



9 November 2022

Zone Planning Group  
ATTN: Jarrod Gillies  
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BURLEIGH TOWN QLD 4220

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Dear Jarrod

This letter comments on the Development Advisory Panel meeting on the above date which comprised of Council staff and the Byron Design Excellence Panel. The aim is to provide preliminary information and assistance to intending applicants in respect of Council's statutory and policy requirements. The matters raised at the meeting are not exhaustive. It is possible that proposals that appear to be consistent with Council's statutory and policy requirements may be found not to be consistent upon detailed examination of any development application lodged. Any indications or information from the Development Advisory Panel in no way prejudice the determination of any development or related application.

**Present:** Jarrod Gillies (Senior Town Planner), Darren Gibson (Director Zone Planning Group), Ilya Melnikoff (Managing Director Luxcon), Matthew Nesbitt (Development Manager Luxcon), Paul Buljevic PBD Architects

*Council Staff:* Shannon Burt (Director Sustainable Environment & Economy), Chris Larkin (Manager Sustainable Development), Rod Simpson (Design Panel Member and Sharon Roberts (Development Support Officer)

**Owner:** Beachbreak Developments Pty Ltd

**Commenced:** 9.15 am **Concluded:** 10.25 am

**Fee Paid:** \$600.00, Receipt No. 27321331807, Date paid: 29/09/2022

**Proposal:**

The applicant proposes to modifications an existing Development Consent for Proposed Three (3) Storey Mixed Use Retail/Residential Development including Basement carparking for 166 vehicles - 97 retail spaces and 69 residential spaces; 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; An open Piazza 314m2 in area opening the building from Jonson Street through to the railway corridor reserve at the rear; 50 apartments over 2 levels comprising 38x2 bedroom apartments, 6x2 bedroom apartments (adaptable), and 6x3 bedroom apartments; The upper residential areas incorporate private open space balconies as well as internal courtyards for the amenity of residents; and a rooftop pool and deck area is proposed for the use of residents only. The rooftop also contains a Solar array, plant for the retail and residential uses below and landscaped areas for residential amenity. comprising of the following:



TRADITIONAL HOME OF  
THE BUNDJALUNG PEOPLE

ALL COMMUNICATIONS TO BE  
ADDRESSED TO THE GENERAL MANAGER  
PO Box 219 Mullumbimby NSW 2482 (70-90 Station Street)  
E: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)  
P: 02 6626 7000 F: 02 6684 3018  
[www.byron.nsw.gov.au](http://www.byron.nsw.gov.au) ABN: 14 472 131 473

**Property Description:**

The property is described as LOT: 5 DP: 619224, 90-96 Jonson Street BYRON BAY 2481.

It has an area of 5390 square metres.

The land is within Zone No. B2 Local Centre under the Byron Local Environmental Plan 2014.

Council's Geographic Information Systems identifies that the land is affected by the following physical constraints:

- Bushfire Prone Land
- Acid Sulphate Soils – Class 3
- Adjoins the Rail Corridor (SEPP Transport and Infrastructure applies)

Further to our recent discussions and presentation to Council staff and the Design Panel on the 25 October 2022, the following comments are provided on the plans and files including:

- 22.2022.14.1 - 1 of 2 DAP Meeting Plans with Summary of Approved and Proposed
- 22.2022.14.1 - 2 of 2 DAP Meeting Plans with Summary of Approved and Proposed
- Key 22.2022.14.1 - 2 of 2 DAP Meeting Plans with Summary of Approved and Proposed
- Oct 2022\_Jonson St\_Architectural Presentation\_221026.pdf
- The revised scheme prepared by PBD Architects

**MAIN POINTS:**

- The overall massing, configuration and mix of uses is substantially the same as the approved design with a slight reduction in the number of units.
- The approved DA design and environmental commitments were the result of a number of discussions and design iterations that refined the design to the satisfaction of proponent and Council.
- The Byron Design Excellence Panel acknowledges that the proposal is at pre-DA stage and appreciates the early discussion.
- The Byron Design Excellence Panel also notes that the applicant has had access to previous advice relating to the earlier scheme and that some members of the current team attended previous Byron Design Excellence Panel meetings and so are aware of the advice and concerns of Council in relation to the design of buildings on the subject site.

Accordingly, these comments are not concerned with detailed compliance or alignment with the Apartment Design Guidelines or technical requirements of Council or NCC compliance but rather with the overall approach to the planning and character of the proposal including materials and circulation.

**‘POROSITY’ AND ‘SUBTROPICAL CHARACTER’**

Previous advice and discussions included reference to the general objectives set out in the Byron Bay Town Centre Master Plan and the BBDCP. The Byron Bay Town Centre Master Plan sets out a range of ‘place principles’, ‘strategies’ and ‘sub-strategies’

These are summarised well in a single ‘place principle’:

*Preserve Byron Bay’s eclectic village character through increased density and high quality design.*

How this might be achieved is set out in ‘sub-strategies’ that include

- A Varied and Defined Centre relates to building heights and spatial definition

- A Fine Grain Village Character relates to subdivision pattern or the *appearance* of a fine grain subdivision pattern
- A Sub Tropical Built Form relates to materials, colours, architectural forms and elements that are a response to the sub-tropical climate

There have been a number of DA's submitted in the town centre since the introduction of the 'Design Excellence provisions'. Interestingly, there has been a similarity in approach in many of the schemes including the use of balconies for external circulation and access. This has in part been driven by commercial considerations given that balcony access does not count in GFA in relation to FSR.

Although this does result in a larger building bulk, balcony access does have some positive aspects;

- it relates well to the 'sub-tropical' character that the masterplan aspires to,
- it means that residents and guests interact with each other and are visible from the public domain as they travel to their unit or room, and
- it generally results in a fragmented highly articulated built form that casts complex shadows and shafts of light.

Together with an almost universal use of planter boxes, rooftop vegetation and ground level courtyards with the capacity for large mature trees, this fragmented built form and permeable ground level has been encouraged and might be considered as an emerging 'Byron Style' that would distinguish Byron Bay from other coastal towns.

The use of face brick and exposed concrete slab edges are also elements that have figured prominently.

The revised scheme deviates from this emerging style, by introducing arched windows and white rendered masonry. This is reminiscent of the architecture of Noosa, Double Bay in Sydney and some parts of Brisbane and Kingscliff. There is nothing inherently wrong with these buildings, on the contrary there are some very fine pieces of architecture, it is just that they are not 'Byron'.

In the town centre there has also been a shift from lightweight construction that is typical of one and two storey buildings to heavier masonry construction that is principally a result of the need for fire separation and fire isolated egress and underground parking. On larger sites there is almost complete site coverage and excavation boundary to boundary to accommodate the required car parking. This is due to the permissible FSR of 1.3:1 that would usually require a 4 storey form to accommodate the GFA while still achieving adequate building separation, deep soil and solar access.

These observations are relevant to the aim of achieving a 'sub-tropical' character that would usually be associated with detached 'pavilion' built form- that is individual buildings separated and surrounded by landscape. These forms characteristic of 'Queenslanders', Caribbean architecture, and for that matter Lismore do not get anywhere near FSR 1.3:1. Consequently, the Panel considers the masonry sub-tropical urban architecture of South East Asia, Bangladesh, Vietnam, Singapore with their courtyards and environmental and climate control devices appropriate precedents.

The term 'eclectic' applied to the town centre can also be interpreted as having a 'relaxed' or 'informal' or 'organic' character. It infers that buildings should not be too 'over-designed' or 'corporate'. Buildings should be able to accommodate change by their occupants. The informal nature also extends to the way people move in and around the town centre, the way they dress for climate and do not expect to move from air conditioned space to air conditioned space.

It could be argued that introducing the style of development in the proposal is part of the 'eclectic mix' referred to in the Town Centre masterplan, but it would be unfortunate if the emerging style were cut short just as it was emerging.

It is extremely difficult and therefore important for places to develop a distinct identity, and it does not necessarily take much to achieve it.

Previous discussions have suggested that 'porosity', a fragmented highly articulated built form, material selection (face brick, concrete, breeze block etc) the use of environmental control devices – (louvres, operable screens, trellises), sheltering roofs, canopies and awnings and vegetation within, on and over buildings would be sufficient to be consistent with the 'sub-strategies'.

## **CHANGES TO THE DESIGN**

The main changes to the design are:

- the removal of balcony access,
- the introduction of multiple lift cores and corresponding lobbies
- removal of lightwells
- re-arrangement of the retail layout
- enlarged courtyard
- reduced number of units
- trafficable roof terraces for nine units

### **Comment**

The generous link from 'spice alley' through to the courtyard and clear lines of sight from Jonson Street to the rail corridor and the potential for activation of the rail corridor are strongly supported, and in keeping with the objective of 'porosity'. The porosity of the scheme could be furthered by making the NW residential entry lobby open air.

### **Suggestion**

The perceived porosity of the proposal could be further enhanced by expressing and revealing the circulation more clearly by having open stairs visible from the courtyard.

The balcony access from the NE core

### **Comment**

The more conventional apartment layouts do provide better amenity for bedrooms. But being 'conventional' are arguably less memorable.

### **Suggestion**

Investigate re-introduction of some internal courtyards in lieu of roof terraces for upper level units given the potential to further improve natural ventilation and concern in relation to extensive roof terraces noted below.

### **Comment**

The proposal includes roof terraces that are shown in the 3D view to have screens to provide privacy. This will appear as a 4<sup>th</sup> storey and it is highly probable that residents will install shading devices. There is a strong opposition to the appearance of a 4<sup>th</sup> storey by both the Council and community. The connected balconies in the previous scheme facilitated access to the common facilities.

### **Suggestion**

Revise the design of roof top terraces to reduce the height of screens or remove roof top terraces. Ensure all structures including lift overruns are barely visible from the public domain or are screened by vegetation.

**Comment**

The multiple cores do provide more 'convenient' access, but lose the informal interactions between residents and the public domain the same time. The corridors and lobbies have some natural light and ventilation but this is not immediately adjacent to the lift or stairs and definitely does not achieve a 'subtropical' or informal feeling.

**Suggestions**

Consider relocating stairs to be open to the courtyard and visible from the public domain.  
Consider introducing skylight and voids through the lobbies and stairs to improve natural light and ventilation.

Investigate the potential for breaks between the wings of the building to admit sunlight between buildings. Consider open air lobbies at the ground level with security at the lifts themselves.

Remove the enclosed lobby for non-residents from the car park- these are deeply recess and the overhangs should provide adequate weather protection

**Comment**

The prominent use of arches is not supported. Arches are becoming 'a la mode' but there is no precedent for them in Byron and together with the proposed white render it is difficult to which Byron precedent or neighbouring properties the proposal relates to. There is no true vernacular from which to draw, and as noted above, the shift to heavier construction demands the use of materials that have not been common in Byron in the past. As noted above the Byron Design Excellence Panel was very supportive of the proposed materials in the previous design iteration. It is not clear why the materials and 'style' of the building has changed so much and no rationale for the changes has been presented.

**Suggestions**

The option to maintain the existing style/ scheme already approved would be preferred with the arches and white render not pursued.

**Comment**

The scheme relies on extensive vegetation in planters and rooftop planting this is strongly supported. It is important that what is shown in the proposal is sustainable and will survive. The planting requires careful detailing for water proofing, selection of species as well as access for maintenance.

**Suggestions**

Engage a landscape architect with particular expertise in species selection for planter boxes and harsh rooftop environments.

Proposed establishment maintenance regime should be included in management statement.  
Provide a detailed landscape plan with the amended application to demonstrate the success of the landscaping, including details on how and who will maintain it.

**Comment**

The 'Bohemian' signage and supporting structure serves to privatise the courtyard which is counter to the objective of encouraging the public to move in and through it. The ground level should be seen as an extension of the public domain.

**Suggestion**

Remove signage; it is unnecessary- a street address is sufficient,  
Consider integrating the pergola/trellis into the structure of the overall building.  
Consider using the same paving materials and ideally similar details to that proposed in the public domain as set out in the Byron Bay public domain design manual. *(Design guide is nearing final completion. Shows what is expected for the town and public spaces.)*

## **Comment**

The use and design of the roof top and pool are of concern. The reality is that few people enjoy sitting in direct sun without any shade for extended periods of time. Consequently, it is almost inevitable that residents will wish to install shade structures or umbrellas on the roof level. The Panel acknowledges that the design sets the pool and deck back from the edge of the building, but further discussion about the useability and treatment of the roof top areas is required.

## **Other Matters for Consideration**

1. Substation – Details on the relocation of the substation should be included with the Application. It is noted the proposal will be referred to Essential Energy for comment. Preliminary discussions between your electrical contractors/ Engineers and Essential Energy are encouraged
2. Spice Alley Loading Bay/ Garbage Bin Storage Areas – This was a major issue to resolve through the initial DA process. It is strongly recommended that what has been approved in Spice Alley be replicated with the amendment. This includes vertical separation and clearance to decks and balconies above, setbacks to boundaries, turning manoeuvring areas and the like.
3. Sustainability Report – It is important that the plans and the sustainability report talk to each other, so it is clear that the intended sustainability features of the development are going to be installed and integrated with the developments construction.
4. Roof top elements – details should be included on how the roof top will be used and its important that they do not read as fourth storey components to the development. A Clause 4.6 variation to the height limit is not required, but justification is still required in the same manner as to why the height limit should be varied in this instance if proposed.
5. Rail Corridor – discussions have been had for 5/6 years regarding TAHE and the interest in land across the corridor. Council's express interest is to extend it where possible. Council has been clear that they want to activate the corridor, including activation and uses hanging off that.
6. Type of Application – The proposed amendment should be submitted a S4.55(2) Application with a level of detail consistent with the relevant provisions of the EPA Act 1979.
7. Planning Agreement/ Public Art – Councils Contribution officer has been on Annual leave and is to return next week. Further comments will be provided as to whether or not the Planning Agreement needs to be updated to reflect the new owner/ developer.
8. Attached to this letter is a second document titled "Subtropical Precedent Lores" for your consideration in addressing design changes as discussed above.

## **Applicant Questions**

### **Item 1**

*Does this 4.55 require Byron's Design Panel consultation to satisfy Design Excellence per Cl. 6.13 of Byron LEP?*

**Comment:** Yes - the modification will need to be considered by the Byron Design Excellence Panel.

## Item 2

*Does pre-consultation with the community need to be undertaken consistent with A13.4.1 of Part A DCP? This has occurred as part of the original DA*

Comment: No – But this open to yourselves to undertake additional pre-lodgement consultation with the community if you wish to. The Modification once submitted will be advertised and notified by Council for a minimum period of two weeks. Refer to Council's Community Participation Plan for more details.

## Item 3

*We understand that the modification will not require a Cl. 4.6 with respect to the additional building height.*

Comment: See discussion above

## Item 4

*We understand a VPA was provided and supported as part of Council meeting 21 October for \$175,000 in lieu of providing public art per Chapter 08: BOCIP. We wish to continue this arrangement.*

Comment: See discussion above

## Item 5

*Please advise the full list of consultant reports and plans required for the modification to ensure Council has the require material for assessment.*

Comment: the following will need to be submitted as a minimum

- Planning Report – SEE (should be address all relevant planning instruments, DCP provisions, the regulations and other relevant matters as called up under Section 4.55(2) of the EPA Act 1979 where applicable.
- Full Suite of Architectural Plans
- Updated Sustainability Report
- Updated Landscape plan and management plan
- Updated car parking/ loading bay/ traffic analysis
- Updated Electrical engineering plan (transformer relocation)
- Updated Stormwater management plans
- Updated Noise Impact report
- It is assumed the basement level remains as approved and is not to go deeper in terms of ASS or dewatering impacts. If that assumption is incorrect then updated Dewatering, ASS and contamination reports may be required.
- Suggested additional detail – it may be beneficial to review the conditions of consent and where detail is required for the construction certificate plans provide that detail now with the amended applications (eg Concurrent Conditions from Transport for NSW in Terms of the rail corridor)

## Item 6

*Please consider the proposed amendments and advise if there is any concern with meeting substantially the same test. See Sheet 73 of 77 of the plans for a summary or proposed and approved.*

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

Please be advised that failure to provide all of the required information upon lodgement of the Development Application will result in delays in the processing of your Application.

Should you require further clarification on any of the issues raised above please contact Council on (02) 6626 7025 or email [dso@byron.nsw.gov.au](mailto:dso@byron.nsw.gov.au)

Yours sincerely



Chris Larkin  
Manager Sustainable Development

**Sustainable Environment & Economy**