

DATE OF DETERMINATION	Wednesday, 16 September 2020
PANEL MEMBERS	Paul Mitchell (Chair), Stephen Gow, Penny Holloway, David Brown and Joe Vescio
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by Public Teleconference on 16 September 2020, opened at 5:05pm and closed at 7:20pm.

MATTER DETERMINED

PPS-2019NTH015 – Byron – DA 10.2018.650.1 at 98-106 Jonson Street Byron Bay – mixed use development (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.

Applications to vary development standards

The panel considered two requests to vary development standards, made under cl 4.6 (3) of the Byron Local Environmental Plan 2014 (LEP).

The first request was for a variation to the height of buildings standard (cl 4.3 of the LEP). Following consideration of the applicant's written request, the panel by majority, (Joe Vescio dissenting) determined to uphold the request because it demonstrated that:

- compliance with cl. 4.3 (Height of Building) would be unreasonable and unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

The panel majority was also satisfied that:

- the applicant's written request adequately addressed the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it would be consistent with the objectives of cl. 4.3 (Height of Building) of the LEP and the objectives for development in the B2 zone; and
- the concurrence of the Secretary has been assumed.

Joe Vescio dissented from the majority decision. Mr Vescio believes the height variation is excessive (and the DA plans are not sufficiently clear to assure him that height exceedances would not be greater than claimed in the applicant's variation request) and that sufficient environmental grounds specifically related to the actual breach have not been made out in the variation request. For these reasons, Mr Vescio believes that a variation to the height standard in the circumstances would not be in the public interest.

The second request was for a variation to the Floor Space Ratio standard (cl 4.4 of the LEP). Following consideration of the applicant's written request, the panel declined to uphold the request to vary the standard finding that:

- compliance with cl 4.4 (FSR) is both necessary and reasonable; and
- insufficient justification had been provided to justify contravention of the development standard.

Moreover, the panel did not believe that the proposed development would be in the public interest because it would be inconsistent with objectives "a" and "d" of the development standard.

Development application

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

The decision was unanimous.

REASONS FOR THE DECISION

1. The proposed building would have excessive bulk and not be consistent with applicable objectives of the FSR standard.
2. The proposed building would be inconsistent with the character of the Byron town centre.
3. Insufficient on-site parking would be provided being an unacceptable aspect of the proposal caused in large measure by the excessive floor space proposed.
4. Both internal and external traffic circulation arrangements would be unsatisfactory leading to traffic queuing and traffic disruption on Jonson Street, and inefficient and unsafe internal vehicular circulation particularly in the porte cochere.
5. Approval of the proposal would not be in the public interest.

CONDITIONS






Not applicable.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Exceedance of height and floor space standards
- Bulk and scale of development inappropriate in the context of the town centre
- Building inconsistent with existing and desired character of Byron Bay
- Noise and amenity impacts associated with roof top facilities
- Scale of building will dominate streetscape and shadow pedestrian space
- No landscaping proposed
- Traffic impacts
- Insufficient parking
- Pedestrian connectivity
- Discharge of water from site onto coastal wetland during construction
- Contamination issues
- Effect on existing businesses
- Precedent set by exceeding height and floor space standards

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Paul Mitchell OAM (Chair)	 Stephen Gow
 Penny Holloway	 David Brown
 Joe Vescio	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPS-2019NTH015 – Byron – DA 10.2018.650.1
2	PROPOSED DEVELOPMENT	Demolition of existing building and construction of a mixed use development – tourist and visitor accommodation (hotel 146 room), function centre and food and drink premises
3	STREET ADDRESS	98-106 Jonson Street Byron Bay
4	APPLICANT OWNER	Mercato on Byron Pty Ltd c/- Urbis Pty Ltd Task Group Services Pty Ltd as trustees for the Group Services Trust and Wingate Byron Property Holdings Pty Ltd as trustee for The Wingate Property Trust
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No 44 – Koala Habitat Protection (saved) State Environmental Planning Policy No 55 – Remediation of Land State Environmental Planning Policy (Coastal Management) 2018 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (State and Regional Development) 2011 Byron Local Environmental Plan 2014 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Byron Development Control Plan 2017 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Clause 92, 98(1)(a), 98(2) and (3) and 98E 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: 8 September 2020 Clause 4.6 Variation request – Building Height, by Urbis, dated June 2020 Clause 4.6 Variation request – FSR, by Urbis, dated June 2020 Written submissions during public exhibition: 423 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Jan Barham on behalf of Community Association Byron Shire (CABS), Cate Coorey on behalf of Byron Residents Group, Vader Turner on behalf of Mary Gardener, Bronwyn Morris, Paul Cholakos and Cate Coorey on behalf of Genovieve Glier Council assessment officer – Rob van Iersel On behalf of the applicant – Liam Campbell
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Site inspection: <ul style="list-style-type: none"> Paul Mitchell: 13/5/2020 and 16/9/20 David Brown: 11 September 2020 Joe Vescio: 15 September, 2020

		<ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: 16 September 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, David Brown and Joe Vescio ○ <u>Council assessment staff</u>: Rob van Iersel and Chris Larkin • Panel briefing: 24 September 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, David Brown and Joe Vescio
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not supplied