

**1 June 2023**

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Zone Planning NSW Pty Ltd  
ABN 13 650 980 662

The General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

**Via NSW Planning Portal**

Dear Sir/Madam,

**LODGEMENT OF A SECTION 4.55(1A) MODIFICATION APPLICATION  
DEVELOPMENT CONSENT 10.2021.384.1  
90-96 JONSON STREET, BYRON BAY  
(LOT 5 DP619224)**

## 1.0 Introduction

We write on behalf of our client, Project Bohemian Pty Ltd AFT Bohemian Unit Trust ('the Applicant'), in lodging this 4.55 (1A) Modification Application pursuant to the *Environmental Planning and Assessment Act 1979* (the Act). The modification seeks to formally amend Development Consent 10.2021.384.1.

Development Consent 10.2021.384.1 was issued 27 May 2022 for the Demolition of Existing buildings and Construction of a 3-Storey Mixed Use Retail/ Residential Development including Basement Parking. The determination is over land referred to as No. 90-96 Jonson Street, Byron Bay (Lot 5 DP619224).

The Consent remains active and is yet to lapse, which will occur on 31 May 2027. A Construction Certificate (CC) is yet to be issued for the approved development.

This 4.55(1) Modification Application seeks to relocate Condition 10 with respect to the Certificate of Compliance – s307 *Water Management Act 2000* and Condition 11 for the payment of Developer Contributions. The modification specifically seeks the relocation of the conditions to 'Prior to Issue of Occupation Certificate' (rather the Prior to the Issue of the CC) and therefore require the payment to the satisfaction of the Certifier prior to the occupation of the premises. Both the conditions can be viewed in **Attachment 1** – Development Consent DA10.2021.384.1.

In accordance with clause 275 of the *Environmental Planning & Assessment Regulation, 2021*, Byron Shire Council is the consent authority, notwithstanding that the original development application was determined by the Northern Region Planning Panel.

## 2.0 Need for the Modification

Regarding the need for the modification, the developer has advised that payment of the contribution fees prior to the CC for the scale of development adds significant financial burden to the project at the early stage, rendering the development financially challenging to deliver and transition into construction. The developer is either forced to undertake a significant portion of pre-sales or attain a significant loan for the contributions. Pre-sale in this early stage is risky given the development does not include strata subdivision and due to the current market of collapsing builders and high interest rates. In those circumstances, the developer much prefers to sell the units (and derive project income to facilitate payment of contributions) at the end of the process. Interest payments on loans for contributions at this early stage adds significantly to the overall costs of the project increasing risk around the pathway to successfully deliver the development.

The following specific reasons for the request have been offered by the developer:

- *If the project stops or is no longer viable for whatever reason including the builder collapsing, the contributions have already been paid with no additional impact on the Byron Shire Council's facilities and services and no clear recourse for the developer.*
- *Financiers are very reluctant to lend for contributions at this stage.*
- *Interest payments on loans for contributions at this early stage add significantly to the overall cost of the project.*
- *At the CC milestone there is no demand for the additional facilities and services (to be funded by the contributions) therefore there no "nexus" to justify payment of contributions at this time.*
- *It is inequitable to require developers of building works to pay contributions at the CC milestone when subdividers are permitted to pay at the much later SC milestone.*
- *The onerous requirement for payment prior to CC makes some projects impossible to finance and therefore will not proceed. This can have a significant negative impact on Byron Shire Council's economic development.*

As a result of the abovementioned reasons, it is determined that there is sufficient merit in varying Councils standard practice for contributions to be paid prior to the issue of the CC. It is noted that the relocation of contribution conditions has been undertaken prior within the Shire through more recently the Ministerial directions responding to the COVID -19 pandemic (implemented 25 June 2020) or more historically through the Shire due to underlying reasons or circumstances.

## 3.0 4.55(1A) Assessment

An assessment of Section 4.55 (1A) of the Act has been undertaken, with the following conclusions made:

- The proposed modification is of minimal environmental impact and simply relates to relocating two conditions. The content of the conditions themselves will not be varied;
- The modification is substantially the same development for which the consent was originally granted appreciating the built form or operational arrangement will remain unchanged;
- The modification will not require re-notification consistent with Byron Shire Council Community Participation Plan, as the modification results in the change of two conditions where those conditions do not involve the design or location of a building or hours of operation;
- This 4.55(1A) modification raises no issues relative to any controls within a State Environmental Planning Policy, Local Environmental Plan or Development Control Plan applying to the site, above what has already been assessed in the original Statement of Environmental Effects;
- The modification seeks to enable the development to be delivered in a more financially viable manner providing a pathway to successfully deliver the development. In this sense the modification facilitates the development in the Shire that has been approved; and
- If amended as requested, the payment of the relevant contributions would be fundamental to the issue of an occupation certificate and there would therefore be no increased risk to Council in that regard.

Considering the above comments, this proposed 4.55(1A) Modification accords with the relevant provisions of the Act and therefore modified consent can be granted by Byron Shire Council.

#### 4.0 4.55(3) Assessment

As per Section 4.55(3) in determining an application for modification of a Consent under this section, 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. The reasons for the grant of DA10.2021.384.1 are identified below:

##### **Statement of Reasons**

- \* *The proposed development complies with the provisions of Byron Local Environmental Plan 2014.*
- \* *The proposed development complies with relevant State Environmental Planning Policies*
- \* *The proposed development complies with relevant provisions of Development Control Plan 2014*
- \* *The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.*
- \* *The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.*
- \* *The proposed development is considered suitable for the proposed site.*
- \* *The development application was notified/advertised in accordance with Council's Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.*
- \* *The proposed development is unlikely to prejudice or compromise the public interest.*

##### **How community views were addressed**

*The DA was advertised in accordance with Council's Community Participation Plan. The submissions received were considered on merit and addressed during assessment of the application.*

*To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.*

In this instance the statement of reasons is very broad, and the modification sought will not be inconsistent with the reasons for approval.

In conclusion, it is submitted that the proposal will not result in any additional environmental impacts and the proposal remains substantially the same development. It is therefore requested that Council issue a modified Development Consent as sought by this Section 4.55(1A) Modification application.

Should you have any queries concerning the above please contact Jarrod Gillies or the undersigned on 07 5562 2303.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Darren Gibson', with a stylized flourish at the end.

**Darren Gibson | Director**  
**ZONE PLANNING NSW**

- **Attachment 1** –Consent DA10.2021.384.1