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| DATE OF DETERMINATION | Wednesday, 14 November 2018 |
| PANEL MEMBERS | Garry West (Chair), Pamela Westing, Stephen Gow and Joe Vescio |
| APOLOGIES | David Brown and Basil Cameron |
| DECLARATIONS OF INTEREST | None |

Public meeting held at Byron Shire Council Chambers on Wednesday, 14 November 2018, opened at 10am and closed at 12.20pm.

MATTER DETERMINED

2017NTH025 – Byron Bay – 10.2017.510.1 at 137 and 139 Jonson Street, 3 Browning Street BYRON BAY (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel has considered the applicant's request to vary the development standards contained in the Byron Local Environment Plan 2014 Clause 4.3 relating to height of buildings and Clause 4.4 relating to floor space ratio and is not satisfied that the request has adequately addressed the matters to be demonstrated by Clause 4.6 (3).

The Panel determined to refuse the 4.6 variation request.

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decisions were unanimous.

REASONS FOR THE DECISION





The Panel refused the Clause 4.6 variation request for the following reasons:

- the extent of the non-compliance with the development standard (height of buildings) is excessive (being most of the top level of Building 1 and all of the top level of Building 2);
- the applicant's justification relies on the proposed amendment to the height control in Planning Proposal 26.2017.6.1, a Proposal that has not passed the Gateway stage, has not been publicly exhibited, and the making of which is neither imminent nor certain;
- notwithstanding the applicant's reliance on Planning Proposal 26.2017.6.1, the applicant proposes four storey buildings rather than the preferred three storey buildings anticipated in the Byron Bay Masterplan which preceded the Planning Proposal;
- the applicant has not demonstrated any particular site characteristics that justify the proposed variation;
- the applicant has not addressed the relationship of the proposed variation to existing or potential future buildings to the north and east of the site, nor the context of the development, apart from considering land to the west across Jonson Street which is subject to a different height control.

- Therefore, the applicant's request does not demonstrate sufficient planning grounds to justify contravening the development standard.
- The proposed development will not be in the public interest because the applicant has not demonstrated that it meets the objectives of CI 4.3(1) of Byron LEP 2014.
- Having refused the Clause 4.6 application to vary Clause 4.3 relating to height of buildings there is no utility to further consider the application to vary Clause 4.4 relating to floor space ratio.

The Panel refused the development application for the following reasons:

- The proposal does not comply with the Apartment Design Guide criteria pursuant to the SEPP 65 with respect to setbacks, deep soil zones and other matters, and therefore does not adequately address the amenity impacts on neighbouring properties;
- The proposal does not comply with the requirements of Byron LEP 2014 with respect to height and floor space ratio and the applicant's written submission does not adequately justify the proposed contravention of the standards;
- The development relies excessively on compliance with proposed controls in a draft planning proposal, rather than seeking to comply with the current planning controls. It would not be in the public interest for this application to be approved, thereby pre-empting the public consultation and consideration of submissions required by the Environmental Planning and Assessment Act 1979 before a local environmental plan amending development standards can be made.

| PANEL MEMBERS | |
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|  Garry West (Chair) |  Pamela Westing |
|  Stephen Gow |  Joe Vescio |

| SCHEDULE 1 | | |
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| 1 | PANEL REF – LGA – DA NO. | 2017NTH025 – Byron Bay – 10.2017.510.1 |
| 2 | PROPOSED DEVELOPMENT | Mixed use development comprising demolition of all existing structures, removal of vegetation and construction of commercial premises, café, child care centre, shop top housing, serviced apartments and associated basement car parking and landscaping. |
| 3 | STREET ADDRESS | 137 and 139 Jonson Street, 3 Browning Street BYRON BAY |
| 4 | APPLICANT OWNER | Mr Malcolm Scott JGD Developments Pty Ltd |
| 5 | TYPE OF REGIONAL DEVELOPMENT | General development over \$20 million (DA lodged prior to 1 March 2018) |
| 6 | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No 55 – Remediation of Land State Environmental Planning Policy No 71 – Coastal Protection State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 Byron Local Environmental Plan 2014 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Byron Development Control Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: 92 and 97A Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development |
| 7 | MATERIAL CONSIDERED BY THE PANEL | <ul style="list-style-type: none"> Council assessment report: 2 October 2018 Written submissions during public exhibition: three (3) Verbal submissions at the public meeting: <ul style="list-style-type: none"> Support – NIL Object – Marcus Steele, Bronwyn Morris, Matthew O'Reilly, Damien Antico, Andrew Boag, Donald Mughan, Cr Cate Coorey, Jan Barham, John Lazarus, Cr Simon Richardson and Cate Coorey (on behalf of Dr Mary Gardner) Council assessment officer – Patricia Docherty, Planner On behalf of the applicant – Malcolm Scott, Jade Myers and Jason Dunn |
| 8 | MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL | <ul style="list-style-type: none"> Site inspection and briefing on 14 November 2018 at 8.45am Attendees: |

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| | | <ul style="list-style-type: none">○ <u>Panel members</u>: Garry West (Chair), Pamela Westing, Stephen Gow and Joe Vescio○ <u>Council assessment staff</u>: Patricia Docherty and Chris Larkin |
| 9 | COUNCIL RECOMMENDATION | Approval |
| 10 | DRAFT CONDITIONS | Attached to the council assessment report |