

Coordinator-General's Decision

State Development and Public Works Organisation Act 1971

In accordance with section 76Q of the *State Development and Public Works Organisation Act 1971* (SDPWO Act), notice is given to:

- Gladstone Regional Council (the decision maker) and
- Eaton Place Pty Ltd (the applicant)

That, after making an assessment, the Coordinator-General has decided to cancel the prescribed decision and substitute a new decision under section 76O(1)(b)(ii) of the SDPWO Act.

Details for the prescribed decision are:

Prescribed project	Hummock Hill Island Development
Applicant	Eaton Place Pty Ltd
Application	Development Application for a Preliminary Approval for a Material Change of Use to Vary the Effect of a Local Planning Instrument – Hummock Hill Island more properly described as Lot 3 on FD841442 (Council Ref: DA/94/2009)
Date of application	16 December 2009
Prescribed decision	The decision under s3.5.11 of the <i>Integrated Planning Act 1997</i> on the application by the applicant for development approval
Date of prescribed decision	15 May 2018
Date of Coordinator-General's decision	2 November 2018

In accordance with section 76Q of the SDPWO Act, the reasons for the Coordinator-General's decision are attached, together with the decision notice.

Reasons, under section 76Q(3)(a) of the *State Development and Public Works Organisation Act 1971*, for the Coordinator-General's decision to cancel a prescribed decision and substitute a new decision

1. Decision

On 2 November 2018, I, Barry Edward Broe, appointed as the Coordinator-General, decided under section 76O(1)(b)(ii) of the *State Development and Public Works Organisation Act 1971* (SDPWO Act) to:

- cancel the Gladstone Regional Council's decision to refuse a development application made by Eaton Place Pty Ltd under the *Integrated Planning Act 1997* for preliminary approval for a material change of use to vary the effect of the Miriam Vale Shire Planning scheme for the Pacificus Tourism Project at Hummock Hill Island, Foreshores (the prescribed decision); and
- substitute a new decision being a decision to approve, subject to conditions, the development application made by Eaton Place Pty Ltd under the *Integrated Planning Act 1997* for preliminary approval for a material change of use to vary the effect of the Miriam Vale Shire Planning scheme for the Pacificus Tourism Project at Hummock Hill Island, Foreshores.

My reasons for this decision follow.

2. Background

2.1 The project

Eaton Place Pty Ltd is the proponent for the Pacificus Tourism Project on Hummock Hill Island. The project is an integrated tourism and residential development, which includes:

- Short term tourism accommodation, including hotels, motels, campgrounds and self-contained apartments
- Permanent residential accommodation, including houses and apartments
- Recreational and leisure facilities, including a golf course, parks and boat ramps
- Commercial facilities, including retail outlets
- Public infrastructure necessary to support the development, including a permanent bridge connecting the island to the mainland, internal roads, water and wastewater supply and treatment and power infrastructure.

Hummock Hill Island is located approximately 200m off the coast within Rodds Bay, approximately 30km south east of Gladstone. The subject site is described as Lot 3 on Crown Plan FD841442.

On 25 October 2006, the project was declared a significant project (now known as a coordinated project) for which an environmental impact statement (EIS) is required under section 26(1)(a) of the SDPWO Act.

The Coordinator-General, at the time, issued a report evaluating the EIS for the coordinated project on 28 February 2011 and recommending that the project proceed.

The proponent applied to change the project on 21 July 2016 and I issued a change report approving the change on 10 February 2017.

On 21 September 2017, the project was declared to be a prescribed project under section 76E(1)(d) of the SDPWO Act.

2.2 The development application

On 16 December 2009, the proponent made a development application to the Gladstone Regional Council (Council) for preliminary approval for a material change of use to vary the effect of the Miriam Vale Shire Planning scheme for the project and a preliminary approval for a material change of use for environmentally relevant activities (sewerage treatment plant and boat repair). The application also sought assessment against the provisions of a superseded planning scheme.

On 5 March 2010, the Council issued an acknowledgement notice under section 3.2.5 of the IPA. The acknowledgement notice advised that the request to assess the application under the provisions of the superseded planning scheme was refused and the application would be assessed under the Miriam Vale Shire Council Planning Scheme 2009.

The application has undergone three main changes since originally lodged with Council on 16 December 2009.

- (1) 10 August 2017 – change to align with Commonwealth and Coordinator-General approvals, incorporating a revised plan of development and renaming of the project to ‘Pacificus Tourism Project’
- (2) 27 November 2017 – change in the proportion of tourist and permanent accommodation, inclusion of a hospitality school and the replacement of the golf course with a recreational lagoon facility
- (3) 24 April 2018 – reversion to the 10 August 2017 application material.

The environmentally relevant activities (sewerage treatment plant and boat repair) no longer form part of the current application, as changed on 24 April 2018.

The changed application I assessed was acknowledged by Council on 30 April 2018.

There are two aspects to the development application namely:

- (a) a development application for preliminary approval for material changes of use made assessable against a planning scheme; and
- (b) an additional aspect involving the request to vary the effect of the planning scheme for the land.

On 15 May 2018, the Council refused the development application. This decision is the prescribed decision for the purposes of Part 5A of the SDPWO Act.

On 19 June 2018, with the approval of the Minister for State Development, Manufacturing, Infrastructure and Planning, I issued a step in notice under section 76K of the SDPWO Act advising the decision maker (Council) and the applicant (proponent) that I would make an assessment and a decision about the prescribed decision under Part 5A of the SDPWO Act.

2.3 Legislative basis for decision

Under section 76N of the SDPWO Act:

- (a) I became the decision-maker under the relevant law for the prescribed decision;
- (b) for making the decision, I have all the powers of the decision-maker under the relevant law for the prescribed decision;
- (c) for making the decision, I must consider:
 - a. the criteria for making the prescribed decision under the relevant law;
 - b. the purposes of Part 5A under section 76A(b), (c)(i) and (ii) and (d) of the SDPWO Act;
 - c. the matters relevant to the undertaking of a prescribed project and prescribed under a regulation;
 - d. another matter relevant to the prescribed decision or the prescribed project to which the decision relates and prescribed under a regulation.

The IPA is the relevant law for the purposes of Part 5A of the SDPWO Act. The criteria for making the prescribed decision under the IPA is contained in Chapter 3, Part 5 of the IPA. In particular, by operation of section 3.5.5 (for the impact assessable part of the application) and section 3.5.5A (for the section 3.1.6 part of the application) of the IPA, I was required to consider:

- (a) the common material;
- (b) the planning scheme;
- (c) where not reflected in the planning scheme, relevant state planning instruments;
- (d) any development approval or lawful use of the subject site or adjacent premises;
- (e) the effect the variations would have on submitter's rights for future applications, particularly regarding the level of detail provided;
- (f) the consistency of the variations with the rest of the planning scheme;
- (g) any relevant matters prescribed under a regulation.

Section 3.5.6 of the IPA provides that, in assessing the application, I may give the weight I am satisfied is appropriate to a code, planning instrument, law or policy that came into effect after the application was made but before the day the decision stage for the application started.

Section 76O of the SDPWO Act provides that I may:

- (a) confirm or amend the decision;
- (b) cancel the decision and substitute a new decision.

In substituting a new decision, the IPA allows me to:

- (a) approve all or part of the application;
 - (b) approve all or part of the application subject to conditions; or
 - (c) refuse the application.
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3. Evidence or other material on which findings of material questions of fact are based

In considering whether the prescribed decision should be cancelled and a new decision substituted, I had regard to the SDPWO Act, the IPA and the Coordinator-General Brief for Statutory Decision dated 2 November 2018, Ref No: DGBN18/1236. The Briefing Note contained the following material relevant to my decision:

- (a) Assessment report prepared by State Development Areas Division dated 1 November 2018
- (b) Miriam Vale Shire Planning Scheme 2009
- (c) Gladstone Regional Council Planning Scheme 2017
- (d) State Planning Policy 2017
- (e) Queensland Advancing Tourism Strategy 2016-20
- (f) Central Queensland Regional Plan October 2013
- (g) The Hummock Hill Island Development Environmental Impact Statement (EIS) (November 2007)
- (h) The Hummock Hill Island Development Supplementary EIS (December 2009)
- (i) The Coordinator-General's report on the EIS – Hummock Hill Island Development (February 2011)
- (j) The Commonwealth Minister for the Environment's decision on a controlled action for the Pacificus Tourism Project (26 November 2015)
- (k) The Hummock Hill Island Development EIS project change application (July 2016)
- (l) The Hummock Hill Island Development: Coordinator-General's change report no.1 February 2017
- (m) The material provided by Gladstone Regional Council on the prescribed decision under section 76M of the SDPWO Act
- (n) Public submissions received on the EIS and project change report
- (o) Council's response to Coordinator-General 25 October 2018
- (p) Proponent's response to draft conditions 23 October 2018

4. Findings of material questions of fact

The conclusions set out below were made after having regard to the documents set out above.

4.1 The common material

I am satisfied the application is consistent with my report on the project change issued on 10 February 2017 and it is also consistent with the Commonwealth Minister for the Environment's approval given on 26 November 2015.

I am also satisfied the decision stage for the application started under the IPA on 1 May 2018.

4.2 Planning scheme

- (a) The application has been assessed against the Miriam Vale Shire Planning Scheme 2009 (planning scheme).
- (b) I am satisfied the application does not compromise the Desired Environmental Outcomes of the planning scheme area. In particular, I am satisfied:
 - (i) in relation to DEO 2.2.2.1, the overall project supports the continued economic development of the region and will provide significant employment opportunities in the tourism and construction sectors, contributing to a strong and productive economy
 - (ii) in relation to DEO 2.2.2.2, the long-term residential component of the project, which forms a secondary component of the overall project, will provide range of housing types and will not impact on the character and amenity of existing developed areas
 - (iii) in relation to DEO 2.2.2.7, infrastructure and services required for the project are able to be constructed, operated and maintained in a safe, efficient and equitable manner.
- (c) The application conflicts with the Rural Locality and Parkland and Open Space Zone provisions of the planning scheme. However, I am satisfied there are sufficient grounds to justify my decision despite the conflict. In particular, I am satisfied:
 - (i) there are economic benefits associated with the project include building Gladstone's tourism industry and diversifying the regional economy;
 - (ii) there are social benefits associated with the project including the provision of publicly accessible community facilities and services and the project will support employment opportunities for the community across a range of sectors, including the construction and hospitality sectors;
 - (iii) I have given decisive weight to the State Planning Policy 2017 and, in particular, the Economic Growth theme and the Tourism state interest and find that the project is a large scale integrated tourism development which will have significant and lasting positive benefits for the tourism industry in the Gladstone region and in Queensland.
- (d) I find that Hummock Hill island is an appropriate location for the project.
- (e) Having regard to section 3.5.6 of the IPA, consideration was given to the Gladstone Regional Council Planning Scheme which was in effect when the assessment process entered the decision stage.
- (f) The provisions of the Gladstone Regional Council Planning Scheme which apply to the subject site are not considered to be significantly different to the Miriam Vale Shire Planning Scheme.

4.3 State planning instruments

- (a) There were no State planning instruments applicable to the assessment of the application in effect when the application was lodged.
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- (b) Having regard to section 3.5.6 of the IPA, consideration was given to the following State planning instruments which were in effect when the assessment process entered the decision stage:
 - (i) State Planning Policy 2017 (SPP)
 - (ii) Central Queensland Regional Plan
- (c) The application is considered to meet, or can be conditioned to meet, the state interests outlined in the SPP
- (d) I am satisfied the application will advance the SPP, particularly the State interest for Tourism, by facilitating a large scale integrated resort development
- (e) The provisions of the Miriam Vale Shire Planning Scheme for the subject site are considered to conflict with the SPP, particularly the State interest for Tourism
- (f) I have given decisive weight to the SPP, particularly the State interest for Tourism, in deciding the application
- (g) The Central Queensland Regional Plan is not relevant to the assessment of the application.

4.4 Any development approvals or lawful use of the subject site or adjacent premises

There are no current development approvals or lawful uses of the subject site or adjacent premises relevant to the current assessment.

4.5 Effect the variation would have on submitter's rights for future applications

- (a) The variation incorporates a Plan of Development which will make future applications for the Pacificus Tourism Project including for residential, commercial and community uses not subject to public notification. I am satisfied the variation does not impact on submitter's rights, due to the community's awareness of the project, and the limited impacts on the community:
 - (i) The Pacificus Tourism Project has been undergoing environmental or planning assessments since 2006. Public consultation occurred on the draft terms of reference for the EIS from 18 November 2006 to 18 November 2006, on the EIS from 8 December 2007 to 4 February 2008 and on the project change from 10 September 2016 to 10 October 2016. The plan of development, which outlines the types of development envisaged on the island and the assessment criteria, has been publicly available in some form since the EIS was released in 2007.
 - (ii) The application relates to an offshore island located a significant distance from sensitive receptors. With the exception of some external infrastructure works, it is unlikely that construction activities would result in noticeable impacts on nearby residents.
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4.6 Consistency of the variations with aspects of the planning scheme other than those sought to be varied

- (a) The variation incorporates a Plan of Development which will result in future applications for the Pacificus Tourism Project, including for residential, commercial and community uses not being subject to overlay codes and other provisions within the planning scheme
- (b) The application was assessed against the relevant overlay codes in the planning scheme. The application complies, or has been conditioned to comply, with the provisions of the overlay codes.
- (c) Consideration was given to the development codes and definitions in the planning scheme. The application proposes to use provisions based on the more recent Gladstone Regional Council Planning Scheme instead. I consider this to be a practical and suitable approach.

4.7 Relevant matters prescribed under a regulation

There are no relevant matters prescribed under regulation.

4.8 Purposes under section 76A(b), (c)(i) and (ii), and (d) of the SDPWO Act

The re-assessment of the prescribed decision is consistent with the purpose of the SDPWO Act, Part 5A, as required under section 76N(1)(c)(ii):

- (a) SDPWO Act, section 76A(b): The re-assessment and decision on the prescribed decision will provide certainty to the applicant, Council and the community and avoid a time-consuming appeals process. The assessment and decision is consistent with the SDPWO Act, section 76A(b).
 - (b) SDPWO Act, section 76A(c)(i): Conditions have been imposed on the approval, which are consistent with the nature of the project, an integrated resort development. The conditions are consistent with those stated in the Coordinator-General's evaluation reports on the EIS and project change. The assessment and decision is consistent with the SDPWO Act, section 76A(c)(i).
 - (c) SDPWO Act, section 76A(c)(ii): Conditions have been imposed on the approval, to ensure any impacts from the development on the environment are managed. The conditions are consistent with those stated in the Coordinator-General's evaluation reports on the EIS and project change. The assessment and decision is consistent with the SDPWO Act, section 76A(c)(ii).
 - (d) SDPWO Act, section 76A(d): The use of voluntary environmental agreements is not considered necessary in this instance. Conditions have been imposed to ensure the conservation, maintenance, rehabilitation and enhancement of the environment. The assessment and decision is consistent with the SDPWO Act, section 76A(d).
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5. Reasons for the decision

Based on my assessment of the matters in section 76N(1)(c) of the SDPWO Act, I have decided to cancel the prescribed decision and substitute a new decision for the following reasons:

- (a) The preliminary approval will facilitate the Pacificus Tourism Project, which will be a significant tourism and construction project for the Gladstone Regional Council Area, for the wider Central Queensland Region and for Queensland. The project will advance the State interest for Tourism, as expressed in the State Planning Policy 2017 by providing substantial new tourism facilities which are not currently available in the region.
 - (b) The site's Rural Locality and Parkland and Open Space designations in the Miriam Vale Shire Planning Scheme do not reflect the State Planning Policy 2017, particularly the State interest for Tourism.
 - (c) The project will not result in significant adverse environmental, economic or social impacts, and any impacts are able to be managed through the imposition of reasonable and relevant conditions.
 - (d) The project will create substantial positive economic benefits for the Gladstone regional and State economies during its construction and operational phases.
 - (e) There are sufficient economic, environmental and social reasons to justify the approval of the development application despite conflicts with the Miriam Vale Shire Planning Scheme.
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