

<b>DATE OF DETERMINATION</b>	13 December 2024
<b>DATE OF PANEL DECISION</b>	12 December 2024
<b>DATE OF PANEL BRIEFING</b>	10 December 2024
<b>PANEL MEMBERS</b>	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Simon Richardson and Ian Pickles
<b>APOLOGIES</b>	Joe Vescio
<b>DECLARATIONS OF INTEREST</b>	None

Papers circulated electronically on 28 November 2024.

#### **MATTER DETERMINED**

PPSNTH-330 – Byron – 10.2022.371.2 – 29 Shirley Street and 2 & 4 Milton Street, Byron Bay – Modification to residential flat building in relation to basement layout, addition of wellness centre, internal floor plan layout changes, addition of rooftop pools changed rooftop terraces and landscaping (as described in Schedule 1).

#### **PANEL CONSIDERATION AND DECISION**

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

#### **Application for modification of consent**

The Panel determined to approve part of the application pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (the Act).

In determining the application the Panel has, pursuant to section 4.55(3) of the Act, taken into consideration the reasons for the grant of the consent that is sought to be modified.

The decision was unanimous.

#### **REASONS FOR THE DECISION**

The Panel determined to approve part of the application for the following reasons, including those set out in the Council's Assessment Report:

1. The proposal, as modified by this approval, is substantially the same as that originally approved and the impacts are considered acceptable.
2. The proposal, as modified by this approval, remains consistent with the relevant objectives of the R3 Medium Density and 7(f2) Urban Coastal Land zones.
3. The Panel remains satisfied that impacts associated with the proposed development, as modified by this approval, can be adequately mitigated through the imposition of conditions of consent

#### *Height of Buildings*

The Panel has determined to not approve the proposed modifications to height of buildings.

In respect of the R3 Medium Density Residential land, the Panel finds that the proposed exceedance of the approved building height (10.7m) is not justified. The Panel agrees with Council's assessment that:

- minimum clear floor to ceiling heights of 2.7m can be achieved within the approved height
- the approved height is consistent with the existing medium density character fronting the northern side of Shirley Street – a key reason for the granting of consent to the original application

- DDA compliance can be achieved without lift access to roof top terraces, and consequent lift overruns penetrating the 10.7m approved height, as minimum private open space requirements are satisfied on the habitable levels

In respect of the 7(f2) Urban Coastal Land, the Panel finds that the proposed exceedance of the approved building height (9.0m) is not justified. The Panel agrees with Council's assessment that:

- All elements of the proposed development can achieve minimum standards within the approved height, namely minimum clear floor to ceiling heights of 2.7m and pool terrace balustrades of 1.2m

The Panel finds that the further exceedances of the building height control are not justified on environmental grounds, and that the scale and cumulative amenity impacts of the additional roof elements are likely to unacceptably compromise neighbourhood amenity.

#### *Roof Top Terraces*

The Panel has determined to approve the configuration and use of roof top terraces as follows:

- Useable roof top terrace space of 40m<sup>2</sup> per apartment. That useable space comprising all seating, entertainment and pool areas
- The remainder of the roof areas to comprise access ways for maintenance purposes, photovoltaic infrastructure, skylights, and low gardens/landscape
- Limitations on hours of use to between 7:00 am and 9:00 pm
- Limitations on fixed structures
- Requirements for a plan of management for roof top areas

The Panel has imposed these constraints to protect the amenity of neighbours within the development and those adjacent.

#### *Internal Apartment Layouts*

The Panel has determined to approve the internal reconfiguration of apartments with the exception of walls that create additional habitable rooms without access to windows and natural light.

#### *Other*

The Panel determined to approve those other modifications sought, including those relating to:

- basement reconfiguration, setback and Wellness Centre
- façade and windows
- privacy screening to protect privacy neighbouring private open space
- sewer easement
- staging of works

In addition, the Panel has amended Condition 89 to bring it into line with Statement Environmental Planning Policy (Housing) 2021, Chapter 3, Part 6 - Short Term Rental Accommodation.

The Panel considers that the proposal, as approved, remains substantially the same as that to which consent was granted, that impacts can be adequately mitigated with the imposition of conditions and, that the proposal remains in the public interest.

### **CONDITIONS**

The Modification Application was approved subject to the conditions outlined in the Council Assessment Report and amended on 5 December 2024 with the following amendments.

- Amend Condition 9 to read as follows:

#### **9. Amendments to the plans required.**

Amended plans must be submitted **to Council for approval** prior to issue of the Construction Certificate to demonstrate:

##### **(a) Maximum height of the northern building in 7F2 zoning**

As per the requirements of BLEP 1988 Clause 40 Height (2) (b) (ii) the vertical distance of the topmost part of the northern building, including any balustrades shall not exceed 9 metres

above the existing ground level below with the floor to ceiling height on levels 1 and or 2 both reduced to achieve compliance.

**(b) Maximum height Southern buildings in R3 zoning**

- i. The maximum height of the building for any lift over runs shall not exceed 10.7 metres above the existing ground level .
- ii. The maximum height of any other elements including balustrading, pools or rooftop planters shall not exceed 10.25 metres above the existing ground level.

**(c) Northern Building Lift Overrun and Canopy**

The lift servicing the rooftop of unit 201 is not approved. Plans must be amended to remove the lift and canopy from the rooftop, with the lift terminating at Level 2.

**(d) Internal unit layouts**

The internal layouts to units 005, 006, 007, 008, 009,105, 106,107,108,109 must be amended to remove the internal walls as marked up on the approved plans to the studies and other habitable rooms with no access to external windows.

**(e) Roof top Terraces**

All roof top terraces in 7(F2) and R3 zone shall be shown as having a maximum useable area of 40m<sup>2</sup> only. Comprising of any pool, BBQ, entertaining and seating areas, excluding roof top maintenance circulation areas. The remainder of the roof top area inside the maintenance circulation area is to be planted with low scale green roof landscaping

**(f) Low scale green roof landscaping**

An amended landscaping plan that specifies the following:

- i. All planters greater than 600mm deep are to be deleted from plans.
- ii. All trees on the roof top are to be deleted from the plans.
- iii. Detail of the planting medium to be used for the low scale green roof including depth and composition. Planters to be maximum 600mm deep.
- iv. A planting schedule detailing the native species to be used for the low scale green roof . Planting to be restricted to ground covers and shrubs only.
- v. A maintenance plan detailing the ongoing maintenance and servicing of the low scale green roof.

Note: Landscaping to the site is to comply with the principles of Appendix 5 of Planning for Bushfire Protection 2006.

- (g) Electric vehicle charging points.** A minimum 240-volt power outlet being provided on the basis of 1 for each and every residential unit in the basement carpark to enable electric vehicle charging.

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

- Delete Condition 9A
- Amend Condition 38 to update the BASIX Certificate No. and Date to Basix Certificate No 1288442M\_04 Dated 29 November 2024.
- Insert new Condition 88B, which reads as follows:

**88B. Plan of Management**

A Plan of Management that details how the building is to operate in accordance with **all conditions** of this consent including the Wellness Centre, communal and outdoor areas including rooftop areas to be approved by Council prior to the issue of the Occupation Certificate.

- Amend Condition 89 to read as follows:

**89. Use of the dwelling-house - Non-hosted STRA – 365 day precinct**

The dwellings may be used for non-hosted short-term rental accommodation (STRA) for up to 365 days.

STRA must only be undertaken in accordance with the following:

- a. must be registered on the NSW Planning Portal.
- b. must comply with the mandatory Code of Conduct for the STRA industry.
- c. must comply with fire safety standards.

Council conducts regular audits to ensure compliance. Penalties may apply if non-compliance is detected.

*Reason: To ensure the use of the dwellings for STRA adheres to regulations, maintaining the integrity of residential areas and ensuring safety and legal standards are upheld.*

- Amend Condition 103 to read as follows:

**103. Use of rooftop terraces**

- a) The use of rooftop terraces is restricted to residents use only between the hours of 7am and 9pm daily.
- b) No shade structures are approved with this consent. Any structure will require separate development consent.
- c) The rooftop is to be managed to ensure there are no loose items that could cause damage if blown around in high winds and storms including any outdoor furniture.

- Insert new Condition 106, which reads as follows:

**106. Plan of Management**


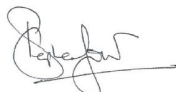



Any strata subdivision application and registration is to be accompanied by a Plan of Management that details how the building is to operate in accordance with all conditions of this consent including the Wellness Centre, communal and outdoor areas.

**CONSIDERATION OF COMMUNITY VIEWS**

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

- Request for referral to Transport to NSW under S.2.98 State Environmental Planning Policy (Transport and Infrastructure) 2021

The Panel considers that concern raised by the community have been adequately addressed in the Assessment Report. The Panel notes that in addressing these issues, appropriate conditions have been imposed.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-330 – Byron – 10.2022.371.2
2	PROPOSED DEVELOPMENT	Modification to residential flat building in relation to basement layout, addition of wellness centre, internal floor plan layout changes, addition of rooftop pools changed rooftop terraces and landscaping
3	STREET ADDRESS	29 Shirley Street and 2 & 4 Milton Street, Byron Bay
4	APPLICANT OWNER	Urbis Ltd on behalf of The Trustee for The 29 Shirley Street Trust 29 Shirley Street Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Housing) 2021</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Sustainable Buildings) 2022</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2021</li> <li>Byron Local Environmental Plan 1988</li> <li>Byron Local Environmental Plan 2014</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Byron Development Control Plan 2010</li> <li>Byron Development Control Plan 2014</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council Assessment Report: 26 November 2024</li> <li>Written submissions during public exhibition: 1</li> <li>Total number of unique submissions received by way of objection: 1</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: 22 October 2024 <ul style="list-style-type: none"> <li><u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, and Ian Pickles</li> <li><u>Council assessment staff</u>: Patricia Docherty and Shannon Burt</li> <li><u>Department staff</u>: Carolyn Hunt</li> </ul> </li> <li>Applicant Briefing: 10 December 2024 <ul style="list-style-type: none"> <li><u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Simon Richardson and Ian Pickles</li> <li><u>Applicant representatives</u>: Chris Vitale, Melissa Griffin, Kerri Mereider, Darren Jarvis, Marty Brennan, Kylie Nikolovski, Stuart Clark, Louka Vitale</li> </ul> </li> </ul>

		<ul style="list-style-type: none"><li>○ <u>Council assessment staff:</u> Alissa Magnifico, Chris Larkin and Patricia Docherty</li><li>○ <u>Department staff:</u> Carolyn Hunt and Lisa Ellis</li></ul> <ul style="list-style-type: none"><li>● Final briefing to discuss Council’s recommendation: 10 December 2024<ul style="list-style-type: none"><li>○ <u>Panel members:</u> Dianne Leeson (Chair), Stephen Gow, Michael Wright, Simon Richardson and Ian Pickles</li><li>○ <u>Council assessment staff:</u> Alissa Magnifico, Chris Larkin and Patricia Docherty</li><li>○ <u>Department staff:</u> Carolyn Hunt and Lisa Ellis</li></ul></li></ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report and amended on 5 December 2024