

**NORTHERN REGION PLANNING PANEL  
COUNCIL ASSESSMENT REPORT**

Doc No. #E2023/91658

<b>Panel Reference</b>	PPSNTH-225
<b>DA Number</b>	10.2021.384.3
<b>LGA</b>	Byron Shire Council
<b>Proposed Development</b>	Modification to Approved Three (3) Storey Mixed Use Retail/Residential Development including Basement Parking with reduction in Units from 50 to 44 Apartments and Other Design Changes
<b>Street Address</b>	90-96 Jonson Street, Byron Bay
	LOT:5 DP 619224
<b>Applicant/Owner</b>	Applicant: Mr Matthew Nesbitt, Luxon Owner: Project Bohemian Pty Ltd
<b>Date of Modification lodgement</b>	22 June 2023
<b>Original DA Determination Date</b>	27 May 2022
<b>Application Type</b>	4.55(2) Modification
<b>Number of Submissions</b>	Two (2)
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria</b>	<p>Clause 2, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General development with a CIV greater than \$30 million.</p> <p>Section 275 of the <i>Environmental Planning and Assessment Regulation 2021</i> states that a council must not determine an application to modify a development consent under the Act, Section 4.55(2), on behalf of a regional planning panel, if the application is of a kind specified in the <i>Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consents</i> published on the NSW Planning Portal on 30 June 2020.</p> <p>The application proposes amendments to a condition of development consent recommended in the council report, but which was amended by the panel.</p>
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment (EP&amp;A) Act 1979</li> <li>• EP&amp;A Regulation 2021</li> <li>• State Environmental Planning Policy No.65 (Design Quality of Residential Apartment Development) &amp; Apartment Design Guide (ADG)</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>• Byron Local Environmental Plan 2014</li> <li>• Byron Development Control Plan 2014</li> </ul>

<b>List all documents submitted with this report for the Panel's consideration</b>	Attachment A: Architectural Plans Attachment B: Section 4.55(2) Report (SEE) Attachment C: Section 4.55 Ancillary Report Attachment D: Design Verification Statement Attachment E: Visual Impact Statement Attachment F: Development Advice Panel Meeting Notes Attachment G: Byron Design Excellence Panel Notes Attachment H: Applicant Colour Options Submission Attachment I: Public Submissions (previously provided)
<b>Report prepared by</b>	Rob van Iersel, Consultant Town Planner
<b>Report date</b>	22 November 2023

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

**Yes**

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**No –  
The variation was  
addressed in the  
assessment report**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

**Not Applicable**

#### Conditions

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

**No – Application is  
recommended for  
Refusal. Applicant  
has been advised of  
recommendation.**

# Executive Summary

## Proposed Development

Development Application 10.2021.384.1 was approved by the Northern Regional Planning Panel on 27 May 2022, for demolition of existing buildings and construction of a three (3) storey mixed use retail/residential development including basement parking.

The key elements of the approved development were:

- Basement carparking for 166 vehicles
- Ground floor retail and food and beverage premises including “Spice Alley”, a laneway providing a pedestrian link from the new Byron Transit Centre directly to Jonson Street
- A central Piazza 314m<sup>2</sup> in area opening the building from Jonson Street through to the railway corridor reserve at the rear
- 48 apartments over 2 levels, comprising 42x2 bedroom apartments, 6x3 bedroom apartments
- A rooftop pool and deck area proposed for the use of residents only. The rooftop also contained a solar array, plant for the retail and residential uses below and landscaped areas for residential amenity.

The current modification application, lodged under Section 4.55(2) of the Act, seeks to amend the consent to substantially alter the building design, alter the internal layout of each building level, and reduce the number of units from 48 to 44. A number of other design and layout changes are proposed as detailed in this report.

## The Site

The subject site is described as Lot 5 DP 619224, No. 90-96 Jonson Street, Byron Bay. It has an area of 5,390m<sup>2</sup> and is irregular in shape.

It is located on the western side of Jonson Street within Byron Bay Town Centre, with a disused and supermarket site adjoining to the south. Land adjoining to the north includes a heritage cottage, commercial development, the Rails Hotel and associated carparking. The disused North Coast railway corridor adjoins the western boundary of the site, with residential development in the Butler Street precinct beyond the recently opened Town Centre Bypass. Existing commercial development is located to the east.

## Zoning and Permissibility

The property is zoned E1 Local Centre under Byron Local Environmental Plan 2014 (BLEP). The proposed development is defined as ***mixed use development*** in the BLEP Dictionary, which means a *building or place comprising 2 or more different land uses*. The land uses within the proposed development are defined in the dictionary as: *retail premises, food and drink premises, restaurant and café and shop top housing*. The land uses are permissible with consent in the E1 zone.

## Northern Regional Planning Panel Briefing

A briefing of the Northern Regional Planning Panel was held 27 October 2021. Link to record of briefing here: [Record of Briefing PPSNTH-106.pdf](#)

## Assessment

A detailed assessment has been undertaken against the provisions of relevant Environmental Planning Instruments, including BLEP 2014, and the Byron Development Control Plan 2014 (BDCP) and is contained below.

There are several environmental planning instruments applicable to the site, which the consent authority must consider. A detailed assessment against the relevant parts of each instrument is included in the body of this report. A summary of the applicable provisions is noted below:

## **S4.55(2) Environmental Planning & Assessment Act 1979**

### Substantially the same development:

The modified design plans show that the building is significantly modified in its external and internal design, including external materials and colours.

Each level of the development is different to that approved, as detailed in this report. The Byron Town Centre Design Excellence Panel conclude that the modified design does not exhibit design excellence, whereas they had endorsed the approved design.

It is considered that the development as modified is not substantially the same as that approved.

### **State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development**

A design verification statement has been submitted in support of the proposal, addressing the Design principles within the SEPP.

As detailed in this report, it is considered that the modified design is not consistent with Design Principle 1 Context and neighbourhood character.

### **Byron Local Environmental Plan 2014**

- **Clause 4.3 of Byron Local Environmental Plan 2014 – Height of buildings**

The building height standard for the site is 11.5 metres. The proposal exceeds the maximum height of building standard, as did the approved development, and the application includes a request to vary the development standard.

The modified proposal, while maintaining the previously approved maximum height, includes a greater number of roof-top elements that exceed the maximum building height development standard.

- **Clause 4.6 Byron Local Environmental Plan 2014 – Exceptions to development standards**

The original approval was based on a written request from the applicant that sought to justify the contravention of the 11.5m maximum building height development standard. A further request is not required for a modification application.

The modified design, while not increasing the maximum height of the building, involves amendments to the roof design that includes additional elements that exceed the 11.5m height, when compared to the approved development.

- **Clause 6.7 Affordable Housing in residential and business zones**

This clause requires that prior to granting consent to development on land zoned E1 Local Business, the consent has considered the need for providing, maintaining, or retaining affordable housing, and the need for imposing conditions relating to providing, maintaining, or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.

The approved development did not provide for affordable housing as defined by the clause. However, it responded to this clause through provision of new supply and diversity of housing stock in the town centre, with a mix of apartment types and sizes offered for purchase and/ or long-term rental. To ensure this outcome, a condition on the use of dwellings to preclude holiday letting of the residential apartments was included in the recommended consent.

The modified proposal alters the mix of apartments, providing a greater number of three bedroom units and a reduction in two bedroom units, reducing the housing diversity in comparison to the approved development.

- **Clause 6.13 – Design excellence – Byron Bay town centre**

Pursuant to this clause, development consent must not be granted unless the consent authority considers that the development exhibits design excellence.

Further, development consent must not be granted unless the Byron Design Excellence Panel has endorsed the development as exhibiting design excellence.

The Design Excellence Panel has reviewed the modified design and concludes that the modifications as proposed do not exhibit design excellence. The Panel has not endorsed the modified design as exhibiting design excellence. Comments of the Panel are included at **Attachment G**.

The changes proposed to the external façade, including fenestration, materials, and colour, significantly alter the building compared to that approved.

As detailed in this report, the modifications proposed would result in a building inconsistent with the existing and desired future character of the Byron Town Centre.

The modified design substantially reduces the design excellence of the project in comparison to the approved building.

#### **Byron Development Control Plan 2014**

- **Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access**

The application includes changes to the apartment mix and the retail floor layout. Changes are also proposed to the approved basement car park in terms of parking numbers and circulation.

Assessment of the proposed modification indicates that it is inconsistent with the parking and access provisions of Chapter B4 regarding parking numbers and manoeuvring area.

- **Chapter E10 Byron Bay Town Centre**

The modification application is inconsistent with a number of objectives, design guidelines, performance criteria and prescriptive measures of this Chapter, primarily as the modified design is considered to be inconsistent with the existing and desired future character of the Town Centre.

#### **Public Submissions**

There were 2 unique submissions received to the exhibition of the development, one of which was in support of the proposal and the other from the operator of a nearby entertainment venue highlighting potential noise conflicts.

#### **Conclusion**

The proposed modifications to the approved building are substantial. In particular, the design changes to the external building appearance significantly alter that which was approved. There are also changes to the internal layout of each level of the building.

It is considered that the nature and extent of changes are such that the modified development is not substantially the same development as that approved.

Council's Byron Design Excellence Panel has assessed the modified plans and has not endorsed the development as exhibiting design excellence.

Given these matters, it is recommended that the Section 4.55 Application be refused by the Northern Regional Planning Panel in accordance with the recommendations listed at the end of this report.

## 1. INTRODUCTION

### 1.1. History/Background

There is a considerable history of approvals relating to the site, but a summary of the key approvals relevant to the land that is subject to the current application is outlined below:

6.1980.2340.1	Shopping plaza development	Approved	09/09/1980
6.1996.2389.1	Shop – Cinema Complex and shops	Refused	02/07/1999
10.2002.15.1	1.8m chain wire fence	Approved	28/02/2002
10.2021.384.1	Demolition of existing buildings and construction of a three (3) storey mixed use retail/ residential development including basement parking	Approved	27/05/2022
10.2021.384.2	Modification application	Withdrawn by applicant	June 2023

10.2021.384.1 was approved by the Northern Regional Planning Panel based on a recommendation for approval from Council staff.

### 1.2. Description of the proposed development

The application describes the amendments proposed as:

- *Reduction in the number of units (six) from 50 to 44* [Note: the original consent provides for 48 units, not 50]
- *Removing the sky homes living arrangements*
- *Increasing the number of north facing living and private open space areas*
- *Moving to a more traditional natural cross flow ventilation arrangement*
- *Increased residential lift cores throughout*
- *More legible movement throughout including widening the openings to the arcade*
- *Improved visibility over public areas and internally creating a more comfortable usable space, benefiting social interaction and enables passive surveillance*
- *Increased communal open space for the enjoyment of residents and visitors*
- *Increase size of ground level piazza including for the north-western pocket and creating an activation point centrally*
- *Singular architectural expression for all shopfronts.*

A separate submission, lodged concurrently, requests that conditions of approval relating to the payment of contributions (Conditions 10 & 11) be amended to require payment prior to the issue of an Occupation Certificate, rather than requiring payment prior to issue of a Construction Certificate.

#### Existing Approval

PPSNTH-106-Byron-10.2021.384.1 was approved by the Northern Regional Planning Panel on 26 May 2022.

The approval provided for “Demolition of Existing Buildings and construction of a Three (3) Storey Mixed Use Retail/Residential Development including Basement Parking”.

In approving the development, the Panel also approved a request from the applicant, made under cl 4.6(3) of the Byron LEP 2014, to vary the maximum building height development standard.

The Panel amended two conditions of the Council's Assessment Report, relating to car parking and noise impact.

An artists' impression of the Jonson Street frontage of the approved development is shown below.



#### *Approved Development*

The consent provides for the erection of a three-storey retail/ residential development, comprising a basement carpark, ground floor food and beverage and retail premises, and two residential levels, containing 2 & 3 bedroom apartments, with 48 apartments in total. A rooftop swimming pool was also proposed for the use of residents.

#### Approved Development Summary:

The approved development included:

- Basement carparking for 166 car spaces, including 97 retail spaces, 69 residential spaces (including visitor spaces), bicycle parking, areas for waste storage and miscellaneous plant items.
- Ground floor retail premises, including "Spice Alley", a laneway providing a pedestrian link from the new Byron Transit Centre directly to Jonson Street, containing a series of small food and drink premises, fronting the Alley;
- An open piazza, approx. 314m<sup>2</sup> in area, opening the building from Jonson Street through to the railway corridor reserve at the rear;
- Level 1 residential comprising 19x2 bedroom apartments, 3x2 bedroom apartments (adaptable), and 3x3 bedroom apartments;
- Level 2 residential containing 19x2 bedroom apartments, 3x2 bedroom apartments (adaptable), and 3x3 bedroom apartments;
- A rooftop pool and deck area, proposed for the use of residents only. The rooftop also contained a solar array and landscaped areas;

At ground level, access to the basement carparking was provided at the southern end of the site. Amenities including end of trip facilities for people who work on site who may cycle to work were also provided. A residential lobby and lift was provided to the upper floors.

Loading services and waste management were proposed via Spice Alley.

#### Proposed Modification:

A number of modifications are proposed to the approved building, the most significant of which includes changes to the building facades and colour (see below):





*Jonson Street - Approved*



*Jonson Street – Proposed*

A summary of the modifications proposed is provided below.

**Table 1: Modifications Proposed**

	<b>Approved</b>	<b>Proposed</b>
Gross Floor area	7,000m <sup>2</sup>	7,092.64m <sup>2</sup>
FSR	1.3:1	1.31:1
Maximum Building Height (natural ground level : RL3.7M)	Lift overrun: 14.85m (single lift) Roof – pool amenities: 13.55m Pool terrace: 12.71m Pool: 11.95m Apartment roof: 10.45m	Lift overrun: 14.85m (3 x lifts) Roof – sauna/ gym: 14.09m Roof – pool amenities: 13.59m Fences between terraces: 12.14m Pool: 12.7m
No of apartments	42 x 2-bedroom 6 x 3-bedroom Total: 48 apartments	20 x 2-bedroom 4 x 2-bedroom + study 20 x 3-bedroom Total: 44 apartments
Car Parking spaces	Total: 166 spaces 97 retail 69 residential	Total: 160 spaces 88 retail 72 residential





*Piazza – Approved*



*Piazza – Proposed*



*Spice Alley – Approved*



*Spice Alley – Proposed*





*Western Elevation – Approved*



*Western Elevation – Proposed*

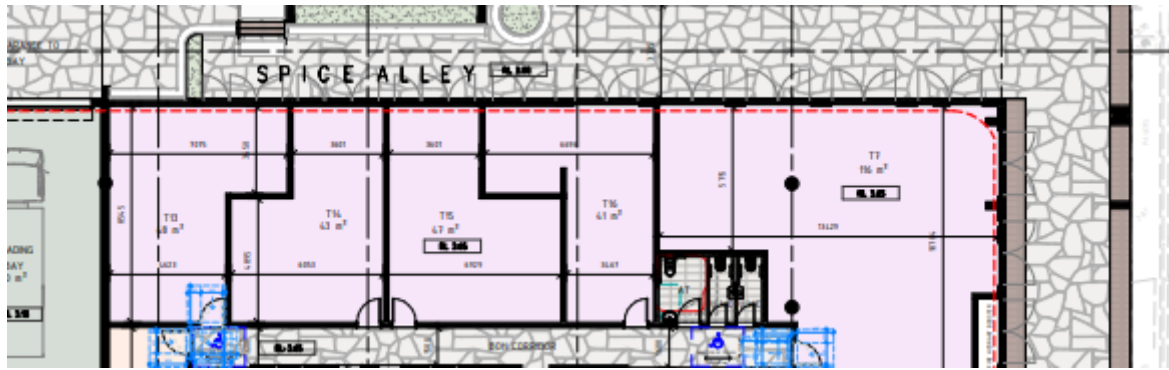
The design changes extend to every elevation of the building, as summarised below.

Basement Level:

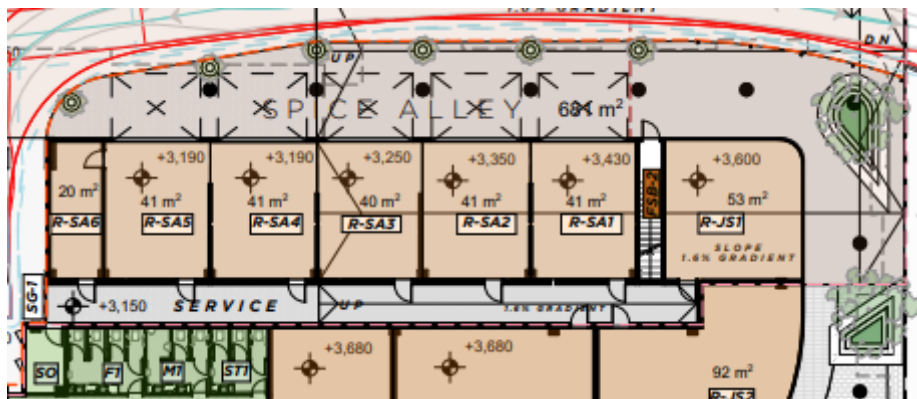
- Reorientation of spaces and aisles;
- Reduction in parking spaces from 166 spaces to 160 spaces;
- Additional lift/ stair access location (5 proposed v 4 approved).

Ground Level:

- Rectangular plaza address to Jonson Street rather than curved as approved;
- Tenancies reduced from 19 spaces to 18;
- Amended “Spice Alley” configuration:
  - Proposed:
    - 5 x food & beverage spaces (eastern most space fronts Jonson Street)
    - average area: approx. 45m<sup>2</sup>



- Approved:  
7 x food & beverage spaces (easter most space equal frontage to lane & Jonson)  
average area: approx. 40m<sup>2</sup>



#### Levels 1 & 2:

- Proposed:
  - 2 x two-bed + study units
  - 10 x two-bed units
  - 10 x three-bed units
  - Separation of internal access corridors – 1 north, 1 south;
- Approved:
  - 21 x two-bed units
  - 3 x three-bed units
  - Connected internal access corridor (i.e. access provided to all apartments from single corridor)

#### Roof:

- Proposed:
  - Communal swimming pool and recreation area
  - Gymnasium and amenities
  - 8 roof-top private garden/ recreation areas, accessed by apartments below and separated by raised planter beds
  - Solar arrays and plant areas for retail areas.
- Approved:



- Communal swimming pool and recreation area
- Communal native garden
- Openable skylights for apartments below (no immediate access available to roof from apartments below the openable skylights)
- Plant areas

### 1.3. Description of the site

Land is legally described as: Lot 5 DP 619224

Property address is: 90-96 Jonson Street BYRON BAY

Land is zoned: E1 Local Centre

Land area is: 5,390m<sup>2</sup>

Property is constrained by: Acid Sulfate Soils (Class 3)

Bush Fire Prone Land (Vegetation Buffer)



#### Site Locality

#### Legal description, dimensions, easements, and topography

The site is located at 90-96 Jonson Street, Byron Bay, located centrally within the Byron Bay Town Centre. It has an area of 5,390m<sup>2</sup> with a frontage of 76.215m to Jonson Street on its eastern boundary.

Easement for parking, right of carriageway and right of footway variable width runs through the centre of the site and an easement for water main 3.05 wide created by covenant number 222 also runs through the centre of the site.

The site is generally flat.



### Existing development, adjoining development, and site vegetation

The site is occupied by two buildings, one located parallel to the northern boundary and the other along the western boundary, each containing a number of commercial tenancies (currently vacant). A sealed laneway, approx. 5m wide, is located along the northern site boundary, providing rear access to the commercial units and pedestrian access to the car parking area located to the north-west.

A sealed carpark covers the remainder of the site, with a small toilet block in the centre of the carpark.

Vehicle access is provided via two crossovers from Jonson Street.



*The Site (source: Near Maps, 2023)*

### Adjoining development

- North: The site adjoins the Railway Precinct Heritage Conservation Area. Immediately to the north, there is a heritage cottage located toward the Jonson Street frontage, with the sealed railway precinct carpark to the rear of that cottage.

The Rails Hotel is located to the north, within the railway precinct, with the rail station, Railway Park, recently upgraded open space along the rail line and bus terminal.

South: The old Woolworths supermarket adjoins to the south. That building is currently vacant. The Mercarto shopping complex is located south of that property.

- West: The site adjoins the disused North Coast rail line.

- East: Jonson Street forms the eastern boundary of the site, with commercial uses, including shops and cafes, located further to the east.



*Site view from Jonson Street*



*Site view along Jonson Street*

### The locality – Byron Bay Town Centre

Development within the town centre is characterised by a mix of one, two and three storey buildings containing a mix of retail business, with many cafes and restaurants at street level.

Most of the existing lots in the town centre have frontages of between 15 and 20m, providing a fine-grain and visual mix of development.





*Existing development, east side of Jonson Street opposite subject site*



*Existing development, west side of Jonson Street, north of subject site*



*Existing development, north side of Lawson Street*



Mercato shopping complex adjoining subject site to south

## 2. SUMMARY OF REFERRALS

### External:

Referral	Issue
Water NSW (s.90 Water Management Act 2000)	Modifications do not change water supply work. The previous General Terms of Approval, issued on 19 November 2021 remain current.
Transport for NSW (SEPP Transport and Infrastructure) 2021)	Advise that modifications do not require change to comments / terms previously provided in relation to original development application, relating to rail (s2.99) or road (s2.122) related issues.

### Internal:

Referral	Issue
Development Engineer	Modifications not supported – parking provision and design. See comments below.
Heritage Advisor	Recommends that the proposed white finish be amended to a warm neutral tone, to reduce the prominence and visual impact of the building in relation to the railway complex.
Byron Design Excellence Panel	Detailed comments are provided in the report under heading clause 6.13 Design Excellence Byron Bay Town Centre. The Panel does not endorse the modified design as exhibiting design excellence. Advice of the Design Panel is provided at <b>Attachment G</b> .

### Development Engineer Comments:

- Parking: Design plans show 159 spaces consisting of 88 retail spaces and 71 residential spaces plus 8 motorbike spaces (2 car space equivalent); a total of 161 spaces. The assessment of car parking requirements indicates of Council's DCP indicates a need for 170 spaces (2 bed + study apartments have been assessed as a 3 bedroom unit).

Land Use	Car Parking Rates	Units		Car Spaces
Medium density housing	1 space / 1 or 2 bed unit, 2 spaces / 3 or more bed unit, 1 visitor space / 4 dwellings or part thereof. Each dwelling to have at least one covered car space. Where dwellings are designed with studies/ offices and other areas capable of being utilised as separate sleeping quarters these will be counted as bedrooms.	No. of 1-2 bed units (resident parking) =	20	79.00
		No. of 3+ bed units (resident parking) =	24	
		No. of dwellings (visitor parking) =	44	
		-		
Retail premises	1 space per 20m² GFA	GFA (m2) =	1812	90.60
		-		
		-		
		-		
			TOTAL	170

- EV Parking: The new proposal now proposed EV vehicles parking within the parking module. There are 26 retail parking and 66 residential parking.

The design spaces for EV vehicles are contained in Austroads whereby spaces are 2.8m wide. The current proposal does not meet the Austroads Design Requirements.

- Retail Parking: All retail parking spaces have adopted the User Class 2 design parameters, therefore non compliant.
- Blind Aisles: Non compliant parking adjacent to the residential security gates due to blind aisle width & manoeuvring requirements.
- Accessible Parking: There are 8 accessible parking spaces required, consisting of 6 for residential use and 2 for retail use. Only 7 spaces are proposed, consisting of 5 for residential use and 2 for retail use.
- Turning movements for a RCV into the loading bay on Spice Alley shows potential for conflicts.

### 3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document Planning for Bush Fire Protection 2019.

The site is mapped as Bush Fire Prone Land within mapping certified on 12 July 2022. It was not mapped as such under the previous mapping, in place at the time of consideration of the original application.

The modifications proposed raise no issues in regard to bush fire risk.

### 4. SECTION 4.55(2) – MATTERS FOR CONSIDERATION

Section 4.55(2) provides that a consent authority may modify a consent if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all),*

The modifications proposed are substantial, including the external façade, materials and colour changes and changes to internal configurations of each level of the building, including roof-top elements.

The proposed modifications were discussed with Council staff at a Development Advice Panel (DAP) meeting in November 2022. The plans tabled at that meeting are the same as those lodged with the current S4.55(2) application.

The proponents requested advice from Council about whether the proposal would meet the substantially the same test. Council's notes of the meeting (**Attachment F**) state:

*The proposal appears to meet the “substantially the same” test. The application will need to be submitted as a s4.55(2) Application*

The meeting notes also contain detailed comments from members of the Byron Design Excellence Panel, including suggestions for change to the plans tabled. Whilst not absolutely clear, the inference is



that the comments about meeting the substantially the same test may have been made on the assumption that the Panel member's suggestions would be taken up.

In any case, the assessment of the architectural plans at that meeting were cursory.

Based on a more detailed assessment of the proposed modifications, and close comparison to the approved scheme, it is considered that, given the nature and scale of the modifications, the consent as modified is not substantially the same development as that approved. In particular, this relates to:

- The external building design, proposed materials, environmental control elements and fenestration are significantly different to the building approved. Those matters were important considerations in the assessment of the original design, in accordance with the design excellence provisions of Byron LEP 2014 (cl 6.13);
  - Alterations to the mix of units to decrease diversity of product;
  - Alterations to each level of the building, including:
    - changes to basement parking layout involving parking numbers and internal circulation (note: Council's Development Engineer comments above);
    - changes to the ground level retail layout and configuration, including changes to "Spice Alley", which was previously proposed to include a greater number of small tenancies;
    - changes to residential levels including internal circulation corridors, unit mix and lift arrangements; and
    - significant additions to roof level involving individual private terrace areas and additional communal facilities, as well as an increase in the range of elements that exceed the building height standard.
- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent,*

Not relevant to this application.

- (c) *it has notified the application in accordance with—*
- i. the regulations, if the regulations so require, or*
  - ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent,*

The application was notified in accordance with DCP 2014 from 7 July to 27 July 2023.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

There were two submissions received. The first provided support for the proposal, stating: "We need some better in town residents and higher quality street frontage with car parking. This development delivers."

The second submission was from an owner/ operator of a nearby hotel, which is a local entertainment venue hosting live music up to seven nights per week. The submission states:

*"We are concerned about the impact that the development may have on our venue regarding noise/ noise complaints but also that the construction of the building is done in a way to facilitate the live performances for the residents, knowingly purchasing or renting a property adjacent to a live music venue".*

The modifications proposed do not raise issues regarding this concern, given that the original approval is in place.

Section 4.55(3) requires that, *in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.*

The relevant matters are addressed below.

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

In approving the original development, the reasons for the determination included consistency with the requirements of Byron LEP 2014. In part, that consistency included a consideration of Design Excellence in accordance with Clause 6.13 of Byron LEP 2014, and the endorsement of the design by the Byron Design Excellence Panel pursuant to part 5 of that clause.

As discussed further below, it is considered that the modified proposal no longer exhibits design excellence.

## **5. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

### **5.1 State Environmental Planning Instruments**

A detailed consideration of relevant SEPPs was provided in the assessment report for the original development application. The following provides an update regarding issues relevant to the proposed modifications and regarding SEPPs commenced since the original approval and

#### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 4 Koala habitat protection 2021:

The assessment report for the original application noted that the subject site is within the area subject to the Byron Coast Comprehensive Koala Plan of Management, but that there are no provisions of the Plan that are directly relevant to the subject application. The proposed modifications raise no further issues in that regard.

#### **State Environmental Planning Policy (Resilience and Hazards) 2021**

Chapter 4 Remediation of land:

A Preliminary Site Contamination Report was submitted in support of the original application confirming the site as acceptable for the proposed development. The proposed modifications raise no further issues in that regard.

#### **State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development**

SEPP 65 requires that residential apartment development satisfactorily address nine (9) design quality principles and considers the recommendations in the Apartment Design Guide (ADG).

#### **Design Quality Principles**

A design verification statement has been submitted to support the modification application. The modified proposal is inconsistent with the first design principle as outlined below:

<b>Principle</b>	<b>Council Officer comments</b>
Principle 1: Context and Neighbourhood Character	<p>The proposal is on a large site in a prominent position in the Byron Bay Town Centre. The area is currently undergoing a transition, with a number of mixed use developments being approved and constructed.</p> <p>The approved development was considered to respond and contribute to the local context, having regard to the desired future character of the area.</p> <p>The modifications proposed, however, substantially alter the approved design in a manner that is considered to be out of</p>

<b>Principle</b>	<b>Council Officer comments</b>
	context with the Byron Bay character – see further commentary below in relation to Clause 6.13 of Byron LEP 2014.
Principle 2: Built Form and Scale	The proposed modifications do not substantially alter the bulk and scale of the building. The modifications do propose a minor increase in height, but that would generally not be perceived from street level. The modifications do, however, substantially alter the built form, though the change in façade treatment, materials and colour.
Principle 3: Density	The modifications do not substantially alter the approved density of the development.
Principle 4: Sustainability	The modified design incorporates most of the sustainability measures approved with the original application.
Principle 5: Landscape	The modified plans raise no substantial issues regarding landscaping, in comparison with the approved development.
Principle 6: Amenity	The modified approval raises minor issues regarding internal amenity for residents, through the deletion of the previously approved single connecting internal corridor, in favour of a number of shorter non-connecting access corridors..
Principle 7: Safety	The modifications raise no substantial issues regarding safety.
Principle 8: Housing Diversity and Social Interaction	The modified proposal alters the approved mix of apartments, with fewer two-bed units and more three-bed, resulting in less diversity
Principle 9: Aesthetics	The modified aesthetics of the proposal are of significant concern in relation to the site's context and the existing and emerging character of the Byron Bay Town Centre. See further comments below from the Byron Design Excellence Panel assessment.

### **Apartment Design Guide (ADG)**

<b>Element</b>	<b>Compliance</b>
3B-1 Orientation	The proposed modifications make no substantial difference in terms of orientation.
3B-2: Overshadowing	The proposed modifications make no substantial difference in terms of overshadowing.
3C: Public domain interface	The modifications substantially alter the public domain interface. See comments from Design Excellence Panel below.
3D: Communal Open Space	The modifications retain the large area of communal open space provided on the rooftop, which includes a pool, deck area and landscaping. The ground floor piazza is also retained.
2D-4: Public Open Space	Public open space is retained via the ground floor piazza and Spice Alley, providing links to the Byron Transit Centre and Jonson Street.

<b>Element</b>	<b>Compliance</b>
3E: Deep Soil Zone	The proposed modifications make no substantial difference in terms of deep soil zones.
3F: Building Separation	The proposed modifications make no substantial difference in terms of building separation.
3G: Pedestrian Access and Entries	The proposed modifications make no substantial difference in terms of pedestrian entries to the apartment, although 4 separate lift entries are proposed rather than 2 in the approved scheme. All entries come from within the piazza, which is the same as the approved scheme.
3H: Vehicle Access	The modified proposal maintains the same vehicular entry point as the approved scheme.
3J-6: Parking	Council's Development Engineer has raised concerns regarding the proposed parking arrangements. See comments above.
4A: Solar and daylight access	Plans submitted with the modification show compliance with the requirement – 70% of apartments and private open spaces receive at least 3hrs of sun in mid-winter, between 9am and 3pm. It is noted however that 6 apartments will receive no solar access, as opposed to 3 apartment in the approved scheme.
4B: Natural Ventilation	Plans submitted show that natural cross ventilation is achieved to 84% of apartments primarily via open access to the internal courtyard.
4C: Ceiling Heights	Complies with design criteria. The ground floor has a floor to ceiling height of 3.6m, with apartment have floor to ceiling heights of 2.7m.
4D: Apartment layout	Plans indicate that the average apartment sizes exceed the design standard. Kitchens are not part of the primary circulation spaces. Each habitable space has more than 10% glazing.
4E: Private open space and balconies	Plans indicate that all balcony sizes comply with the design standards.
4F: Internal circulation	Plans indicate that there no more than 6 apartment of each level per individual circulation core.
4G: Storage	Most apartments have the minimum of 50 percent of the required storage within the apartment with the remainder located in secure and accessible locations within the car park. The proposal satisfies the objectives of this control
4H: Acoustic privacy	The modifications do not raise any significant issues regarding acoustic privacy..
4J: Noise and Pollution	An updated acoustic report has been provided, which recommends construction methods/materials/treatments to be used to meet the criteria for the site, given both internal and external noise sources. The recommendations cover acoustic treatments such as glazing, building construction, separation between uses, mechanical noise, and commercial delivery times.



<b>Element</b>	<b>Compliance</b>
4K: Apartment mix	As outlined above, the modified design alters the apartment mix in favour of more 3 bedroom apartments.
4M: Facades	The modifications proposed to the approved façade provide a substantial change to the building. See comments below from the Byron Bay Design Excellence Panel.
4N: Roof design	The modification involves substantial changes to the roof design, primarily by way of private roof terrace areas, but also including addition lift overruns and a communal gym. The majority of these roof elements will not be visible from adjoining streets
4O: Landscape design	An updated Statement of Landscape Intent has been provided.
4Q: Universal design	5 of the apartments are adaptable. Accessible parking is provided for all these units.
4S: Mixed Use	The proposed modifications raise no significant issues in regard to this element.
4T: Awnings and signage	Sun and rain protection is provided by a continuous building overhang around the perimeter of the ground floor. Signage will be limited to building identification, navigation, and statutory signs. Commercial signage will be subject to future and separate development applications.
4U: Energy efficiency	The application was accompanied by an updated BASIX certificate indicating energy efficiency for each residential unit provided.
4V: Water management	The BASIX Certificates demonstrate that the development achieves the pass mark for water conservation.
4W: Waste management	A construction and operational waste management plan has been prepared by a qualified waste consultant adhering to waste controls. All units are provided with sufficient areas to store and dispose of waste/recyclables.

## **State Environmental Planning Policy (Planning Systems) 2021**

### **Chapter 2: State and Regional Development**

The original development constituted Regionally Significant Development, by way of Section 2.19(1) and sub-Clause 2 of Schedule 6, as it had a capital investment value in excess of \$30 million.

Section 275 of the *Environmental Planning and Assessment Regulation 2021* states that a council must not determine an application to modify a development consent under the Act, Section 4.55(2), on behalf of a regional planning panel, if the application is of a kind specified in the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels – Applications to Modify Development Consents* published on the NSW Planning Portal on 30 June 2020.

The application proposes amendments to a condition of development consent recommended in the Council report, which was amended by the panel. The Panel therefore remains the consent authority for the modification application.

## State Environmental Planning Policy (Sustainable Buildings) 2022

The SEPP does not apply, as the application was lodged prior to 1 October 2023. The previous SEPP, therefore is applicable and a BASIX certificate has been provided in accordance with that SEPP.

## SEPP (Transport and Infrastructure) 2021

The following clauses apply:

### *Section 2.99 Excavation above, below, or adjacent rail corridors:*

Because the proposal involves excavation within 25m of the rail corridor, the application was referred to Transport for NSW, the relevant rail authority, who advise that previous concurrence/ comments remain valid.

### *Section 2.119 Development with frontage to a classified road:*

Transport for NSW provided comments on the original application. A referral was sent to TfNSW via the portal on 3 July 2023, who advise that previous comments remain valid.

It is noted that access to the site is only available from the classified road.

An updated traffic assessment was submitted with the application and considered by Council's Development Engineers. See comments above raising a number of concerns regarding parking and access.

### *2.122 Traffic generating development*

The proposed development is traffic generating development based on the proposed number of motor vehicle trips per hour. A referral was sent to TfNSW via the portal on 3 July 2023, who advise that previous comments remain valid.

## 4.2 Byron Local Environmental Plan 2014 (LEP 2014)

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The proposed development is defined as ***mixed use development*** in the LEP 2014 Dictionary, which means *a building or place comprising 2 or more different land uses*. The land uses within the proposed development are defined in the dictionary as: *retail premises, food and drink premises, restaurant and café and shop top housing*.
- (b) The land is within the E1 Local Centre according to the Land Zoning Map;
- (c) The proposed development is permissible with consent; and
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	Consistent.
<i>To encourage employment opportunities in accessible locations.</i>	Consistent.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	Consistent. The property is easily accessed from local bus stops, including the Byron Transit Centre in Butler Street. Bicycle parking has been provided in the basement for both retail and serviced apartment components, in accordance with the requirements of DCP 2014.
<i>To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.</i>	Consistent. Residential apartments are proposed behind and above retail premises.

Relevant provisions of the LEP are addressed below:

#### **Clause 2.7 – Demolition requires consent**

Clause 2.7 requires that demolition of a building may be carried out only with development consent, except where it is demolition of development specified as exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The proposal seeks consent for the demolition of all existing structures. This type of demolition is not exempt development. It is permissible with consent under Clause 2.7.

#### **Clause 4.3 – Height of Buildings**

The original approved development did not comply with the 11.5m development standard. A clause 4.6 variation was supported in Council's assessment and by the Panel determination.

The modifications involve an increase in the extent of roof area that exceeds the 11.5m standard, as shown below, with details in the Architects Plans DA700, DA701 and DA702.

	<b>Approved Development</b>	<b>Proposed Modified Design</b>
Maximum Building Height 11.5m	Lift overrun: 14.85m (single lift) Roof – pool amenities: 13.55m Pool terrace: 12.71m Pool: 11.95m	Lift overrun: 14.85m (3 x lifts) Roof – sauna/ gym: 14.09m Roof – pool amenities: 13.9m Fences between terraces: 12.59m Pool Deck: 12.8m

#### **Clause 4.4 – Floor Space Ratio:**

The original approved development complied with 1.3:1 FSR development standard. The modifications involve a slight increase in gross floor area, resulting in an FSR of 1.31:1.

#### **Clause 4.6 Exceptions to Development Standards**

While noting that a Clause 4.6 variation is not required for a Section 4.55 Modification, the applicant has provided a submission to justify why strict adherence to the building height and floor space ratio development standards is unreasonable or unnecessary.

Regarding floor space ratio, the applicant argues that the exceedance is very minor and that it does not result in an increase in bulk and scale of the building in comparison to the approved development.

Regarding height, the applicant argues that the modifications do not increase the maximum height when compared to the approved development. The applicant acknowledges that the modified roof design increases the areas within the roof that exceeds the 11.5m standard by approx. 316m<sup>2</sup> but argues that these areas would not be visible to observers outside the property, as they are set back from the roof edges so as not to be visible from the adjacent Jonson Street.

The additional height exceedance will not significantly change the extent of shadow or overlooking from the building when compared to the approved development.

Overall, it is considered that the minor increases in non-compliance with these development standards does not create significant impacts in comparison to the approved development.

#### **Clause 5.10 - Heritage**

Council's Heritage Advisor has reviewed the proposed modifications and advises:

*The main issue identified from a heritage perspective is the proposed white exterior finish which will be more prominent in the streetscape setting than the current approved exterior finishes. As outlined in the applicant's visual impact statement, 'the building will become an important and prominent part of the evolving streetscape.'*

*it is recommended that the proposed white finish is amended to a warm neutral to reduce the prominence and visual impact of the building in relation to the railway complex in accordance*

*with the provisions of Clause 5.10 of the Byron LEP 2014 and Councils adopted DCP detailed policies.C1.4.5.*

The concern regarding the colour mirrors that expressed by the Byron Design Excellence Panel. In response, the application provided a submission showing a number of alternate colour options (**Attachment x**).

The suggested options do not substantially change the concerns regarding this issue.

#### **Clause 6.13 – Design excellence – Byron Bay Town Centre**

This clause applies to the development and requires that *“development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence”*.

In part, the clause requires that the consent authority must consider whether *“a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved”*.

These matters were considered, in part, in advice provide a pre-lodgement Development Advice Panel meeting in November 2022, attended by members of the Byron Design Excellence Panel Notes of the DAP meeting are at **Attachment F**.

The key issue discussed at that meeting, which remains in the current application, is whether the modified building design is appropriate to the location, in accordance with the relevant considerations under this clause.

The Panel met on 31 October 2023 and provided the following comments:

- In determining whether the design is ‘substantially the same’ in accordance with s 4.55(b) as the approved DA it is the Panel’s view that although the quantum of development, the overall massing and mix of uses is substantially the same, the materials, environmental control element, fenestration are not.
- Given that these are matters that are required to be considered and endorsed by the Panel as exhibiting ‘design excellence’ the design is not substantially the same because the ‘excellence of the design’ has been substantially reduced.
- Furthermore, in accordance with s 4.55(3), *the consent authority must take into account the reasons given by the consent authority for the grant of the consent that is sought to be modified*. In relation to this proposal those reasons included quality and type of materials, fenestration and general contextual fit, as well as all of the matters previously referred to that were developed through the consultative process, and which then were endorsed by the panel as exhibiting design excellence.
- As such the Panel does not endorse the Modification as ‘exhibiting design excellence’.

Further commentary from the Panel is at **Attachment G**.

In determining the original development application (10.2021.384.1) the matters outlined in this clause were considered and constituted a significant reason for the approval of that application. In particular, the endorsement of the Byron Design Excellence Panel, required in accordance with clause 6.13(5) was an important consideration in that determination.

While the Panel endorsement is not a statutory requirement for a modification application, consideration of design excellence remains a key focus for the proposed development.

As outlined above, it is considered that the proposal as modified no longer exhibits design excellence.

#### **Clause 6.14 – Active Street frontages in Byron Bay town centre**

The clause requires that development consent must not be granted to a new building in the town centre unless Council is satisfied that it will have an active street frontage.

The proposed modification, while significantly altering the look and feel of the building at ground level, does not substantially change the active nature of the proposal at that level.

#### **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

None relevant.

#### **4.4 Byron Shire Development Control Plan 2014 (DCP 2014)**

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are of relevance to the proposed modification are addressed below:

##### **Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access**

Council's Development Engineer has assessed the proposed modifications against the requirements of this Chapter. As outlined above, the assessment highlights the following inconsistencies with Chapter B4:

- A shortfall of 10 car parking spaces, consisting of 8 residential spaces and 2 retail spaces;
- Non-compliant parking adjacent to the residential security gates due to blind aisle width and manoeuvring requirements;
- A shortfall of 1 accessible parking space for residential use; and
- Potential for conflict with turning movements for RCV into the loading bay.

##### **Chapter B15 Public Art**

The original application included submission of a draft Voluntary Planning Agreement (VPA) proposing to provide a monetary contribution toward public art.

That VPA was exhibited and endorsed by the Public Art Panel. The modification application indicates a willingness to continue with the draft VPA provisions.

##### **Chapter D1 Residential Accommodation**

D1.10.1	Density control	The proposed modifications retain 25% of the total floor space for retail/ commercial components, as required.
D1.10.2	Accessibility	Access via a residential lobby with direct lift access to the apartments and carpark is retained in the modified proposal, with additional lifts provided because internal access corridors on the residential levels do not link.
D1.10.3	Private open space	The Apartment Design Guide applies rather than the DCP controls (through SEPP 65). The modified design complies with balcony size requirements of the ADG.

##### **Chapter D4 Commercial and Retail Development**

D4.2.1	Design and character of retail and business areas	<p>The modified design is inconsistent with a number of the 'performance criteria' within this section:</p> <ul style="list-style-type: none"><li>• Development must be designed to integrate well with the locality's pedestrian and cycle network and to contribute to the aesthetics, landscape design and usage of adjoining streets</li><li>• Development in coastal areas must reflect a low-scale, tourist beach image</li></ul>
D4.2.2	Design detail and appearance	<p>The modified design is inconsistent with a number of the 'performance criteria' within this section:</p>

- The design of new buildings must reflect and enhance the existing character of the precinct. The design, scale, bulk, design and operation of business, commercial and retail development must be compatible with the streetscape and with the aesthetics, function and amenity of development in the locality.
- Building design, roof profile, detailing, colours, materials and the like that are visible from the street and from adjoining properties must be compatible with any dominant design themes in the surrounding locality.

D4.2.3	Vehicle access and parking	See commentary above.
D4.2.4	Loading docks	See commentary above.
D4.2.5	Street setbacks	The proposed modifications raise no issues in this regard.
D4.2.10	Restaurants, cafes, small bars etc	The proposed modifications raise no new issues regarding noise.

## Chapter E10 Byron Bay Town Centre

E10.2.1	Uses	The proposed modifications raise no issues in this regard.
E10.2.2	Character	<p>The proposed modifications raise significant issues in relation to this matter.</p> <p>Based on the assessment above, particularly commentary of the Design Excellence Panel in <b>Attachment G</b>, the modified design is inconsistent with the following:</p> <p><u>Objective:</u></p> <p><i>To ensure development responds to the predominant streetscape qualities and contributes to the desired future character of the Town Centre.</i></p> <p><u>Design Guideline:</u></p> <p><i>Reinforce and enhance neighbourhood character</i></p> <ul style="list-style-type: none"> <li>• <i>Reflect, complement, or enhance established neighbourhood forms and design features that contribute positively to neighbourhood character</i></li> </ul> <p><u>Performance Criteria:</u></p> <p><i>Development continues the predominant built form character of the street, including awnings, parapet lines, and roof pitches.</i></p>
E10.2.3	Built form	<p>The proposed modifications are inconsistent with the following:</p> <p><u>Objectives:</u></p> <p><i>To achieve a built form of a scale and character in keeping with the 'town scale' and desired future character of the Town Centre.</i></p> <p><i>To allow for architecture that reflects the surrounding existing natural and built environment.</i></p> <p><u>Prescriptive Measures:</u></p>

*Roof-top recreation or commercial facilities must not contravene the maximum building height development standard.*

See above. The approved building includes roof-top facilities that exceed the height limit. The modified proposal increases the number of elements that exceed the limit.

10.2.4	Climate and context	<p>The proposed modifications are inconsistent with the following:</p> <p><u>Objective:</u></p> <p><i>To ensure that new and existing buildings retain the coastal village character of Byron Bay and are responsive to the Far North Coast climate.</i></p> <p><u>Design Guidelines:</u></p> <p><i>Respond to the North Coast Climate and Design</i></p> <ul style="list-style-type: none"> <li><i>• Use materials that complement the existing aesthetic of the town and are suitable for the Far North Coast climate.</i></li> </ul> <p><i>Choose building materials, colours and textures that embody the coastal village character of Byron Bay.</i></p>
10.2.5	Acoustic and visual privacy	The proposed modifications raise no issues in this regard.
10.2.6	Car parking	See assessment above.
10.2.7	Waste and Recycling	The proposed modifications raise no issues in this regard.
10.2.8	Heritage Conservation	See commentary above from Council's Heritage Consultant.
10.2.9	Roof form, access and use	The proposed modifications raise no issues in this regard.
10.2.10	Green infrastructure	The proposed modifications raise no issues in this regard.
10.2.11	Design Excellence	<p>The proposed modifications are inconsistent with the following:</p> <p><u>Objective:</u></p> <p><i>Ensure that new development within the Byron Bay Town Centre exhibits the highest standard of architectural and urban design.</i></p> <p><i>Achieve buildings that respond appropriately to the environmental and built characteristics of the Town Centre.</i></p> <p><i>Improve the quality and amenity of the public domain.</i></p> <p><u>Performance Criteria:</u></p> <p><i>Development in the Byron Town Centre achieves Design Excellence, as articulated in the Byron Local Environmental Plan 2014 Clause 6.13.</i></p>



#### **4.5 Any Planning Agreement or Draft Planning Agreement?**

See above – the applications proposes to continue the provisions of the draft VPA submitted with the original application.

#### **4.6 Environmental Planning & Assessment Regulation 2021 Considerations**

The modification application was submitted in accordance with the requirements of Part 5 of the Regulation and complies with the relevant requirements of that Part relating to content.

#### **4.7 Any Coastal Zone Management Plan?**

No coastal zone management plan relates to the site.

#### **4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	The modification proposal does not significantly alter the potential impacts on the natural environment of the locality when compared to the approved development.
<b>Built environment</b>	Yes. As outlined above, the modified design is not consistent with the existing or intended character of the Byron Town Centre and would result in a significant adverse impact on the built environment in that centre.
<b>Social Environment</b>	The modified design would have an adverse social impact on the locality through the inconsistency with existing and future character.
<b>Economic impact</b>	The modified proposal will not have a significant economic impact on the locality when compared with the approved development.
<b>Construction Impacts</b>	The modified proposal does not significantly alter construction impacts.

#### **4.9 The suitability of the site for the development**

Approval of the original application indicated that the site is suitable for a development of this type and scale. That suitability is based on proposals that are consistent with the existing and desired future character the Byron Bay Town Centre, as articulated in development and built form controls for the area.

#### **4.10 Submissions made in accordance with this Act or the regulations**

The application was notified and advertised from 7 July to 27 July in accordance with the Byron DCP 2014.

Two unique submissions received to the exhibition of the development, one of which was in support of the proposal and the other from the operator of a nearby entertainment venue highlighting potential noise conflicts.

#### **4.11 Public interest**

The modified design is not considered to be in the public interest, given the inconsistency with the existing and desired future character of the area and the lack of design excellence.

### **5. DEVELOPER CONTRIBUTIONS**

#### **5.1 Water & Sewer Levies**

Section 64 levies would be payable.

#### **5.2 Section 7.11 Contributions**

Section 7.12 Contributions would be payable.

### **6. CONCLUSION**

As outlined in this report, the application proposes significant changes to numerous aspects of the approved development, most strikingly its appearance. The nature and extent of changes proposed are such that it is considered that the proposal as modified is not substantially the same as that approved.

In addition, the design modifications have significantly reduced the design excellence of the building such that it is inconsistent with numerous development and built form controls, including the provisions of Clause 6.13 of Byron LEP 2014 and Chapter E10 of Byron DCP 2014.

The Byron Design Excellence Panel have assessed the modified design and are not able to endorse it as exhibiting design excellence.

It is concluded that the building as modified would be inconsistent with the existing and desired future character of the Byron Town Centre.

## **7. RECOMMENDATION**

That the Northern Regional Planning Panel as the consent authority:

1. Refuse modification application 10.2021.384.3 for the following reasons:
  - a) The modified development is not substantially the same as the development originally approved.
  - b) The modified design is inconsistent with the existing and desired future character of the Byron Bay Town Centre.
  - c) Pursuant to clause 4.55(3) of the Environmental Planning and Assessment Act 1979, the modified development is inconsistent with a number of the matters referred to in Section 415(1) of the Act, primarily:
    - i. Pursuant to clause 6.13(3) of Byron Local Environmental Plan 2014, the modified proposal does not exhibit design excellence;
    - ii. Pursuant to clause 6.13(5) of Byron Local Environmental Plan 2014, the Byron Design Excellence Panel has not endorsed the development as exhibiting design excellence;
    - iii. The modified proposal is inconsistent with Chapters B4 and E10 of the Byron Development Control Plan 2014; and
    - iv. The modified design is not considered to be in the public interest in that it is inconsistent with the existing and desired future character of the Byron Bay Town Centre.

And

2. That submitters be notified of the decision.