

DATE OF DETERMINATION	16 October 2023
DATE OF PANEL DECISION	16 October 2023
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Simon Richardson, Ian Pickles
APOLOGIES	None
DECLARATIONS OF INTEREST	Joe Vescio had a perceived conflict of interest as a property he owns is located adjacent to the subject premises.

Papers circulated electronically on 20 September 2023.

MATTER DETERMINED

PPSNTH-179 – Byron – 10.2022.371.1 - 29 Shirley St and 2-4 Milton St, Byron Bay - Demolish existing development and clear the site, including existing buildings and trees to facilitate a residential flat building development comprising of 25 three-bedroom dwellings distributed across four separate two and three-storey buildings with basement car parking, associated landscaping and amenities (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 listed at item 8 in Schedule 1.

Application to vary a development standard

Byron LEP 2014 – Height and Floor Space Ratio

The Panel considered a written request from the Applicant, made under cl 4.6 of the Byron LEP 2014 (BLEP 2014), that has demonstrated that:

- compliance with cl 4.3 (building height) and cl 4.4 (floor space ratio) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standards

The Panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 of the BLEP 2014;
- the development is in the public interest because it is consistent with the objectives of the R3 Medium Density Residential zone and of clauses 4.3 and clause 4.4 of the BLEP 2014; and
- the concurrence of the Secretary has been assumed.

Byron LEP 1988 - Height

The Panel considered a written request from the Applicant, made under cl 64A of the Byron LEP 1988 (BLEP 1988), representing that:

- compliance with cl 40(2)(b)(ii) (building height) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

The Panel is not satisfied that:

- a) The applicant's written request adequately addresses the matters required to be addressed under cl 64A of the BLEP 1988; or
- b) The exceedance is in the public interest because it is consistent with the objectives of the 7(f2) Urban Coastal Land zone and cl 40 of the BLEP 1988.

Development application

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

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application, subject to conditions, for the reasons outlined in the Council assessment report.

The Panel's decision was unanimous.

The Panel agrees with Council's assessment that:

- the development is permissible with consent in both relevant zones: namely R3 Medium Density under BLEP 2014 and the 7(f2) Urban Coastal Land zone under BLEP 1988,
- the proposal is generally consistent with the SEPP 65 Design Quality Principles and satisfies the requirements and objectives of the relevant controls,
- the development, subject to the recommended conditions, will not result in unacceptable adverse impacts upon the natural or built environments, and
- the development is consistent with the objects of the Environmental Planning and Assessment Act 1979.

In respect of the R3 Medium Density Residential land, the Panel agrees that:

- exceedance of the height and floor space ratio controls under BLEP 2014 are justified,
- the proposed exceedances are minor and will enable additional dwellings consistent with the R3 zoning and existing medium density character fronting the northern side of Shirley Street, and
- The FSR exceedance is also justified as it enables improved landscape and communal open space outcomes across that portion of the site.

In respect of the Deferred Matter - 7(f2) Urban Coastal Land, the Panel:

- agrees that the provision of 10 dwellings across two floors is acceptable, noting this is a minor exceedance of the minimum site area per dwelling ratio of 300m² of site area for each dwelling greater than 85m² in floor area under BDCP 2010 Chapter 1 Part C.7.2 for residential flat buildings. The proposed density (resulting in 10 dwellings vs 8.2 dwellings under the DCP control) is considered acceptable because the building mass is contained in one uniform level structure surrounded by generous landscaping and open space and subject to the height control issue (see below) will result in a development not out of character with the typical lower form, bulk and amenity of development on adjoining 7(f2) Urban Coastal Land, and
- is not satisfied the request to exceed the cl. 40 (2)(b)(ii) height control is justified. The Panel agrees with Council that the 4m floor to ceiling heights proposed for the residential floors could be reduced to have the uppermost roof level (including parapets and balustrades) conform with the height control and still provide adequate internal spaces, and
- concluded that, subject to all building elements including balustrading conforming with the 9m height control, and submission of adequate landscape designs, accessible roof top gardens with modest trafficable areas are acceptable and will have insignificant adverse amenity or environmental impacts.

The Panel is satisfied that the impacts associated with the construction and ongoing use can be mitigated or managed by the imposition of conditions as recommended by Council and as amended by the Panel.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments:

- Delete Schedule 1, which includes the Deferred Commencement Conditions 1(a), (b) and (c)
- Amend Condition 1 to read as follows:

1. Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Title	Version No.	Drawn by	Dated
29 Shirley Street & 2-4 Milton Street Byron Bay Development Application Pages 27 to 47 inclusive	Project No 2555	Hayball	12.9.2023
Preliminary Engineering Services Layout Plan (Annotated by Council)	DA04 Rev D	ADG	11/08/23
Preliminary Road Widening Layout Plan and Sections Milton St	DA10 Rev C	ADG	11/08/23
Preliminary Driveway Crossover Details Milton St	DA12 Rev C	ADG	11/08/23
Preliminary Driveway Crossover Details Cavvanbah St (Annotated by Council)	DA13 Rev C	ADG	27/03/23
Preliminary Stormwater Management Layout Plan	DA17 Rev A	ADG	11/08/23
ATP211137-R-NIA-01	Noise Impact Assessment Report, 29 Shirley St, Byron Bay	ATP Consulting Engineers	August 2022
Statement of Landscape Intent	Statement of Landscape Intent	Urbis / Hayball	September 2023
Letter and attachments from Sodiq Azeez of Greg Alderson and Associates addressing Internal Access and Manoeuvring	Ref: 22381 – Response To Council RFI	Sodiq Azeez – Greg Alderson and Associates	4 October 2023
Letter from Anthony Mallam of Greg Alderson and Associates RE	Ref: 22381_RFI Response 1 & 2_03 10 23	Anthony Mallam - Greg Alderson and Associates	3 October 2023

Assessment of Proposed Ramp in Relation to Wheel Slippage for Waste Vehicles – 29 Shirley St,			
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In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

- Amend Condition 2 to read as follows:

2. Coastal erosion – consent to cease

The development consent must cease if at any time the erosion escarpment, as defined by Byron Shire Council, comes to within 50 metres of any building associated with the development. The owner of the land must then remove that building/s. Note condition 26 below requiring the imposition of an 88E positive covenant to be placed on the title pursuant to the Conveyancing Act 1919.

- Amend Condition 9 to read as follows:

9. Amendments to the plans required.

Amended plans must be submitted with the Construction Certificate to show :

- (a) **Maximum height of the northern building.** As per the requirements of BLEP 1988 Clause 40 Height (2) (b) (ii), the vertical distance of the topmost part of the northern building, including any balustrades, shall not exceed 9 metres above the existing ground level below with the floor to ceiling height on levels 1 and or 2 both reduced to achieve compliance.
- (b) **Northern building roof top landscaping.** Each roof top deck area on the northern building shall be shown as having a maximum trafficable area of 40sqm only with the remainder of these deck areas to be a landscaped green roof. Plans and details of the landscaped green roof areas to include:
 - Detail of the medium to be used for the landscaped green roof areas including depth and composition. Note – other than around the periphery of each individual deck this landscaping and its associated medium is not to be provided in pots or planters.
 - A planting schedule detailing the native species to be used for roof top landscaping, including the green roof areas and the location and dimensions of any pots or planters to be used around the periphery of each deck and the native plant regime to be used in these planters / pots.
 - A maintenance plan detailing the ongoing maintenance and servicing of the roof top deck landscaped areas.
- (c) **Electric vehicle charging points.** A minimum 240-volt power outlet being provided on the basis of 1 for each and every residential unit in the basement carpark to enable electric vehicle charging.

Such plans are to be approved as part of the Construction Certificate.

- Amend the condition title of Condition 10 to be – Amended Noise Impact Assessment Report

- Insert new Condition 11, which reads as follows and renumber the remaining conditions accordingly:

11. Amended Acid Sulfate Soils Assessment

An amended Acid Sulfate Soil Assessment and (if necessary) an Acid Sulphate Soil Management Plan (ASSMP) shall be prepared by a suitably qualified person in accordance with the NSW Acid Sulphate Soil Manual. The Assessment and Management Plan shall be prepared in accordance with Acid Sulfate Soil Manual (NSW ASSMAC 1998) and shall be submitted to Council for approval prior to the issue of a Construction Certificate.

The amended report is requested to confirm that samples taken were handled in accordance with NSW ASSMAC 1998, and detail how they were handled post extraction and prior to arrival at the testing lab. In addition, the report should include results for all core samples taken (6 in total). The basement cut will be approx. 5 metres below the ground surface, and as such testing is required every .05m down to a depth of 6 metres.

See Advisory Notes below

- Amend Condition 11 (now Condition 12) to read as follows:

12. Site contamination - A Detailed Site Investigation (DSI) shall be undertaken

The applicant shall submit a Detailed Site Investigation (DSI) for evaluation and approval prior to the issue of a Construction Certificate.

The DSI must be verifiable and specific to the subject property and include any supporting documentation. The DSI should address, but is not limited to, potential contamination from the rail corridor, previous uses of the site, heavy mineral sands, lead, asbestos and termiticide treatments. The DSI should also include investigation of, and sampling for, contamination resulting from the demolition of the existing buildings.

Reference should be made to the NSW EPA Consultants Reporting on Contaminated Land – Contaminated Land Guidelines 2020 with regards to detailed investigations, reporting methodology and information sources for obtaining land use history. For details refer to <https://www.epa.nsw.gov.au/your-environment/contaminated-land/statutory-guidelines>

Should the DSI find that the site is contaminated, a Remedial Action Plan (RAP) must be prepared for the management of contaminated soils in accordance with the findings of the DSI, in addition to the following requirements:

- a) The RAP must be prepared by a suitably qualified person as per the Consultants Reporting on Contaminated Land Contaminated Land Guidelines 2020 and all other statutory requirements.
- b) A Notice of Commencement must be submitted to Council no less than 30 days prior to commencement.
- c) A suitably qualified person with experience in contaminated land remediation must be engaged by the proponent to be responsible for overseeing all works.
- d) Contact details of the responsible person must be provided to Council, including a 24-hour telephone number.
- e) A validation report and notice of completion submitted to Council before any other works commence. The notice of completion must certify the site is suitable for the proposed use.
- f) All reporting must conform to the requirements of Consultants Reporting on Contaminated Land Contaminated Land Guidelines 2020 and must also include information confirming that EPA and all other regulatory requirements have been met. In particular, documentary

evidence is required to confirm that any disposal of soil off-site is done in accordance with the RAP and regulatory requirements.

The RAP report/s shall be submitted to Council for approval prior to the issue of a Construction Certificate.

- Amend Condition 12 (now Condition 13) by changing the condition reference in the Note to Condition 55 'Sequencing of Works'
- Amend Condition 13 (now Condition 14) to remove the reason
- Amend Condition 14 (now Condition 15) to remove the reason
- Amend Condition 15 (now Condition 16) to remove the reason
- Amend Condition 18 (now Condition 19) to remove the reason
- Amend Condition 20 (now Condition 21) to read as follows:

21. Stormwater Quality Improvement Device/s (SQIDs) required (Off-street)

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with the relevant Australian Standard. All stormwater drainage for the development must be treated to meet the retention criteria in Table 3.2 of Chapter B3 of DCP 2014.

Any proprietary product must be included in supporting documentation covering but not limited to: -

- Modelling to demonstrate compliance with the retention criteria in Table 3.2 of Chapter B3 of DCP 2014.

Claimed stormwater treatment performance of proprietary product must be described, including:

- Reduction of pollution concentrations
- Reduction of flow (if any)
- Design treatment flow rate (TFR)
- Recommended maintenance frequency (and associated activities)
- Documentation that the assumed pollutant concentration reductions up to the treatment flow rate (TFR) meets the retention criteria and no removal efficiencies are claimed for the bypass flow. The TFR is defined as $Q_{0.25}$ of half of Q_1 .
- Maintenance Plan including supporting calculations to demonstrate that the proprietary product has sufficient storage volume to store the collected sediments and gross pollutant between projected maintenance intervals.
- Minimum 5 years maintenance agreement. Written evidence to be provided that the owner/developer has entered into a minimum five (5) year signed and endorsed maintenance contract with a reputable and experienced cleaning contractor for the maintenance of the proprietary product.

Such plans and specifications must be approved as part of the Construction Certificate.

All stormwater drainage systems within the lot and the connection to a public or an inter-allotment drainage system must:

- (a) comply with any requirements for the disposal of stormwater drainage and on-site stormwater detention contained in Council's Development Control Plan, Stormwater Guideline and Local Approvals Policy; and

- (b) unless exempt from obtaining an approval under section 68 of the Local Government Act 1993 by a Local Approvals Policy, an approval must be obtained under that Act prior to issue of a Construction Certificate.

- Amend Condition 21 (now Condition 22) to read as follows:

22. Consent required for Works within Road Reserve

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

a) Milton St upgrade (north)

- Carriageway of width 7.0m
- Upgrade the pedestrian crossing in accordance with Figure 4 of TfNSW Technical Direction no TDT 2011/01a. (See approved annotated ADG drawing D04)

Note: Carriageway widening, road widening, line marking and signage, concrete island, proposed driveway to the basement, kerb & gutter, footpath and other services must be adjusted and proposed on-street parking deleted.

- The proposed drainage swale running along the side boundary with Lot 10 DP1153734 must be deleted and replace with a new stormwater pit and pipe as shown on the approved annotated ADG drawing D04. Minimum pipe in the road reserve to be 375mm RCP.

b) Milton St upgrade (south of Shirley St)

i. Roadworks

- Resealing and the provision of concrete edge strips on both sides of the carriageway
- Carriageway to be 7.5m

ii. Stormwater

The following must be included in the design and construction:

- Final pipe sizing of the downstream stormwater drainage design to include all contributing catchments
- 100 year HGL of the final pipe design to remain below the surface in accordance with the approved design plans.
- Potholing is required to determine the final alignment of the stormwater drainage extension.
- Construction of stormwater drainage system line C, D, E & F in ADG drawing D17 Rev A
- Provision of flood control device at the pipe discharge point

c) Driveway upgrades

The driveway proposal in ADG drawing DA13 Rev C must be updated in accordance with Council's Northern Rivers Local Government Development Design & Construction Manuals unless details are submitted to demonstrate that the vertical gradients create scraping issues for a B99 vehicle and stormwater calculations demonstrate the capacity of the design is adequate for 1% AEP flows to be maintained in the kerb.

- The driveway proposal in ADG drawing DA12 Rev C must be updated in accordance with Council's Northern Rivers Local Government Development Design & Construction Manuals and Figure 3.1 of AS2890.2. Minimum driveway width of 6.0m in accordance with AS2890.2. Longitudinal grade of driveway along the road reserve in accordance with Council's standard drawing R06.

Note: Vehicles must enter and leave the driveway without infringing the boundaries of the roadway. Exiting vehicles movement across the centre-line of the roadway is not permitted.

d) Driveway Removal

The existing driveway must be removed and the kerb and footpath area reinstated to Council's satisfaction

- Amend Condition 22 (now Condition 23) to read as follows:

23. Access & Parking

The application for a Construction Certificate is to include plans and specification that indicate access, parking, the provision of electric vehicle charging point connections as required in Condition 9 above, and manoeuvring details in accordance with the plans approved by this consent.

The access, parking and manoeuvring for the site is to comply with the requirements of AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking, AS 2890.6-2009: Parking facilities, Part 1: Off-street parking for people with disabilities and AS 2890.2-2002: Parking facilities, Part 2: Off-street commercial vehicles. Plans are to include, but not be limited to, the following items:

- a) The ramp servicing the basement carpark must be designed to accommodate the largest commercial vehicle required to service the site, e.g. the garbage truck, with certification provided by the waste contractor that they can access and exit the basement and empty all garbage receptacles within the basement.
- b) Basement parking module must be designed to meet the specification and requirements specified in Chapter B4.2.6 of Byron DCP 2014
- c) The path of vehicular travel from the car park entrance to all parking spaces for people with disabilities and from those spaces to the car park exit shall have a minimum headroom of 2200 mm.
- d) The headroom above each dedicated space and adjacent shared area for accessible parking, measured from the level of the dedicated space, shall be a minimum of 2500 mm.
- e) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment including suitably designed permeable pavements;
- f) site conditions affecting the access;
- g) existing and design levels; and
- h) longitudinal section from the road centreline to the car space(s).

Such plans and specifications must be approved as part of the Construction Certificate.

Prior to issue of the construction certificate, written evidence prepared by a suitably qualified engineer must be obtained that demonstrates, to the certifier's satisfaction, the plans for ramp servicing the basement carpark comply with the conditions above.

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

- Amend Condition 25 (now Condition 26) – delete the word 'Further' and replace with 'and' in the section paragraph
- Amend the condition title of Condition 30 (now Condition 31) to be – Sewer Easements – Section 88B Instrument
- Amend Condition 37 (now Condition 38) to delete the first sentence and replace with:
The development is to comply with Basix Certificate No 1288442M_02 Dated 11 October 2023.

- Delete Condition 40 – Water and Sewerage – Section 68 Part B approval, and renumber the remaining conditions accordingly
- Amend Condition 60 (now Condition 59) to remove the reason
- Amend Condition 61 (now Condition 60) to remove the reason
- Delete Condition 71 – Maintenance of sediment and erosion control measures, and renumber conditions accordingly
- Amend Condition 81 (now Condition 79) to read as follows:
79. Common TV antenna to be provided.
Each building shall be provided with a common TV antenna with connections from each dwelling unit to this antenna shall be provided.
- Amend Condition 86 (now Condition 84) to replace ‘plan’ with ‘plans’.
- Insert new Condition 88, which reads as follows and renumber the remaining conditions accordingly:
88. Waste Management
Solo Resource Recovery or other approved Waste Management Contractor to certify that waste can be collected from the basement car park by their approved refuse collection vehicle prior to the issue of the Occupation Certificate. Details to be provided to the PCA.
- Amend Condition 94 (now Condition 93) to remove the reason
- Amend Condition 95 (now Condition 94) to remove the reason
- Amend Condition 96 (now Condition 95) to remove the reason and add the words ‘by **UGLRL** on behalf of **TfNSW**’ at the end of the sentence.
- Delete Condition 99 – Swimming pool discharge, and renumber the remaining conditions accordingly
- Delete Condition 101 – Swimming Pool fencing, and renumber the remaining conditions accordingly
- Insert new condition 100, which reads as follows:
100. Waste management service
The waste management service shall be provided by a non-standard waste collection vehicle as described in Greg Alderson and Associates letter from Sodiq Azeez, and attachments dated October 2023 and also the letter from Anthony Mallam of Greg Alderson and Associates dated 3.10.2023 addressing ‘Assessment of Proposed Ramp in Relation to Wheel Slippage for Waste Vehicles – 29 Shirley Street.

A contract must be maintained at all times with a waste service provider able to provide these vehicles and the basement carpark access ramp shall be maintained in accordance with the regime described above in the letter from Anthony Mallam of Greg Alderson and Associates dated 3.10.2023 addressing ‘Assessment of Proposed Ramp in Relation to Wheel Slippage for Waste Vehicles – 29 Shirley Street.

All waste collection including recycling and green waste to be collected from the basement at all times. No waste collection is permitted from the street. Should the development ever be subdivided, appropriate provision to be included in the relevant management statements (whether it is Strata or Community title) to reflect this.

- Remove reference to 'Schedule 5. Notes' and replace with 'Notes'
- Insert the following Note after the 'Occupation Certificate required' note –
Should an updated Acid Sulfate Assessment and subsequent Acid Sulfate Soil Management Plan (ASSMP) be required:
These plans shall be prepared so as to provide specific detail on the practical management of the acid sulfate soil risks. Any report shall be submitted to Council for approval prior to the issue of a Construction Certificate.

The ASSMP must develop the strategy outlined in the Acid Sulfate Soil Assessment and provide Council with specific details (which may not be limited to) the following:

- a) Investigation and reporting for the ASSMP must be undertaken by a suitably qualified environmental scientist.
 - b) The location and address of all land, or portions of land, proposed to be used for ASS and PASS treatment.
 - c) A site plan, to an appropriate scale, shall detail the exact location of all treatment, chemical storage and transport affected parts within the boundaries of each property.
 - d) Details should include private owner consent and an assessment of the environmental risks and requirements under the Environmental Planning and Assessment Act 1979 where the use of such land for the treatment of contaminated soil may require separate development consent or approval.
 - e) A 'designated responsible' person to be accountable for managing, monitoring, and reporting on the ASS and PASS remediation program associated with this development.
 - f) Contact details and appropriate qualifications and professional indemnity insurance to be included.
 - g) The specifics of all operator training, monitoring, testing, and recording to be carried out during the ASS and PASS remediation program.
 - h) An emergency management plan that includes all likely eventualities where ASS and PASS soil, alkaline chemicals or other environmentally harmful substances may be washed, blown or otherwise escape from the excavation site, transport vehicle or treatment containment areas.
 - i) The specifics of the final soil monitoring criteria, final waste classification and proposed final point of disposal of soil excavated from the subject property.
 - j) Works involving excavations at or below the natural ground surface must not commence until the ASSMP has been prepared and approved by Council.
 - k) Remediation and management of ASS and PASS must be in accordance with the Acid Sulfate Soil Manual (NSW ASSMAC 1998) and best practice methodologies.
 - l) Remediation and emergency contingencies responses for incidents occurring in particular in the event of non-compliance that has potential to affect the receiving environment.
- Insert the following Note after the 'Protection of the Environment Operations Act 1997' note –
Reasons for conditions of consent from TfNSW Rail

Construction and demolition impacts

Reason for condition

The proposal includes demolition of existing development (backpackers' hostel accommodation building, shared facilities, two dwellings) on the project site which is adjacent to the **CRN** rail corridor. It is important for **UGLRL** to be satisfied that the proposal does not have any adverse impacts on the operation of the rail in future and the rail infrastructure at all times.

Demolition of existing developments

Reason for condition

It is essential for **TfNSW** and **UGLRL** to ensure that demolition of existing development (backpackers' hostel, including accommodation buildings, shared facilities such as kitchen and dining areas, car parking area and communal open spaces as well as two dwellings) have no adverse impacts on the rail corridor land. As such, the applicant is advised to contact **UGLRL's** Third Party

Works team to obtain **TfNSW's** approval to demolition of existing development via thirdpartyworks@uglregionallinx.com.au

Fencing

Reason for condition

The security of fencing along the rail corridor is essential to prevent unauthorised entry and ensure safety.

Excavation in, above, adjacent to the rail corridor

Reason for condition

The information provided with the DA and amended documents/plans provided with additional information provided clearly indicate excavation within 25m from the rail corridor. The plans also indicate structural measures to retaining of fill materials along the rail corridor boundary. Therefore, it is important for UGLRL and TfNSW to be satisfied that the works do not have any adverse impacts on the rail corridor and rail infrastructure during proposed development.

Clause 2.99 of SEPP (Transport & Infrastructure) 2021 stipulates that the consent authority must not grant consent without consulting with the rail authority and obtaining concurrence consistent with clause 2.99 (2) – (5) in the event that the development involves the penetration of ground to a depth of at least 2m below ground level on land within a rail corridor or within 25m of a rail corridor.

Supervision of all excavation, shoeing and piling works within 25m of the rail corridor

Reason for condition

The revised Statement of Environmental Effects (SEE), Architectural Plan, and Civil Engineering Plans supplied by the applicant do not provide details of the excavation activities near to the rail corridor. Therefore, it is important for UGLRL and TfNSW to be satisfied that the works do not have any adverse impacts on the rail corridor and rail infrastructure during proposed development.

Cranes and Equipment

Reason for condition

Should such equipment be required to be used in the air space over the rail corridor other than the proposed development area, the applicant must submit an application to **UGLRL** for its endorsement and **TAHE's** approval in advance. The applicant is advised to contact **UGLRL's** Third Party

Access to rail corridor

Reason for condition

The site is located adjacent to the rail corridor. As such, it is essential that access to the rail land must be permitted in advance **by TfNSW and UGLRL**.

It is also noted that there is an existing informal pedestrian access from the northern eastern corner of existing Lot 12 DP 1138310 (and ultimately the north-eastern corner of proposed development) to Belongil Beach. The Applicant must provide information on the legality and authorization of this existing access. Furthermore, clarification on the permissibility or closure of this existing pedestrian access once development is completed should also be provided.

Stormwater drainage

Reason for condition

The Applicant must obtain written approval that the development of any drainage, and surface runoff paths would not be discharged into the rail corridor and cause no risk to the rail corridor. As such, it is essential for **TfNSW** and **UGLRL** to satisfy that the proposal does not have any adverse impact on the rail corridor.






Noise and vibration**Reason for condition**

The development is proposed for residential flat building for residential purpose. Therefore, if the railway line does become operational in the future, rail noise and vibration should be considered for the proposed residential development. It is essential to maintain the acoustic amenity of the future occupants of the residential properties.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during the public exhibition. The Panel notes that thirteen (13) submissions were received with twelve (12) in support and one requesting ongoing consultation.

The Panel considers the concerns raised have been adequately addressed in the assessment report and conditions imposed.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Gow
 Michael Wright	 Simon Richardson
 Ian Pickles	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-179 - BYRON - 10.2022.371.1
2	PROPOSED DEVELOPMENT	Demolish existing development and clear the site, including existing buildings and trees to facilitate a residential flat building development comprising of 25 three-bedroom dwellings distributed across four separate two and three-storey buildings with basement car parking, associated landscaping and amenities
3	STREET ADDRESS	29 Shirley Street and 2-4 Milton St, Byron Bay
4	APPLICANT OWNER	The Trustee for The 29 Shirley Street Trust Tarek Nabi and Baycity Pty Ltd
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"> Environmental Planning and Assessment (EP&A) Act 1979 Environmental Planning and Assessment Regulation 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Byron Local Environmental Plan 2014 Byron Local Environmental Plan 1988 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Byron Shire Development Control Plan 2014 (DCP 2014) Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> 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: 19 September 2023 Supplementary Report: 11 October 2023 Clause 4.6 variation requests: <ul style="list-style-type: none"> Height of Building and Floor Space Ratio (Cl. 4.3 and 4.4 of Byron Local Environmental Plan 2014) Height (Cl. 40 of Byron Local Environmental Plan 1988) Written submissions during public exhibition: Thirteen (13) Total number of unique submissions received by way of objection: Nil
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 15 March 2023 <ul style="list-style-type: none"> <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow, Joe Vescio and Simon

		<p>Richardson</p> <ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Steven Denize and Chris Larkin ○ <u>Department staff</u>: Carolyn Hunt <ul style="list-style-type: none"> • Site inspection: 16 June 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow and Simon Richardson ○ <u>Council assessment staff</u>: Steven Denize and Renan Solatan • Applicant Briefing: 26 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow, Simon Richardson and Ian Pickles ○ <u>Applicant representatives</u>: Melissa Griffin, Patrick Hefferan, Letitia Vitale, Chris Vitale ○ <u>Council assessment staff</u>: Chris Larkin and Steven Denize ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis • Final briefing to discuss council's recommendation: 26 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright, Stephen Gow, Simon Richardson and Ian Pickles ○ <u>Council assessment staff</u>: Chris Larkin and Steven Denize ○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report