

DATE OF DETERMINATION	16 July 2025
DATE OF PANEL DECISION	16 July 2025
DATE OF PANEL MEETING	14 July 2025
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright, Simon Richardson and Ian Pickles
APOLOGIES	None
DECLARATIONS OF INTEREST	Joe Vescio declared a perceived conflict of interest as he owns property nearby to the subject property. He did not participate in the meeting.

Papers circulated electronically on 30 June 2025.

MATTER DETERMINED

PPSNTH-409 - Byron - 10.2022.371.4 - 29 Shirley Street, Byron Bay (Lot 2 582519) - Modification to residential flat building including increase in building height within R3 Medium Density Residential and 7(F2) Urban Coastal Land zones and increase in size of rooftop recreation areas across all buildings (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 refuse the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to refuse the application for the following reasons:

1. Pursuant to Section 4.55(3) of the *Environmental Planning and Assessment Act 1979*, the proposed modified development is not consistent with the reasons given by the consent authority for the granting of the consent that is sought to be modified.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the application is inconsistent with Chapter 2 Coastal Management, Section 2.11 of the State Environmental Planning Policy (Resilience and Hazards) 2021 for the following reasons:
 - a) The proposed modification is likely to adversely impact on the visual amenity and scenic qualities of the coast which is adjacent to the proposal. S2.11(1)(a)(iii)
 - b) The additional height and bulk together with recreational use and activity at an upper level adjacent to the coast would be inconsistent with the existing scenic qualities of the coast. S2.11(1)(a)(iii)
 - c) The proposal has not demonstrated it would not have an adverse impact on the adjacent heritage conservation area. S2.11(1)(a)(v)
 - d) The bulk, scale and size of the proposed development would impact negatively on the surrounding coastal and built environment. S2.11(1)(c)

3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is inconsistent with section 142(1)(b) and s142(1)(c) of the *State Environmental Planning Policy (Housing) 2021*. The proposed modifications would not achieve better built form and aesthetics of buildings, streetscapes and public spaces. The modifications would not maximise the amenity, safety and security of the community.
4. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are inconsistent with Chapter 4 and Schedule 9 Principle 1, 2 and 6 of Design of Residential Apartment Development of the *State Environmental Planning Policy (Housing) 2021*.
 - a) The modifications do not achieve good design that responds to and contributes to its context (Schedule 9, Principle 1).
 - b) The modifications would not result in good design that achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings (Schedule 9, Principle 2).
 - c) The modifications would not positively influence internal and external amenity for residents and neighbours or contribute to positive living environments and resident well-being (Schedule 9, Principle 6).
5. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are inconsistent with Clause 4.3 Height of Buildings of Byron Local Environmental Plan 2014. The proposed development breaches the maximum height of buildings development standard of 9m.
6. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are inconsistent with Clause 40 Height of Buildings of Byron Local Environmental Plan 1988. The proposed development breaches the maximum height of buildings development standard of 9m.
7. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is considered inconsistent with the objectives of the 7(F)2 Urban Coastal Land Zone of Byron Local Environmental Plan 1988.
8. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is considered inappropriate having regard to Clause 32 (3)(d) of Byron Local Environmental Plan 1988 in relation to the form, bulk, intensity and nature of development in the 7(F)2 Urban Coastal Land Zone.
9. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are considered inconsistent with objective 2 of Chapter D1.2.6 Character and Visual Impact of Byron Development Control Plan (BDCP) 2014. The proposed modifications do not respect and complement the area's natural and built environment that is important to its existing character.
10. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are considered inconsistent with the desired residential character as outlined in BDCP2014 Chapter E5.8.3 Design Considerations.
11. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are considered inconsistent with BDCP2014 Chapter C1.1.3 (5) The proposed increase in building height does not respect the heritage context of the locality and is not sympathetic in terms of its form, scale, character, bulk, and is likely to adversely affect the components of Heritage Conservation Areas and their settings.
12. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are considered inconsistent with BDCP2010 Chapter 1 Part C3.1 Visual Impact. The proposed modifications would not reasonably integrate with the existing built and natural environment.

13. Pursuant to Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979*, insufficient information was provided to demonstrate compliance with Clause 102(2)(c) of the Environmental Planning and Assessment Regulation 2021 in relation to certain content of the required statement by a qualified designer for residential apartment development.
14. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is considered likely to adversely impact the natural and built environments of the locality.
15. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed modification is not in the public interest. The impacts of the excessive building height, impacts on the streetscape and built environment and amenity impacts on the locality would set an undesirable precedent.

Additionally, the Panel is not satisfied that the application to further exceed the height controls beyond those approved under the original consent (16 October 2023) is justified. The Panel is satisfied that the approved heights can be complied with whilst still achieving minimum floor to ceiling heights of 2700mm in the R3 zone and more generous floor to ceiling heights in the 7(f2) zone.

The Panel notes the Applicant's stated intention to not alter the landscape design of the proposed roof terraces and preparedness to remove the lift overrun associated with Unit 201 to partially ameliorate visual impact concerns.

The Panel retains concerns regarding the operation and management of the roof top terraces particularly relating to aural amenity (noise impact) and reliance on conditions of consent to manage occupant behaviour. Whilst the Panel notes the Applicant's stated intention to have an on-site building manager, this is undocumented with no indication on the plans or in accompanying documents to explain this person's location or role.

CONDITIONS






Not applicable

CONSIDERATION OF COMMUNITY VIEWS

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

- Noise and placement of the air conditioning units and pool filters adversely impacting on neighbouring amenity

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

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-409 – Byron – 10.2022.371.4
2	PROPOSED DEVELOPMENT	Modification to residential flat building including increase in building height within R3 Medium Density Residential and 7(F2) Urban Coastal Land zones and increase in size of rooftop areas across all buildings
3	STREET ADDRESS	29 Shirley Street, Byron Bay (Lot 2 DP 582519)
4	APPLICANT/OWNER	Urbis 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 (Planning Systems) 2021 ○ State Environmental Planning Policy (Housing) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Sustainable Buildings) 2022 ○ Byron Local Environmental Plan 1988 ○ Byron Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Byron Development Control Plan 2010 ○ Byron Development Control Plan 2014 • Planning agreements: Nil • 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: 26 June 2025 • Written submissions during public exhibition: 1 • Total number of unique submissions received by way of objection: 1
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 20 May 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Simon Richardson and David Brown ○ <u>Council assessment staff</u>: Chris Larkin ○ <u>Department staff</u>: Carolyn Hunt and Ilona Ter-Stepanova • Applicant Briefing: 14 July 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Simon Richardson and Ian Pickles ○ <u>Applicant representatives</u>: Lauren Bolger, Darren Jarvis, Marty Brennan, Melissa Griffin, Kerri Mereider, Paul Watson, Sean Evangelista ○ <u>Council assessment staff</u>: Chris Larkin and Alissa Magnifico ○ <u>Department staff</u>: Carolyn Hunt and Ilona Ter-Stepanova

		<ul style="list-style-type: none">• Final briefing to discuss Council’s recommendation:<ul style="list-style-type: none">○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Simon Richardson and Ian Pickles○ <u>Council assessment staff</u>: Chris Larkin and Alissa Magnifico○ <u>Department staff</u>: Carolyn Hunt and Ilona Ter-Stepanova
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	N/A