 Conclusion

After considering the above matters, I decided to approve the development application, as changed by the applicant, subject to conditions.

I consider that my decision, as documented in my decision notice dated 16 April 2019, delivers an outcome for the site that:

- is consistent with the planning scheme
- avoids detrimental impacts on the Bargara local centre
- is of an acceptable height and scale
- manages impacts of artificial lighting on turtle nesting areas to an acceptable level.

Dated 16 April 2019

A handwritten signature in blue ink, appearing to read 'Cameron Dick', followed by a horizontal line.

**CAMERON DICK MP**  
**Minister for State Development, Manufacturing,**  
**Infrastructure and Planning**



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