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5 June 2023

Dear Mayor, Councillors and CEO,

Kirra Beach Hotel Redevelopment – 2022 Change Application OTH/2022/12

In view of the many issues detailed in this document, in the interests of maintaining public trust in Council, and in the interests of Councillors being protected – we urge Councillors to act in accordance with their legal obligations and REFUSE this other change application OTH/2022/12.

Thank you.

Yours sincerely,

Table of Contents

1. Graphs showing escalation of intensity 41% above 2014 approval 4
   1.1 Height – Building 2 4
   1.2 Height – Building 3 4
   1.3 Beds – Residential density 5
   1.4 Tower footprints m2 5
   1.5 GFA m2 5
2. Site Overlays ignored 6
3. Disregard of Planning Instruments 6
   2005 – Gross Floor Area 5,842m2 6
   2013 – Gross Floor Area 27,157m2 – An increase of 21,315m2 + 365% 6
   2019 – Gross Floor Area 28,405m2 – An increase of 1,248m2 + 5% 6
   2022 – Gross Floor Area 38,306m2 – An increase of 9,901m2 + 35% 6
4. 30 admitted non-compliances claimed as “substantially compliant” 7
5. Information Request of 4 May 2022 documents negative impacts 7
6. Inconsistencies between Information Requests & Recommendation for Approval 7
7. Maximum building height 4 storeys – City Plan 3.3.2.1(9)(a)–(h) 50% uplift 8
8. 2022 Failure to assess buildings 2 and 3 against City Plan 3.3.2.1(9)(a)–(h) 50% uplift 8
9. 2019 Building heights 15–10–4 found “appropriate” 8
10. Massive increases in bulk, mass and scale 9
   Gross Floor Area 9
   Visual impacts 9
   Shadowing impacts 9
11. Visual Impact Assessment – Peer Review – found 2019 application “cannot be justified” 9
12. Floorplate of 1,669m2 refused in 2019, 1,629m2 recommended in 2022 10
13. False comparison with Coolangatta and Airport 10
14. Buildings 1 and 2 not “repeatedly” increased 10
15. Error in engaging City Plan 1.4 Hierarchy of assessment benchmarks 10
16. Disinformation from City officers in relation to assessment of other change application 11
   16.1 The legislation 11
   16.2 Explanatory Note – Example 11
   16.3 Case Law 12
   16.4 “in the context of the development approval” 12
17. 3 key errors made by City officers in assessing and deciding the other change application 12
18. Section 45(5)(b) “other relevant matters” not considered 13
19. Consistency required in the application of the City Plan and decision-making by Councillors 13
20. Council obligation to act as a Model Litigant 14
21. Councillors and City officers obligation to local government principles 14
Conclusion 15
22. Councillors exposed by non-compliance with obligations 15
23. Refuse change application OTH/2022/12 15

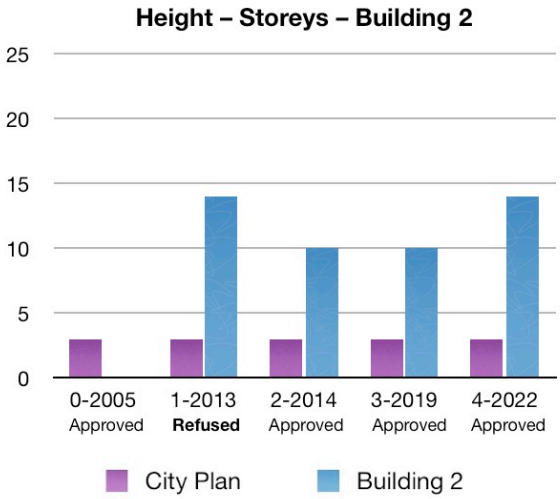
APPENDICES 16
Appendix 1: Comparison of 2019 Approval and 2022 Application and deviation from City Plan 17
Appendix 2: 30 admitted non-compliances claimed as “substantially compliant” 18
Appendix 3: Non-compliances documented in Council Information Request of 4 May 2022 20
1. Negative impacts to the local identity and sense of place 20
2. Negative impacts on adjacent amenity 21
Appendix 4: Inconsistencies between Information Requests & Recommendation for Approval 23
Appendix 5: Assessment against City Plan 3.3.2.1 maximum height uplift 50% 26
2019 building 3 26
2022 buildings 2 and 3 26
Maximum heights 26
Appendix 6: Maximum height increase of 50% in urban neighbourhoods 27
City Plan Strategic Framework 3.3.2.1 27
City Plan 5.3.3 28
Appendix 7: 2019 Building heights 15–10–4 found “appropriate” 29
Appendix 8: Massive increases in bulk, mass and scale 30
Gross Floor Area 30
Visual impacts 30
Shadowing impacts 30
Appendix 9: Visual Impact Assessment – Peer Review – found 2019 application “cannot be justified” 31
Appendix 10: Floorplates 32
1,669m2 refused in 2019 32
1,629m2 recommended for approval in 2022 32
Appendix 11: Disinformation from City officers in relation to assessment 33
Assessing an other change application 33
The Legislation 33
– Section 82(2) 33
– Section 82(4) 33
– Section 45(5) 33
“in the context of the development approval” 34
Explanatory Note 34
– Intent 34
– Example 34
Case Law 35
Appendix 12: Section 45(5)(b) “other relevant matters” in favour of refusal 36
Appendix 13: Planning & Environment Court: Komune decision – development application refused 39

1. Graphs showing escalation of intensity 41% above 2014 approval

These graphs show the 2022 application:

- in all respects exceeds the 2014 approval – *by far*;
- seeks to match the building 2 height of 14 storeys – that was refused in 2013;
- seeks to exceed the beds (residential density) – that was refused in 2013;
- by far exceeds the floorplates that were refused in 2013.

1.1 Height – Building 2



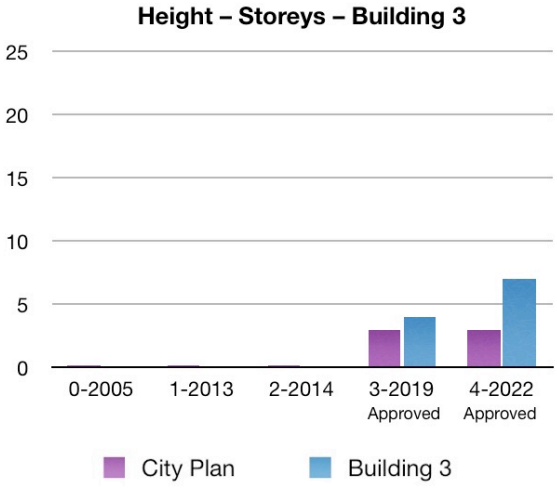
This graph shows:

The 2022 application for 14 storeys:

– returns the height to the 14 storeys – that was refused in 2013;
– exceeds the 2014 approval of 10 storeys;
– exceeds the City Plan of 3 storeys by 11 storeys – 367%.

This is an indicator of the excessive intensity on the site.

1.2 Height – Building 3



This graph shows:

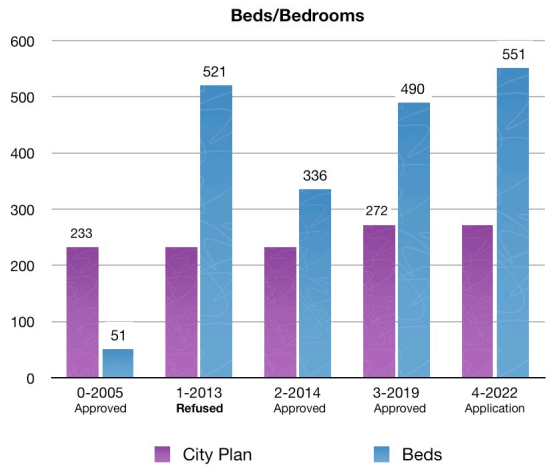
Building 3 did not exist until the 2019 application.

The 2019 approval of 4 storeys was the maximum uplift allowable under the City Plan.

The 2022 application for 7 storeys exceeds the City Plan of 3 storeys by 4 storeys – 133%.

This is an indicator of the excessive intensity on the site.

1.3 Beds – Residential density



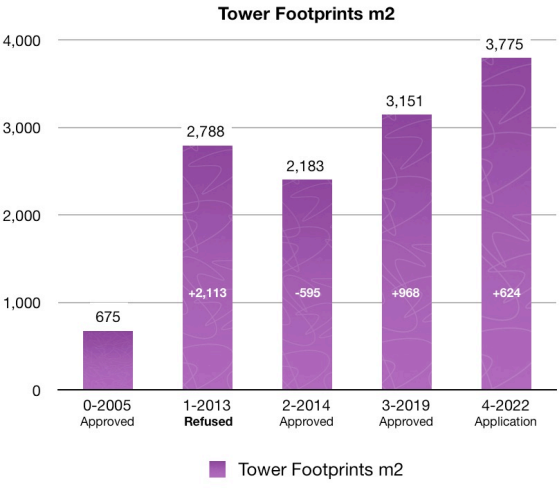
This graph shows:

The escalation of approvals 2014 – 2019 – 2022.

That the 2022 application for 551 beds:
– *exceeds* the 2013 application for 521 beds – *that was refused*;
– *exceeds* the 2014 approval of 336 beds by 185 – 55%;
– *exceeds* the City Plan of 272 beds by 279 – 103%.

This is an indicator of the excessive intensity on the site.

1.4 Tower footprints m^2



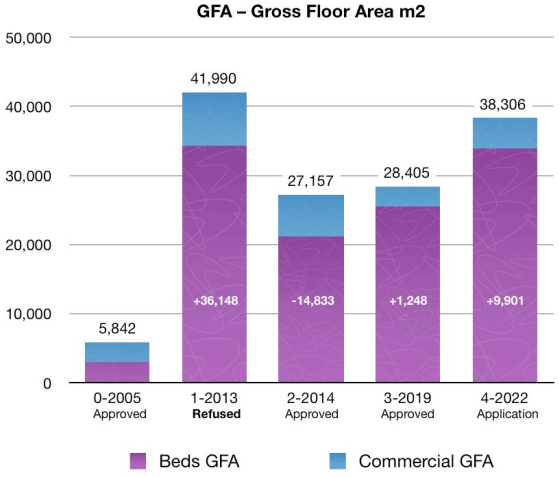
This graph shows:

The escalation of approvals 2014 – 2019 – 2022.

That the 2022 application with a footprint of 3,775m^2:
– exceeds the 2014 approval of 2,183m^2 by 1,592m^2, 73%;
– exceeds the 2013 application – *that was refused* – by 36%.

This is a further indicator of the excessive intensity on the site.

1.5 GFA m^2



This graph shows:

The escalation of approvals 2014 – 2019 – 2022.

That the 2022 application with a GFA 38,306m^2:
– exceeds the 2014 approval of 27,157m^2 by 11,149m^2 – 41%;
– exceeds the 2019 approval of 28,405m^2 by 9,901m^2 – 35%.

Is only 3,684m^2 less than the 2013 application – *that was refused*.

Again this is an indicator of the excessive intensity on the site.

2. Site Overlays ignored

1. City officers admit to the following overlays relevant to the site:

   (i) At all relevant times the site has had a Building height overlay map of 3 storeys–15 metres.

   (ii) At all relevant times the site has had a Residential density overlay map of 1 bed per 33m^2.

To ignore the site overlay maps does not reflect Local Government Principles.

3. Disregard of Planning Instruments

2005 – Gross Floor Area 5,842m^2

2. In 2005 the previous developer lodged a material change of use MCU/2200426:
   Building 1 was approved at 7 storeys – 233% above the City Plan
   – but with a tower footprint of only 675m^2.

   Residential density was approved at 1 bed per 150m^2 – 51 beds, 68% *below* the City Plan of 160.

2013 – Gross Floor Area 27,157m^2 – An increase of 21,315m^2 + 365%

3. In 2013 the developer lodged a material change of use MCU/2013/355:
   Building 1 was approved at 15 storeys – 400% above the City Plan;
   Building 2 was approved at 10 storeys – 233% above the City Plan;
   – with a combined footprint of 2,401m^2 – an increase of 1,726m^2 and 256%.

   Residential density was approved at 1 bed per 22m^2 – 336 beds, 44% above the City Plan of 233.

   This 2013 approval was an *extreme* departure from the Planning Scheme 2003. It should never have been approved.

2019 – Gross Floor Area 28,405m^2 – An increase of 1,248m^2 + 5%

4. In 2019 the developer lodged the change application OTH/2019/14:
   Buildings 1 and 2 at 15 and 10 storeys did not change.
   – Given the 2013 approval these heights were, and are, 'protected.'
   Building 3 was added at 4 storeys – including the 50% uplift under City Plan 3.3.2.1(9) and 3.3.2.1(10).
   – the combined footprint now 3,151m^2 – an additional increase of 750m^2 and 111%.

   Residential density was increased to 1 bed per 18m^2 – 490 beds, 80% above the City Plan of 272.

   This 2019 approval was a *further* departure from the City Plan 2016. Though the height uplift of building 3 to the maximum of 4 storeys was assessed under the City Plan.

2022 – Gross Floor Area 38,306m^2 – An increase of 9,901m^2 + 35%

5. In 2022 the developer lodged the current change application OTH/2022/12:
   Building 1 is now approved at 16 storeys (under delegated authority) – 433% above the City Plan;
   Building 2 seeks to increase from 10 to 14 storeys – 367% above the City Plan;
   Building 3 seeks to increase from 4 to 7 storeys – 133% above the City Plan;
   – the combined footprint now 3,799m^2 – an additional increase of 648m^2 and 96%.

   Residential density seeks to increase to 1 bed per 16m^2 – 551 beds, 103% above the City Plan of 272.

   This 2022 change application is an *even further* departure from the City Plan 2016.
   Neither building 2 or 3 have been assessed against the 50% uplift under City Plan 3.3.2.1(9) and (10).

6. Adding to the residential density of the site is retail/commercial density approved in 2019 at 2,883m^2. The 2022 change application seeks an additional 1,477m^2 – an additional 51% – for a total of 4,360m^2.
7. Adding to the intensity of the site is the lack of communal open space. The development requires 10,750m^2 of communal open space but only 2,505m^2 has been provided – a mere 23% of the City Plan.
8. All this adds up to a cumulative and massive overdevelopment of the site.
9. The increase in gross floor area over the 2019 approval is 35% – an additional 9,901m^2 – increasing the gross floor area from 28,405m^2 to 38,306m^2. This is a staggering increase, and again, a massive overdevelopment.
10. A "Comparison of 2019 Approval and 2022 Application and deviation from City Plan" is attached at Appendix 1.

Approvals in disregard of the City Plan are not consistent with Local Government Principles.

4. 30 admitted non-compliances claimed as "substantially compliant"

11. The Recommendation to Planning by City officers on 20 April 2022 falsely claim the development is "substantially compliant" with the City Plan – yet confirms the development does not comply with at least 30 assessment benchmarks.

This is inconsistent with Local Government Principles.

Full details are attached at Appendix 2.

5. Information Request of 4 May 2022 documents negative impacts

12. The Council Information Request of 4 May 2022 admits and documents multiple non-compliances with the City Plan in relation to, but not limited to:
    (i) Negative impacts on local identity and sense of place;
    (i) Negative impacts on adjacent amenity.
13. The Recommendation of 20 April 2023 simply ignored the multitude of negative impacts.
14. The contrast and inconsistencies between the Information Requests and the Recommendation are clear and undeniable.

This dismissal of admitted non-compliances is inconsistent with Local Government Principles.

Full details attached at Appendix 3.

6. Inconsistencies between Information Requests & Recommendation for Approval

15. City officers documented numerous non-compliances with the City Plan in Information Requests of 4 May 2022 and 5 December 2022. Their Recommendation of 20 April 2023 simply ignored them. The contrast and inconsistencies between the Information Requests and the Recommendation are clear and undeniable.

This is inconsistent with Local Government Principles.

Full details attached at Appendix 4.

7. Maximum building height 4 storeys – City Plan 3.3.2.1(9)(a)–(h) 50% uplift

16. City officers admitted in their Information Request of 4 May 2022:

> "(10) Increases in building height, beyond 50% above the Building height overlay map, are not anticipated in urban neighbourhoods."

17. This was further admitted by City officers in their Recommendation of 20 April 2023.
18. This results in a maximum uplift of 1 storey – from 3 storeys to a maximum of 4 storeys.
19. City officers have completely ignored the maximum 50% height uplift in recommending Building 2 at 14 storeys and Building 3 at 7 storeys.

This is inconsistent with the City Plan, and with Local Government Principles.

Full details attached at Appendix 5 and 6.

8. 2022 Failure to assess buildings 2 and 3 against City Plan 3.3.2.1(9)(a)–(h) 50% uplift

20. The new building 3 in the 2019 application was assessed against the City Plan 3.3.2.1(9)(a)–(h) and found to meet all the criteria which must be met in order qualify for the height uplift, of a *maximum* of 50%, taking it from 3 storey to 4 storey. This is the maximum allowable under the City Plan for Urban Neighbourhoods.
21. In relation to the 2022 application buildings 2 and 3 *were not assessed against the City Plan 3.3.2.1(9)(a)–(h)*.
22. In any event building 2 at 14 storeys and building 3 at 7 storeys are not permissible under the City Plan, 3.3.2.1(10).

This is inconsistent with the City Plan, and with Local Government Principles.

Full details attached at Appendix 5 and 6.

9. 2019 Building heights 15–10–4 found "appropriate"

23. In 2019 Building 3 approved with the 50% uplift to 4 storeys creating a 15–10–4 storey tower profile was found to:
    - provide "graduation" "transition" and "variation;"
    - "respect the sense of open space;"
    - be "appropriate scale, amenity and privacy;"
    - "minimise visual impact on the street;"
    - "consider the adjacent neighbourhood scale as well as the topography of the landscape."
24. The 2022 application creating a 15–14–7 storey tower profile with a 35% increase in the intensity of the development, cannot continue to meet these standards.

In these circumstances, for the 2022 application to be recommended is not consistent with Local Government Principles.

Full details at Appendix 7.

10. Massive increases in bulk, mass and scale

Gross Floor Area

While gross floor area (GFA) is not a benchmark under the City Plan, changes in GFA reflect increases in the intensity, bulk, mass and scale of the development.

- Overall increase in GFA from 28,405m^2 to 38,306m^2 – a massive increase of 9,901m^2 – 35%.
- Building 2 increase in GFA from 8,173m^2 to 14,165m^2 – a massive increase of 5,992m^2 – 73%.
- Building 3 increase in GFA from 1,011m^2 to 1,083m^2 – a massive increase of 1,542m^2 – 44%.
- Retail/commercial increase in GFA from 2,883m^2 to 4,360m^2 – a massive increase of 1,477m^2 – 51%.

Visual impacts

- These increases have impacts on visual amenity, local character, sense of place and sensitivity to neighbours.

Shadowing impacts

- The bulk, mass and scale of proposed building 2 produce additional shadowing impacts on neighbours on the south side of Musgrave Street. At worst, this leaves them in shade until 3pm in the afternoon in winter.

These are unacceptable impacts on amenity, especially in view of the fact that the impact is not supported by the City Plan.

This is not consistent with Local Government Principles.

More details at Appendix 8.

11. Visual Impact Assessment – Peer Review – found 2019 application "cannot be justified"

25. With the applications of 2013, 2019 and 2022 the developers provided Visual Impact Assessments. The City officers commissioned Peer Reviews of each.
26. The Peer Review conducted by Insight Design and Assessment Services dated 31 July 2019 was *not favourable*, confirming the development:
    - is "offset from the local spine of development means that it will be visually prominent and at odds with the existing structure in the area;"
    - is a "built form intensity or scale that is at odds with the character of the area;"
    - "the increases in bulk cannot be justified;"
    - "represent(s) noticeable and impactful increases over the existing development outcome;" and
    - is in "conflict" with the "built form that is of a scale and intensity appropriate for the zone and locality and that complements the surrounding neighbourhood" and "cannot be justified."
27. In spite of this, City officers recommended and Council approved the 2019 application.

This is not consistent with Local Government Principles.

Full details at Appendix 9.

12. Floorplate of 1,669m^2 refused in 2019, 1,629m^2 recommended in 2022

28. In 2019 City officers refused a floorplate of 1,669m^2 that:
    - "would result in a significant visually dominant and bulky appearance;"
    - "does not reinforce the character, urban legibility and built form along the Musgrave Street and Marine Parade foreshore area;"
    - "would not achieve the desired intended aim under the Strategic framework section 3.4.1 (8) as the dominant bulky form does not reinforce the urban legibility, does not reinforce the existing built form scale and does not provide a sensitive transition to nearby residential areas."
29. Yet, in 2022 (2023) City officers recommend a floorplate of 1,629m^2, and an increase in the intensity of the overall development by 35%.
30. What was unacceptable in 2019, remains unacceptable in 2022 (2023).

This is inconsistent with Local Government Principles.

Full details attached at Appendix 10.

13. False comparison with Coolangatta and Airport

31. City officers falsely compare the KBH development to development in Coolangatta, a Major Regional Centre, and the development around the Airport. This is false and disingenuous:
    (i) Kirra is geographically separate from both these areas;
    (ii) Kirra is a "neighbourhood centre" and not "major regional centre;"
    (iii) Kirra overlays are purposely and specifically aligned with the neighbourhood centre that is Kirra;
    (iv) Kirra is specifically designated as having its' own local identity and sense of place – which is separate and distinct from the other areas noted.
    (v) It is not in accordance with the City Plan assessment for neighbourhood centres.

This argument by City officers does not reflect Local Government Principles.

14. Buildings 1 and 2 not "repeatedly" increased

32. City officers falsely advised Councillors of "repeated" increases to building heights. This is false.
    (i) Buildings 1 and 2 at 15 and 10 storeys *were approved in 2013*. These building heights were *not* in accordance with the (then) Planning Scheme 2003 (3 storey–15 metres).
    (ii) Buildings 1 and 2 at 15 and 10 storeys *did not change* as part of the 2019 change application.
    (iii) Buildings 1 and 2 have *not* been *repeatedly* increased. They were increased only once, in 2013.
    (iv) Building 2 now seeks to increase from 10–14 storeys, increasing gross floor area by 5,992m^2, a massive 73%.

This disinformation is inconsistent with Local Government Principles.

15. Error in engaging City Plan 1.4 Hierarchy of assessment benchmarks

33. City officers have engaged the Hierarchy of assessment benchmarks in overriding development codes, use codes, zone codes and overlays. This is an error.

34. The overriding of assessment benchmarks is only permitted "where there is inconsistency between provisions within the City Plan."

35. Since there are no inconsistencies in relation to the administering of the City Plan for this application, there are no grounds to trigger the overriding of assessment benchmarks under City Plan 1.4 Hierarchy of assessment benchmarks.

16. Disinformation from City officers in relation to assessment of other change application

36. City officers admitted the other change application OTH/2022/12 must be assessed in accordance with sections 82(2), 82(4) and 45(5). This is supported by an Explanatory Note, and case law.

37. Despite the above, City officers *repeatedly* in their Recommendation, and in their advice to Councillors in the Planning Meeting of 20 April 2023 advised Councillors they were required to make their assessment against a single phrase "in the context of the existing approval."

16.1 The legislation

38. Section 82(2)(a)(ii) in "assessing and deciding the change application in the context of the development approval, the relevant provisions apply as if the change application were the original development application, with the changes included, but was made when the change application was made; and" section 82(2)(b) "with necessary changes."

39. Section 82(4) "it is declared that the following matters apply, only to the extent the matters are relevant to assessing and deciding the change application in the context of the development approval:"

    (i) the assessment benchmarks;
    (ii) referral agency matters under section 55(2);
    (iii) …
    (iv) if impact assessment, matters under section 45(5)(a)(ii) and (b).

40. s45(5)(a)(ii) assessment *must* be carried out against or having regard to 'matters prescribed by regulation;' &

41. s45(5)(b) assessment *may* be carried out against or having regard to 'any other relevant matter.'

16.2 Explanatory Note – Example

42. The Explanatory Note provides an example:

> "For example, if there is a development approval for a 10 storey building, and an applicant seeks to change the approval to add a further 2 storeys, the additional 2 storeys is intended to be assessed in the context of a 10 storey building, against the assessment benchmarks relevant to a 12 storey building in that locality."

In relation to the current change application OTH/2022/12, this means—

43. In relation to building 2 – which has a current approval for 10 storeys and seeks another 4:

> If there is a development approval for a 10 storey building, and the applicant seeks to change the approval to add a further 4 storeys, the additional 4 storeys is intended to be assessed in the context of a 10 storey building, against the assessment benchmarks relevant to a 14 storey building in that locality.

44. In relation to building 3 – which has a current approval for 4 storeys and seeks another 3:

If there is a development approval for a 4 storey building, and the applicant seeks to change the approval to add a further 3 storeys, the additional 3 storeys is intended to be assessed in the context of a 4 storey building, against the assessment benchmarks relevant to a 7 storey building in that locality."

16.3 Case Law

45. In *Catterall & Ors v Moreton Bay Regional Council & Anor* [2020] QPEC 52, Williamson QC DCJ in the Planning and Environment Court of Queensland, laid out the meaning of the phrase "in the context of the development approval:"

> "[42] … An important contextual change is identified in ss 82(2) and (4) of the PA. Both of these provisions include the phrase *'in the context of the development approval'*. The purpose of this phrase is to make clear that the assessment and decision making process occurs in the context that the application is one to change an existing development approval, as distinct from a fresh development application. In practical terms, this means the assessment and decision making process for a change application under s 82 of the PA is founded upon, but not limited to[1]:
>
> (a) an identification of the change/s proposed to the development approval;
>
> (b) an identification of the planning issues, be they positive or negative, arising for consideration as a consequence of the change/s proposed to the development approval; and
>
> (c) an assessment of the planning issues arising as a consequence of the change/s to the development approval, having regard to the requirements of the 'relevant provisions'[2], and assessment benchmarks[3], to the extent they are relevant."

46. The case law is clear, the phrase *'in the context of the development approval'* is relevant to determining the change/s between the existing approval and the proposed application. The aspects of the development that result in changes are then assessed in accordance with the legislation, the Explanatory Note, and case law.

16.4 "in the context of the development approval"

47. Yet in their Recommendation, and at the Planning Committee Meeting of 20 April 2023, they *repeatedly* misrepresented that the decision must be made "in the context of the development approval."

- They repeatedly reduced the entirety of the assessment process to the single phrase;
- They repeatedly misrepresented the meaning of the phrase;
- They did not provide the true meaning of the phrase detailed in an Explanatory Note, and in case law.

This is inconsistent with Local Government Principles.

Full details attached at Appendix 11.

17. 3 key errors made by City officers in assessing and deciding the other change application

48. City officers made these 3 key errors in making their Recommendation, and advising Councillors as to their obligations under the legislation in relation to assessing and deciding the other change application.

Error 1:

1 For example s 82(4)(d) of the PA may require '*relevant matters*' to be considered.

2 s 82(2) of the PA.

3 s 82(4)(a) of the PA.

City officers advised Councillors the change application *must* be assessed "in the context of the development approval." This is a misrepresentation. It is false. The change application must be assessed under section 82(2), 82(4) and 45(5), as specified in the legislation, Explanatory Note and case law.

Error 2:

City officers advised Councillors the changes "*must"* be assessed against any "other relevant matter." This is false. The change application "*may*" have regard to 'any other relevant matter,' section 45(5)(b).

Error 3:

City officers advanced one "other relevant matter" in favour of the *approval* – the existing approval of building 2 above the City Plan; and failed to advance "other relevant matters" in favour of *rejection*.

49. The Recommendation of 20 April 2023 prepared by City officers based on these errors was flawed.
50. The advice given by City officers to Councillors in the Planning Meeting of 20 April 2023 based on these errors was flawed.
51. The resulting decision of the Planning Committee to approve the Other Change Application OTH/2022/12 was flawed.

This is inconsistent with Local Government Principles.

18. Section 45(5)(b) "other relevant matters" not considered

52. City officers claimed an "other relevant matter" in favour of *approval* to be considered under section 45(5)(b) being the existing approval of buildings 1 and 2 at 15 and 10 storeys respectively.
53. City officers failed to consider *numerous* "other relevant matters" in favour of *refusal* to be considered under section 45(5)(b).

Full details of "other relevant matters" in favour of *refusal* are provided in Appendix 12.

19. Consistency required in the application of the City Plan and decision-making by Councillors

54. Councillors are required to act consistently in the application of the City Plan and in their decision-making. How can it be considered consistent that Council:

- Refuses a partial third storey "entertaining space with powder room, bar and outdoor roof terrace" at 19 Lakefield Crescent, Paradise Point; and
- Withdraws from litigation in the Planning and Environment Court in the Komune case.

Then reverses, and

- Approves the massive overdevelopment of the Kirra Beach Hotel site as discussed in this document.

This does not reflect consistency in the application of the City Plan, and Local Government Principles.

More details at Appendix 13.

20. Council obligation to act as a Model Litigant

55. Model Litigant Principles legislation, issued by the Queensland Government Department of Justice and Attorney-General, requires Councils to act consistently in their assessment and decision-making.

56. In view of Councils refusal in relation to 19 Lakefield Crescent, Paradise Point, and the withdrawal from litigation in relation to Komune, Coolangatta, the consistent decision is to refuse this application.

21. Councillors and City officers obligation to local government principles

57. The *Local Government Act 2009* (LGA) creates clear obligations for Councillors, local government employees and councillor advisors in carrying out their responsibilities.

58. Section 4(2) sets out the five core local government principles that ***must*** be followed by Councillors and City officers:

> (2) The local government principles are—
>
> (a) transparent and effective processes, and decision-making in the public interest; and
>
> (b) sustainable development and management of assets and infrastructure, and delivery of effective services; and
>
> (c) democratic representation, social inclusion and meaningful community engagement; and
>
> (d) good governance of, and by, local government; and
>
> (e) ethical and legal behaviour of councillors, local government employees and councillor advisors.

59. According to the Code of Conduct for Councillors, these contribute to a stable, transparent and ethical decision-making process. They form the basis of the public trust in local government.

Conclusion

22. Councillors exposed by non-compliance with obligations

60. Councillors acted on the disinformation from City officers both in the Recommendation and in the advice from City officers at the Planning meeting of 20 April 2023 – in making their decision to approve the change application OTH/2022/12. This included:

- The 3 key errors;
- Recommendation for approval despite 30 admitted non-compliances;
- Recommendation for approval despite admitted *further* non-compliances with City Plan – in particular in relation to height, residential density, and lack of communal open space;
- Recommendation for approval despite conflict with 2019 admissions and recommendations – in particular in relation to floorplates, building height graduation, transition, variation and amenity;
- Recommendation for approval despite conflict with 2019 Peer Reviews of Visual Impact Assessments;
- Disregarding of admitted non-compliances in Information Requests;
- Failure to act in accordance with legislation for assessing "other change applications;"
- Failure to act in accordance with the Explanatory Note;
- Failure to act in accordance with case law;
- Failure to act in accordance with the City Plan;
- Failure to act consistently in administering the City Plan;
- Failure to act in accordance with Model Litigant Principles;
- Failure to administer the City Plan in accordance with Local Government Principles.

61. Councillors are exposed as a result of disinformation from City officers, since they have failed to make their decision in accordance with their legal obligations under sections 82(2), 82(4) and 45(5) of the *Planning Act 2016*, and in accordance with Local Government Principles under section 4(2) of the *Local Government Act 2009*.

23. Refuse change application OTH/2022/12

In view of the many issues detailed in this document, in the interests of maintaining public trust in Council, and in the interests of Councillors being protected – we urge Councillors to act in accordance with their legal obligations and REFUSE this other change application OTH/2022/12.

Thank you.

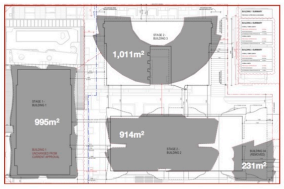
APPENDICES

Appendix 1: Comparison of 2019 Approval and 2022 Application and deviation from City Plan

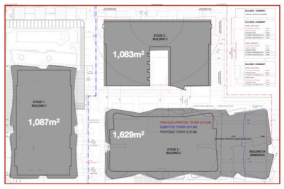
Kirra Beach Hotel Redevelopment – Change Application OTH/2022/12

#	Change	City Plan	2019 Approval	2022 Application	Increase/ (Decrease)	Increase/ (Decrease) %	Over/ (Under) City Plan
1	**Increase in Residential density**	1 bed per 33m²	1 bed per 18m²	1 bed per 16m²			
	– Number of beds	272	490	551	61	12.4%	103%
2	**Enlargement of all buildings 1–3**		28,405m²	38,306m²	9,901m²	35%	
3	**Enlargement of building 2–3:**		14,904m²	23,568m²	8,664m²	58%	
1	Increase in height building 2	3 storey (15 metres)	10 storey	14 storey	4 storey	40%	367%
2	Increase in height building 3	3 storey (15 metres)	4 storey	7 storey	3 storey	75%	133%
3	Increase in floorplate building 2	750m²	914m²	1,629m²	715m²	78%	117%
4	Increase in floorplate building 3	750m²	1,011m²	1,083m²	72m²	7%	44%
5	Gross Floor Area building 2		8,173m²	14,165m²	5,992m²	73%	
6	Gross Floor Area building 3		3,501m²	5,043m²	1,542m²	44%	
7	Increase in Retail/Commercial		2.883m²	4,360m²	1,477m²	51%	
8	Increase in Car Parks		538	621	83	15%	
9	Decrease in Separation B1 & B2	25m²	12m²	12m²	-0m²	0%	-52%
10	Decrease in Separation B2 & B3	25m²	13m²	10m²	-3m²	-23%	-60%
11	Decrease Communal Open Space 2019	9,889m²	3,471m²		-6,418m²		-65%
12	Decrease Communal Open Space 2022	10,750m²		2,505m²	-8,200m²		-77%
*	**Existing approval building 1**	3 storey (15 metres)	16 storey				433%
*	**Existing approval building 2**	3 storey (15 metres)	10 storey				233%

Increases in floorplates: 2019 & 2022



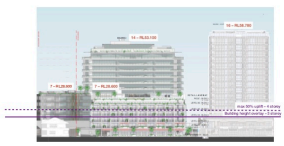
2019 APPROVAL | Footprint 3,151m² +750m²



2022 APPLICATION | Footprint 3,799m² +648m²

North elevations Marine Parade: 2019 & 2022

2019 APPROVAL | NORTH Elevation Marine Parade



2022 APPLICATION | NORTH Elevation Marine Parade

South elevations Musgrave Street: 2019 & 2022

2019 APPROVAL | SOUTH Elevation Musgrave St

2022 APPLICATION | SOUTH Elevation Musgrave St

PLEASE, VISIT OUR FACEBOOK PAGE FOR THE LATEST INFORMATION:
Kirra Beach Hotel Redevelopment Revealed

Appendix 2: 30 admitted non-compliances claimed as "substantially compliant"

The Recommendation to Planning by City officers on 20 April 2022 falsely claim the development is "substantially compliant" with the City Plan – yet confirms the development does not comply with at least 30 assessment benchmarks:

Neighbourhood centre zone code:

(i) AO1/PO1 – Setbacks;

(ii) AO3/PO3 – Height – 3 storey (15 metres) – Approved 16–10–4: Application 16–14–7;

(iii) AO4/PO4 – Density (residential) – 1 bed per 33m^2 – Approved 1/18m^2: Application 1/16m^2;

(iv) AO10/PO10 – Land use – serves day-to-day needs of "immediate neighbourhood." Application: tourist accommodation units and hotel.

High-rise accommodation design code:

(v) AO1/PO1 – Tower base (podium) – heights and setbacks;

(vi) AO4/PO4 – Tower form design – tower floor plate 750m^2. Application 1,629m^2 & 1,083m^2; failure to provide slender tower form;

(vii) AO5/PO5 – Tower form design – towers separated by min. 25m. Application 12m & 10m;

(viii) AO8/PO8 – Tower cap design – no tower cap provided;

(ix) AO9/PO9 – Tower cap design – no integration of services into tower cap;

(x) AO10/PO10 – Housing need and choice – no mix of housing affordability;

(xi) AO15/PO15 – Services – services, utilities not hidden from public view.

Multiple accommodation code:

(xii) AO4/PO4 – Design and appearance – building form, orientation and articulation does not promote subtropical design excellence and innovation;

(xiii) AO6/PO6 – Ground floor and entry requirements for buildings with 3 or more storeys – easily identifiable and built to a human scale;

(xiv) AO7/PO7 – Privacy – building is not designed to achieve an acceptable level of privacy;

(xv) AO10/PO10 – Communal open space – required 10,750m^2; provided 2,505m^2 only 23%;

(xvi) AO13/PO13 – Car park areas;

(xvii) AO16/PO16 – Housing need and choice – does not provide mix of affordability.

Commercial design code:

(xviii) AO2/PO2 – Design and appearance – not visually varied and interesting;

(xix) AO3/PO3 – Design and appearance – not sensitively placed;

(xx) AO7/PO7 – Car parking;

(xxi) AO9/PO9 – Amenity – services and loading areas not screened from public areas;

(xxii) AO10/PO10 – Land use – insufficient flexible reuse;

(xxiii) AO11/PO11 – Land use – insufficient active uses.

General development provisions code:

(xxiv) AO1/PO1 – Amenity protection – does not mitigate negative effects to amenity;

(xxv) AO2/PO2 – Amenity protection – does not prevent loss of amenity, visual amenity, shadowing, traffic, hours of operation, noise;

(xxvi) AO6/PO6 – Casual surveillance and lighting;

(xxvii) AO8/PO8 – Shadow impacts – for all development 3 or more storeys.

Transport code:

(xxviii) AO1/PO1 – Car parking

(xxix) AO10/PO10 – Bicycle parking

(xxx) AO22/PO22 – Integrated transport and land use

Amenity non-compliance includes:

– Business hours 6am–10pm. Approved 6am–3am 7 days per week – in a neighbourhood zone;

– Shadowing – in particular on neighbours to the south, who in winter will not be free of shade until 3pm in the afternoon – as a result of the additional 4 storeys to building 2;

These are 30 specific and significant non-compliances. For City officers to claim the development is "substantially compliant" in the face of these 30 specific and significant non-compliances is a gross misrepresentation.

Appendix 3: Non-compliances documented in Council Information Request of 4 May 2022

The Council Information Request of 4 May 2022 admits and documents the following non-compliances with the City Plan including, but not limited to:

1. Negative impacts on local identity and sense of place;
2. Negative impacts on adjacent amenity.

1. Negative impacts to the local identity and sense of place

"City officers note the submission of a Visual Impact Assessment, prepared by Interplan, dated March 2022 ('the VA Report'). The VA Report contends that, notwithstanding the differences in form and appearance of proposed Building 2 compared to the approved Building 2, the proposed development will not result in a significantly different outcome (at the neighbourhood scale) with respect to its legibility, bulk, and scale.

City officers disagree with this finding. A review of the visualisations included in the VA Report show that:

- Building 2 will be noticeably closer to apartments to the south-east, and will obstruct views past the site, reducing the permeability of the skyline;
- when viewed from the north-east, north, or east, the proposed development presents as a far more intense outcome; and
- While proposed Building 3 has a substantially different form to the previously approved form, in isolation, the changes to the form and scale do not result in significant changes in terms of the character of the area as would be observed at a neighbourhood scale. The changes do however contribute to an apparent increase in the intensification of the development as a whole.

City officers believe that, in general terms the changes proposed will be obvious and will result in less compatibility with the character of the area.

Pursuant to the above, City officers raise the following concerns with impacts to the local identity and sense of place:

- The proposed changes to the built form result in reduced compatibility with the built form character of the local area. The greater height and bulk of Buildings 2 and 3 combined with some reductions in setbacks and reduced separation distances results in reduced distinction of each building form, reduced permeability of built form and an impression of a greater overall intensity of built form on the site. This impact would be most apparent to people approaching and passing the site from the north, north-east, or east.
- The continuous building length of Building 2 at 72 metres for Levels 1 to 6 is considered excessive and monolithic. It is likely to result in an urban wall effect to the neighbouring apartments located opposite the site on Musgrave Street. The increase in impact is significant, noting the originally approved length of Building 2 was approximately 50 metres. The reasonable building length of 50 metres afforded an appropriate scale in proportion to the site and provided a clear visual break and north-south views corridors for the adjoining neighbours.
- City officers are concerned the amended form for Building 2 and Building 3 will create an overly dominant and bulky appearance that does not respect the envisaged pattern of development and does not contribute to the desired character of Kirra Beach. In addition, the combined development of Building 1 and the increased intensity of Building 2 and 3 on the amalgamated site, results in a cumulative impact to the overall development site with an overbearing and concentrated intensity.

- The proposed height for Building 2 is 3 levels lower than Building 1 and does not provide distinct visual differentiation or the desired transitional height over the site. The variation in height for each building over the development site is important to ameliorate the visual dominance and intensity and to provide a varied skyline. It is also important to provide a transition in height to Kirra Hill and nearby residential areas, with lower building heights.

The proposed changes are expected to results in an overbearing scale, intensity and bulk that does not achieve the envisaged local identity or sense of place. The proposed changes are considered to result in non-compliance with the following assessment benchmarks:

- Specific Outcome 3.3.2.1(8) – The noticeable increase in height of Building 2 and 3 represents a further departure from the building height pattern and desired future appearance reflected in the Building height overlay map. The greater height of Building 2 also results in a more distinct contrast in building height between the proposed development and land to the south and east, where no such contrast is sought by the Building height overlay map.
- Specific Outcome 3.3.2.1 (9) and (10) – Increases in building height, beyond 50% above the Building height overlay map, are not anticipated in Urban neighbourhoods. While the previous approval did not satisfy these provisions, the greater height of proposed Building 2 and 3 results in further departure from these provisions.
- Specific outcome 3.4.5.1 (5) – The proposed increases to building height are not considered to complement the function and desired future appearance of the neighbourhood.
- Overall Outcome 6.2.5.2(2)(b)(vii) of the Neighbourhood centre zone code – The proposed changes are not consistent with the intended outcomes for building form/city form and do not represent desirable building height patterns.
- Overall Outcome 9.3.10.2(2)(b) of the High-rise accommodation code – The proposed changes do not present a slender design outcome nor do they enhance the views of the city skyline.
- Overall Outcome 9.3.10.2(2)(c) of the High-rise accommodation code – The proposed changes do not mitigate negative visual and physical impacts.
- Performance outcome PO4 and PO5 of the High-rise accommodation code (slender tower forms, and mitigate negative visual and physical impacts with setbacks and design).
- Performance outcome PO2 / Overall Outcome 9.4.4.2(2)(a) of the General development provisions code (maintain expected levels of amenity).

Note: Please note the above list is not exhaustive.

To address the above concerns, City officers recommend a reduction in the scale and intensity of Buildings 2 and 3 to achieve more compact and slender tower forms. The applicant is suggested to consider a reduced floor plate and reduced height, to achieve a more balanced built form that is proportionate to the site context. These improvements will promote a more desirable built form outcome with a sense of openness and sky views, and achieve a reinforced local identity and sense of place."

City officers admit and document negative impacts on adjacent amenity.

2. Negative impacts on adjacent amenity

"Within the submitted VA Report and Planning Report, commentary is provided regarding the acceptability of impacts the proposed changes will have on surrounding residents.

City officers consider the magnitude of impacts to surrounding residents to the east and south would be moderate-high, because the views available will be substantially narrowed, but not obstructed entirely.

The VA Report contends that such impacts are not unreasonable as they are consistent with the intensification of the area anticipated by the planning scheme. No further explanation of this contention is provided within the VA Report.

City officers disagree the findings in the VA Report and the Planning Report regarding impacts to adjacent amenity. The visualisations provided in the VA Report indicate the additional height combined with the additional length and reduced setbacks from the south result in a noticeably larger building that will be obvious to neighbouring residents. The changes proposed, to Building 2 in particular, demonstrates increased amenity impacts for surrounding residents. The proposed changes result in reduced compliance with the following assessment benchmarks:

- Specific outcome 3.4.5.1(8)(g) – The proposed changes do not maintain the reasonable amenity expectations of nearby residents.
- Overall Outcome 6.2.5.2(2)(b)(vii) of the Neighbourhood centre zone code – The proposed changes result in unreasonable amenity impacts to adjoining residential development.
- Overall Outcome 9.3.10.2(2)(a) of the High-rise Accommodation Design Code – The proposed changes do not protect the amenity of neighbouring residential premises.
- Performance outcome PO2 / Overall Outcome 9.4.4.2(2)(a) of the General development provisions code – Development is designed to maintain the expected level of amenity for the area.

Note: Please note the above list is not exhaustive.

In order to achieve well managed interfaces and provide reasonable amenity outcomes for nearby neighbours, City officers recommend a reduction in the scale and intensity of Building 2. This will allow an appropriate scale and form which maintains separation distances for amenity and privacy as well as improve view corridors through the site and reduce an adverse urban wall outcome. These improvements will promote a more desirable built form outcome with a sense of openness and sky views."

None of these non-compliances were resolved by the developer.

Question:

How is it possible that all these negative impacts admitted and documented by City officers can be swept aside and replaced with nebulous claims of benefits to tourism and making the Gold Coast a world-class city in order to "justify" approval?

In any event:

1. the 2019 approval already benefits tourism, and the Gold Coast as a world-class city, and
2. tourism is not a specified land use for the Kirra neighbourhood or for the subject site.

Where is the compliance with the City Plan and Local Government Principles required by City officers and Councillors?

Appendix 4: Inconsistencies between Information Requests & Recommendation for Approval

City officers documented numerous non-compliances with the City Plan in Information Requests of 4 May 2022 and 5 December 2022. Their Recommendation of 20 April 2023 simply ignored them. The contrast and inconsistencies between the Information Requests and the Recommendation are clear and undeniable.

Non-compliances: Information Request: 4 May 2022

1. Impacts on local identity and sense of place—

- Greater departure from key City Plan provisions:
  - – building height;
  - – maintaining amenity expectations;
  - – limiting impacts on neighbouring residential amenity, particularly outlook and shadowing;
  - – slender towers to provide an open skyline;
  - – enhance views of the city skyline;
- extent of existing departures not a reason for even further non-departures;
- building height overlay map remains relevant;
- 3.3.2.1(8) (9) (10) maximum uplift of 50% in *limited* circumstances *may* be allowed if *all* criteria met;
- approved development already achieves 'a more intensive outcome;'
- significant worsening of development impacts;
- slender tower design is required;
- extent and degree of impact on character and amenity protection;
- intensification of impact too great;
- reduced scale and intensity required;
- Kirra Beach forms its own unique and distinct locality with defining features such as the Kirra Beach foreshore and Kirra Hill;
- to the west the mapped building height is 29 metres (the highest for the neighbourhood), moving to the east heights are intended to taper to lower intensity built forms proximate to Kirra Hill;
- approved building height (16 storeys) already significantly exceeds mapped 3 storeys (433% over building height overlay map;
- developer now seeking significant increase to scale and intensity (34% GFA);
- increase in building 2 from 10 to 14 storeys;
- increase in building 2 from 4 to 7 storeys;
- increases in site cover;
- decreases in setbacks;
- decreases in separation distances;
- building 2 noticeably closer to neighbours and obstruct views, reducing permeability;
- development presents a far more intense outcome;
- building 3 changes (additional height and changed form) create an apparent increase of the intensification of the development;
- changes are obvious and result in less compatibility with the character of the area;
- impacts to the local identity and sense of place;
- – reduced compatibility with the built form character of the local area;
- – greater height and bulk of buildings 2 and 3;
- – reduction in setbacks and reduced separations;
- – reduced distinction of each building form;
- – reduced permeability;
- – greater overall intensity of built form;
- building 2 – 75.5 metres (increased from 50m) – excessive and monolithic – urban wall;
- elimination of view corridors;
- buildings 2 & 3 – overly dominant and bulky;
- does not respect envisaged development;
- does not contribute to desired character of Kirra Beach;
- cumulative impact of buildings 1, 2 and 3 an overbearing and concentrated intensity;
- height of building 2 (14 storeys) does not provide distinct visual differentiation or desired transitional height over the site;
- failure to ameliorate visual dominance and intensity and provide a varied skyline;
- failure to provide a transition in height to Kirra Hill and nearby residential areas with lower building heights;
- overbearing scale, density and bulk;
- does not achieve envisaged local identity or sense of place;
- further departure from building height overlay map;
- further departure above 50% uplift;
- distinct contrast in building height where not envisaged;
- increases in building height do not complement the function and desired future appearance of neighbourhood;
- not consistent with intended outcomes for building form/city form and do not represent desirable building height patterns;
- do not represent slender design outcomes;
- do not enhance views of skyline;

Non-compliances Information Request: 4 May 2022 (cont)

2. Adjacent amenity—

- magnitude of impacts to surrounding residents would be moderate-high;
- views substantially narrowed;
- building 2 – increased amenity impacts for surrounding residents;
- do not maintain reasonable amenity expectations of nearby residents;
- unreasonable amenity impacts to adjoining residential development;
- do not protect amenity of neighbouring residential premises;

3. An excellent standard of appearance of the built form and street edge—

- building 2 – too repetitive, does not achieve variation and materiality, does not achieve a visually appealing, attractive composition;
- building 3 – does not achieve an excellent standard of appearance;

4. Shadow impacts—

- building 2 and 3 – greater shadow impacts;
- Developer Information Request Response of December 2022 admits: In winter, the shadow of building 2 only ceases to impact the development of 102–112 Musgrave Street as a whole, by 3pm.

* Council notes these lists are not exhaustive.

Non-compliances Information Request: 5 December 2022

- significant further departure from City Plan;
- worsening of impacts;
- worsening of impacts onto neighbouring residential sites – due to height and form of building 2 – dominant and bulky;
- greater shadowing impacts;
- (lack of) meaningful variation in building heights;
- visual impact and obstruction of view corridors;
- loss of separation between building 2 & 4;
- 75.5metre podium and structures – additional visual impact and visual obstruction;
- more intense and larger in scale;
- increased site cover;
- increased building height;
- reduced building separation;
- further departure from planned building height;
- further departure from character of surrounding neighbourhood;
- reduce the tower height of building 2;
- provide meaningful variation in height between building 1 and 2;
- ameliorate the visual dominance and intensity of the development;
- provide a varied skyline;
- decrease building 2 podium height by one (1) storey;
- make building 2 tower light-weight and permeable;
- reduce bulk and scale;
- does not achieve excellent standard of appearance.

Information Request Responses from developer: September 2022 and December 2022

In response to the two Information Requests, the only changes of any note were:

1. cosmetic changes to building 2; and
2. increasing the gross floor area of building 2 over the 2019 approval by 73%, instead of 90%.

Except for #1, all non-compliances remain.

Notes:

- The claimed "reduction" in building 2 is in fact an increase in gross floor area over the 2019 approval of 73%, after initially seeking an increase of 90%. The relevant benchmark is the *2019 previous approval*, not an abandoned change application.

- The developer *increased* the floorplate of building 2 tower from 914m^2 to 1,347m^2 then to 1,101m^2 – an additional 187m^2 and 20% over the 2019 approval;

- The developer *increased* the floorplate of building 2 podium from 914m^2 to 1,613m^2 to 1,629m^2 – an additional 715m^2 and 78% over the 2019 approval;

- The developer *increased* the length of building 2 podium from 50 metres to 72 metres to 75.5 metres – an additional 25.5 metres and 51% over the 2019 approval.

Recommendation to Council: 20 April 2023

Regardless of the minimal effort to ameliorate the many non-compliances raised in the two Information Requests, City officers swept them all aside and recommended Council approve the change application *claiming* "sound town planning reasons." These reasons are duplicitous, calculated and cherry-picked. This action is dishonest, deceitful, and disingenuous. It does not accord with five (5) core Local Government Principles that *must* be followed by Councillors and City officers under section 4(2) of the Local Government Act 2009.

The Recommendation for approval OTH/2022/12:

- *claims* previous approvals set reasonable expectation of greater height;
- *claims* development substantively complies with the balance of assessment benchmarks;
- *claims* higher intensity outcomes are envisaged;
- *claims* height in keeping with 'the character of the broader area;'
- *claims* complements the function and desired future appearance of surrounding neighbourhood;
- *claims* high quality architectural outcome;
- *claims* negligible hard impacts in terms of visual impacts, amenity impacts and shadowing;
- *claims* to attract tourism;
- *claims* to bolster economic activity;
- *claims* to assist establishing the Gold Coast as a world-class city and travel destination.

- 1. These recommendations are in clear and stark contrast with the non-compliances admitted and documented by City officers in their Information Requests.
- 2. Each of these claims is noted in full Appendix 7; and addressed in Appendix 8.

It's clear there are a multitude of non-compliances admitted and documented by City officers in their Information Requests of 4 May 2022 and 5 December 2022.

These non-compliances have been completely disregarded in the Recommendation by City officers of 20 April 2023. In their place is substituted nebulous and unsubstantiated claims in favour of approval on grounds unrelated to the assessment of the application.

This is unconscionable.

It does not reflect Local Government Principles

Appendix 5: Assessment against City Plan 3.3.2.1 maximum height uplift 50%

2019 building 3

The new building 3 in the 2019 application was assessed against the City Plan 3.3.2.1(9)(a)–(h) and found to meet all the criteria which must be met in order qualify for the height uplift, to a *maximum* of 50%. This took building 3 from 3 storeys to 4 storeys – the maximum allowable under the City Plan for Urban Neighbourhoods.

2022 buildings 2 and 3

In the 2022 application buildings 2 and 3 *were not assessed against the City Plan 3.3.2.1(9)(a)–(h)*.

Maximum heights

City officers admitted in their Information Request of 4 May 2022:

> "(10) Increases in building height, beyond 50% above the Building height overlay map, are not anticipated in urban neighbourhoods."

This was further admitted by City officers in their Recommendation of 20 April 2023.

- *The maximum height allowable for building 2 and 3 under the City Plan, is 3 storeys–15 metres.*
- *The maximum height allowable for building 3 under the City Plan, with the 50% uplift, is 4 storeys.*
- *The maximum height allowable for building 2 under the City Plan, with the 50% uplift, is 4 storeys – but the existing 10 storey approval is "protected."*

Building 2 at 14 storeys is **367% above the City Plan**.

1. This is specifically *not* allowable under City Plan 3.3.2.1(10);
2. Has not been assessed against City Plan 2016 Element – Urban Neighbourhoods 3.3.2.1(9)(a)-(h).
3. The 10 storeys approved in 2013 is since 'protected,' but is no excuse for further departure from the City Plan.

Building 3 at 7 storeys is **133% above the City Plan**.

1. This is specifically *not* allowable under City Plan 3.3.2.1(10);
2. Has not been assessed against City Plan 2016 Element – Urban Neighbourhoods 3.3.2.1(9)(a)-(h).

Appendix 6: Maximum height increase of 50% in urban neighbourhoods

Buildings 2 at 10 storeys already exceeds the 4 storey maximum allowable for the site by 233% of the 3 storey limit. The 14 storeys sought is not allowable under the City Plan. It is 367% above the Building height overlay map.

Building 3 at 4 storeys is already at the 4 storey maximum allowable under the City Plan. The 7 storeys sought is not allowable under the City Plan. It is 133% above the Building height overlay map.

City Plan Strategic Framework 3.3.2.1

City Plan Strategic Framework 3.3.2.1 provides for a maximum uplift of 50% above the Building height overlay map where all specified criteria are met. Given the Building height overlay map is 3 storey (15 metres) the maximum allowable height for the site is the lesser of 4 storeys or 22.5 metres.

> (8) The Building height overlay map shows the building height pattern and desired future appearance for local areas within urban neighbourhoods. This map also shows areas where building heights change abruptly to achieve a deliberate and distinct contrast in built form within and between low, medium or high-rise areas.
>
> (9) Increases in building height up to a maximum of 50% above the Building height overlay map may occur in limited circumstances in urban neighbourhoods where all the following outcomes are satisfied:
>
> (a) a reinforced local identity and sense of place;
>
> (b) a well managed interface with, relationship to and impact on nearby development, including the reasonable amenity expectations of nearby residents;
>
> (c) a varied, ordered and interesting local skyline;
>
> (d) an excellent standard of appearance of the built form and street edge;
>
> (e) housing choice and affordability;
>
> (f) protection for important elements of local character or scenic amenity, including views from popular public outlooks to the city's significant natural features;
>
> (g) deliberate and distinct built form contrast in locations where building heights change abruptly on the Building height overlay map; and
>
> (h) the safe, secure and efficient functioning of the Gold Coast Airport or other aeronautical facilities.
>
> Note: Where the Building height overlay map shows both storeys and metres, the lesser of the two shall apply, and any fraction which results from the calculations shall be rounded down to the nearest floor or partial floor.
>
> (10) Increases in building height, beyond 50% above the Building height overlay map, are not anticipated in urban neighbourhoods.
>
> **Note: No criteria have been identified for building heights which are more than 50% above the Building height overlay map, because such increases are in conflict with City Plan.**

In the 2019 change application, building 3 at 4 storeys was assessed against 3.3.2.1(9)(a)–(h) and found to warrant the additional 1 storey above the 3 storey height limit.

The 2022 change application seeks:

– an additional 4 storeys to building 2 taking it from 10 storeys to 14 storeys; and

– an additional 3 storeys to building 3 taking it from 4 storeys to 7 storeys.

These increases above 4 storeys are not permissible under the City Plan:

> (10) Increases in building height, beyond 50% above the Building height overlay map, are not anticipated in urban neighbourhoods.
>
> **Note: No criteria have been identified for building heights which are more than 50% above the Building height overlay map, because such increases are in conflict with City Plan.**

Yet City officers have recommended approval of building 2 at 14 storeys and building 3 at 7 storeys.

Further, they did not assess buildings 2 and 3 against City Plan 3.3.2.1(9)(a)–(h):

Assessed against City Plan 3.3.2.1(9)(a)–(h) building 2 at 14 storeys, and building 3 at 7 storeys;

(a) do not reinforce local identity and sense of place;

(b) do not provide a well managed interface with, relationship to and impact on nearby development, including the reasonable amenity expectations of nearby residents;

(c) does not present a varied, ordered and interesting local skyline;

(d) does not present an excellent standard of appearance of the built form and street edge;

(e) does not provide housing choice and affordability;

(f) does not provide protection for important elements of local character or scenic amenity;

(g) does not provide the deliberate and distinct built form contrast as provided in the Building height overlay map – which provides for the centre of the Kirra neighbourhood at 29 metres, and the subject site at 15 metres – a deliberate and distinct change in built form.

City Plan 5.3.3

City officers claim the increases in building height to 14 storeys for building 2 and 7 storeys for building 3 are allowable under City Plan 5.3.3.

5.3.3 Determining the requirements for accepted development and assessment benchmarks and other matters for assessable development

(5) Impact assessable development:

(i) is to be assessed against the identified assessment benchmarks in the assessment benchmarks column;

(ii) is to be assessed against any assessment benchmarks for the development identified in Part 4, Division 4, Subdivision 1 & 2 of the Regulation.

City Plan 5.3.3 requires “impact assessable development to be assessed against the identified assessment benchmarks.” It does not allow the increases in building height to 14 and 7 storeys recommended by City officers.

Appendix 7: 2019 Building heights 15–10–4 found "appropriate"

In 2019 Building 3 sought the maximum 50% uplift from 3 storeys to 4 storeys. City officers assessed building 3 at 4 storeys, and the 15–10–4 tower profile created, as meeting *all* requirements of City Plan 2016 Element – Urban Neighbourhoods 3.3.2.1(9)(a)-(h). City officers recommended the uplift to 4 storeys as "appropriate" and confirmed it as the "maximum allowable" under the City Plan.

Building 3 at 4 storeys, and the resulting 15–10–4 storey height profile, was found to:

- provide graduation between the Kirra Beach Pavilion and the 10 and 15 storey towers;
- provide transitional height that gradually increases to Building 2 at 10 storeys and Building 1 at 15 storeys;
- low rise scale respects the sense of open space along the Kirra foreshore and Marine Parade;
- provide a visual transition and graduation in height to the ground level pedestrian environment;
- appropriate scale;
- appropriate amenity;
- appropriate privacy;
- minimise visual impact on the street;
- consider the adjacent neighbourhood scale as well as the topography of the landscape;
- provides a modest impact on the skyline and defines the corridor and streetscape of Marine Parade;
- represent variation in building height;
- provide a stepping down of building height from Miles Street to Rutledge Street is … responsive to the topography of the area and create a transition from the built form along Marine Parade … down towards Kirra Hill.

The 2022 change application, with building 3 at 7 storeys – vastly more imposing, and building 2 at 14 storeys – completely overwhelming, and the resulting 15–14–7 height profile, *does not provide the outcomes on which the 2019 approval was based*.

This rips the foundations from beneath the 2019 approval.

Appendix 8: Massive increases in bulk, mass and scale

Gross Floor Area

While gross floor area (GFA) is not a benchmark under the City Plan, changes in GFA reflect the increase in the intensity of the development.

- Increase in overall bulk, mass and scale of the development, including building 1, is reflected in the increase in gross floor area from 28,405m^2 to 38,306m^2 – a massive increase of 9,901m^2 and 35%.
- Increase in the bulk, mass and scale of building 2 is reflected in the increase in gross floor area from 8,173m^2 to 14,165m^2 – a massive increase of 5,992m^2 and 73%.
- Increase in the bulk, mass and scale of building 3 is reflected in the increase in gross floor area from 1,011m^2 to 1,083m^2 – a massive increase of 1,542m^2 and 44%.
- Retail/commercial seeks to increase GFA from 2,883m^2 to 4,360m^2 – a massive increase of 1,477m^2 and 51%.

Visual impacts

- The bulk, mass and scale of proposed building 2 will be obvious not only to neighbouring residents but to everyone approaching the site from every angle except due west – from where building 2 will be obscured by building 1.
- The bulk, mass and scale of proposed building 3 is very imposing onto Marine Parade. It does not respect the surroundings as was found for the approved building 2.

Shadowing impacts

- The bulk, mass and scale of proposed building 2 produce additional shadowing impacts on neighbours on the south side of Musgrave Street. At worst, this leaves them in shade until 3pm in the afternoon in winter.

These are unacceptable impacts on amenity, especially in view of the fact that the impacts are not supported by the City Plan.

Appendix 9: Visual Impact Assessment – Peer Review – found 2019 application "cannot be justified"

With each application, City officers have commissioned Peer Reviews of the developers Visual Impact Assessments. The Peer Review conducted by Insight Design and Assessment Services dated 31 July 2019 was *not favourable*, and confirmed:

- "While intense built form can certainly reinforce (or even create) a focal point, the location of this particular focal point at the end of the Marine Parade vista and offset from the local spine of development means that it will be visually prominent and at odds with the existing structure in the area. The mere opportunity to reinforce a spatial node or focal point does not justify a level of built form intensity or scale that is at odds with the character of the area. A less intense form of development (and the intensity of development that was previously approved) could just as effectively form a focal point at that location.
- Ultimately, while building height, podium form, and tower separation may be appropriate the visual impacts on the local character and amenity of the area that would result from the increases to the intensity of the proposed development, and the increases to the bulk cannot be justified.
- While the increases in the building length and development intensity represent moderate increases to the existing approval, they nonetheless represent noticeable and impactful increases over the existing development outcome.
- The proposal reflects a level of conflict with key provisions of City Plan, particularly provisions seeking built form that is of a scale and intensity appropriate for the zone and locality and that complements the surrounding neighbourhood.

These findings in the Insight Peer Review in 2019 are clear that the development:

- is "offset from the local spine of development means that it will be visually prominent and at odds with the existing structure in the area;"
- is a "built form intensity or scale that is at odds with the character of the area;"
- "the increases in bulk cannot be justified;"
- "represent(s) noticeable and impactful increases over the existing development outcome;" and
- is in "conflict" with the "built form that is of a scale and intensity appropriate for the zone and locality and that complements the surrounding neighbourhood."

Given the 2019 change application, with a 15–10–4 configuration and a gross floor area of 28,405m^2, which the independent Insight Peer Review of 31 July 2019 found "cannot be justified;"

It's not possible that a 2022 change application for 15–14–7 configuration and a gross floor area of 38,306m^2 – an increase of 35% over the 2019 approval – can be justified.

Appendix 10: Floorplates

1,669m2 refused in 2019

The 784th Planning Committee Recommendation of 4 December 2019 to the Council Meeting of 6 December 2019 admits and confirms building 1 with a proposed floorplate of 1,669m^2 "is significantly larger than existing 15 storey towers within the Kirra precinct" and insisted the developer reduce the floorplate back to what had originally been approved – 985m^2.

> "The existing 15 storey towers have been identified in the application material as ranging in building dimension and bulk in the following order to the largest:
>
> - Meridian: 36m x 18m (floorplate 648m^2)
> - Iconic: 36m x 25m (floorplate 900m^2)
> - Wyndham: 49m x 21m (floorplate 1,029m^2)
> - Nirvana by the Sea: 46m x 27m (floorplate 1,242m^2)
>
> Building 1 as originally proposed ... with a footprint that had overall dimensions of 59.6m x 28m [floorplate 1,669m^2] it is significantly larger than existing 15 storey towers within the Kirra precinct."

They admit and document that proposed building 1 with a floorplate of 1,669m^2 "would result in a significant visually dominant and bulky appearance" does not achieve the Strategic framework and "does not reinforce the urban legibility, does not reinforce the existing built form scale and does not provide a sensitive transition to nearby residential areas:"

> "… proposed Building 1 with overall dimensions of 59.6m x 28m [1,669m^2] would result in a significant visually dominant and bulky appearance, in terms of comparable dimensions, massing and bulk with the existing towers, and consequently does not reinforce the character, urban legibility and built form along the Musgrave Street and Marine Parade foreshore area. The assessment determined that the significantly larger building form of Building 1 would not achieve the desired intended aim under the Strategic framework section 3.4.1 (8) as the dominant bulky form does not reinforce the urban legibility, does not reinforce the existing built form scale and does not provide a sensitive transition to nearby residential areas.
>
> Building 1 … would be visible as an overly bulky building when seen from numerous locations throughout the local area, …"

1,629m^2 recommended for approval in 2022

Fast forward to 2022 and the proposed building 2 is seeks to increase floorplates over 14 storeys – from 914m^2 to 1,629m^2 over the first 6 storeys – an increase of 78%; and to 1,101m^2 above 6 storeys – an increase of 20%

The podium has increased in length from 51 metres to 75.5 metres – an increase of 48%.

Overall the gross floor area of building 2 has increased from 8,173m^2 in 2019 to 14,165m^2, an additional 5,992m^2, – a staggering increase of 73% – and just 40m^2 less than what City officers themselves described as "visually dominant and bulky" that "does not reinforce the urban legibility, does not reinforce the existing built form scale, and does not provide a sensitive transition to nearby residential areas."

This creates a massive "urban wall," the biggest floorplate, and the biggest building, in Kirra – *by far* – in what is supposed to be a transition zone of lower density – *as provided in the Building height overlay map and the Residential density overlay map*.

Appendix 11: Disinformation from City officers in relation to assessment

Assessing an other change application

The Legislation

The developer lodged change application OTH/2022/12 on 15 March 2022.

There's agreement the change application:

1. is a change application, and not a minor change application, and therefor engages section 82 of the *Planning Act 2016*; and
2. is subject to *impact assessment* under section 45 of the *Planning Act 2016.*

Section 82 of the *Planning Act 2016* is reproduced in full at Appendix 1.
Section 45 of the *Planning Act 2016* is reproduced in full at Appendix 2.

Sections 82 and 45 are the two sections under which this change application is to be assessed.

– Section 82(2)

Under section 82(2)(a)(ii) in "assessing and deciding the change application in the context of the development approval, the relevant provisions apply as if the change application were the original development application, with the changes included, but was made when the change application was made; and"

Section 82(2)(b) "with necessary changes."

To reiterate, s82(2) requires:

assessing and deciding the change application in the context of the development approval;

- as if the change application were the original development application;
- with the changes included;
- made when the change application was made; and
- with necessary changes.

– Section 82(4)

Section 82(4) provides "it is declared that the following matters apply, only to the extent the matters are relevant to assessing and deciding the change application in the context of the development approval:"

(i) the assessment benchmarks;
(ii) referral agency matters under section 55(2);
(iii) if code assessment, matters under section 45(3)(b);
(iv) if impact assessment, matters under section 45(5)(a)(ii) and (b).

In relation to this change application:

1. Assessment is required against section 82(4)(a) "the assessment benchmarks;"
2. Because this change application is impact assessable, assessment is also required under section 82(4)(d), which engages section 45(5)(a)(ii) and (b).

– Section 45(5)

Section 45(5) requirements for assessment:

s45(5)(a)(ii) assessment *must* be carried out against or having regard to 'matters prescribed by regulation;' &

s45(5)(b) assessment *may* be carried out against or having regard to 'any other relevant matter.'

Sections 82(2), 82(4) and 45(5) set out the assessment requirements for a change application, that is not a minor change, and is impact assessable (as underlined).

"in the context of the development approval"

Sections 82(2) and 82(4) both make reference to "the change application in the context of the development approval."

The phrase "in the context of the development approval" is explained in:

1. an Explanatory Note; and
2. case law.

Explanatory Note

The *Planning Bill 2015* provides Explanatory Notes including for section 82 of the *Planning Act 2016;* 'Assessing and deciding applications for other changes.'

The Explanatory Note reiterates the section 82(2) requirement to administer the change application, and assess and decide the change application in the context of the development approval—

> "(a)(ii) as if the change application were a development application including the change, but made when the change application was made; and
>
> (b) with necessary changes."

– Intent

The Explanatory Note then specifies the intent of the reference to assessing and deciding the change application "in the context of the development approval:"

> "The intent of the reference to assessing and deciding the change application "in the context of the development approval" is that the proposed change should not be considered in isolation. Neither however is the entirety of the development including the change re-assessed. Instead, it is intended the change be assessed with reference to the context of the development approval already existing for the development."

– Example

It provides an example:

> "For example, if there is a development approval for a 10 storey building, and an applicant seeks to change the approval to add a further 2 storeys, the additional 2 storeys is intended to be assessed in the context of a 10 storey building, <u>against the assessment benchmarks relevant to a 12 storey building in that locality</u>."

In relation to the current change application OTH/2022/12, this means—

1. In relation to building 2 – which has a current approval for 10 storeys and seeks another 4:

> If there is a development approval for a 10 storey building, and the applicant seeks to change the approval to add a further 4 storeys, the additional 4 storeys is intended to be assessed in the context of a 10 storey building, <u>against the assessment benchmarks relevant to a 14 storey building in that locality</u>.

2. In relation to building 3 – which has a current approval for 4 storeys and seeks another 3:

> If there is a development approval for a 4 storey building, and the applicant seeks to change the approval to add a further 3 storeys, the additional 3 storeys is intended to be assessed in the context of a 4 storey building, <u>against the assessment benchmarks relevant to a 7 storey building in that locality</u>."

The explanatory note is clear *the change application must be assessed against the assessment benchmarks relevant to the changed development in that locality*.

It is not *"assessed in the context of the development approval"* as repeatedly and falsely represented by City officers in their Recommendation to Planning of 20 April 2023, and their advice to Councillors at the Planning Meeting of 20 April 2023.

Case Law

In *Catterall & Ors v Moreton Bay Regional Council & Anor* [2020] QPEC 52, Williamson QC DCJ in the Planning and Environment Court of Queensland, laid out the meaning of the phrase "in the context of the development approval:"

> "[42] … An important contextual change is identified in ss 82(2) and (4) of the PA. Both of these provisions include the phrase *'in the context of the development approval'*. The purpose of this phrase is to make clear that the assessment and decision making process occurs in the context that the application is one to change an existing development approval, as distinct from a fresh development application. In practical terms, this means the assessment and decision making process for a change application under s 82 of the PA is founded upon, but not limited to[4]:
>
> (a) an identification of the change/s proposed to the development approval;
>
> (b) an identification of the planning issues, be they positive or negative, arising for consideration as a consequence of the change/s proposed to the development approval; and
>
> (c) an assessment of the planning issues arising as a consequence of the change/s to the development approval, having regard to the requirements of the 'relevant provisions'[5], and assessment benchmarks[6], to the extent they are relevant."

The case law is clear, the phrase *'in the context of the development approval'* is relevant to determining the change/s between the existing approval and the proposed application. The aspects of the development that result in changes are then assessed in accordance with the legislation, the Explanatory Note, and case law.

Again, they are *not* assessed "in the context of the development approval" or "in the context of the existing approval."

4 For example s 82(4)(d) of the PA may require '*relevant matters*' to be considered.

5 s 82(2) of the PA.

6 s 82(4)(a) of the PA.

Appendix 12: Section 45(5)(b) "other relevant matters" in favour of *refusal*

The existing approval of buildings 1 and 2 at 15 and 10 storeys respectively, in a 3 storey height limit, is in fact an "other relevant matter" in favour of *refusal*.

In addition, City officers ignored many "other relevant matters" in favour of *refusal,* which *may* be considered under section 45(5)(b). Some of these were raised by Planning committee members, who voted in favour of *refusal*.

Note: Assessment against benchmarks is the key assessment criteria under section 82(4)(a). The failures to comply with City Plan alone are grounds for refusal.

City officer admissions of non-compliance with City Plan

Neighbourhood centre zone code: AO1/PO1 – Setbacks; AO3/PO3 – Height; AO4/PO4 – Density; AO10/PO10 – Land use High-rise accommodation design code: AO1/PO1 – Tower base; AO4/PO4 – Tower form design; AO5/PO5 – Tower form design; AO8/PO8 – Tower cap design; AO9/PO9 – Tower cap design; AO10/PO10 – Housing need and choice; AO15/PO15 – Services. Multiple accommodation code: AO4/PO4 – Design and appearance; AO6/PO6 – Ground floor and entry requirements for buildings with 3 or more storeys; AO7/PO7 – Privacy; AO10/PO10 – Communal open space; AO13/PO13 – Car park areas; AO16/PO16 – Housing need and choice.	Commercial design code: AO2/PO2 – Design and appearance; AO3/PO3 – Design and appearance; AO7/PO7 – Car parking; AO9/PO9 – Amenity; AO10/PO10 – Land use; AO11/PO11 – Land use. General development provisions code: AO1/PO1 – Amenity protection; AO2/PO2 – Amenity protection; AO6/PO6 – Casual surveillance and lighting; AO8/PO8 – Shadow impacts. Transport code: AO1/PO1 – Car parking; AO10/PO10 – Bicycle parking; AO22/PO22 – Integrated transport and land use.

Added to the non-compliances are these "other relevant matters" that may be considered.

(1) The existing 2013 approval of buildings 1 and 2 at 15 and 10 storeys respectively, given they were an *extreme* departure from the Planning Scheme 2003;

(2) The *number* of non-compliances with planning instruments resulting from the 2022 change application;

(3) The *extent* of non-compliance with planning instruments;

(4) The cumulative effect of building on the 2013 non-compliances in relation to building 2;

(5) That the approvals for 15 and 10 storey buildings in 2013, at 400% and 233% above the Planning Scheme 2003 of 3 storey 15 metres, should never have been granted.
There is no further height increase available;

(6) That the approvals for 15 and 10 storey buildings in 2013, non-compliant on at least 6 other metrics in the Planning Scheme 2003, should never have been granted.
No further non-compliances should be available;

The 677th Planning Committee recommendation Part 2 Executive Summary admits and confirms:

> "The proposed development satisfies relevant Acceptable Solution, with the exception of building height, building setbacks, accommodation density, plot ratio, provision of car parking spaces and provision of communal space."

This list fails to include site coverage, the seventh issue failing to satisfy Acceptable Solutions. All seven (7) issues including site coverage are included in the table of issues in Planning Committee recommendation Part 1 Overview.

The complete list of non-compliances was:

1. building height;
2. building setbacks;
3. accommodation density;
4. plot ratio;
5. provision of car parking spaces;
6. provision of communal space; and
7. site coverage.

This recommendation was adopted by the Planning Committee on 2 April 2014, and subsequently by Council on 4 April 2014. How?

(7) The failure of City officers to assess the increase in height for buildings 2 and 3 in accordance with Strategic Framework 3.3.2.1(8), (9) and (10);

(8) Claimed "benefits" not supported by evidence;

(9) Actual "detriments" not taken into account;

(10) Insight Design and Assessment Services Peer Review of 31 July 2019 – in favour of refusal;

(11) That the 2019 change approval of an additional building 3 of 4 storeys was granted on the basis that it merited the maximum 50% height uplift taking it from 3 storey to 4 storey. There is no further height increase available. City Plan 3.3.2.1(9) and 3.3.2.1(10);

(12) That the 2019 change approval of an additional building 3 of 4 storeys was granted on the basis of the variation, graduation and 'stepping down' in height of the 3 buildings from 15–10–4 storeys, and down to neighbours including the Kirra Beach Pavilion.
Allowing proposed changes would rip the foundation from beneath the 2019 approval;

(13) That the 2022 changes proposed have complete disregard for all the other arguments made in favour of the 2019 change approval including (but not limited to) building mass, amenity, transition, local character and sense of place.
Again, allowing the proposed changes would rip the foundation from beneath the 2019 approval;

(14) City officers Information Request of 4 May 2022 – highlighting numerous non-compliances with City Plan that were not resolved by the Applicant.;

(15) City officers Further Information Request of 5 December 2022 – highlighting numerous non-compliances with City Plan that were not resolved by the Applicant.;

(16) City officers Recommendation for approval of OTH/2022/12 contradicting their own admissions of numerous non-compliances in their Information Requests of 4 May 2022 and 5 December 2022..

(17) City officers recommendation for approval (in full) on grounds unrelated to assessment;

(18) Objectors recommendation for refusal.

This list is not exhaustive.

Note: the Peer Reviews of the Visual Impact Assessments of 2019 and 2022 were requested by Cr Daphne McDonald on or before 27 April 2023, but are yet to be provided.

In following up on all Peer Reviews from 2013–2022 Council is refusing to provide the documents administratively, forcing us to pursue formal RTI (Right To Information) channels.

Further, the numerous non-compliances admitted and documented by City officers in their Information Requests of 4 May 2022 and 5 December 2022 in favour of refusal, have been ignored in their recommendation to the Planning Committee of 20 April 2023 and replaced with a recommendation for approval on completely different grounds.

In the place of 30 specific and significant non-compliances, they have substituted nebulous and unsupported benefits in favour of approving the development that do not withstand scrutiny, or assessment against relevant benchmarks.

This does not reflect Local Government Principles.

Appendix 13: Planning & Environment Court: Komune decision – development application refused

Case law supports planning instruments as the comprehensive expression of what constitutes:

- the public interest; and
- the appropriate development of land.

This is reflected in *Body Corporate for Lindor Community Title Scheme 29204 and Planit Consulting Pty Ltd v Gold Coast City Council & Anor* [2018] QPEC 054 *(Komune)* where the findings of Rackemann DCJ[7] included:

In relation to intensity of development for it's location

- In relation to the unsuitability of the intensity of the development for it's location, and the impacts on character and visual amenity, the *Komune* decision found:

> "[136] … inconsistency with both the existing and planned character associated with placing what would be the largest building in Coolangatta where it is not intended would give rise to impacts on character and visual amenity."
>
> "[137] … The proposal is inconsistent with the existing, planned and likely built form and character of the part of esplanade in which it is located."

These are equally true of the KBH development. Building 2 alone, with a floorplate in excess of 1,629m^2 – the City Plan stipulates 750m^2 – is *by far* the largest building in the entire Kirra neighbourhood. The City Plan sets the reasonable expectations for the site. The intensity, bulk, mass and scale of the application (and even the existing approval), was never intended for this neighbourhood centre, let alone this particular site, at the very end, and offset from the more intense 'centre' of the Kirra neighbourhood centre.

In relation to tourist and residential need

- In relation to need, the *Komune* decision found:

> "[152] … In terms of the need being met, City Plan 2016 has been prepared to cater for a 20 year horizon, and it is intended to be reviewed periodically to ensure that it responds appropriately to the changes of the community at a local, regional and state level."

It's not for developers, motivated purely by financial gain, to decide needs that serve their agenda and override planning instruments.

- In relation to tourist and residential needs, the *Komune* decision found:

> "[157] … I accept that the proposal responds to a level of need for further tourist and residential development in the locality and would be of economic benefit. It is not however, a need which the Planning Scheme fails to recognise. The Scheme makes provision for tourist and residential development to occur. What it does not contemplate is development of the scale and intensity proposed in the precinct in which the subject site falls."

This is true for the KBH development.

In relation to economic benefit

- In relation to arguments of economic benefit, the *Komune* decision found:

> "[159] … Mr Duane observed that a 'compliant development' on the subject site would result in a much smaller facility and would not provide the same level of benefit as the subject proposal. More

[7] 30 November 2018

> development is however not always better development or development which is appropriate in the circumstances. The economic benefits of development must be balanced with other planning considerations. The balance is struck in the planning scheme documents."

"The economic benefits of development must be balanced with other planning considerations. The balance is struck in the planning scheme documents."

The planning scheme documents have already considered and "built-in" issues of need and economic benefit. They have also "built-in" issues of character and amenity. This is how they came to their decisions on zoning, building height and residential density. For these and so many other assessment benchmarks to be flouted is scandalous.

In relation to character and visual amenity

- In relation to character and visual amenity, the *Komune* decision found:

> "[161] … the proposal in this case goes beyond reasonable and acceptable optimisation of development potential and would, I am satisfied, have a detrimental effect on the existing and planned character and visual amenity of the area."

Again, this is true for the KBH site, given the number and extent of non-compliances with the City Plan.

City Plan the expression of public interest and appropriate development

- The *Komune* decision concluded, as in the case of the KBH development, the conflict with the planning instruments was significant; and that the planning instruments are the expression of the public interest and appropriate development:

> "[165] … The extent of conflict with both (planning instruments) is significant. … In *Bell v Brisbane City Council* [2018] QCA 84 McMurdo JA said:"[8]
>
> > "… where there is a tension between the application of the relevant instrument, here a planning scheme, and the public interest. If that tension exists, it will be for the decision maker to consider whether there are sufficient grounds, in the public interest, to depart from the instrument. Necessarily, cases where that tension exists will be exceptional, because a planning scheme must be accepted as a comprehensive expression of what will constitute, in the public interest, the appropriate development of land."

"a planning scheme must be accepted as a comprehensive expression of what will constitute, in the public interest, the appropriate development of land."

In the end:

> "[167] … The appeal is allowed and the development application is refused."

GCCC conceded application should be refused

The GCCC approved the *Komune* development, despite the extent of non-compliances with the City Plan. The hearing in the Planning and Environment Court was set to start on 12 March 2018. On 7 March 2018 the GCCC advised the Court:

> "[1] … Although the Council approved the application, it advised on 7 March 2018 that it no longer supported approval and was of the view that the appeal should be allowed."

This current change application OTH/2022/12 should be refused, now.

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[8] at [66]