

The logo for URBIS, featuring the word "URBIS" in a bold, sans-serif font. The text is contained within a square frame that is partially open on the right side. A thick black horizontal line extends from the right side of the square frame across the top of the page. A thick black vertical line extends from the top of the page down to the top of the square frame.

URBIS

S4.55(2) MODIFICATION APPLICATION

29 Shirley Street and 2-4
Milton Street, Byron Bay

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Patrick Hefferan
Associate Director	Melissa Griffin
Consultant	Kerri Mereider
Project Code	P0038351
Report Number	FINAL JUNE 2024

Urbis acknowledges the important contribution that Aboriginal and Torres Strait Islander people make in creating a strong and vibrant Australian society.

We acknowledge, in each of our offices, the Traditional Owners on whose land we stand.

All information supplied to Urbis in order to conduct this research has been treated in the strictest confidence. It shall only be used in this context and shall not be made available to third parties without client authorisation. Confidential information has been stored securely and data provided by respondents, as well as their identity, has been treated in the strictest confidence and all assurance given to respondents have been and shall be fulfilled.

© Urbis Ltd
50 105 256 228

All Rights Reserved. No material may be reproduced without prior permission.

You must read the important disclaimer appearing within the body of this report.

urbis.com.au

CONTENTS

Executive Summary	1
1. Site and Surrounds	2
1.1. Site Description	2
1.2. Locality Context	4
1.3. Zoning Context.....	5
2. Application Background	6
2.1. Variation Requests.....	7
2.2. Key Matters Addressed.....	7
2.2.1. Stormwater Management	7
2.2.2. Clause 4.6 Variation Request in the R3 Zone - Height	8
2.2.3. Clause 64A Variation Request in the 7(f2) Zone.....	8
2.2.4. Clause 4.6 Variation Request in the R3 Zone – Floor Space Ratio.....	8
2.2.5. Density within the 7(f2) Zone.....	8
2.2.6. Building Height Plane	8
2.2.7. Proximity to Escarpment.....	9
2.2.8. Vegetation Clearing	9
2.3. Public Exhibition Period	9
2.4. Integrated Development	9
2.5. Designated Development	9
2.6. Northern Regional Planning Panel	9
2.7. Approval Documentation	10
3. Proposed Modifications	11
3.1. Summary of Changes	11
3.1.1. Basement Level Modifications.....	11
3.1.2. Ground Level Modifications	12
3.1.3. Roof Plan Modifications.....	13
3.1.4. Southern Building Modifications	15
3.1.5. Northern Building Modifications.....	16
3.2. Amended Conditions.....	18
3.2.1. Amended Existing Conditions	18
3.2.2. Proposed New Conditions	23
4. Section 4.55 Modification	25
4.1. Substantially the Same Development.....	25
4.1.1. Overview of Modifications.....	25
5. Section 4.15 Assessment	27
5.1. Environmental Planning Instruments	27
5.2. Local Environmental Plan Assessment	28
5.2.1. Byron Local Environmental Plan 2014	28
5.2.2. Byron Local Environmental Plan 1988	30
5.2.3. Proposed Environmental Planning Instruments	30
5.3. Byron Shire Development Control Plan 2014	30
5.4. Regulations	30
5.5. Likely Impacts of the Development.....	31
5.6. Suitability of the Site	31
5.7. Public Interest	31
6. Summary and Conclusion	32
Disclaimer	33

No table of contents entries found.

FIGURES

Figure 1 Aerial Image of Site	3
Figure 2 Surrounding Context Map.....	4
Figure 3 Zone Mapping - Local Environmental Plan 2014	5
Figure 4 Approved Ground Floor Plan.....	6
Figure 5 Approved Elevation Plan from Shirley Street	7
Figure 6 Height Exceedances in the R3 Medium Density Residential Zone and 7(F2) Zone	7
Figure 7 Modified Basement Level Layout	12
Figure 8 Modified Ground Floor Plan.....	13
Figure 9 Modified Rooftop Area in the 7(F2) Zoning (North Building)	14
Figure 10 Modified Landscape Scheme in the 7(F2) Zoning (North Building)	14
Figure 11 Modified Elevation Plan from Shirley Street (South Building)	15
Figure 12 Modified Section Plan from Southern Elevation (Southern Building)	15
Figure 13 Modified Elevation Plan from Eastern Elevation (South Building).....	16
Figure 14 Southern Building - Ground Floor Plan	16
Figure 15 Modified Elevation Plan from Northern Boundary (North Building)	16
Figure 16 North Building from Western Elevation	17
Figure 17 Northern Building - Ground Floor Plan	17

PICTURES

Picture 1 Height plane veil in R3 Zone	7
Picture 2 Height plane veil in 7(F2) zone.....	7

TABLES

Table 1 Site Overview	2
Table 2 Approval Documentation Overview.....	10
Table 3 Amended Condition Wording	18
Table 4 Proposed New Conditions.....	23
Table 5 Comparative analysis of approved and proposed schemes	25
Table 6 Compliance with State Environmental Planning Policies.....	27
Table 7 BLEP 2014 Compliance Overview	29
Table 8 BLEP 1988 Compliance Overview	30

EXECUTIVE SUMMARY

This Planning Report has been prepared on behalf of Vitale Property Group (the **Applicant**) to accompany a Section 4.55(2) Modification Application submitted to Byron Shire Council (**Council**).

The Application seeks to modify development consent for DA.10.2022.371.1 issued for 29 Shirley Street and 2-4 Milton Street, Byron Bay on 16 October 2023. Development consent was granted for:

“Demolition of existing development and clear the site, including existing buildings and trees to facilitate a residential flat building development comprising of 25 three-bedroom dwellings distributed across four separate two and three-storey buildings with basement car parking, associated landscaping and amenities.”

This Planning Report provides a comprehensive description and assessment of the proposed modifications within the following sections of the report as listed below:

- **Section 1:** Site description and surrounding context;
- **Section 2:** Application background;
- **Section 3:** Overview of proposed modifications, including rationale and intended outcomes, and proposed amendments to the current development consent conditions;
- **Section 4:** Assessment of the proposed modifications in accordance with Section 4.55(2) of the EP&A Act;
- **Section 5:** Assessment of the proposed modifications in accordance with Section 4.15 of the EP&A Act and applicable Local Environmental Plans; and
- **Section 6:** Conclusion.

A detailed overview of the proposed modifications has been included within Section 3 of this report. The primary scope of modifications from the approved scheme are summarised as below:

Elevation modifications

- Reduction in total building height for the building portion situated within the 7(F2) Urban Coastal Land from 10.1m to 9.25m;
- Increase in total building height for the building portion within the R3 Medium Density Residential zone from 10.7m to 11.21m;
- Increase of floor to floor heights for the building portion within the R3 Medium Density Residential zone;
- Decrease of floor to floor heights for the building portion within the 7(F2) Urban Coastal land zone;

Rooftop modifications

- Reduction and reconfiguration to rooftop trafficable areas across the building portion within the R3 Medium Density Residential zone from areas between 129.3m² – 142.8m² to 33.8m² – 42.6m²;
- Reduction and reconfiguration to rooftop trafficable areas across the building portion within the 7(F2) Urban Coastal Land zone from areas between 167m² – 205.2m² to 40.7m² – 63.5m²;

Internal modifications

- Slight reconfiguration of internal floor plans across all dwellings, with no change to total bedroom numbers per dwelling;
- Reduction in basement level footprint from 3,720m² to 3,630m² which includes a change to the rear setback of the basement from 10m to 10.6m; and
- Reconfiguration of basement level services including the fire pump room, fire services water tank, pool pump and switch room.

1. SITE AND SURROUNDS

1.1. SITE DESCRIPTION

The development site is located at 29 Shirley Street and 2-4 Milton Street, Byron Bay and comprises a total of ten (10) lots. The site is located slightly north of the Byron Bay Town Centre, between Belongil Beach and Shirley Street.

Key site details and its features are provided within **Table 1** below.

Table 1 Site Overview

Feature	Description
Street Address	29 Shirley Street, Byron Bay 2 Milton Street, Byron Bay 4 Milton Street, Byron Bay
Formal Lot Descriptions	Lot 8, Section 52 on DP758207 Lot 9, Section 52 on DP758207 Lot 2 on DP582819 Lot 7 on DP841611 Lot 12 on DP1138310 Lot 1 on DP582819 Lot 1 on DP780935 Lot 8 on DP841611 Lot 9 on DP841611 Lot 11 on DP1138310
Land Area	5,937m ²
Land Dimensions	Shirley Street – 60.345 metres Milton Street – 60 metres Side Boundary (North) – 20.115 metres Side Boundary (West) – 62.095 metres Rear Boundary (Railway Corridor) – 73 metres Side Boundary (East) – 99.19 metres
Topography	The site has an undulating topography, summarised as follows: North-South: Existing ground level increases from approximately 4.58m ADH at Shirley Street to a high point of 6.6m, decreasing to approximately 6.1AHD at the rear boundary. This results in a site

Feature	Description
	<p>difference of approximately 2m between the lowest and highest point on the site.</p> <p>East-West: Existing ground level increase from approximately 4.52AHD at the Milton Street frontage, rising to a high point of 5.76AHD, and falling again to 4.93ADH at the eastern boundary. This results in a difference of approximately 1.2m between the lowest and highest point on the site.</p>
<p>Vegetation</p>	<p>The site is largely undeveloped with the exception of a backpacker's hostel and short stay accommodation fronting Shirley Street and Milton Street.</p> <p>The remainder of the site is landscaped with maintained lawns and garden beds, with some scattered trees towards the rear of the site and one (1) mature fig tree species towards the eastern boundary.</p>

The site currently comprises of a backpacker's hostel development and associated facilities which will be demolished to facilitate the new development, along with the dwelling fronting Milton Street which is currently used for short-term accommodation.

As illustrated below, the site has immediate frontages to both Shirley Street and Milton Street, with current vehicular access provided only from Milton Street. Pedestrian access is currently provided via the existing footpath connecting from Shirley Street. The site in its combined lot form and main access routes are shown in **Figure 1** below.

Figure 1 Aerial Image of Site



Source: Urbis adapted from Nearmap 2024

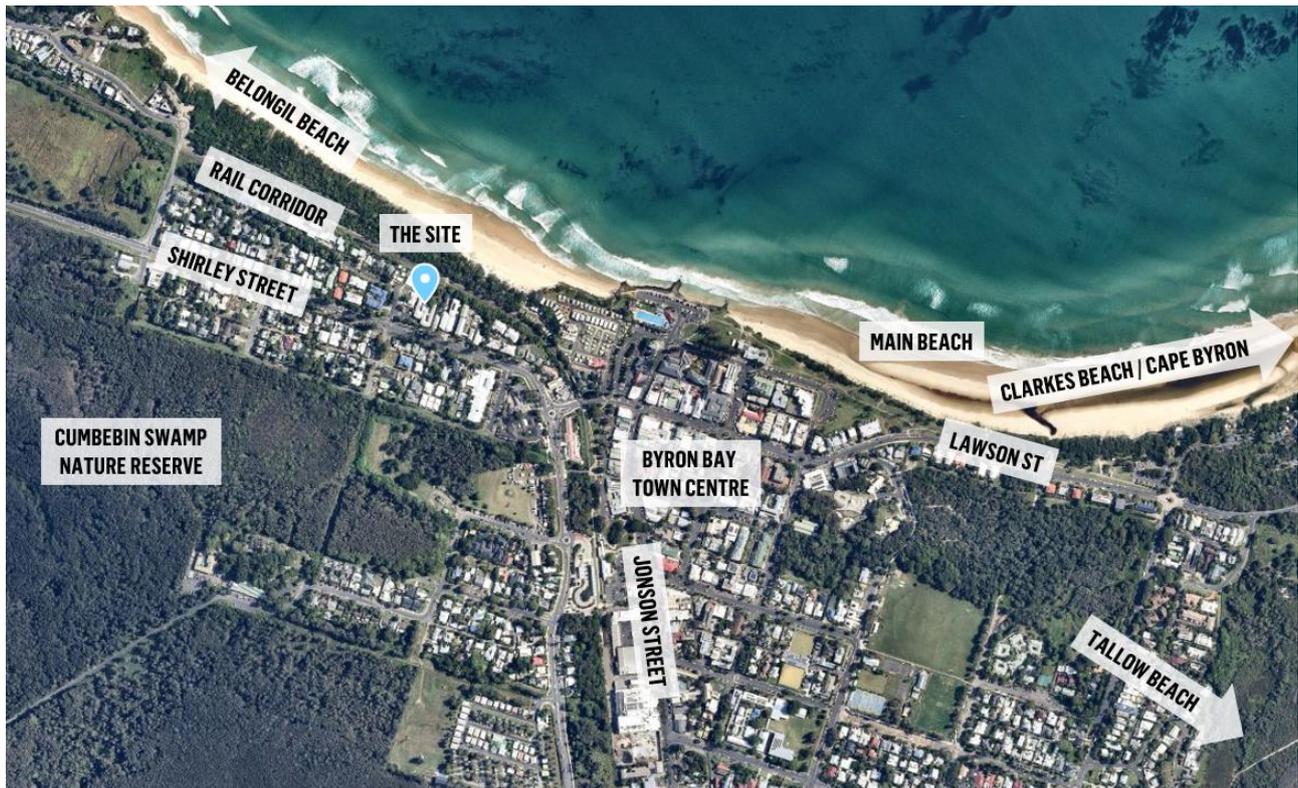
1.2. LOCALITY CONTEXT

The site is located within Byron Bay, within the broader Northern New South Wales region, and sits approximately 400 metres from the Byron Bay Town Centre and 5.8km from the Pacific Motorway. The site sits along the eastern approach of Shirley Street, which is a key thoroughfare for vehicles travelling into Byron Bay as they exit the Pacific Highway onto Ewingsdale Road.

Within the local context, the site benefits from its proximity to the Byron Bay Town Centre, which includes bus services, retail and restaurant offerings, as well as civic services. The Town Centre is easily accessed via a wide, sealed footpath running along Shirley Street.

The site's locality context with its surrounds is demonstrated in the below **Figure 2**.

Figure 2 Surrounding Context Map



Source: Urbis adapted from Nearthmap 2024

The following notable developments and landmarks in context to the site are as follows:

- **North** – immediately north, the site adjoins the rail corridor of the former Casino-Murwillumbah line. The rail corridor is still used by the Byron Bay Train, which is a solar-powered train used largely to connect tourists from the Elements of Byron Resort to the Byron Town Centre. Beyond the rail corridor, the area transitions to the coastal environment of Belongil Beach and the Pacific Ocean.
- **East** – the site adjoins an existing two-storey Dwelling House, positioned towards the front of the lot. Further east sits a series of two-storey resort, motel and serviced apartment developments, before the character of Shirley Street transitions through civic services, such as an aged care facility and Byron Bay Police Station. Shirley Street continues east, turning into Lawson Street as it enters the Byron Bay Town Centre.
- **South** – immediately south, the site fronts Shirley Street, which adjoins an area of one- to two-storey Dwelling House developments, holiday villas, and medical and allied health uses including the former Byron District Hospital. Further south sits Cumbebin Swamp and associated Nature Reserve
- **West** – the site adjoins the intersection of Shirley Street and Milton Street. West of the subject site and north of Shirley Street is an area largely dominated by two- to three-storey resort and hotel developments. South of Shirley Street sits a cluster of single Dwelling Houses on smaller lots, interspersed by larger lots and resort developments. Further west Shirley Street transitions to Ewingsdale Road, past the Cumbebin Swamp and associated Nature Reserve.

1.3. ZONING CONTEXT

The site consists of dual zoning, with a majority of the site situated within the R3 Medium Density Residential zoning that is regulated pursuant to the Byron Local Environment Plan 2014 (BLEP 2014).

The rear portion of the site is designated per the BLEP 2014 as a Deferred Matter zone and identified within the Byron Local Environmental Plan 1988 (BLEP 1988) as the 7(f2) Urban Coastal Land Use zone. The applicable zoning is demonstrated within the below mapping per **Figure 3**.

As shown in **Figure 3**, the majority of lots along Shirley Street are zoned as R3 Medium Density Residential and are adjacent to a portion of R2 Low Density Residential. The northern portion of the site is located in the Deferred Matters Zone and with the SP2 Infrastructure zone located further north of the site's northern boundary.

Figure 3 Zone Mapping - Local Environmental Plan 2014



Source: Byron Shire Council Web Map 2024

2. APPLICATION BACKGROUND

On 16 October 2023, Byron Shire Council granted consent for DA.10.2022.371.1 for the demolition of existing development and construction of a residential flat building development at 29 Shirley Street and 2-4 Milton Street, Byron Bay. Key features of the development included provisions for the following:

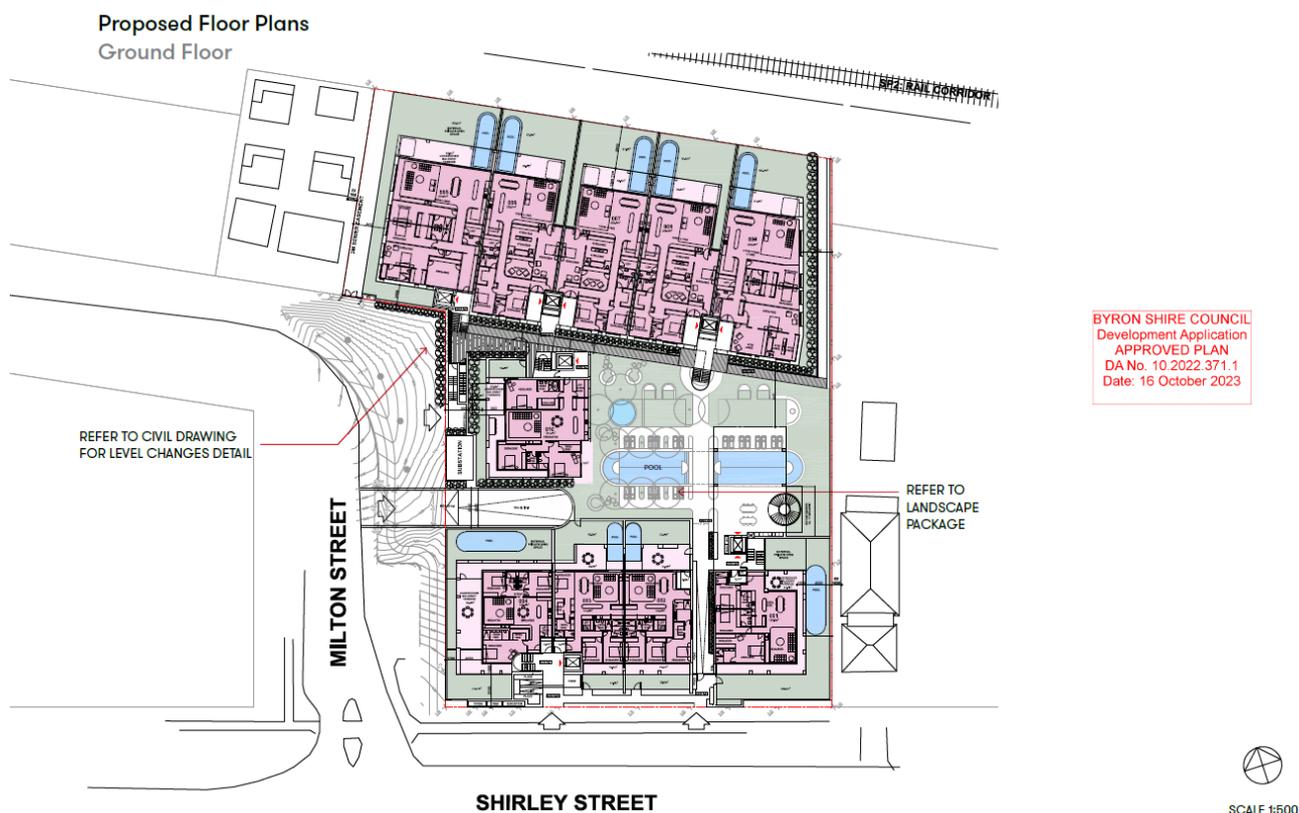
- Demolition of existing development;
- 25 three-bedroom dwellings distributed across four separate two and three-storey buildings;
- Basement parking level containing 69 total car parking spaces, including 7 visitor spaces and bike parks with vehicle access from Milton Street;
- An integrated landscape and communal open space design concept;
- 4,843.94m² landscape area including communal open space, roof top gardens, private open courtyards, and balconies; and
- 527.32m² of deep planting on natural ground at ground level.

Pursuant to the *Byron Local Environmental Plan 2014* (BLEP 2014), a Residential Flat Building is defined as:

“A building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.”

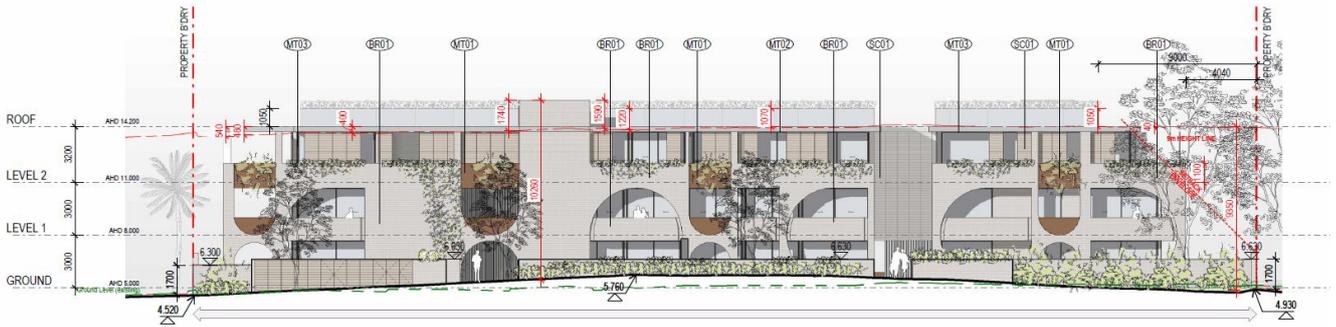
The approved ground floor plan issued as part of the development approval package from Byron Shire Council is illustrated below in **Figure 4**, with the approved elevation plan from Shirley Street shown in **Figure 5**.

Figure 4 Approved Ground Floor Plan



Source: Hayball 2023

Figure 5 Approved Elevation Plan from Shirley Street



Source: Hayball 2023

2.1. VARIATION REQUESTS

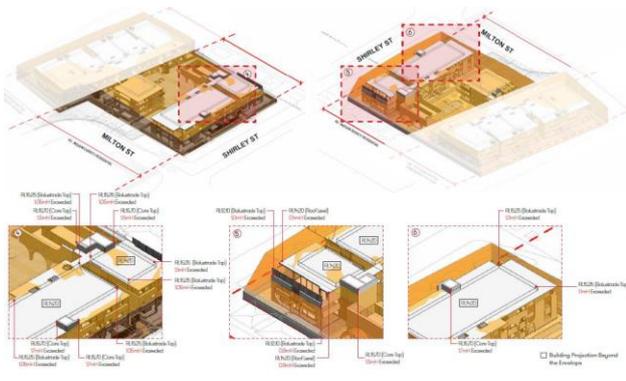
The application consisted of variation requests to Clause 4.6 for height of development within the R3 Medium Density Residential zoning, and a variation request to Clause 64A for height of development within the Deferred Matters (7f2 – Urban Coastal Land) zoning.

Specifically, the variation requests were sought and approved by Council at the following exceedances:

- R3 Medium Density Residential Zone (Clause 4.6 for height variance) – **18.9%**
- R3 Medium Density Residential Zone (Clause 4.6 for floor space ratio exceedance) – **0.06**
- 7(f2) Urban Coastal Land Zone (Clause 64A for height variance) – **13.9%**

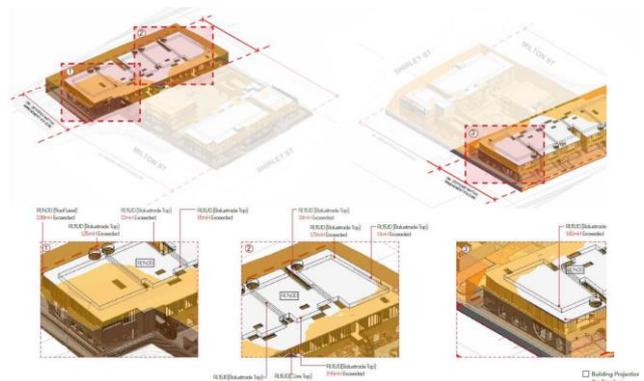
As part of the variation request process, height plane veils were provided to depict the extent of the height contravention at various positions across the proposal. Extracts of these have been included below in **Figure 6**, showing both the height exceedances in the R3 Medium Density Residential Zone and 7(f2) Urban Coastal Land Zone, shown respectively.

Figure 6 Height Exceedances in the R3 Medium Density Residential Zone and 7(F2) Zone



Picture 1 Height plane veil in R3 Zone

Source: Hayball 2023



Picture 2 Height plane veil in 7(F2) zone

Source: Hayball 2023

2.2. KEY MATTERS ADDRESSED

Throughout the development assessment process with Council, several key matters were identified and addressed, which pertain to the following described below.

2.2.1. Stormwater Management

The initial architectural scheme proposed its legal point of discharge towards the rail corridor. Following further discussions with Council and Transport for New South Wales (**TfNSW**) in relation to concerns of stormwater impacts on the rail corridor to the north, properties downstream of the corridor and the dune environment of Belongil Beach, new stormwater management infrastructure was incorporated within the scheme to discharge stormwater to the south of the site to avoid any impacts to the rail corridor. Therefore,

the approval in its current form does not discharge stormwater into the rail corridor. No changes to the approved development are proposed in this regard as part of the current s4.55(2) request.

2.2.2. Clause 4.6 Variation Request in the R3 Zone - Height

The development application sought a variation to the height of the building by an additional 1.7m in exceedance of the 9m height limitation, equivalent to a variation of 18.9%. The height exceedance was to facilitate the top of the lift overrun and fire staircase. Lesser exceedances were also sought for an additional 1.25m to the top of the balustrade. Minor changes to the height exceedance in the R3 Zone are proposed as part of this s4.55(2) request.

2.2.3. Clause 64A Variation Request in the 7(f2) Zone

The development application sought a variation to the height of the building by an additional 1.1m in exceedance of the 9m, equivalent to a variation of 13.9%. The height exceedance was to facilitate the top of the lift overrun and fire staircase.

Further, the Clause 64A request also sought to propose a third floor level of units which was ultimately amended within a revised development scheme to comply with the maximum of 2 floor levels permitted within the 7(f2) zone. The proposed development has been amended to satisfy conditions of the development consent and reduce the overall building height in the 7(f2) zone.

2.2.4. Clause 4.6 Variation Request in the R3 Zone – Floor Space Ratio

The development application sought a variation to the floor space ratio of the development by an additional 208.4m² of GFA, equating to a 0.66:1 FSR. As outlined in the accompanying Development Summary prepared by Hayball, the updated GFA within the R3 Zone is 2,258.4m² which results in an FSR of 0.65:1.

The modified FSR has been calculated consistent with the approved development as per the definition of gross floor area within the BLEP 2014. It is specifically noted that the definition of gross floor area only includes 'habitable' rooms within a basement. Whilst the term 'habitable' is not defined by the BLEP 2014, recent case law has determined that it is appropriate to apply the Building Code of Australia definition which establishes that a habitable room is 'a room used for normal domestic activities and excludes spaces of a specialised nature occupied neither frequently nor for extended periods. Communal facilities within the current modification request are considered 'non-habitable' as they will not be used for normal domestic activities, are specialised spaces and not used for extended periods.

No material change to the FSR is proposed as part of the current modification request.

2.2.5. Density within the 7(f2) Zone

The development application initially sought approval for a total of 26 dwellings, with 14 of these located within the 7(f2) zoning. Pursuant to the *Byron Development Control Plan 2010* that is used for where land within the BLEP 1988 is applied, the maximum number of dwellings of which Council will approve in this zoning where medium density development is permissible is determined via the proposed dwelling size in accordance with the area of the site.

To achieve compliance, a reduction of density within the 7(f2) zoning was sought from a total of 14 to 10 units. A redistribution of dwellings across the site was sought in order to achieve the revised density outcome, in addition to a reduction overall from 26 to 25 dwellings. No changes to the density is proposed as part of this s4.55(2) request.

2.2.6. Building Height Plane

Within the additional DCP requirements for the R3 Medium Density Residential zoning, a building height plane provision applied to form the maximum building envelope as a combination of boundary setbacks and building height.

The development application sought a minor variance to the building height plane provision (D1.2.1) for the minor encroachment of balcony areas within the eastern setback (4m setback to boundary) and balcony areas within the western setback (4.8m setback to boundary). During the previous assessment process, Council considered this variation to be minor and consistent with the relevant objectives and supporting performance criteria. No changes to the building height plane are proposed as part of this s4.55(2) request.

2.2.7. Proximity to Escarpment

The development application sought a building footprint that would be located approximately 80m from the Belongil coastal escarpment, as identified within the mapped Erosion Precinct 2. A structural solution was proposed to ensure that the development would not have an impact on coastal processes, and that the coastal processes would not have an impact upon the future building.

Given the site's separation distance from the escarpment line and the presence of the railway corridor further to its northern boundary, a development condition as part of the approval was imposed to restrict the future land use on the site should the escarpment come within 50m of the future building. The approved setbacks are retained in the current s4.55 request and thus the development remains in excess of 50m from the escarpment line.

2.2.8. Vegetation Clearing

The development application includes the removal of existing vegetation in order to facilitate the extent of the development. Initially, the Moreton Bay Fig tree was to be retained. However, upon further discussions that lead to the revised scheme, it was recommended by Council to remove the Moreton Bay Fig tree to facilitate the revised scheme, subject to an extensive and appropriate landscaping scheme as part of the development. The Moreton Bay Fig will continue to be removed as part of the current s4.55 request to facilitate the approved development.

2.3. PUBLIC EXHIBITION PERIOD

The Applicant has undertaken two (2) community engagement initiatives, one commencing from March of 2022 and the second in July 2022. A further community engagement process was carried out in October 2022 by Council as part of the development assessment process. Following each engagement process, amendments were made to address the received feedback.

The latest engagement during Council's public exhibition period resulted in Council receiving twelve (12) submissions of support for the proposal and one (1) by the Tweed Byron Local Aboriginal Land Council which was of an advisory nature. No objections were received.

The submissions of support are indicative of the positive contribution the development will have in addressing the existing housing shortage within Byron Bay and the support for the quality of built form proposed.

2.4. INTEGRATED DEVELOPMENT

Pursuant to the *Environmental Planning and Assessment Regulation 2000* (NSW) (**Regulation**) under the *Environmental Planning and Assessment Act 1997* (NSW) (**Act**), the proposed development was not categorised as Integrated Development in which required further and various approvals from specific State Government agencies.

2.5. DESIGNATED DEVELOPMENT

As per the Regulation, the proposal is not categorized as Designated Development and therefore required a Statement of Environmental Effects (SEE) rather than an Environmental Impact Statement (EIS).

2.6. NORTHERN REGIONAL PLANNING PANEL

The development application was subject to final assessment and conditions of consent via the Northern Regional Planning Panel (**Planning Panel**) due to its categorisation as regionally significant development, in accordance with the capital investment value threshold of more than \$30 million pursuant to the *State Environmental Planning Policy* (Planning Systems) 2021.

The development application was discussed at the Planning Panel meeting held on 26 September 2023 after being recommended for consent approval by Byron Shire Council (**Council**).

2.7. APPROVAL DOCUMENTATION

Council's development approval package issued in October 2023 consisted of seven (7) items as listed below in **Table 2**.

Table 2 Approval Documentation Overview

Item	Author	Date	Revision
Approved Architectural Plans	Hayball	12 September 2023	-
Approved Noise Impact Assessment Report	ATP Consulting Engineers	22 August 2022	0
Approved Statement of Landscape Intent	Urbis	12 September 2023	9
Approved Internal Manoeuvring and Waste Service Letter	Greg Alderson Associates	4 October 2023	-
Approved Engineering Set	ADG	11 August 2023	D
Approved Ramp Grade Letter	Greg Alderson Associates	3 October 2023	-
Byron Shire Council – Notice of Determination of a Development Application (including consent conditions)	Byron Shire Council	16 October 2023	-

3. PROPOSED MODIFICATIONS

3.1. SUMMARY OF CHANGES

The proposed modifications to the approved development scheme seek to amend various minor components which are outlined further below.

Specifically, the Section 4.55(2) Application seeks consent for the following design changes:

- Slight reconfiguration of internal floor plans across all dwellings, with no change to total bedroom numbers per dwelling;
- Change in private-use pool shapes from rounded edges to square edges;
- Minor size reduction of undercover balcony/terraces on ground floor level for all ground floor units with the exception of unit 003 which has been made slightly larger;
- Sewer easement width increased from 3m to 4m;
- Pedestrian gate added to north-eastern corner for maintenance and fire egress with path;
- External façade amendments including window scheduling and screening to align with internal reconfigurations;
- 1.8m high fixed privacy screening to prevent views down to private open space of neighbouring property;
- Raised planter box;
- Increase in total building height for the building portion situated within the R3 Medium Density Residential zone from 10.7m to 11.21m;
- Reduction in total building height for the building portion situated within the 7(F2) Urban Coastal Land from 10.1m to 9.25m;
- Increase of floor to floor heights for the building portion situated within the R3 Medium Density Residential zone;
- Decrease of floor to floor heights for the building portion situated within the 7(F2) Urban Coastal Land zone;
- Reduction and reconfiguration to rooftop trafficable areas across the building portion within the R3 Medium Density Residential zone from areas between 129.3m² – 142.8m² to 33.8m² – 42.6m²;
- Reduction and reconfiguration to rooftop trafficable areas across the building portion within the 7(F2) Urban Coastal Land zone from areas between 167m² – 205.2m² to 40.7m² – 63.5m²;
- Reduction in basement level footprint from 3,720m² to 3,630m² which includes a change to the rear setback of the basement from 10m to 10.6m;
- Reconfiguration of basement level services including the fire pump room, fire services water tank, pool pump and switch room;
- Relocation of bicycle storage area within the basement level from its previous location adjacent to the main lobby, to their relocation towards the western boundary; and
- Reconfiguration to the lobby area and communal facilities within the basement level to include a wellness centre.

3.1.1. Basement Level Modifications

Minor modifications have been made to the basement level to facilitate a shift in the building services, storage and bicycle rack locations, and to decrease the basement footprint within the western portion.

Overall, the basement level has decreased in its total footprint from 3,730m² to 3,630m². The northern setback has also increased from 10m to 10.6m.

The overall extent of the basement reconfigurations is shown below in **Figure 7** with the primary areas of modification outlined in red. As illustrated, this extent incorporates the reconfiguration of the lobby area and communal facilities as discussed above, in addition to the relocation of bicycle storage areas, the locality of the fire pump room, fire services water tank and switch room. The amendments to the basement level do not include any changes to the total car parking numbers. The modified basement level layout is illustrated below in **Figure 7**, with clouding included for ease of amendment reference.

Figure 7 Modified Basement Level Layout



Source: Hayball 2024

3.1.2. Ground Level Modifications

Minor modifications have been made to the ground floor level primarily relating to internal reconfigurations, change in general shape of private-use pools, amendments to outdoor private open space areas, and addition of mail area along pathway to Shirley Street. Whilst internal reconfigurations have occurred, there are no changes to the total number of bedrooms, however, an additional study room has been incorporated within the amended floor plans of the building situated within the 7(F2) zoning.

No amendments have been made to the ground level setbacks including all side, front and rear setbacks, therefore remaining consistent with the approval. The proposed modifications to the ground floor plan are shown in **Figure 8** below, which also show the increase in width of the sewer easement along the western boundary from 3.5m to 4m.

Figure 8 Modified Ground Floor Plan



Source: Hayball 2024

3.1.3. Roof Plan Modifications

The proposed modifications include both a reconfiguration and reduction to the accessible and trafficable rooftop spaces for the buildings in both the R3 and 7(F2) zones. Specifically concerning the building portion within the 7(F2) where a development condition was imposed to restrict the maximum trafficable area to 40m² with only the remainder of these deck areas to be a landscaped green roof, an updated rooftop plan has been included within the revised scheme.

The rooftop area within the 7(F2) zoning has been reduced from its previous total area of 167m² – 205.2m² to 40.8m² – 63.5m² within the revised scheme with further detailing provided on the rooftop trafficable area calculations. The rooftop areas have been illustrated in three (3) specific shading of colours as below:

- Circulation area shown in light pink – provides compliant landing access;
- Maintenance circulation area shown in purple – provides the required circulation area for maintenance of the PV system and rooftop planters. This area is not accessible to future residents; and
- Trafficable area shown in dark pink – provides use of space for future residents.

The modified rooftop area of the northern building with the corresponding sub-areas is illustrated below in **Figure 9**.

Figure 9 Modified Rooftop Area in the 7(F2) Zoning (North Building)



Source: Hayball 2024

An amended Statement of Landscape Intent has been prepared by Urbis to support the revised landscaping scheme and the modifications to the rooftop terrace areas. As illustrated below in **Figure 10**, planting locations along the rooftop terrace areas have been updated in accordance with the changes to the extent of trafficable areas. The rooftop terrace areas incorporate a variety of shade trees within garden beds, screening trees and shrubs.

Figure 10 Modified Landscape Scheme in the 7(F2) Zoning (North Building)



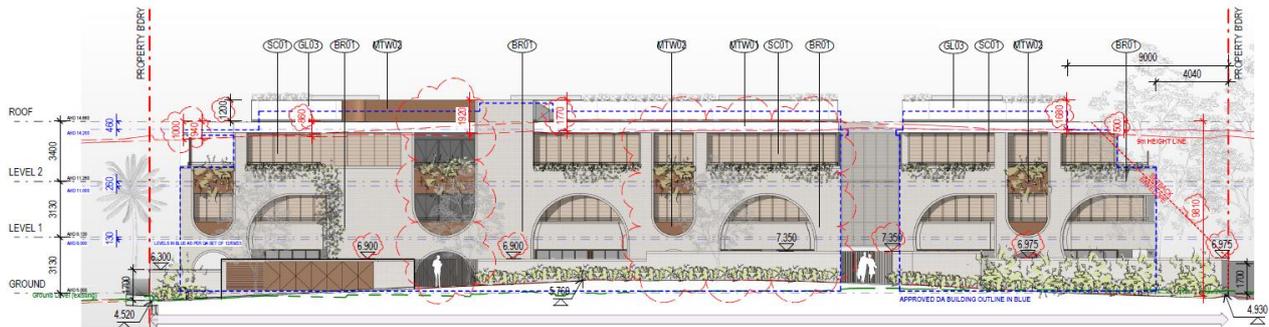
Source: Urbis

3.1.4. Southern Building Modifications

The modified elevation plan of the southern building fronting Shirley Street is illustrated below in **Figure 11** with the inclusion of the approved DA building outline shown in a dashed blue, the floor to floor levels per the approved DA set shown in a dashed red, and the 9m height line shown in a solid red line in accordance with the ground level (existing) in a dashed green line.

As shown below and within the revised architectural scheme, the southern building has been modified to marginally increase its floor to floor heights to achieve a minimum 2.7m ceiling height to living areas and bedrooms. As a result, the total extent of the building has increased resulting in the rooftop balustrading and lift-overrun marginally exceeding the 9m building height line.

Figure 11 Modified Elevation Plan from Shirley Street (South Building)



Source: Hayball 2024

The below **Figure 12** illustrates the modified section plan of the southern building with the perspective shown from Shirley Street (southern boundary).

Figure 12 Modified Section Plan from Southern Elevation (Southern Building)

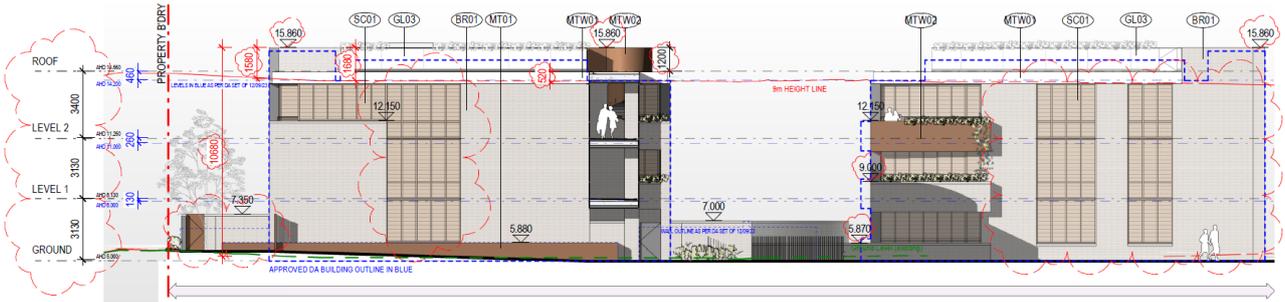


Source: Hayball 2024

Further to the modified building height, the amendments to the southern building also include the following:

- Fixed privacy screening with a height of 1.73m is incorporated along the terrace area of Unit 201 adjacent to the adjoining lot;
- Fixed louvered privacy screening incorporated along the balcony of Unit 101 adjacent to the adjoining lot;
- A 2m high masonry acoustic wall incorporated along the eastern boundary in accordance with the noise impact assessment report; and
- Amendments to the external façade and materials.

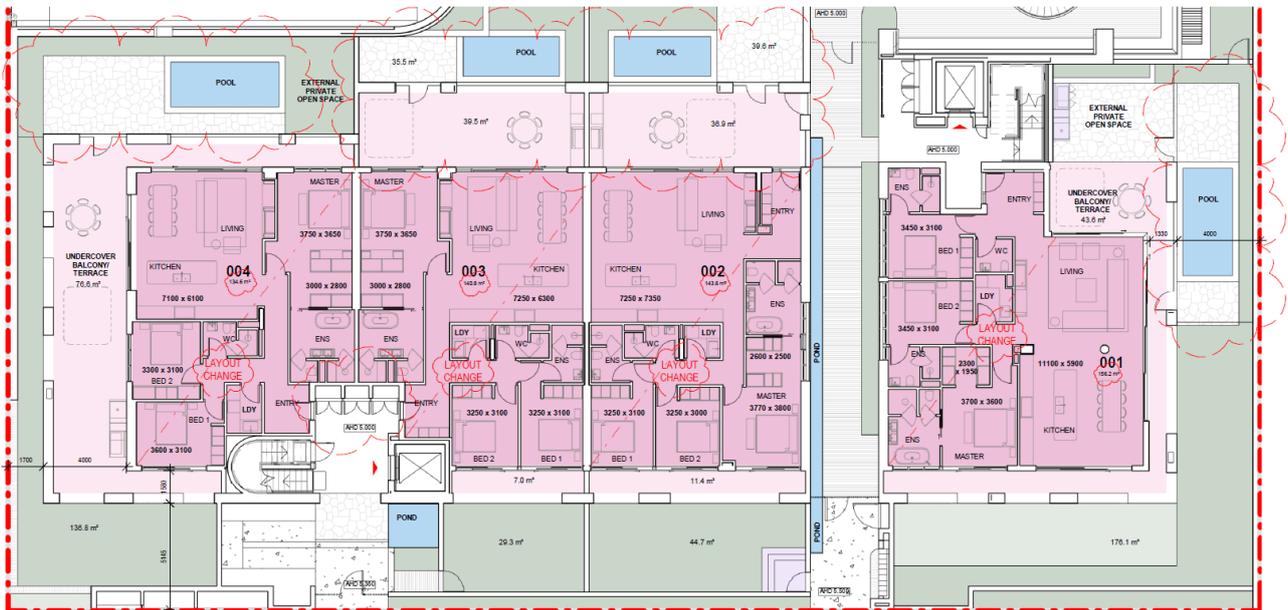
Figure 13 Modified Elevation Plan from Eastern Elevation (South Building)



Source: Hayball 2024

The modified ground floor plan as shown below in **Figure 14** notes various minor amendments to the internal reconfigurations of dwelling 001 – 004. The floor plans of these dwellings have been revised as part of marketing and the design development process; however, the number of bedrooms has been retained from the original approval.

Figure 14 Southern Building - Ground Floor Plan

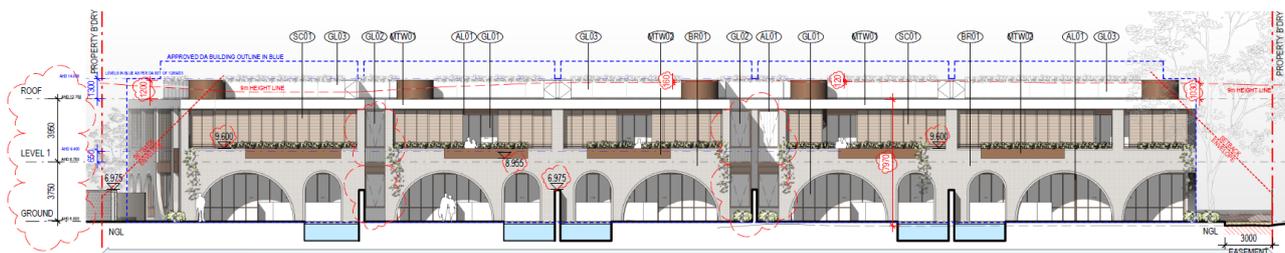


Source: Hayball 2024

3.1.5. Northern Building Modifications

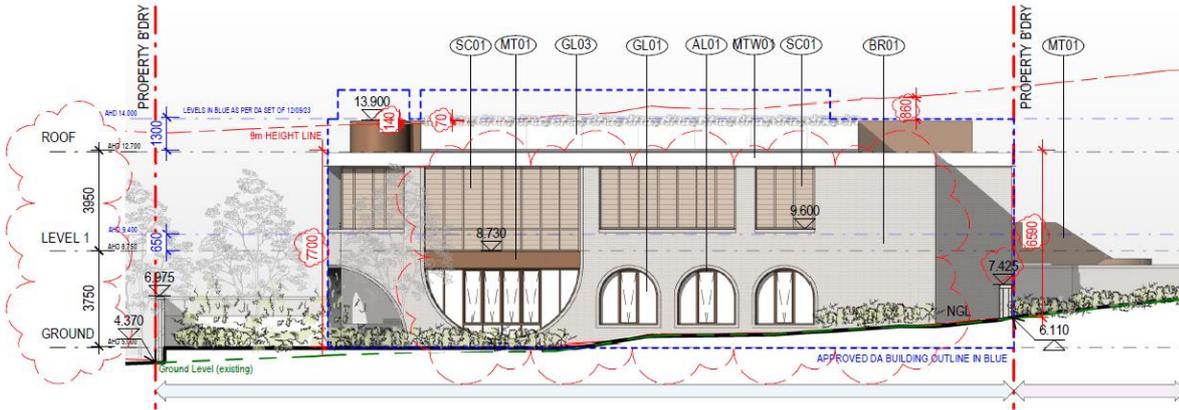
The modified elevation plan of the northern building from the northern perspective are shown in **Figure 15** and **Figure 16** below which incorporates an overall reduction in total building height. This reduction has been achieved by reducing the floor to floor heights. As a result, the majority of the building is now set at 9m or below, with the exception of a minor portion of balustrading and lift-overrun which marginally exceeds the 9m height line.

Figure 15 Modified Elevation Plan from Northern Boundary (North Building)



Source: Hayball 2024

Figure 16 North Building from Western Elevation



Source: Hayball 2024

The modified ground floor plan of the northern building is shown below in **Figure 17**. Similar with the southern building, the northern building has undergone various minor amendments to the floor plan configuration as part of marketing and the design development process.

No changes have been made to the number of bedrooms per unit, however, revisions of the configuration have allowed for an additional study to be added. This change has been facilitated via the removal of an ensuite to the secondary bedrooms.

Figure 17 Northern Building - Ground Floor Plan



Source: Hayball 2024

3.2. AMENDED CONDITIONS

3.2.1. Amended Existing Conditions

This section outlines the proposed replacement and/or amended wording of the conditions of consent imposed by Council in accordance with the proposed drawing modifications as outlined in **Section 3.2**.

The list of amended condition wording is to be read in conjunction with the proposed new development condition in Section **3.2.2** further below.

Table 3 Amended Condition Wording

Condition	Modification	Reason
1 – Approved Plans and Supporting Documents	<i>29 Shirley Street & 2-4 Milton Street, Byron Bay Development Application Pages 27 to 47 inclusive</i> <i>(dated 12.09.23)</i> <i>(dated 15.05.24)</i>	Plan reference updates to reflect modified scheme.
	<i>Preliminary Engineering Services Layout Plan (Annotated by Council)</i>	
	<i>Preliminary Road Widening Layout Plan and Sections Milton St</i>	
	<i>Preliminary Driveway Crossover Details Cavvanbah St (Annotated by Council)</i>	
	<i>Preliminary Stormwater Management Layout Plan</i>	
	<i>ATP211137-R-NIA-01</i>	
	<i>Statement of Landscape Intent</i> <i>dated 25 June 2024</i>	
	<i>Letter and attachments from Sodiq Azeez of Greg Alderson and Associates addressing Internal Access and Manoeuvring</i>	
<i>Letter from Anthony from Anthony Mallam of Greg Alderson and Associates RE Assessment of Proposed Ramp in Relation to Wheel Slippage for Waste Vehicles – 29 Shirley Street</i>		
6 – Bushfire Safety Measures	<p>This land is identified as being designated bush fire prone land and under section 4.14 of the Environmental Planning and Assessment Act 1979, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with “Planning for Bush Fire Protection 2019”.</p> <p>The development is approved subject to the development complying with the requirements of Revised Bush Fire Assessment Report – Multi-storey Residential Development (version 3.1) prepared by Melanie Jackson (BPAD-Level 3</p>	Plan reference updates to reflect modified scheme.

Condition	Modification	Reason
	Accredited Practitioner & Member of FPA Australia) of Bushfire Risk Pty Ltd dated 26 June 2024 .	
15 – Demolition of Existing Development	<p>Prior to issue of construction certificate, the Applicant must obtain TfNSW's and UGLRL's approval for demolition of existing development.</p> <p><u>Change wording of Condition to:</u></p> <p>Prior to demolition of existing development adjoining the rail corridor, being LOT: 11 DP: 1138310 & LOT: 12 DP: 1138310, the applicant must obtain TfNSW and UGLRL's approval.</p>	The proposed amendment is requested to enable demolition to commence on parts of the site which will not impact the rail corridor.
25 – Traffic Management Plan (TMP)	<p>Prior to issue of the construction certificate, consent from Council must be obtained for a Traffic Management Plan (TMP) pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development. The TMP is to be designed in accordance with the requirements of the current version of the Transport for NSW Traffic Control at Work Sites Technical Manual.</p> <p>The report must incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site.</p> <p>The TMP and associated traffic guidance scheme/s must be prepared by a suitably qualified Transport for NSW accredited person.</p> <p><u>Change wording of Condition to:</u></p> <p>"Prior to issue of Construction Certificate (CC1), consent from Council must be obtained for a Traffic Management Plan (TMP) pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development. The TMP is to be designed in accordance with the requirements of the current version of the Transport for NSW Traffic Control at Work Sites Technical Manual.</p>	There are 2 TMP's required – 1 for early civil works and 1 for construction. The Early Works TMP is part of the Section 138 process.

Condition	Modification	Reason
	<p><i>The report must incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site.</i></p> <p><i>The TMP and associated traffic guidance scheme/s must be prepared by a suitably qualified Transport for NSW accredited person.”</i></p>	
<p>26 – S.88E Public Positive Covenant to be placed on title – Coastal erosion</p>	<p>Amended wording in red provided below:</p> <p><i>Prior to the issue of construction certificate (CC3), documentary evidence is to be provided to the Principal Certifying Authority that a public positive covenant, pursuant to the provisions of S.88E of the Conveyancing Act, 1919, has been placed lodged on the title to the land, the subject of this consent, stating:-</i></p> <p><i>The development granted via development consent number 10.2022.371.1 must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of this consent must be demolished immediately, and the landowner must suitably revegetate the land.</i></p> <p><i>In this covenant coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.</i></p>	
<p>27 – Fibre-ready Facilities and Telecommunications Infrastructure</p>	<p>Amended wording in red provided below:</p> <p><i>Prior to the issue of the Construction Certificate (CC2) in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:</i></p> <p><i>a) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and</i></p>	

Condition	Modification	Reason
	<p><i>b) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.</i></p>	
<p>28 – Land to be consolidated</p>	<p><u>Amended wording in red provided below:</u></p> <p><i>All separate parcels of land are to be consolidated into one allotment and registered with NSW Land Registry Services.</i></p> <p><i>Prior to issue of the construction certificate (CC3), proof of lodgement to NSW Land Registry Services must be provided to the Principal Certifying Authority.</i></p>	
<p>31 – Sewer Easements – Section 88b Instrument</p>	<p><u>Amended wording in red provided below:</u></p> <p><i>Prior to the issue of construction certificate (CC3), a Section 88B instrument and one (1) copy are to be submitted to Council.</i></p> <p><i>All separate parcels of land are to be consolidated into one allotment and lodged with NSW Land Registry Services.</i></p> <p><i>Prior to issue of the construction certificate (CC3), proof of lodgement to NSW Land Registry Services must be provided to the Principal Certifying Authority.</i></p>	
<p>32 – Certificates for engineering works – Section 138</p>	<p><i>The submission of all test certificates, owners manuals, warranties and operating instructions for civil works, mechanical and/or electrical plant, together with a certificate from a suitably qualified engineer certifying that all works have been constructed in accordance with the approved plans and Council's current "Northern Rivers Local Government Design and Construction Manuals and Specifications".</i></p> <p><u>Change wording of Condition to:</u></p> <p><i>"For all works relating to a Section 138, prior to the issue of an Occupation Certificate (OC) the submission of all test certificates, owners manuals, warranties and operating instructions for civil works, mechanical and/or electrical plant, together with a certificate from a suitably qualified engineer certifying that all works have been constructed in accordance with the approved plans and Council's</i></p>	

Condition	Modification	Reason
	current “Northern Rivers Local Government Design and Construction Manuals and Specifications.”	
52 – Traffic Management Plan	<p>The approved traffic management plan is to be implemented.</p> <p><u>Change wording of Condition to:</u></p> <p><i>The approved traffic management plans are to be implemented.</i></p>	There are 2 TMP’s required – 1 for early civil works and 1 for construction. The Early Works TMP is part of the Section 138 process.
54 – Toilet Facilities	<p><i>Toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a toilet connected to an accredited sewage management system approved by the Council or be a building and construction site portable chemical toilet.</i></p> <p>Only one (1) such portable chemical toilet may be used during construction, should additional toilets be required during the construction they must be either:</p> <p>a. Connected to an accredited sewage management system approved by the Council or</p> <p>b. Not installed or used until such time that approval under Section 68 of the Local Government Act 1993 is obtained for the installation of a human waste storage facility.</p>	<p>The existing wording relating to one (1) portable chemical toilet to be used during construction will contravene WHS obligations per the Building Code of Australia (BCA). As per the BCA, the following is extracted:</p> <p>“The facilities must be clean and hygienic. Where it is not reasonably practicable to provide access to permanent toilets, portable toilets need to be provided (clause 47). These must be installed securely, and be provided with a lockable door, lighting and ventilation.”</p> <p>Per Clause 51 of the BCA:</p> <p>“Toilets need to be accessible, preferably located inside a building or as close as possible to the workplace, to eliminate or reduce any risk to employee safety while accessing them. In multi-storey buildings, toilets need to be</p>

Condition	Modification	Reason
		<p><i>located on at least every second storey. For short-term temporary workplaces and workplaces in remote areas, a temporary toilet needs to be provided in a secure place with safe access.</i></p> <p>The Development site is a large in area, greater than 6,000 sqm, has an extensive basement and 3 levels above. There will be times when a large workforce will be on site and potentially spread out between a lower basement and higher levels. As per Clause 51, the construction phase will need to have toilets:</p> <p><i>“as close as possible to the workplace, to eliminate or reduce any risk to employee safety while accessing them. In multi-storey buildings, toilets need to be located on at least every second storey.”</i></p>

3.2.2. Proposed New Conditions

Refer to the below **Table 4** outlining proposed new conditions to be made as part of the conditions of consent.

Table 4 Proposed New Conditions

Condition	Wording	Reason
Staging of Construction Certificates	<i>“Prior to commencement of any construction works associated with the approved development, it is mandatory to obtain a Construction Certificate. Plans,</i>	The proposed staging of works will allow for flexibility in appropriately delivering

Condition	Wording	Reason
	<p><i>specifications and relevant documentation accompanying the Construction Certificate must include any requirements imposed by the conditions of this Development Consent.</i></p> <p><i>It is acknowledged that the developer intends to obtain staged Construction Certificates generally in accordance with the following;</i></p> <p><i>CC1 – Basement excavation, retention and shoring;</i></p> <p><i>CC2 – Construction of basement including in-ground services up to the underside of ground floor;</i></p> <p><i>CC3 – Construction of structure including services;</i></p> <p><i>CC4 – Completion of works, landscaping and public art;</i></p> <p><i>Conditions within this Development Approval should be read as being applicable to the relevant Construction Certificate and to be confirmed by the Principle Certifying Authority.”</i></p>	<p>each component of the staged build in accordance with particular approval conditions, specifically in the delivery of basement excavation works and services.</p>

4. SECTION 4.55 MODIFICATION

4.1. SUBSTANTIALLY THE SAME DEVELOPMENT

This section provides an assessment of the proposed modifications in accordance with Section 4.55 of the EP&A Act.

4.1.1. Overview of Modifications

The below **Table 5** provides a summary overview of the key aspects of the approved and proposed development to demonstrate that the development remains substantially the same to that approved under DA.10.2022.371.1.

Table 5 Comparative analysis of approved and proposed schemes

Aspect of Development	Approved Development under DA.10.2022.371.1	Proposed Modifications	Change
Development Area	29 Shirley Street and 2-4 Milton Street, Byron Bay Land Area: 5,937m ²	29 Shirley Street and 2-4 Milton Street, Byron Bay Land Area: 5,937m ²	No change
Land Uses	Residential Flat Building	Residential Flat Building – no change is proposed to the approved land use.	No change
Maximum Building Height	R3 Medium Density Residential Zone – permissible 9m maximum		
	A maximum of 10.7m (RL15.7) to the top of the lift overrun and fire staircase, resulting in a maximum non-compliance of 1.7m equivalent to a variation of 18.9%.	A maximum of 11.21m to the top of the lift overrun and fire staircase, resulting in a maximum non-compliance of 2.21m equivalent to a variation of 24.56%	Variance is proposed – 2.21m
	7(F2) Urban Coastal Land Zone – permissible 9m maximum or 4.5m from topmost floor level		
	A maximum of 10.10m (RL15.10) to the top of the balustrade, which is setback well within the building footprint, resulting in a maximum non-compliance of 1.10m equivalent to a variation of 13.9%.	A maximum of 9.25m to the top of the balustrade. The majority of the northern building is either at or below the 9m height limit, equivalent to a variation of 2.78%.	Variance is proposed – 0.25m
Floor Space Ratio – R3 Zone Only	0.66:1 (2,292.6m ²)	0.65:1 (2,258.4 m ²)	No change
Density – 7(F2) Only	Dwellings at 1 per 300m ² of site area = 8.21	No change is proposed to the approved density within the 7(F2) zoning.	No change

Aspect of Development	Approved Development under DA.10.2022.371.1	Proposed Modifications	Change
Ground Floor Area	4,810m ²	4,767m ²	Minor reduction in GFA by 43m ²
Total Communal Space	1,392m ²	Communal terrace on level 01 removed.	Minor reduction in communal area
Dwelling No.	25x 3-bedroom dwellings	No change is proposed to the approved total dwelling number or number of bedrooms.	No change
Total Landscaped Areas	1,392m ² of landscaping including 527.32m ² of deep soil zones	1,437.24m ² of landscaping including 551m ² of deep soil zone	Minor change to increase deep planting
Trees being retained	0	0 – no change	No change
Trees being planted	71 (90% as native and endemic species)	116 (72 on ground level, 26 on level 2 and 18 on rooftop level)	Increase of 45
Car Parking Provisions	69 car parking spaces including 7 visitor spaces	No change is proposed to the approved car parking provisions.	No change
Setbacks	North – 6.6m setback South – 5.1m setback East – 4m setback West – 4.8m setback	No change is proposed to the setbacks previously approved.	No change

5. SECTION 4.15 ASSESSMENT

This Section 4.55(2) Application has been assessed in accordance with the matters for consideration listed in Section 4.15 of the EP&A Act and as outlined below.

5.1. ENVIRONMENTAL PLANNING INSTRUMENTS

The proposed modifications have been assessed in accordance with the relevant State Environmental Planning Policies (SEPP's) within **Table 6** below.

Table 6 Compliance with State Environmental Planning Policies

SEPP	Proposed Modification
<i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>	<p>Pursuant to the <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>, appropriate BASIX certification was provided to demonstrate compliance with the minimum legislative provisions for energy, water, and thermal comfort.</p> <p>Within the previous BASIX report, both water and energy had a targeted benchmark of 40%, with the approved development achieving a score rating of 43% for each. The thermal comfort criteria which are based on specific materials and detailing was also awarded a pass.</p> <p>An updated BASIX report, BASIX certification and an updated NatHERS group certificate has been provided to reflect the proposed modifications as part of the re-assessment against the <i>SEPP (Building Sustainability Index: BASIX) 2004</i>.</p>
<i>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</i>	<p>Pursuant to the <i>State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP65)</i>, the approved development was previously assessable against the SEPP65's design quality principles and Apartment Design Guide (ADG).</p> <p>The primary variance to the ADG benchmarks previously concerned Objective 3C-1, relating to public domain interface given that a portion of dwellings do not facilitate direct street entry. However, Council was supportive with this minor variance. The balance of design responses was compliant.</p> <p>The proposed modification application does not seek to further vary any of the ADG benchmarks, and also remains consistent with the nine (9) design quality principles of the SEPP65. The proposed modifications and outcomes of the design remain reflective of the design responses achieving compliance.</p>
<i>State Environmental Planning Policy (Planning Systems)</i>	<p>The proposed modification will be subject to review by the Northern Regional Planning Panel due to its classification as Regionally Significant Development pursuant to Schedule 6 of the <i>State Environmental Planning Policy (Planning Systems)</i> of which the threshold is met when development has an estimated cost of more than \$30 million.</p>
<i>State Environmental Planning Policy</i>	<p>Pursuant to the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>, the approved development was subject to assessment of</p>

SEPP	Proposed Modification
<i>(Resilience and Hazards) 2021</i>	<p>Division 4, Clause 2.11 due to development being sought within the coastal use area.</p> <p>Clause 2.11 has regard to development outcomes reflecting a design that will be managed to avoid an adverse impact in terms of protection of the foreshore, overshadowing, wind funnelling and loss of views from public places to foreshores, visual amenity and scenic qualities, Aboriginal cultural heritage, and built environment heritage.</p> <p>Given that only minor modifications are proposed to the building portion situated within the 7(F2) zone and coastal use area designation, the revised scheme as part of this modification application is considered to accord with and uphold its consideration to development within the coastal and built environment.</p>
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	<p>Pursuant to the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>, the approved development was previously referred to the following referral agencies:</p> <ul style="list-style-type: none"> - Division 5: electricity transmission or distribution (referred to Ausgrid); - Division 15: railways, Subdivision 2: development in or adjacent to rail corridors and interim rail corridors (referred to Rail Operator); and - Division 17: roads and traffic (referred to TfNSW).

5.2. LOCAL ENVIRONMENTAL PLAN ASSESSMENT

The development site is subject to two (2) zoning designations that are each designated by two (2) different Local Environmental Plans, being the following:

- Byron Local Environmental Plan 2014 (BLEP 2014) – applicable over the majority of the site towards Shirley Street and Milton Street. Under the BLEP 2014, the majority of the site is designated as R3 Medium Density Residential zoning; and
- Byron Local Environmental Plan 1988 (BLEP 1988) – applicable over the rear portion of the site towards the coastline due to its designation as ‘Deferred Matters’ under the BLEP 2014. Under the BLEP 1988, the rear portion is categorised as being within the 7(F2) Urban Coastal Land Use zone.

In accordance with the amendments proposed as part of this S4.55(2) Modification Application, a further review of the proposal has been provided for both applicable LEP’s.

5.2.1. Byron Local Environmental Plan 2014

As noted above, the majority of the site is designated within the R3 Medium Density Residential zoning pursuant to the BLEP 2014.

Pursuant to the BLEP 2014, the objectives of the R3 Medium Density Residential zoning per the BLEP 2014 are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed modification retains the approved Residential Flat Building land use and will therefore continue to meet the objectives of the R3 zoning given that the amended proposal:

- Retains its previously approved 25x 3-bedroom dwellings provided and therefore contributing towards the needs of the community within a medium density residential environment; and
- Consistent with the previous approval, the revised scheme continues to provide for a variety of housing types within the R3 zoning.

An overview of the applicable clauses pursuant to the BLEP 2014 are outlined below in **Table 7**.

Table 7 BLEP 2014 Compliance Overview

Clause	Proposed Modification	Compliance
Clause 2.1 – Zoning and Permissibility R3 Medium Density Residential Zone	The majority of the site is designated as R3 Medium Density Residential zoning under the BLEP 2014. The proposed modifications retain the approved Residential Flat Building land use, total number of dwellings (25x) and 3-bedroom typology per dwelling.	Yes
Clause 4.1 – Minimum Lot Size 4,000m ²	No subdivision works are proposed as part of the DA modification.	Yes
Clause 4.3 – Height of Building 9 meters	The maximum permissible building height for the site is 9m.	Variation sought
Clause 4.4 – Floor Space Ratio 0:6	0.65:1 (2,258.4m ²)	Variation sought
Clause 5.10 – Heritage Conservation	The existing buildings on site are not heritage listed, however the site is located adjacent to the Shirley Street Heritage Conservation Area (HCA). A Heritage Management Report accompanied the original development application.	Yes
Clause 5.11 – Bushfire Hazard Reduction	Proposed works will be delivered in accordance with approved Bushfire Management Plan.	Yes
Clause 6.17 – Affordable housing in employment, mixed use and residential zones	<p>The subject site is currently used for the purpose of a ‘<i>Tourist and visitor accommodation – backpackers’ accommodation</i>’ which provides temporary and short-term accommodation on a commercial basis.</p> <p>Removal of the current land use on the site will not result in loss of affordable housing within Byron Bay.</p>	Yes
Clause 6.18 – Affordable housing contribution for	The subject site is not located on land as designated within the affordable housing	N/A

Clause	Proposed Modification	Compliance
certain development in affordable housing contribution areas	contribution area; therefore Clause 6.18 is not applicable.	

5.2.2. Byron Local Environmental Plan 1988

The land zoned 'Deferred Matters' under the 2014 LEP (being the northern section of the site) reverts to the *Byron Local Environmental Plan 1988* (LEP 1988) for zoning, land use and development controls. The subject site is located within the 7(F2) Urban Coastal Land Zone under this BLEP 1988. An overview of the applicable clauses pursuant to the BLEP 1988 are outlined below in **Table 8**.

Table 8 BLEP 1988 Compliance Overview

Clause	Proposed Modification	Compliance
Clause – Zoning	Within the 7(F2) zoning, a Residential Flat Building is designated as permitted with consent development. The proposed modifications do not seek to change the approved land use over this portion of the site.	Yes
Clause 32 – Development within 7(F2) Urban Coastal Land Consideration of coastal processes, building relocation, consent timeframe, form, bulk, intensity and nature of the development, and restriction on subdivisions.		Yes
Clause 40 – Height Maximum topmost floor level of 4.5m above existing ground level or vertical distance between the topmost part of the building and the existing ground level below does not exceed 9m.		Yes

5.2.3. Proposed Environmental Planning Instruments

No draft environmental planning instruments are relevant to this proposal or modification application.

5.3. BYRON SHIRE DEVELOPMENT CONTROL PLAN 2014

The Byron Shire Development Control Plan 2014 (DCP) provides benchmark controls for the site. The proposed modifications have been assessed in accordance with the relevant provisions and compliance is considered consistent with the previous current approval.

5.4. REGULATIONS

This application has been prepared in accordance with the relevant provisions of the *Environmental Planning and Assessment Regulation 2021*.

5.5. LIKELY IMPACTS OF THE DEVELOPMENT

The approved development was assessed considering the potential environmental, economic and social impacts as outlined below:

- **Natural Environment:** The development has been fundamentally design around the retention of the existing fig tree on site.
- **Built Environment:** The development is a high-quality built form which priorities natural light infiltration, cross ventilation, whilst minimising overlooking. The development will feature double glazed units and aim for 8 stars environmental certification.
- **Social:** The development delivers high quality communal space central to the development, encouraging casual interactions between residents and their visitors.
- **Economic:** The development has a construction value of \$45,475,000, delivering substantial employment opportunities for local trades.

The current s4.55(2) request will reinforce these positive environmental, economic and social impacts.

5.6. SUITABILITY OF THE SITE

The proposed modification remains consistent with the development's previous suitability for this site for the following reasons:

- The majority of the site is zone as R3 Medium Density Residential which is suitable for the delivery of infill residential development. The proposed modifications uphold the sites suitability as an opportunistic delivery of infill residential development;
- The remainder of the site is designed as Deferred Matters zoning, therefore reverting to the BLEP 1988 as 7(F2) Urban Coastal Land zoning. The approved development and the proposed modifications both achieve a suitable built form outcome over this portion of zoning with particular considerations having been given to maintaining coastal processes and upholding the ecological values of the nearby Belongil Beach;
- The proposed variations sought for an exceedance of height are in line with recent approvals that have been delivered within the area, and will enable a higher quality delivery of the development overall; and
- As a corner lot, the site and the proposed modifications provide the opportunity for the development to capitalise on multiple outlooks and separation of transport modes, whilst maintaining privacy to existing neighbouring dwellings.

5.7. PUBLIC INTEREST

The proposed modification application is considered in the public interest for the following reasons:

- The modified proposal is consistent with the relevant State and local strategic plans and substantially complies with the relevant State and local planning controls, including both the BLEP 2014 and BLEP 1988, SEPP65 apartment design guidelines, and the applicable DCP 2014 controls;
- The modified proposal does not cause adverse environmental, social or economic impacts;
- The modified proposal will provide public benefits in the form of supplying the further delivery of housing opportunities within the Byron Bay area; and
- The modified proposal incorporates a high-quality design which will positively influence the surrounding amenity of the Byron Bay area, particularly significant given the sites proximity to Belongil Beach and the Byron Bay Town Centre.

6. SUMMARY AND CONCLUSION

The proposed modifications have been assessed in accordance with Section 4.55(2) and Section 4.15 of the EP&A Act, and are considered appropriate in the context of the approved development and site characteristics as summarised below:

- The proposed modifications result in substantially the same development as approved under the previous DA.10.2022.371.1;
- The proposal satisfies the applicable planning controls and policies, including the BLEP 2014 and BLEP 1988, the SEPP65 apartment design guidelines, and applicable controls under the DCP 2014;
- The proposal in its modified built form and scale remains suitable for the site and its configuration;
- The proposal upholds its consideration of privacy both to and from the neighbouring properties; and
- The proposal is considered to be within the public's interest, given that it delivers further housing supply to the Byron Bay area and an excellent standard of quality.

Having considered all relevant matters, it is concluded that the proposed modifications are appropriate for the site and approval of the Section 4.55(2) application is recommended, subject to appropriate conditions of consent.

DISCLAIMER

This report is dated 26 June 2024 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Vitale Property Group (**Instructing Party**) for the purpose of Modification Report (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

In preparing this report, Urbis may rely on or refer to documents in a language other than English, which Urbis may arrange to be translated. Urbis is not responsible for the accuracy or completeness of such translations and disclaims any liability for any statement or opinion made in this report being inaccurate or incomplete arising from such translations.

Whilst Urbis has made all reasonable inquiries it believes necessary in preparing this report, it is not responsible for determining the completeness or accuracy of information provided to it. Urbis (including its officers and personnel) is not liable for any errors or omissions, including in information provided by the Instructing Party or another person or upon which Urbis relies, provided that such errors or omissions are not made by Urbis recklessly or in bad faith.

This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.