

DETERMINATION AND STATEMENT OF REASONS

NORTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	15 July 2026
DATE OF PANEL DECISION	15 July 2026
DATE OF PANEL MEETING	13 July 2026
PANEL MEMBERS	Dianne Leeson (Chair), Stephen Gow, Michael Wright and Bruce Clarke
APOLOGIES	None
DECLARATIONS OF INTEREST	Simon Richardson declared a conflict of interest as he has a close relationship with the proponent and has a matter to be determined by Council which he does not wish to prejudice the outcome of that matter. He did not participate in the meeting. Bruce Clarke advised that he does not have a conflict of interest but noted that he Chairs the Byron Community Center (BCC) that Brandon Saul was also on. He does not have any relationship with him outside of the panel and noted that Brandon Saul left the BCC six months ago). He participated in the meeting.

Papers circulated electronically on 30 June 2026.

MATTER DETERMINED

PPSNTH-420 – Byron – 10.2025.156.1 – 5 Penny Lane, Byron Bay – Mixed use development comprising on-grade parking, commercial premises, pocket park and back of house facilities on the ground level; 37 shop top housing apartments, a landscaped podium, a swimming pool and resident amenities on level 1 and 41 shop top housing apartments on level 2 and subdivision of Penny Lane from Lot 1 DP271119 for integration with Lot 14 DP271119 (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 briefings listed at item 8 in Schedule 1.

Application to vary a development standard

Following consideration of a written request from the applicant, made under s. 4.6 (3) of the Byron Local Environmental Plan 2014 (LEP), the Panel is satisfied that the applicant has demonstrated that:

- compliance with s. 4.3 (Height of Buildings) and s. 4.4 (Floor Space Ratio) is unreasonable or unnecessary in the circumstances because the proposed development is generally consistent with the established building heights in previous stages of the Habitat precinct, the objectives of the building height clause is generally achieved and the floor space ratio exceedance will not result in a significant increase in the generation of pedestrian or vehicle traffic; and
- there are sufficient environmental planning grounds to justify contravening the development standard as lower ceiling heights would result in reduced sunlight and amenity for residents and the minor increase in the floor space ratio will have minimal adverse impacts on amenity, views, solar access and the character of the Habitat precinct.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to uphold the Clause 4.6 variation to building height and floor space ratio and approve the application for the reasons outlined in the Council's Assessment Report and Supplementary Assessment Report.

The Panel, having regard to Council's policy (Byron Shire Council and Rous County Council Development Servicing Plans) for the calculation of contributions and ensuring that they did not financially disadvantage Council, did not support the applicant's request to amend Condition 11 and Schedule 5 (Water Payments under the Water Management Act) as this matter is to be resolved with the Water Management Authority.

The Panel, having regard to Council's policy (Byron Shire Developer Contributions Plan 2012 (as amended)) for the calculation of contributions and ensuring that they did not financially disadvantage Council, did not support the applicant's request to amend Condition 12 and Schedule 5 (s7.11 Schedule of Development Contributions).

Notwithstanding the imposition of Condition 73 to require the Community Management Statement to prohibit the use of residential office space as a bedroom, the Panel gave greater weight to Council's policy regarding office spaces or storage rooms which are capable of being used as bedrooms and setting of precedent.

CONDITIONS

The Development Application was approved subject to the conditions attached to Council's Supplementary Assessment Report and updated on 13 July 2026 with the following amendments.

- Amend Condition 14 – Consent required for works within the road reserve, to delete the following words:

Footpath A concrete footpath (minimum) 2.1 metres wide must be provided to the entire frontage at Wallum Place from the corner of Porter Street to the corner of Gallagher Street. Existing stormwater infrastructure is to be adjusted as required.

- Condition 39 – Hours of operation, to read as follows:

39. Hours of work

The principal certifier must ensure that building work, demolition or vegetation removal that produces noise, dust or odour is only carried out between:

- 7am to 6pm on Monday to Friday.
- 8am to 1pm on Saturday.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency or if the work involves activities which would be inaudible externally, such as internal painting, fit out, or other minor work.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Note: Any variation to the hours of work requires Council's approval. Work that are less likely to produce noise, dust or odour may include for example, internal painting, internal fit-out work that does not involve hammering or use of power tools, minor landscaping work, or similar).

- Amend Condition 73 – Use of residential offices, to read as follows:

73. Use of residential offices

Each residential unit contains one office space to enable home occupation or similar work from home uses. These residential offices are ancillary to the approved shop-top housing use and are not approved for separate use as commercial premises or industry.

The Habitat Community Management Statement must include, and maintain at all times, a by-law prohibiting the use of any residential office within Habitat Stage 5 as a bedroom or sleeping area.

The Panel noted the following grammatical errors in:

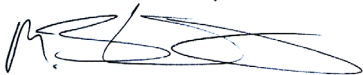
- Condition 14 – Consent required for works within the road reserve, being capitalised B in a) Access Width and removal of 'a)' in Dilapidation Reports required
- Condition 18 – Amended Operational Waste Management Plan, parts (f)(ii) and (iv) to be corrected by Council.

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:

- Overshadowing
- Car parking

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

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Michael Wright
 Stephen Gow	 Bruce Clarke

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-420 – Byron – 10.2025.156.1
2	PROPOSED DEVELOPMENT	Mixed use development comprising on-grade parking, commercial premises, pocket park and back of house facilities on the ground level; 37 shop top housing apartments, a landscaped podium, a swimming pool and resident amenities on level 1 and 41 shop top housing apartments on level 2 and subdivision of Penny Lane from Lot 1 DP271119 for integration with Lot 14 DP271119
3	STREET ADDRESS	5 Penny Lane, Byron Bay (Lot 1 and 14 DP 271119)
4	APPLICANT/OWNER	Planners North Bayshore Development Pty Ltd and Community Association DP271119
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	• Environmental planning instruments: ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ 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 (Sustainable Buildings) 2022 ○ Byron Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: ○ 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	• Council Assessment Report: dated 30 March 2026 • Council's Supplementary Assessment Report: dated 26 June 2026 • Council's Summary of Changes to Recommended Conditions of Consent: dated 13 July 2026 • S.4.6 variation requests: s.4.3 (Height of Buildings) and s.4.4 (Floor Space Ratio) of the Byron Local Environmental Plan, 2014 • Written submissions during public exhibition: 2 • Total number of unique submissions received by way of objection: 2
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Applicant Briefing: 14 April 2026 ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Bruce Clarke ○ <u>Applicant representatives</u>: Steve Connelly, Fraser Williams-Martin, Abel East, Ryan Beavis, Brandon Saul ○ <u>Council assessment staff</u>: Ben Grant, Dylan Johnstone, Renan Solatan ○ <u>Department staff</u>: Carolyn Hunt, Gail Fletcher

		• Briefing to discuss Council's recommendation: 14 April 2026 ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Bruce Clarke ○ <u>Council assessment staff</u>: Ben Grant, Dylan Johnstone, Renan Solatan ○ <u>Department staff</u>: Carolyn Hunt, Gail Fletcher • Applicant Briefing: 13 July 2026 ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Bruce Clarke ○ <u>Applicant representatives</u>: Steve Connelly, Melina Hobday, Abel East, Ryan Beavis ○ <u>Council assessment staff</u>: Ben Grant, Patricia Docherty ○ <u>Department staff</u>: Carolyn Hunt and Holly McCann • Final briefing to discuss Council's recommendation: 13 July 2026 ○ <u>Panel members</u>: Dianne Leeson (Chair), Stephen Gow, Michael Wright, Bruce Clarke ○ <u>Council assessment staff</u>: Ben Grant, Patricia Docherty ○ <u>Department staff</u>: Carolyn Hunt and Holly McCann
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Supplementary Assessment Report and updated on 13 July 2026