

## ALTERNATE MOTION BY COUNCILLOR TERRY

ITEM NUMBER: DIS388

ITEM TITLE: HOLIDAY HOUSE AT 56 KARRAKATTA ROAD, GOODE BEACH

DATE & TIME RECEIVED: MONDAY 25 MARCH 2024 AT 10.51AM

**DIS388: ALTERNATE MOTION BY COUNCILLOR TERRY**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council RESOLVES to issue a notice of determination for REFUSAL of a Holiday House at Lot 601, 56 Karrakatta Road, Goode Beach for the following reasons:**

- 1) The proposal does not satisfy the following matters to be considered as identified in Schedule 2, Part 9, Clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015, namely:**
  - a) the objectives and provisions of State Planning Policy 3.7 *Planning in Bushfire Prone Areas*, specifically:
    - i. Objectives 5.1, 5.2 and 5.3 and Policy measure 6.6 of SPP 3.7; and**
    - ii. The proposal does not meet the performance solutions nor the intent of Element 5: Vulnerable Tourism Land Uses contained within the Guidelines for Planning in Bushfire Prone Areas (v 1.4) associated with the State Planning Policy 3.7: Planning in Bushfire Prone Areas. Specifically the performance solutions outlined under the Bushfire Management Plan dated 19/09/2023 do not satisfactorily demonstrate in the opinion of the local government, in consultation with DFES, appropriate solutions for Siting and Design (P fv).****
  - b) The suitability of the land for the development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk; and**
  - c) The suitability of the land for the development taking into account the possible risk to human health or safety.**

### **Councillor Reasons:**

I strongly disagree with the Committee Recommendation as firstly I do not think that Council should ENDORSE the Bushfire Management Plan as it contains a number of discrepancies that have been highlighted by the administration in the preparation of the report for this item and subsequent to the DIS Committee meeting, including the addendum included in this agenda and the attachment to this Alternate Motion.

How many times do we need to be advised that we should refuse this application? The reasoning provided by our very experienced Planning Staff, backed by advice from DFES, are very sound.

For those that supported the Committee Recommendation, it doesn't matter whether you think that the change in use from Residential to Short Term Accommodation is not an intensification use because the number of people staying at the property would not increase, **the application seeks a change in use to a vulnerable land use involving visitors who are unfamiliar with the surroundings and/or where they present evacuation challenges. This reflects the increase in risk from a permanent residential use.**

You cannot ignore that and if you do then should a catastrophic fire occur at this residence with loss of life or significant injury then you will open up the City, and by extension its ratepayers, to the risk of prosecution by high to very high net worth clients who would have very deep pockets to engage a highly skilled Barrister to argue that given all of the advice provided by our administration and advice from DFES that the decision maker, i.e. this Council, was unreasonable to disregard the advice in relation to SPP 3.7.

I would also like to reiterate to Councillors the Precautionary Principle as outlined in SPP 3.7 at 6.11 that states –

*“where a landowner/proponent has not satisfactorily demonstrated that the relevant policy measures have been addressed, responsible decision-makers should apply the precautionary principle to all strategic planning proposals, subdivision and development applications in designated bushfire prone areas. For example, if a landowner/proponent cannot satisfy the performance principles of the relevant policy measures through either the application of acceptable solutions outlined in the Guidelines, or through alternative solutions endorsed by the WAPC and State authority/relevant authority responsible for emergency services, the application may not be approved.”*

**MAY NOT BE APPROVED** not should not be approved.

In this case the proponent has not satisfactorily demonstrated that the relevant policy measures have been addressed so a **RESPONSIBLE DECISION MAKER CANNOT APPROVE THIS DEVELOPMENT APPLICATION.**

By approving this development application, even with the conditions as proposed, I would argue that we would be following the Precautionary Principle and therefore open up the City, and its Ratepayers, to significant litigation should a catastrophic event occur at this site.

Is that a risk that you want to take on behalf of the City and its ratepayers?

### **Condition 7**

In relation to Condition 7 and specifically the measures contained in Section 6; Table 12. One of those conditions is in relation to ember protection.

At the DIS Committee meeting I talked about the cladding underneath the house and asked whether this would be classified as the sub-floor area and whether a suitable non-corrosive metal screen mesh with a maximum aperture of 2mm would need to be installed here. The answer from staff was yes it would. What I failed to bring to everyone’s attention was the fact that 2 LP Gas cylinders were located under the house.

I wish to bring to Councillors attention that in the BAL Assessment Report at Appendix A in the BMP prepared by Bio Diverse Solutions, that on page 18 & 19 of that report is a copy of pages 71 & 72 of the Guidelines for Planning in Bushfire Prone Areas.

On page 19 of the BAL Assessment Report is a section that deals with Standard for Asset Protection Zones in relation to LP Gas Cylinders.

The requirement states “Should be located on the side of a building furthest from the likely direction of a bushfire or on the side of a building where surrounding classified vegetation is upslope, or at least one metre from vulnerable parts of a building”.

The location of the LP Gas Cylinders is not addressed in the BMP. Why? Surely a Level 2 Practitioner should pick that up and I'd suggest a Level 3 Practitioner should too. I'm not qualified, however I am a member of the South Coast Volunteer Bushfire Brigade and I identified that significant risk in seconds of seeing it!!

It is my understanding that the location of the LP Gas Cylinders would need to be addressed as per requirement at point 4 of table 12, i.e. they would need to be relocated

What other discrepancies exist in the BMP? I refer to the confidential attachment to this Alternate Motion for reference.

### **Condition 9**

I would also like you to consider the compliance burden that would be imposed on the Administration in relation to Condition 9 that pertains to Lot 602 Karrakatta Road. The Easement condition includes the Statement "Vegetation to be maintained at a low fuel state AT ALL TIMES". Correspondence from the adjoining landowner indicates they will only agree to 'maintain parkland clearing on an annual/biannual basis', i.e. not maintain in a low fuel state for perpetuity.

It is expected that maintenance will be required more frequently than annually/biannually given the BMP states at Section 5.2.1 APZ Management "that pruning climbing vegetation and trimming and removing dead plants and leaves should occur on a weekly basis and that weeds and woody material should be removed and grasses mowed/slashed on a monthly basis (even more frequently during spring and autumn)."

The landowner has not agreed to the implementation of any legally binding measures referenced in the BMP nor any burden on their property through a S70 notification and easement. The City generally does not support clearance of adjoining properties for bushfire purposes given the significant compliance burden to ensure this property is maintained a low fuel state in perpetuity. If the City applies the condition, the City takes on responsibility for compliance with this condition.

Is that a reasonable condition to be imposed on our staff and efficient use of their time? Once again, if a catastrophic event occurs at the site and it could be shown that the City has not been vigilant in ensuring compliance that once again opens up the City, and its ratepayers, to significant litigation risks. Is that acceptable to you?

One other issue pertains to the conditions imposed on the City in relation to Table 13 of the BMP, including the responsibility for monitoring BMP compliance with a comprehensive list of issues to address. Additionally, the city is required to request updates to the BMP and the BEEP if any aspect of the Holiday House changes. The City may not always be aware of changes to the Holiday House this is therefore an impractical expectation

So weighing all of these issues up plus the sound assessment of the DA by staff contained in the Agenda Report, including the Addendum, I strongly urge all Councillors to accept the advice by our officers and Refuse the application on very solid planning grounds.