

DETERMINATION AND STATEMENT OF REASONS

NORTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	15 December 2023
DATE OF PANEL DECISION	15 December 2023
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Joe Vescio and Ian Pickles
APOLOGIES	None
DECLARATIONS OF INTEREST	Simon Richardson declared a conflict of interest as he has a commercial interest in an adjacent property.

Papers circulated electronically on 24 November 2023.

MATTER DETERMINED

PPSNTH-225 – Byron – 10.2021.384.3 at 90-96 Jonson Street Byron Bay – 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 (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7, the material presented at meetings and briefings and the matters listed at item 8 in Schedule 1.

Application for modification of consent

Notwithstanding some positive elements and submissions by the applicant, the Panel determined to refuse the modification application made pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel concluded that it is not satisfied, pursuant to section 4.55(2)(a), that the proposed development is substantially the same as the development for which consent was originally granted.

In reaching its decision, the Panel had regard to:

- The Design Excellence Panel's (DEP) design excellence considerations and view that the design as proposed to be modified is not substantially the same because the excellence of the design has been substantially eroded to the point that the DEP considers that design excellence is no longer achieved.
- The DEP having not endorsed the modified design as exhibiting design excellence (noting this is not a jurisdictional pre-requisite to the granting of consent to a modification but was a fundamental and essential reason for the granting of the original consent.)
- The Panel's reasons for approval of the original application in 2022, as required under section 4.55(3), including that it demonstrated design excellence and had been endorsed by the Council's DEP whose reasons included quality and type of materials, fenestration, and general contextual fit. The Panel agrees with the DEP and the Council Assessment Report that these elements are substantially different in the modified proposal.


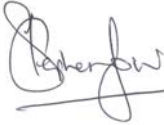
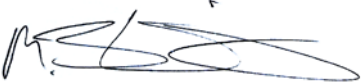


- The provisions of Byron Shire LEP cl.6.13 Design excellence – Byron Bay Town Centre – particularly cl. 6.13(4)(b) and cl.6.13(4)(c).
- The cumulative effect of modifications including in particular: the change to the unit mix; the aesthetic/architectural expression of the building; the introduction of additional breaches to the height standard and privatisation of the roof with private open space areas; the changes to the layout; and the diminution of design excellence resulting in the proposal not being substantially the same development.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered the written submissions made during public exhibition. The Panel notes that issues of concern included:

- Potential noise conflicts

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Gow
 Michael Wright	 Joe Vescio
 Ian Pickles	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-225 – Byron – 10.2021.384.3
2	PROPOSED DEVELOPMENT	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
3	STREET ADDRESS	90-96 Jonson Street, Byron Bay
4	APPLICANT OWNER	Matthew Nesbitt Project Bohemian Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ◦ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ◦ State Environmental Planning Policy (Resilience and Hazards) 2021 ◦ State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development ◦ State Environmental Planning Policy (Planning Systems) 2021 ◦ State Environmental Planning Policy (Transport and Infrastructure) 2021 ◦ Byron Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ◦ Byron Development Control Plan 2014 • Planning agreements: Yes • Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council Assessment Report: 22 November 2023 • Written submissions during public exhibition: Two (2) • Total number of unique submissions received by way of objection: One (1)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: 13 September 2023 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Ian Pickles ◦ <u>Council assessment staff</u>: Rob Van Iersel • Briefing: 26 September 2023 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Joe Vescio, Ian Pickles ◦ <u>Council assessment staff</u>: Chris Larkin and Rob Van Iersel ◦ <u>Department staff</u>: Elliot Brown and Lisa Ellis • Applicant Briefing: 13 December 2023 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Joe Vescio, Ian Pickles

		<ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Chris Larkin and Rob Van Iersel ○ <u>Applicant representatives</u>: Matthew Nesbitt, Ilya Melnikoff and Darren Gibson ○ <u>Department staff</u>: Carolyn Hunt, Louisa Agyare and Lisa Ellis <ul style="list-style-type: none"> • Final briefing to discuss council's recommendation: 13 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Joe Vescio, Ian Pickles ○ <u>Council assessment staff</u>: Chris Larkin and Rob Van Iersel ○ <u>Department staff</u>: Carolyn Hunt, Louisa Agyare and Lisa Ellis
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not Applicable