

Scott, Noreen

From: byroneforms
Sent: Wednesday, 7 April 2021 12:20 PM
To: council
Subject: 10.2019.616.3 Submission of Support -
Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-745

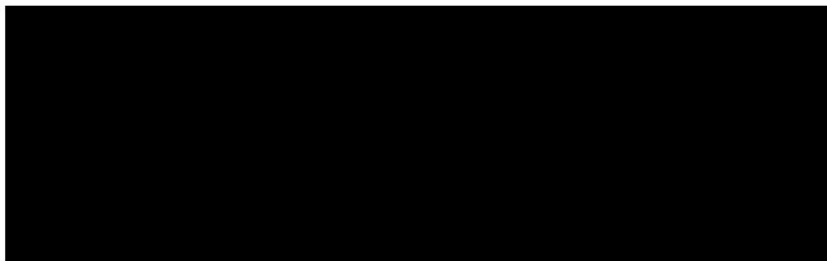
DA number: 10.2019.616.3

Subject address: 137 Jonson Street, 139 Jonson Street and 3 Browning Street Byron Bay

Application type: Support

Other details:

Grounds: I believe the pool would be a great addition to the development. It's where the bypass comes into the town, quite a busy traffic area. The people who live there will need some open space and a place to swim at home.



Scott, Noreen

From: byroneforms
Sent: Wednesday, 7 April 2021 10:49 AM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-740

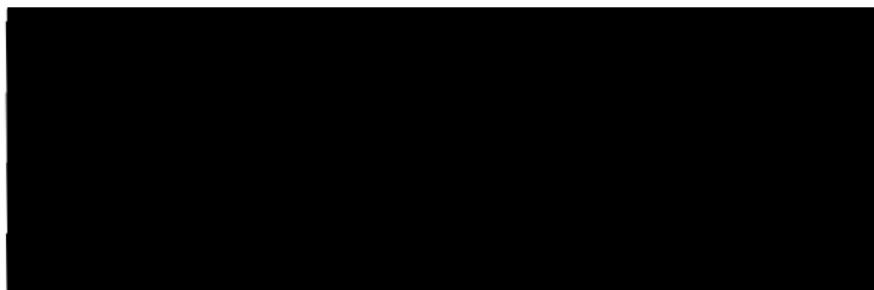
DA number: 10.2019.616.3

Subject address: 137 and 139 Jonson Street and 3 Browning Street Byron Bay

Application type: Support

Other details:

Grounds: Whilst I am Sydney based I spend much of my time in the Byron Shire and Lennox Head region. I have looked at the plans for the rooftop area, or the section of the rooftop area proposed for a pool and garden area. In my view, life these days is busy and stressful. What counters this is nature, fitness and relaxation. Which would all be provided for Jonson Lane residents via this DA modification. I can't actually see any negatives, only positives. Thank you.



Scott, Noreen

From: byroneforms
Sent: Wednesday, 7 April 2021 10:19 AM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-733

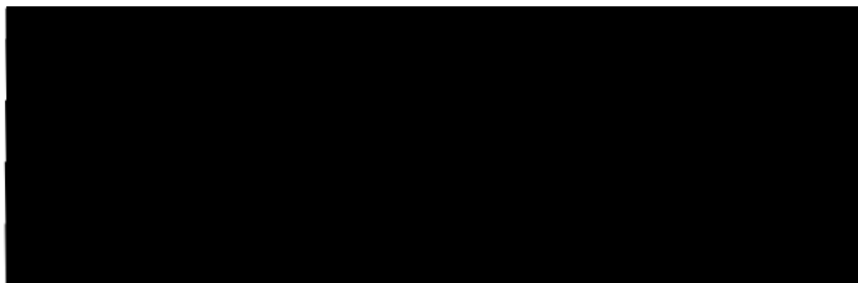
DA number: 10.2019.616.3

Subject address: 137 and 139 Jonson Street and 3 Browning Street Byron Bay

Application type: Support

Other details:

Grounds: These improvements will add to the quality of life of residents of Jonson Lane. It does not appear that they will detract from the quality of life of neighbours. By adding this amenity Jonson Lane is more likely to attract quality residents as the years pass, thereby adding to the quality of life of those in neighbouring properties. The people behind this development have worked very hard to address all concerns including but not limited to the shortage of permanent accommodation in Byron Bay. Thank you.



Scott, Noreen

From: byroneforms
Sent: Thursday, 8 April 2021 11:20 AM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-794

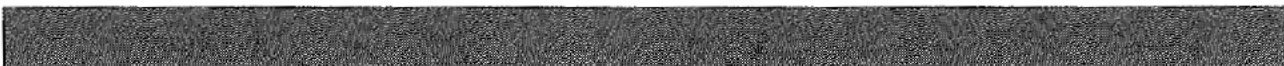
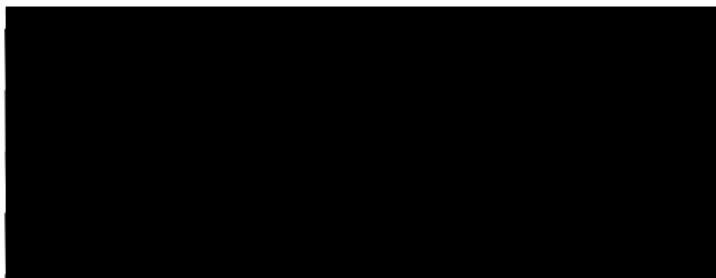
DA number: 10.2019.616.3

Subject address: 137 and 139 Jonson St and 3 Browning St Byron Bay

Application type: Support

Other details:

Grounds: I support the proposed rooftop pool and garden as it'll give Jonson Lane residents the opportunity to enjoy the outdoors securely. Plus, the noise issues have been addressed by the developer.



Scott, Noreen

From: byroneforms
Sent: Friday, 9 April 2021 11:21 AM
To: council
Subject: 10.2019.616.3 - Submission of Object - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-828

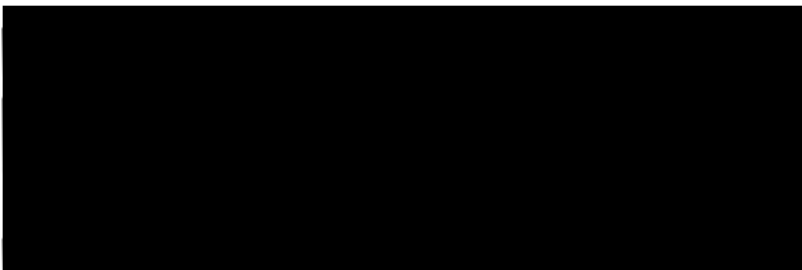
DA number: 10.2019.616.3

Subject address: 137 Johnson Street, 139 Jonson Street, 3 Browning Street Byron Bay

Application type: Object

Other details:

Grounds: The existing approved DA for this development already exceeds Byron Shire council's height and floor space ratio policy. The proposed rooftop pool will add another storey, pushing height limits for future developments in this area. The rooftop pool cannot be defined as an 'enclosed space' as it is an open air entertaining venue and any sound will not be muted by enclosing roof or walls. This development threatens the amenity of all surrounding residential houses, particularly those overlooking the rooftop as I do. The environmental noise impact assessment conducted by sound engineers for the developer did not consult neighbours who will be visually and acoustically impacted by the rooftop pool. My house is already subject to high outside party noise from the student accommodation next door at 14 Ruskin, the wedding venue the Secret Garden 119-121 Jonson Street and the nightclub Cheeky Monkeys. Music and loud voices carry in the night air in this area, my neighbours and I regularly call police who are overburdened with noise complaints and cannot attend unless there is a violent incident. Because of proximity to town these apartments are likely to be let for STHL and the addition of a rooftop pool increases their appeal to as 'resort' style accommodation for holiday visitors. I strongly object to this DA application on the grounds of increasing loss of amenity in this residential area.



Scott, Noreen

From: byroneforms
Sent: Friday, 9 April 2021 10:21 AM
To: council
Subject: 10.2019.616.3 - Submission of Object - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-824

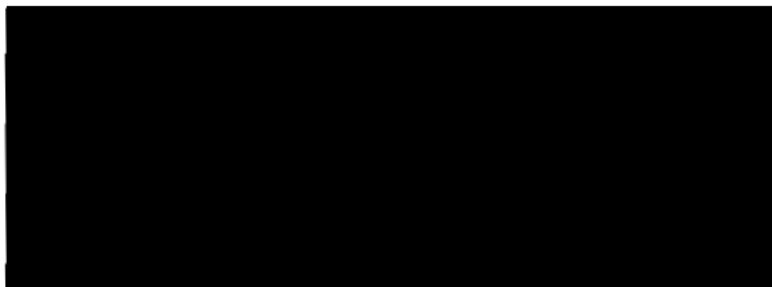
DA number: 10.2019.616.3

Subject address: 137 Jonson St Byron Bay

Application type: Object

Other details:

Grounds: Objection is to modification of DA to include a rooftop pool and amenities. Modification further breaches height restrictions. Modification includes enclosed toilet/change room which is clearly a fourth storey. Proposed acoustic control measures do not address noise transmission to uphill neighbours. Modification will have adverse visual impact on uphill neighbours. Modification will affect uphill neighbours future building plans re overlook of proposed pool area. Absence of onsite management may allow late night noise issues to arise. Long term residents, family and guests can be just as noisy, antisocial, and inconsiderate as short term stays. In the event of noise problems, neighbours can only call police, who are busy enough already. Anecdotal evidence from a building surveyor indicates that "rooftop pools always leak".



Scott, Noreen

From: byroneforms
Sent: Monday, 12 April 2021 7:53 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-866

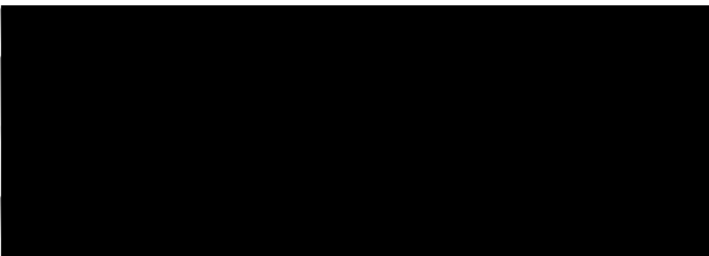
DA number: 10.2019.616.3

Subject address: 137 and 139 Jonson St and 3 Browning St Byron Bay

Application type: Support

Other details:

Grounds: I support this DA modification. The owners are trying to improve the quality of life for locals, for people who are going to live in the town centre. They are doing this at their expense, taking pressure off Byron Bay's already crowded infrastructure. I cannot see any reason why a building (or buildings) with no pool and garden would be preferable to a building or buildings with a pool and garden. Thank you.



Scott, Noreen

From: byroneforms
Sent: Tuesday, 13 April 2021 10:54 AM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-871

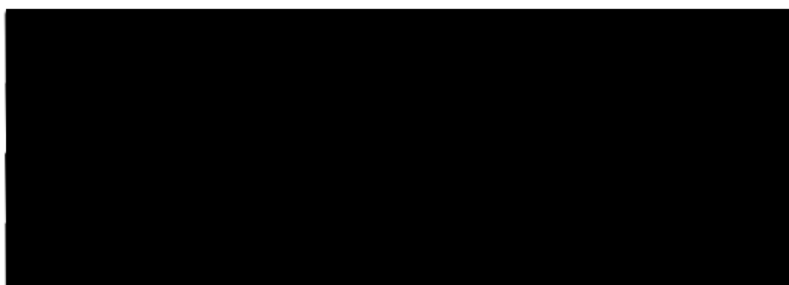
DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: Good morning Councillors and BSC, The southern end of Jonson Street was identified by the Byron Bay Masterplan as an area that should have mixed use residential above retail and other businesses. It says that the ground floor is to be open to the public. So I support that the residents of this building are going to create rooftop gardens and have a pool area for them to enjoy. We need more residential apartments in town to support the work force, there won't be any locals left if you don't. [REDACTED]



Scott, Noreen

From: byroneforms
Sent: Tuesday, 13 April 2021 11:24 AM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-872

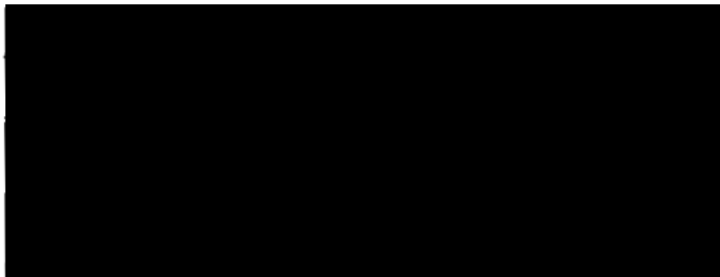
DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: Hi Byron Council, I have read this DA and looked at the website provided by the developer. We should support this application as it is providing a pool and gardens without impacting other people. There's pool in the apartments at the Butter factory across the street, why should these residents not be able to enjoy the same facilities. We should be encouraging green roofs and gardens in town, we should try and turn Byron into the greenest town in Australia so we should definitely be doing something cool like this. Thanks for your consideration. [REDACTED]



Scott, Noreen

From: byroneforms
Sent: Tuesday, 13 April 2021 12:54 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-874

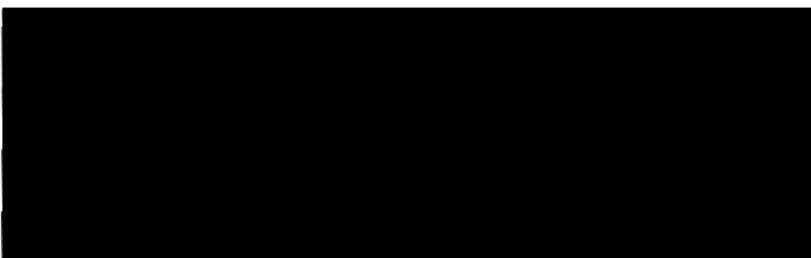
DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: A rooftop pool and gardens will bring more nature, health and fitness into the lives of Jonson Lane residents. The developer has addressed issues of noise and visual amenity, there is no visual impact on neighbours as the pool can't be seen from the street or the neighbours properties. I will enjoy having same facilities I have at home, a pool to teach kids to swim, an area to enjoy with my family and friends. A rooftop area to enjoy reading the paper and communal herb gardens are all increasing residents amenity of the building and lifestyle. An area to meet other residents and/or solillise with Byron Bay visitors.



Scott, Noreen

From: byroneforms
Sent: Tuesday, 13 April 2021 2:24 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-875

DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: This proposal would allow locals buying in to have the same facilities that they would have at home, a pool to teach kids to swim, rooftop area to enjoy reading community fellowship. A rooftop pool and gardens will bring more nature, health and fitness into the lives of Jonson Lane residents. The developer has addressed issues of noise and visual amenity, there is no visual impact on neighbours as the pool can't be seen from the street or the neighbours properties

Contact address:

[REDACTED]

Scott, Noreen

From: byroneforms
Sent: Tuesday, 13 April 2021 4:24 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-876

DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: To whom it may concern, We are a supporter of this submission as have purchased one of the apartments. As locals with a business that employs over 25 persons we were attracted to this development because it was passed as a long term rental precinct. In other words no short term holiday rental or Airbnb. Our town is crying out for this type of accommodation. Our business (along with other businesses in the CBD) which is located within 250 metres has a challenge to retain staff. Buying such an apartment is a perfect way to house our staff and retain them long term. The addition of a pool on the property has been thoroughly thought out to impose minimal impact to neighbours. Long term residents having an outdoor area to not only get fresh air and be able to have a swim, can only take pressure off elsewhere in the community. We as locals take the current situation seriously regarding affordable and accessible long term rentals. This development ticks all the boxes with regards to this and the more amenities available on site the less traffic and pressure on other Byron amenities. It is something we feel is only going to help all parts of our community. Yours Sincerely [REDACTED]

[REDACTED]

Scott, Noreen

From: byroneforms
Sent: Tuesday, 13 April 2021 4:54 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]
Attachments: BSC-005-877-Council letter.docx

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-877

DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: Dear Council and Attn: Mr Rob Van Iersel I write in relation to the proposed addition of a pool for the Jonson Lane development. As an owner and future resident in the building, I am strongly supportive of having a pool and garden included. The reasons I see this as beneficial to residents include: • Having a safe area where I can teach my child [REDACTED] to swim • Generating a strong local community environment and gathering space in the building where I can get to know my neighbours • Creating a safe area where children can play • Encouraging tenants to be outside more and utilise the local areas finest attribute – its weather I understand the concerns that have been raised regarding noise and the local environment. - I myself had similar concerns. However, after studying the plans, I strongly believe the developer has done a terrific job of addressing these, while at the same time providing a fantastic family-friendly space that appeals to long-term residents. Not allowing this pool would only decrease the likelihood of attracting long-term residents – such as my family - to live in the building. Thank you for your consideration. [REDACTED]

[REDACTED]
Contact phone:

[REDACTED]
Contact address:

Scott, Noreen

From: byroneforms
Sent: Wednesday, 14 April 2021 8:55 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-913

DA number: 10.2019.616.3

Subject address: 139 Jonson Lane Byron Bay

Application type: Support

Other details:

Grounds: My family have spent the last 20 years travelling to Byron Bay and surrounds. We have twice owned property in the Byron Shire and have always dreamed of owning property that is central located. We love the area and it figures very highly in our plans for our future. We purchased this apartment as we wish to spend significant time in Byron Bay as do our family. We are significant contributors to the Byron Shire economy as we believe in purchasing local and in supporting the many small businesses in the Byron Shire. The apartment that we have purchased will be located directly below the proposed swimming pool. So, we would be the MOST affected of any Byron Shire resident if the pool was not constructed or managed well. We are entirely confident that the developer has addressed all issues of noise and visual amenity. It is clear when you view the plans that our neighbours will not be able to see or hear the pool. [REDACTED] from intellectual and physical disabilities and has a number of health issues. Her mental and physical health are greatly assisted by her having access to outdoor spaces, to a swimming pool, and to gardens and to greenery. We think she is not alone in this. The health and welfare of all residents of the property will be enhanced by the addition of the pool and gardens. Lastly, we have no doubt that we, and all residents of this property will spend more time in Byron Shire if the pool is permitted. There is clear economic benefit to Byron Shire by having this property with high amenity, especially as that amenity comes at no cost at all to surrounding properties. We also remind the Council that this property will not be a "party" property. It will be occupied by permanent residents who love Byron Bay and who love the location of this development. I reiterate that we are very confident that the pool and garden area have been designed and will be managed so as to have no impact on the amenity of adjoining residents.

Scott, Noreen

From: byroneforms
Sent: Wednesday, 14 April 2021 3:25 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-905

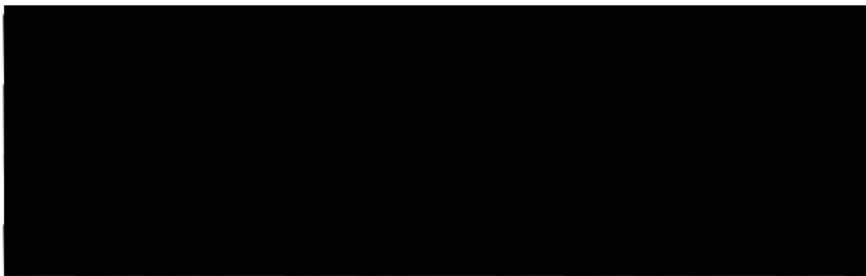
DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: I'm a purchaser and a rooftop pool and gardens will bring more nature, health and fitness into the lives of Jonson Lane residents. The developer has addressed issues of noise and visual amenity, there is no visual impact on neighbours as the pool can't be seen from the street or the neighbours properties. For locals buying in to have the same facilities that they would have at home, a pool to teach kids to swim, rooftop area to enjoy reading the paper and communal herb gardens are all increasing residents amenity of the building and lifestyle.



Scott, Noreen

From: byroneforms
Sent: Thursday, 15 April 2021 11:25 AM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-916

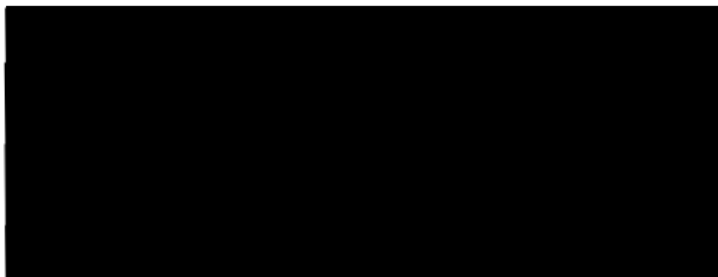
DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: The rooftop area will be a beautiful quiet place for owners and residents to enjoy without impacting on neighbours in any way. The gardens and pool will allow for nature and healthy outdoor living. Visual impact and noise issues have been addressed by the developer in a positive way. I strongly support the proposal and believe that the inclusion of a pool and garden will have an extremely positive effect on peoples lives.



Scott, Noreen

From: byroneforms
Sent: Thursday, 15 April 2021 11:55 AM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-917

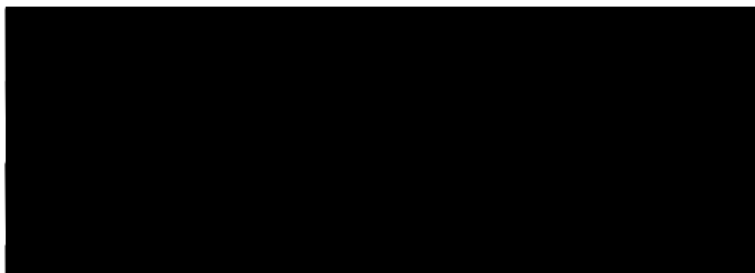
DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: I was surprised to find out after we committed to the Jonson Lane development that there was no swimming pool or roof top garden as part of the project when developments in this day and age usually are designed around these recreational areas. My wife [REDACTED] and I would depend on these facilities for our health, fitness and wellness regime as we do rehabilitation exercises in a swimming pool and relax in these areas while soaking up the sun. Having a roof top garden is an area that would definitely help us to relax above the comfort of our own home and an area where we could meet, get to know, and socialise with other residents of Jonson Lane. Our understanding is that the developer has addressed visual and noise issues and no neighbour would be impacted with such additions whatsoever. These amenities are an essential part of any community and it only makes total sense to include such essential facilities in any development including Jonson Lane.



Scott, Noreen

From: byroneforms
Sent: Thursday, 15 April 2021 5:25 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-921

DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: Our family has been a regular visitor to Byron Bay and surrounding areas for the past 25 years. We love the area and my husband and I (both in our mid 50's) are very keen to become semi-permanent residents as we move into the retirement phase of our lives. We were attracted to the apartments at 139 Jonson Street because they will be owned by residents like us and will not be available for short term rental. We are hoping a little community will be built within the development. However, for that to happen, you need communal spaces like the proposed pool and gardens where you can meet other residents. We are active people and enjoy many outdoor activities, including swimming. Our health and fitness activity will be greatly assisted through the approval of the swimming pool. I am also recovering from a significant and very recent health issue and hydrotherapy and access to green spaces on the rooftop will be essential to my long term recovery. We are confident the developer has addressed all issues relating to noise. This was a concern for us given our apartment is on the level directly below the proposed pool. We are comfortable through the design and operating arrangements that there are no issues or concerns in relation to noise. Also, given the pool cannot be seen from the street or neighboring properties, we are satisfied there is little, if any, visual impact to other surrounding properties or residents. We see this space as a place for families and residents like us to exercise, relax and heal. The pool and garden will be a very important part of our lifestyle in the future.

Scott, Noreen

From: byroneforms
Sent: Thursday, 15 April 2021 6:25 PM
To: council
Subject: DA # 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-923

DA number: DA # 10.2019.616.3

Subject address: 139 Jonson St Byron Bay

Application type: Support

Other details:

Grounds: To whom it may concern, I am purchasing as a new resident owner in the Jonson lane build. I am writing in support of the new da for a pool. I am understanding that noise and neighbours have been accounted for with no adverse effects. This facility will enhance the lifestyle of a ocean suburb living i pursue by moving to Byron Bay. On a fitness level i will swim i believe 2-3 times a week to increase my fitness level in the pool and spend time reading by the pool and mixing with my community of other owners. Many thanks for considering my support of this request. Best regards [REDACTED]

[REDACTED]

Scott, Noreen

From: byroneforms
Sent: Friday, 16 April 2021 10:26 AM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-926

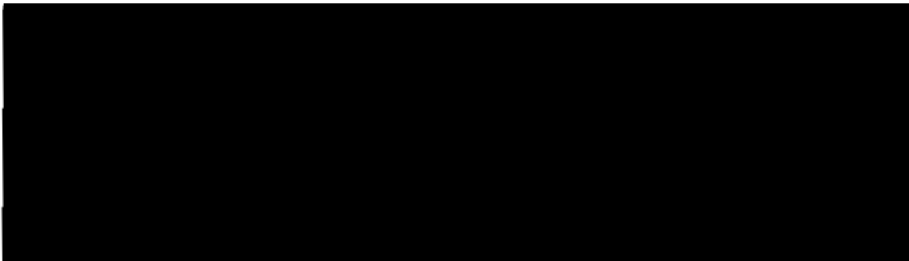
DA number: 10.2019.616.3

Subject address: 139 JOHNSON STREETBYRON BAY Byron Bay

Application type: Support

Other details:

Grounds: A rooftop pool and garden gives all residence a total home environment with in the building they all live, to be able to leave their unit to go and relax out doors with out leaving their properties address. It will be very privet and away from general public, no effect to residence in their unit if they wish not to use the pool or garden roof top. It will be a great place to live



From: [REDACTED]
Sent: Friday, 16 April 2021 11:06 AM
To: council
Subject: Objection to 10.2019.616.3 139 Jonson Street Closing 16 April 2021

The application is a modification application of 10.2019.616.1.

1. The proposal does not meet the requirements of a modification application. The original approved DA would be altered by having a functional 4th level facility being used by residents and their guests. This was never intended in the original approval. It would, if approved, set a new working precedent for all similar developments in and around the town centre and beyond in the Shire.
2. The modification is in breach of the Council's LEP height limits.
3. A rooftop pool and leisure area will create intrusive noise falling upon the adjacent and very close by neighbours. The sound mitigation proposed is totally inadequate as it is not capable of stopping sound emitted above 1.3 metres; there is no proper study of the diffraction and reflection of sound waves that will reach the residents day and night (8 am to 10 pm 365 days of the year)
4. There is no feasible management plan whereby full time staff of the Development can properly ensure all rules and hours of operation are followed. Invariably this will lead to activity beyond the proposed times.
5. The facility will greatly increase the attractiveness of the property for short term holiday letters. They, quite naturally, will use the facility to the maximum extent thus intensifying sound emission including loud conversations and amplified music. There is no clear legal basis on which proposed Strata By Laws can stop short term letting. Indeed, as of writing this objection, the Dept of Fair Trading's website still includes a complete exemption from short term rental provisions of owners renting their principal place of residence.
6. The Developer is now effectively on his third modification application seeking to obtain significant 4th level development previously denied. If granted there is a strong likelihood of a further modification application to seek sun protection structures (umbrellas, pergolas etc) that will further breach the LEP provisions.

Because of publication errors by Council involving late access to prime Developer documentation, I will take up the opportunity of making further detailed submissions over the next three weeks which has been extended by Council officers.

Scott, Noreen

From: byroneforms
Sent: Friday, 16 April 2021 4:26 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-929

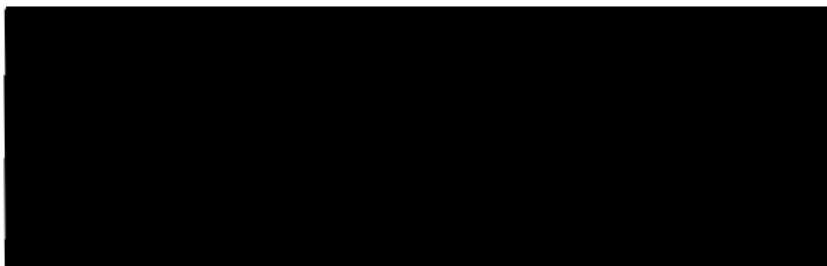
DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Support

Other details:

Grounds: We are locals who have been in Byron for 25 years and have bought a Jonson Lane apartment. We are going to live in our apartment and would very much appreciate a pool on the rooftop. We believe in order to attract locals into this building to live permanently, it is necessary to provide the pool and open space and greenery surrounding it. For us to have the ability to swim and see the sky on the roof would be an amazing addition to our lifestyle, and for me personally for my mental health. All the north facing apartments looks at a wall 3 metres from the balcony railings. I struggle with agoraphobia and don't leave home very often, especially if I'm alone- so the pool and open sky etc would be a God send. It can be very gloomy living in an apartment and some people become depressed if they can't see the sky or feel the sun. The apartments on the south side will hardly get any sun at all. They would benefit greatly from a pool. The apartments looking over Jonson Street and Browning Street will be very noisy. The owner occupiers or permanent tenants won't realistically be able to open their doors to the balconies during the day. Well I wouldn't be able to. I'm also thinking of mothers and fathers at home with children and hope that they will have the opportunity to have a pool. I always had a pool for my children when we lived in apartments. It makes all the difference. I understand the developer has already addressed the issues with regard to noise and visual impact, that the pool area can't be seen by neighbours nor from the street. Please allow the pool. It will make a massive difference to my life and to health and well-being of everyone else too, and will be the key to attracting locals to live permanently in the building. Kind regards, [REDACTED]



From: [REDACTED]
Sent: Friday, 16 April 2021 4:33 PM
To: [REDACTED]
Cc: submissions@byron.nsw.gov.au; council; Van Iersel, Rob
Subject: Objection to DA 10.2019.616.3 at 139 Jonson Street

Dear Sir / Madam

Objection to DA 10.2019.616.3 at 139 Jonson Street

In May 2020 this Development was approved with substantial concessions to the SEPP rules in terms of the amount of communal space, green space and deep planting. It was also a matter of public record that many of the apartments will not receive adequate natural light. The design is all the poorer for these concessions but the Developer successfully argued SEPP planning rules should not be strictly applied because of the Development's close physical proximity to the beach/recreational areas & also because it is predominantly a commercial development.

The Development also already exceeds height limits and Floor Space Ratio requirements as set out in the LEP.

These concessions set the Developer up to maximise his financial returns. He has now realised a financial benefit large enough to finance the \$35M cost of building 139 Jonson Street and by his own admission he has done this by selling all 28 residential units off the plan. (28 residential units can hardly allow 139 Jonson Street to be qualified as a predominantly commercial development)

At the time the current DA was approved in May 2020 Simon Richardson said: "I wish this was a little smaller and a bit better designed but it's pretty good"

The community, including adjacent residents is now being asked to accept a rooftop pool, garden and leisure area. This amounts to an even bigger Development in terms of overall scale, density, height and noise to compensate for the lack of green space, communal space and natural light the Developer successfully persuaded Council was not necessary in the first place.

4th Level Rooftop Pool & Recreational Area

1. The NRJPP categorically rejected a 4th Storey when this DA was first assessed. The current proposal does not meet the requirements of a modification application and the changes it proposes are substantial not minor. The original approved DA would be significantly altered if a functional 4th level facility is permitted to proceed. This was never intended in the original approval.

It would, if approved, set a new working precedent for all similar developments in and around the town centre and beyond in the Shire.

2. The modification is in breach of the Council's LEP height limits.

3. A rooftop pool and leisure area will create intrusive noise falling upon the adjacent and very close by neighbours. The sound mitigation proposed is totally inadequate as it is not capable of stopping sound emitted above 1.3 metres; there is no proper study of the diffraction and reflection of sound waves that will reach the residents day and night (8 am to 10 pm 365 days of the year)

4. There is no feasible management plan whereby full time staff of the Development can properly ensure all rules and hours of operation are followed. Invariably this will lead to activity beyond the proposed times.


5. The facility will greatly increase the attractiveness of the property for short term holiday letters. They, quite naturally, will use the facility to the maximum extent thus intensifying sound emission including loud conversations and amplified music. There is no clear legal basis on which proposed Strata By Laws can stop short term letting. Indeed, as of writing this objection, the Dept of Fair Trading's website still includes a complete exemption from short term rental provisions of owners renting their principal place of residence.

6. The Developer is now effectively on his third modification application seeking to obtain significant 4th level development previously denied. If granted there is a strong likelihood of a further modification application to seek sun protection structures (umbrellas, pergolas etc) that will further breach the LEP provisions.

Because of publication errors by Council involving late access to prime Developer documentation, I will take up the opportunity of making further detailed submissions over the next three weeks, this extension of the exhibition period has been confirmed by Council officers.

Please can Council also be aware that we are still unable to access DA Tracker and so cannot make a submission in the manner requested. We would appreciate confirmation this objection has been received and accepted via return email.

Thank you.



From: [REDACTED]
Sent: Thursday, 22 April 2021 10:57 AM
To: submissions@byron.nsw.gov.au
Subject: Submission on S.4.5.5. variation to 10.2019.616.3 for rooftop pool etc

Dear Mayor Richardson and councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
 2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
 3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - Green space
 - Communal space
 - Natural light in the units
- If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.
4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
 5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units which are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
 6. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
 7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

Scott, Noreen

From: byroneforms
Sent: Monday, 26 April 2021 6:33 PM
To: council
Subject: 10.2019.616.3 - Submission of Support - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-942

DA number: 10.2019.616.3

Subject address: 139 Jonson Street, Byron Bay Byron Bay

Application type: Support

Other details:

Grounds: Dear Councillors and Byron Council Staff, Please accept this submission as my show of support for this DA modification 10.2019.616.3 I am writing to you to as the owner of [REDACTED] which is one of 3 properties which shares the boundary with the Jonson Lane building currently under development. The developer JD Property Group (Jason) has provided me a lot of information via email and called me to discuss my questions directly. He explained that the design of the pool / gardens locates it North towards the commercial zoning and keeps it away from the Eastern residential properties located on Browning Street and Ruskin Lane. I appreciate the engagement from the developer and the explanations which shows there is going to be no visual impact and no acoustic impact on my property. Thank you for your consideration. Regards, [REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Thursday, 29 April 2021 7:51 PM
To: submissions@byron.nsw.gov.au; council
Subject: Submission on S.4.5.5. variation to 10.2019.616.3 for rooftop pool etc

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - green space
 - communal space
 - natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

From: byroneforms
Sent: Thursday, 29 April 2021 6:05 PM
To: council
Subject: 10.2019.616.3 - Submission of Object - [REDACTED]
Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-945

DA number: 10.2019.616.3

Subject address: 139 Jonson Street Byron Bay

Application type: Object

Other details:

Grounds: I oppose the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street for the following reasons: 1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area. 2. BSC must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio? 3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for: • Green space • Communal space • Natural light in the units If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk. 4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold. I confirm that no disclosure of any political donation is required in relation to this submission. [REDACTED]

[REDACTED]

[REDACTED]

Scott, Noreen

From: [REDACTED]
Sent: Sunday, 2 May 2021 10:56 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,


I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

Due to the application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,

[REDACTED]



Byron Shire Council
By email
30 April, 2021

SUBMISSION – Opposing DA 10.2019.616.3 – 137-139 Jonson Street, Byron Bay

S4.55 to Provide Residential Recreation Area including Swimming Pool, Amenities, Gardens and Landscaping on the Roof of Building 1, Include an Additional External Podium Planter/Landscape Bed at the North-Western Corner of Building 1 on Level 1 and Relocate Two (2) Photovoltaic Arrays on the Roof of Building 2

I am strongly opposed to the application for the modification of the development at 137-139 Jonson St, Byron Bay.

I spoke at the JRPP hearing on the 14th November, 2018 and stand by the comments I made at that time regarding the proposed development, which I attach below.

The current DA is a breach of the LEP in relation to height. The prior approval is beyond the 9m height limit and it's unacceptable to allow breaches that set a dangerous precedent for the character of the town of Byron Bay.

The inclusion of rooftop facilities allows use that will directly impact on the surrounding neighbours, especially the Ruskin Lane residents with noise, lighting and privacy concerns. There is also the potential that such works would then be followed by additions such as sails or covers that will also impact on the streetscape, extending the height impact.

The applicant has already been granted a level of development beyond the standard and this current variation should be refused.

It should be noted that if the applicant hadn't sought to maximise the built form then the recreational amenities could've been provided elsewhere in the development.

I strongly oppose any additional development at this location and request that council refuse this application on the basis of the breach of the LEP height requirements, the bulk and scale and the loss of amenity

Yours sincerely



Attachment 1 – Submission to JRPP 14 November, 2018

Attachment 1

I oppose the 4 storey, mixed use development 10.2017.510.1 at 137 Jonson Street, Byron Bay

As a long term resident of almost 30 years and with the experience of being on Council for 13 years I have been involved in many strategic planning processes and community consultations. A very clear community position since the 1988 LEP was that the 3 storey limit in Byron is an important part of the low scale character of the coastal town of Byron Bay that is so appealing to residents and visitors. The scale of the town presents a vital 'sense of place' and character that differentiates it from other popular destinations. The recent Masterplan process has maintained the community desire to maintain 3 storeys. This point is also identified in the Evaluation Report for this development by BSC staff.

The priority issue with this 4 storey development is the impact it would have on the future scale and density of Byron Bay and with the lack of compliance with the current zoning and planning rules. If approved, a precedent that would be set and it would be a denial of good governance and a shocking signal to developers that current plans and good process are irrelevant.

I will refer to some points about the community attitudes regarding governance later.

The application breaches the height limit of 9m and the Floor Space Ratio requirements. The proposal has a height of 12.2m at it highest point with most of the building at 11.5m, which is more like 30% increase, not the 3% as listed in the Evaluation Report on page 26 . The FSR of 1.3:1 is exceeded and delivers a 1.54:1, which is at least 700sqm increase in allowable Floor Space

There are other concerns but I think these are the clear issues that provide more than enough for refusal of the DA. But traffic and impact on the amenity of the area and the nearby commercial premises should not be disregarded.

The application was lodged in September 2017 and it was clear then that the proposal breached the current planning provisions of height and density. If this was what was being sought, then the appropriate step available to the applicant was to seek a rezoning.

I would like to provide the historical information about the area. The lands that are identified on the Jonson St eastern side between Kingsley and Browning St were up until 2010 zoned residential 2a with a 2 storey limit. The change in zoning came about after numerous processes of investigation, including a Local Environment Study and a Retail Study. Council's decision to change the zoning was supported by studies and community consultation and resulted in a position that effectively allowed change of use from residential to commercial but was very definitive in the decision to maintain the 2 storey

height limit. The rezoning was supported by a DCP to provide for landscape setback, street trees, on site car parking and footpath construction.

It is worth noting that there is within the existing commercial zone still large lots that have potential for rezoning and redevelopment and this must be investigated and analysed prior to any extension of the commercial zone and the height, bulk and scale of the town.

Also there have been references to the height, scale and character of the building across the road on the western side of Jonson Street. The building in question was not an approval as such, it was a redevelopment of an existing historical building, the Norco Buttery, so it should not be used as a standard. At short notice I was unable to access the historical information on this but with more time could do so, if required.

It is unfortunate that this application is here today, by that I mean, that it is not a decision of the council.

If the application complied with the current planning standards it most likely would not be before the JRRP but would be a decision of Byron council. It appears that if it met the current planning provisions it would not meet the Capital Investment Value threshold that allows it to come before the JRPP.

On 2 points, the height and the FSR the proposals exceedances appear to be the factors that influence the project value of \$23,186,495 as the FSR exceedance of 16%(\$3,709,890) , if this was eliminated it would take the CIV below the \$20m threshold, which I note has now been increased to \$30m under the Schedule 7(2) of the State and Regional Development SEPP since 1 March 2018. I also note that the JRPP site has the CIV at \$21m while the BSC Evaluation Report cites the higher figure.

I would like to quote from the Masterplan report as it sums up an important point about Governance p12

Governance has become a hot topic over the last decade as evidence mounts for the critical role it plays in determining the delivery of widespread plans, policies and projects. There is a growing consensus that good governance is perhaps the single most important factor in any projects ultimate delivery.

For good governance to exist in both theory and practice, the community must be empowered to participate in meaningful ways and have a role in the decision making process.

I like many others were not aware of this application being exhibited. My excuse may be a bit different from others. I have been away from the area caring [REDACTED] and as I understand the DA was advertised in the Byron Shire News and unfortunately I missed the advertisement as did many others.

It appears that this application was clearly designed to avoid the scrutiny of the council and the community. If the proposal conformed to the current planning standards, the CIV threshold would not have been met. Likewise, if the applicant had proposed to do a rezoning to increase the height limit and density provisions, we would have had a process

that was informed by studies, scrutiny and community input and that would meet the governance desires of the community.

BSC Evaluation Report

It is clear from the BSC Evaluation Report that the development is not in accordance with the current LEP and zoning requirements

But what is not clear is how council staff came to the position of support for an application that is in breach of the current planning controls.

1. The reliance of future potential zoning as support for the approval of this DA in the staff report is unacceptable
2. The impact of an approval in relation to precedent setting and dismissal of the need for a zoning change and the essential issue of community input is unacceptable
3. The lack of a BSC submission raises key concerns as to why the council staff did not report the matter to the elected council and community in a Council Agenda for the development of a submission, this is unacceptable.

Masterplan

The reliance on the Masterplan for justification of this application is of great concern. The development of the Masterplan involved some important community consultation but it is a guiding document for future consideration, it is not a planning document.

There are statements in the BSC report that do not reflect the Masterplan. The Masterplan does not express a clear direction and is a document that lays the groundwork for future options to be presented to the community and government.

Statements that this DA conforms to the 'future desired character' or as the applicant has referred 'strategic directions' of the Byron Bay Masterplan are untrue.

There is no clear direction in the Masterplan to describe any future character plan. It does identify in section 4.6 under Built Form & Aesthetic Strategy that 'The community's main concerns were

-Maximum 3 storey buildings, traffic congested entry points, unique urban grain and character and lack of consistency in architectural quality.


The Masterplan does not definitively dictate the increase of building heights.

The way to achieve planning changes is to undertake an amendment to the LEP and when the applicant lodged this non compliant DA in September 2017 that option was available.

Council when considering the implementation of the Masterplan resolved on the 20th September 2018 (RES 18-609) to move forward with a Gateway proposal to amend the LEP in relation to the southern end of Jonson Street.

This is the correct way to proceed, allow the amendment to be prepared and to go out on public exhibition with studies that identify the cumulative impacts of any change to allow for informed decision making. I don't agree with the proposal, but respect the process and look forward to the opportunity to oppose.

I appeal to Panel to refuse this application. To approve it would diminish the respect and importance of good governance and planning and reward an applicant for showing disregard for the rules and community and would change Byron Bay forever. This would not be a fair outcome and would discredit the principle of good planning.



14 November 2018

From: [REDACTED]
Sent: Sunday, 2 May 2021 8:24 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors, I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street. 1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area. 2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio? 3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for: • Green space • Communal space • Natural light in the units If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk. 4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each. 5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance. 6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact. 7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present. 7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height. I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added. Yours sincerely,

From: [REDACTED]
Sent: Sunday, 2 May 2021 3:50 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - green space
 - communal space
 - natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Scott, Noreen

From: [REDACTED]
Sent: Sunday, 2 May 2021 2:01 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - green space
 - communal space
 - natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

From: [REDACTED]
Sent: Sunday, 2 May 2021 9:40 AM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?

3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:

- Green space
- Communal space
- Natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than r

[REDACTED]

Scott, Noreen

From: [REDACTED]
Sent: Sunday, 2 May 2021 8:32 AM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc

Dear Councillors,

I wish to object to the proposal to build a rooftop swimming pool at 139 Jonson Street.

This application breaches the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

There is no justification for allowing this breach of the LEP, despite the developers claims.

It will impact on the amenity of the neighbourhood. The precedent in allowing the rules to be broken needs to be rejected.

Yours

Scott, Noreen

From: [REDACTED]
Sent: Saturday, 1 May 2021 8:59 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Johnson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
 2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
 3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - Green space
 - Communal space
 - Natural light in the units
- If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.
4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
 5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
 6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.

7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules

before this proposed pool and recreation area was added.

Overall a very significant loss to NEARBY neighbours amenity if this variation on the DA were to be approved, I strongly disagree with this request to vary the DA

Yours sincerely,

From: [REDACTED]
Sent: Saturday, 1 May 2021 7:49 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?

3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:

- green space
- communal space
- natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.

5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.

6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.

7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

From: [REDACTED]
Sent: Saturday, 1 May 2021 7:02 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
 2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
 3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - Green space
 - Communal space
 - Natural light in the units
- If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.
4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
 5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
 6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
 7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
 7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,

From: [REDACTED]
Sent: Saturday, 1 May 2021 5:37 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?

3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:

- green space
- communal space
- natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.

5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.

6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.

7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Scott, Noreen

From: [REDACTED]
Sent: Saturday, 1 May 2021 5:21 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - Green space
 - Communal space
 - Natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,

Sent from my iPhone

From: [REDACTED]
Sent: Saturday, 1 May 2021 4:56 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?

3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:

- green space
- communal space
- natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.

5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.

6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.

7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Scott, Noreen

From: [REDACTED]
Sent: Saturday, 1 May 2021 4:55 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - Green space
 - Communal space
 - Natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules

before this proposed pool and recreation area was added.

Yours sincerely,

Scott, Noreen

From: [REDACTED]
Sent: Saturday, 1 May 2021 4:52 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - Green space
 - Communal space
 - Natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,

Scott, Noreen

From: [REDACTED]
Sent: Saturday, 1 May 2021 4:50 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool Jonson St

Dear Councillors, I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street. 1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area. 2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio? 3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for: • green space • communal space • natural light in the units. If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk. 4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each. 5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance. 6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact. 7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present. 7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height. I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added. Yours sincerely,

[REDACTED]

From: [REDACTED]
Sent: Saturday, 1 May 2021 4:38 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc - STRONG OPPOSITION

Dear Councillors,

I am flabbergasted this ugly DA is raising its head yet again. If we give in to breaches of the height limit it will become a free for all and the nature of Byron Bay will be eroded further. We can not let that happen.

I firmly reject the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - green space
 - communal space
 - natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

From: [REDACTED]
Sent: Saturday, 1 May 2021 4:26 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?

3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:

- green space
- communal space
- natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.

5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.

6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.

7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Scott, Noreen

From: [REDACTED]
Sent: Saturday, 1 May 2021 4:17 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?

3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:

- Green space
- Communal space
- Natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.

5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.

6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.

7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules

before this proposed pool and recreation area was added.

Yours sincerely,

A solid black rectangular box used to redact a signature.

Scott, Noreen

From: [REDACTED]
Sent: Saturday, 1 May 2021 4:11 PM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - Green space
 - Communal space
 - Natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Sent from my iPad

From: [REDACTED]
Sent: Saturday, 1 May 2021 12:27 AM
To: council
Subject: Submission on S.4.5.5. variation to 10.2019.616.3 for rooftop pool etc

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

Don't we have planning regulations? Don't they have a purpose? Don't they apply to everybody?

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - green space
 - communal space
 - natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,



From: [REDACTED]
Sent: Saturday, 1 May 2021 12:24 AM
To: council
Subject: Submission on S.4.5.5. variation to 10.2019.616.3 for rooftop pool etc

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

Don't we have planning regulations? Don't they have a purpose? Don't they apply to everybody?

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - green space
 - communal space
 - natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,



30th April 2021

Byron Shire Council
Via email: submissions@byron.nsw.gov.au

Re: 137-139 Jonson St, 3 Browning St, Application for 4th Level Pool and other facilities

Dear Sir/Madam,

[REDACTED] development, arguably the property most impacted by it.

In November, 2018, the Northern Regional Planning Panel (NRPP) rejected an application for development on this site. Its reasons included failure to comply with:

- SEPP65 guidelines with respect to setbacks, deep soil zones and other matters; and
- Byron LEP 2014 with respect to height and floor space ratios.

Byron Shire planning staff had recommended approval of the development.

In 2019, a revised development application was submitted which removed the fourth floor but failed to address many of the failings noted by NRPP. Many of the inaccuracies which were noted in the developers' documentation for its refused 2018 application remained in its 2019 application. I noted this in my submission on the 2019 application. Such matters go to the integrity of the applications and potentially the seriousness with which they regard the LEP, SEPP65 and other planning requirements.

The revised application, also recommended by the same Byron Shire Council planning staff and approved by Council in March 2020, still failed to meet Byron LEP 2014 height. It also failed to address the non-compliances which the NRPP had identified regarding floor space ratios, deep soil zones and other matters. Many of the key failings were almost identical, in both nature and extent, to those rejected by the NRPP. As I noted in my submission on the 2019 application, many of the non-compliances were material, notwithstanding how they had been represented by the developer (eg. the developer sought to represent its shortfall on deep planting as 6.5% - in fact the DA provides for 41 m² of deep planting versus SEPP65 allowance of 2834.9m², more accurately represented as an 80% shortfall).

The issue of deep soil zones was recognised by the developer as being purely a financial matter – the development application noted the need “to ensure the development is economically feasible”. No reason was given for Council approving this, so it would be reasonable to assume that it accepted the developer's rationale. That is not a valid basis for a planning non-compliance, as acknowledged by Council planning staff. Nevertheless, the failure to comply with deep planting requirements was endorsed by Council. The consequence of the approval is that the community will have to deal with more cars parking on the streets. That is, it follows a typical property development playbook – the problems manifest after the developer has sold out and it's up to the community to deal with them.

The DA approved in March 2020 also failed to comply with SEPP65 re communal space, with Council presumably accepting the developer's rationale that “the land is approx. 1km from Main Beach and

0.5km from the Byron Bay recreation grounds". This non-compliance directly enabled the developer to fail to meet floor space ratios which the NRPP had noted in its earlier refusal. Many submissions, including my own, on the revised application noted the failure to comply with FSR requirements of the LEP.

During community consultation, which the developer was required to do, it made unequivocal commitments that the development was to be a "build to rent" scheme. As I noted in my submission at the time, if that is the case there should be no approval for strata-titling of the development. Council decided to grant approval for strata titling and we now find a situation where the development is yet to reach ground level and the developer is saying it has sold all the units. While Council planning staff have suggested that the commitment to be a long term holder was never in the DA documents, it was a clear commitment by the developer.

The community consultation was an integral part of the DA process. Any suggestion that commitments made during it are not relevant displays at best an immature, and at worst a cynical or deceptive, approach to community consultation. In any event, it demonstrates the value, or lack thereof, of undertakings made by the developer. Council staff have suggested that the long term ownership commitment was not in any written documentation submitted by the developer. Whether that is the case or not is not relevant. The commitment was clearly made by the developer during community consultation and that fact is not disputed.

The developer's interest in community consultation was demonstrated in 2019 when it said to me that it was only doing it because it was a Council requirement. It has been further demonstrated by the developer changing its commitment to be a long term holder – it advised the community that it had sold out after it says it sold all the units. The current owner, Jason Dunn, has been quoted in the media as saying that Graham Dunn – Jason's father – no longer has any part in the development. During the community consultation, Graham was clear that his intent was to hand over the development at some point to Jason. That is entirely a matter for the Dunn family. Importantly, all commitments or representations made by Graham remain binding on Jason. The fact that Graham is not involved may be of interest to some, but it does not change the commitments or undertakings already made.

The fact that the developer says it has sold out is material. It follows the well trodden path of many property developments. The scenario we now have is that the developer has sought various concessions where were rejected by NRPP but then approved by Council when the developer adopted an alternative approval path. The developer says it has now sold out, so any issues that arise in the future will be the community's to deal with, the developer having cashed in and moved on to other things. The ability to enforce consent conditions against a body corporate is more difficult than doing so against a developer during construction, and this is exacerbated when the consent condition is about the nature of use of the facilities rather than the physical characteristics of it. Council staff has advised me that they are not aware of any successful enforcement of consent conditions that seek to limit STHL.

We now have a situation where the same planning staff are being asked to consider a further variation which would re-instate the 4th level under the guise of a pool. If approved, a future step for the developer or new owners could be to seek approval for sun and weather protection. With the developer having sold out, and short term holiday letting (STHL) controls being a matter where currently ill-defined State law will over-rule Council, the development is moving ever closer to an AirBnB motel, albeit an unregulated one.

It would be imprudent, to be generous, to suggest that the community can rely upon enforcement of the Consent Condition that strata rules must prohibit STHL. Strata rules can change at the whim of the owners, and State regs will override Council.

From a probity perspective, it is most unusual that the same Council staff have reviewed each application for this development, and are now being asked to review the current application. This is particularly the case given what could be seen as a “salami-slicing” approach by the developer. Each variation moves the development closer to that which was rejected by the NRPP in 2018. Staff who have addressed previous applications should not be placed in a position of effectively having to review their own earlier decisions, yet such an approach is essential when considering variations. The variations do not stand alone; rather, the DA and all subsequent variations in aggregate contribute to the approval.

I am also concerned by comments from Council staff suggesting that only a small number of people seem to be opposed to the latest variation. Whether that is accurate or not is immaterial. It suggests a “snooze and lose” approach to town planning approvals, which is entirely inappropriate. Councils should enforce the rules in the ordinary course of business, rather than only when they think someone might be watching.

LEPs, DCPs and other planning documents typically get extensive public consultation. Many members of the community then assume that the requirements contained in those documents will be enforced by Council on their behalf, when in fact they are all too often watered down on a piecemeal basis, one DA at a time. While the outgoing Mayor has suggested that “the notion of precedence is a bit of a silly notion”, real word experience shows that the erosion of planning controls overwhelmingly goes in developers’ favour, as each one learns tricks from the previous one and argues “it’s been done there so it should be done here too.”

In mid, 2019 a variation was granted for a lift overrun. This was another part of the development which would exceed the height limits of the LEP. It was explained at the time as being to provide for access to maintain rooftop plant. It struck me as strange that a professional developer would neglect to address such a matter in its DA design. We now learn that the lift would be used to access the proposed 4th level pool. With the benefit of hindsight, it beggars belief that this is a coincidence; rather, it can reasonably be seen as part of an incremental approach, intentionally approved before the current variation, and part of a deliberate approach by the developer to get back to or close to the rejected 2018 development.

So, having been granted approval for a major non-compliance on FSRs, on the basis that the development didn’t need to meet SEPP65 requirements for communal space due to its proximity to the beach and rec grounds, the developer now seeks approval for a 4th level pool.

It cannot have it both ways; either the development is close enough to the beach and rec grounds that it doesn’t need communal space, and therefore gets major relief of FSRs (as it was granted in March 2020), or it needs communal space and so should reasonably be required to comply with FSRs. I am not aware of any offer by the developer to now comply with LEP FSR requirements, so presumably the developer still considers the beach and rec grounds are close enough as to not need communal space in the development.

The decision by Council to not enforce its own LEP requirements for FSR is significant, especially when combined with the other non-compliances with SEPP 65 and the LEP. The fourth level pool application seeks approval of further non-compliances to LEP height constraints. It will also likely lead to further non-compliances - approved or otherwise - in the future as pool users seek shelter from the sun.

I understand that the lift overrun approval also gave approval for an increase in the height of the ground floor of the development. Council staff have explained that there was no subsequent impact on roof heights as the roof was made flatter and/or thinner. I have not been able to verify this. If it found that construction does not deliver the finished roof compliant with LEP requirements, will Council withhold occupancy certificates until the construction is modified to comply? An after the fact approval should be flagged now as never being an option.

I am unable to assess the privacy implications of the application, as the drawings submitted with it contain many inconsistencies. Given that, and the demonstrated propensity of the developer to change or walk away from undertakings, it is unreasonable to require the community to definitively comment based on the available drawings. To do so would require us to make assumptions about which elements of the application are accurate and which are not. Given the history of approval of non-compliances, it is equally unreasonable for these inconsistencies to be resolved between Council and the developer, without complete transparency and the opportunity for well informed public comment. Indeed, the concept of "free and prior informed consent" is relevant – the community has been refused the opportunity for informed consent as a consequence of the inconsistencies in the application.

That said, it appears that the setbacks are too small and there will be privacy implications for neighbouring properties. These will be exacerbated should adjacent properties be developed, as would be expected. Any approvals on this property cannot adversely impact the current or future rights of adjacent property owners.

The noise report which forms part of the current variation application is fundamentally, and probably intentionally, flawed. It assumes noise from pool users only comes from close to the floor of the fourth level. In practice, much noise will emanate from people standing. The application supposes that there will be no BBQ, fridge or stereo facilities. That is simply not credible. Users will bring in such equipment if it is not installed by the developer. Ongoing non-compliances and disruption can never be remedied if this fourth level pool is approved; specific disruptions may be addressed but only after they have occurred. Each and every disruption will have been facilitated by any approval for the facility to be constructed.

As noted earlier, if this variation were to be approved, it would be a precursor to sun and weather shelters in various forms being installed. Any consideration of the current variation should assume that such shelters would be installed, and the extent of non-compliance with LEP height restrictions assessed on that basis.

I have asked Council if it is certain that the changes captured in the current variation are in fact as represented by the developer. The drawings associated with the application appear to include several differences from those included with the DA approved in 2020. At the time of my question, Council staff said they had not yet reviewed the drawings in detail, but said the obligation was on Council to ensure the drawings accurately represent the subject development. I am particularly concerned that changes to the 4th level will impact my adjoining property, including by possible breaches of setbacks and other

requirements. Any assessment must recognise that the rear of the adjoining block is zoned residential. There were matters in the previous applications which failed to account for this. In a similar vein, given the nature of previous reports submitted by the developer, and the fact that the current noise and visual impact reports do not accurately or completely represent all impacts (eg. noise report does not fully disclose impacts on my adjoining property), what steps will Council take to validate or challenge any of the submissions. Who is accountable if the actual outcomes are worse than those represented in the developer's applications, and what recourse would be available to those impacted?

Many submissions, albeit short and in similar language, supporting the 2019 DA spoke about the need for housing to accommodate people working in Byron Bay. At the publicly advertised sale price of \$1.8 million for a 98 m² unit, it is unlikely that many retail or hospitality workers will be buying in, and rental prices will reflect the purchase price.

One of the reasons the developer has offered the community for now wanting a pool, is that the absence of "private" landscaped open space would lead to young people in the apartments (stated in written comms with members of the Browning Street Residents Group). The developer was very plain in its 2019 application that it considered that communal space wasn't needed due to proximity to the beach and rec grounds. Is he willing to now comply with FSR rules in order to provide the communal space that he sought exemption from? It is misleading, as some Council staff have suggested, that the pool provides the communal space that I and others (and SEPP65) argued should be incorporated in the development. That line of argument ignores the fact that the original development banked breaches in FSR for the development at the expense of communal space. The two matters must be treated together.

The comment also reinforces the very obvious point that the development will not house Byron's retail and hospitality workers, who are predominantly young. They are clearly not the target market for buyers of the units. Further, such commentary that suggests young people are not desirable, a comment which I consider to be deeply offensive and judgemental. It is certainly not a reason to support the application for a 4th level pool, in a town which is hanging on to a reputation for being a vibrant and inclusive community. It smacks of the developer looking for ways to maximise his short term returns by selling the units for the highest profit margin. That is not the community's concern and nor should it be Council's.

There is a further inconsistency in the messages from the developer. He has said that he has sold all the units, yet he also says that he needs a pool to attract the "right" clientele (I'm paraphrasing). If he has already sold the units, then purchases were made when a 4th level pool was not part of the development. Plausible scenarios are either that the units haven't been sold, or they have been sold subject to getting a pool approved. The latter would certainly be presumptuous, but if it is the case, the community should be told.

The 4th level pool application should be refused. Its approval would be entirely inconsistent with the approval of non-compliances of FSRs (as a consequence of the developer saying communal space wasn't needed) and would further breach the LEP height restrictions. Any approval or recommended approval which reflects that "it's only a small further breach", such language having been used in various conversations, would be an abrogation of the obligations that Council and its staff have to the community.

I would be happy to meet to discuss.

Regards,





30 April, 2021

I wish to object to DA 2019.616.3 regarding the proposal to add a 4th level including a pool facility and a leisure area to the approved development. Below are the reasons for my objection.

The development was first rejected outright by the Northern Joint Regional Planning Panel (NJRPP) on several grounds. These included a failure to comply with SEPP65 guidelines with respect to setbacks, deep soil plantings and a range of other concerns and failure to comply with Byron LEP 2014 with respect to height and floor space ratio (FSR). Unfortunately, many of these grounds for rejection still apply to the current development approved by Byron Shire Council eg. lack of open space, lack of deep soil plantings, lack of natural light and ventilation.

This application was supposedly approved by the Byron Shire Council in the context of a 'build to rent' project to satisfy the urgent need to provide longer term lower cost rental accommodation in Byron Bay for employees and others in our community in need of long term lower cost rental. However the developer has stated that the units (now individually owned strata units) have been sold and are being sold, off the plan, for \$1.8 million. He is currently advertising them at this price through a local agent. One would imagine that these units, if rented as permanent rental, would not fall into the 'affordable housing' context. One would also imagine that at least some, if not most, of these units are going to be holiday rentals not used as permanent rentals.

Frankly I don't know where Byron Bay is headed with regards to adequate affordable housing. Sorry, I do know where it is headed-down the path of Byron Bay just becoming (or it has become) a cash cow for BSC. There appears to be no appetite from BSC to change the status quo. The homeless, marginalized and even the workers who are in allied industries or service industries are being pushed out. Developers, as per this example, can just say '...low cost rental accommodation...' in their application and appear to have no intention of implementing this, and BSC does nothing to ensure developers stick to their word. BSC is an enabler to

developers in the marginalizing of our community. One might argue it is not only an enabler but complicit in this.

The above becomes relevant as the developer has stated to us that he has submitted the proposal for a rooftop pool because this is what the prospective purchasers want. Prospective purchasers want a rooftop pool when they are paying \$1.8 million for an apartment. This obviously is not the '...low cost rental accommodation' mantra the developer has wheeled out. So the Byron Council's approval of this development supposedly, is at least partly based on the 'build to rent' and 'affordable housing' needs of our community have been completely ignored by the developer. Ironically the developer is now spitting in the face of Byron Council by stating that this expensive development, with its expensive apartments requires an expensive pool to satisfy the needs of its wealthy purchasers!! Not the needs of the community; not in consideration of neighbouring properties; not to add to the aesthetic of the area; not to enhance the subtropical environment- just because the purchasers want it!!! The developer recently stated in writing to the Butler Street Residents Group:

' We had a lot of feedback from locals looking to buy into the building that they wanted a space where they can have open gardens and obviously were keen to see a pool in there given the climate here. Further feedback from agents has been unless we want young people and groups (given the central location) we would be wise to include 'private' landscaped open space for residents, ideally with a pool, so there is space for relaxation beyond the confines of their apartments. We spent a lot of time considering the location of the pool so that it is not visible from Jonson, Browning streets or Ruskin Lane and set it back so it can't be seen from 135 Jonson St as well.'

So the developer decides to push through his initial DA with reduced open space, deep plantings, communal areas and without adequate light and ventilation to some apartments (and that gets approved!) on the basis of proximity to the beach and park for residents. He has conservatively added another 3 apartments because of these concessions by Byron Council. Now he is making a spurious claim which does not make a lot of sense to me, that if there is no pool and leisure facility this will somehow attract a younger demographic to rent these apartments?? Really, I would have thought a younger, financially able demographic

would be renting these apartments as holiday rental because it HAS a pool. Party central at the pool.

The developer also states that he has spent a lot of time 'considering' where to locate the facility and has said that such a facility is not visible from our property. This has no basis in any of the documentation contained in the developer's proposal. From the back of our property the pool can be viewed and those standing up around the pool area will be able to be viewed from our property. At no time has the developer contacted us to discuss his proposal until it was submitted to Council. Even then we have had very little contact with the developer. This is the amount of consideration he has given us.

If a rooftop 4th level pool and leisure area were permissible on this development there would not be an issue for me; or I might have an issue with it but if it is a compliant development then I can not do much about it. This proposal is clearly not compliant and the developer has the audacity to say that he wants this non compliant addition to his development purely on the basis that his purchasers would like a pool and leisure area- how grossly ridiculous.

The proposed addition of a pool and leisure area is going to create significant negative consequences for the residents of 135 Jonson St, Byron Bay- the property we own. We are the most impacted property if this pool facility and leisure area is given approval. The proposal is an additional above ground level 4. It breaches the permissible height limits in the LEP. This additional height (if approved) will clearly further negatively impact our property. The proposal will result in further overshadowing of our property and clearly will intrude on the privacy of our property.

There does not appear to be a 4.6 Application for the exemption for the height limits. There is no revised Statement of Environmental Effects (SEE) submitted by the developer as required due to the proposed addition of a pool facility and leisure area. The developer has failed to lodge a revised BASIX. Surely a revised SEE and BASIX are minimum requirements with regards to this proposal. Just on this basis alone the proposal needs to be rejected as the developer's application is incomplete- it fails to meet these basic requirements.

Residents and guests of the adjoining development will be using the pool facility and leisure area and will clearly be overlooking our property. The proposal for the pool facility states that it is to operate 7 days a week, 52 weeks a year from 8 am-10 pm. Given this, one assumes that the pool will be heated and used over the winter period as well. Users of the pool will be in and around this facility from early morning until late at night. The pool area will not be supervised during the evening period to enforce closure times, music volumes, portable barbeques, the number of persons present and a range of other related issues.

Sound mitigation under this current proposal is grossly inadequate. The noise mitigation barrier only extends to waist height- 1200 mm. In fact it is unclear what the actual height of the noise barrier is. In some documents it states the noise barrier will be 1200 mm in other documents it states 1300mm. Regardless of which height is actually proposed, this will have minimal impact on noise mitigation. It will have NO impact on reducing noise when people are standing, while drinking and conversing. There will also be music devices placed at table height and portable BBQs brought to the facility and therefore the poor noise mitigation measures proposed by the developer will be plainly grossly inadequate to mitigate noise emanating from the pool facility.

The acoustic Report submitted by the Developer has gross inadequacies. It fails to model noise generated by a large group of people who are standing on the 4th level pool and leisure facility. It fails to model noise generated by sound amplification devices. To suggest in the Report that the sound from residents/holiday makers, music, BBQs etc will be controlled to the north east by an acoustic barrier of either 1200mm or 1300mm fails to factor in that users of the facility will be standing, they will be placing electronic devices on tables and bringing portable BBQs hence generating noise which will not be regulated by a 1200 or 1300mm barrier. It is a Report full of omissions and therefore its validity must be called into question. It is essentially a Report written for the benefit of the Developer. It fails to address how noise is generated by people behaving in a normal, everyday manner. The elevations submitted for this proposal fail to show (in any of them) people standing around the pool or around the leisure area. This is a most peculiar omission given that people will actually be standing up around this area.

Given that the development is likely to be used for short term holiday rental, the pool area is likely to become the centre for unsupervised partying. This will intrude on the privacy of the residents at our home and clearly negatively affect their amenity. The lack of adequate supervision of the pool area will inevitably result in antisocial behaviours. Our only recourse (or the tenants recourse) to curtail such behaviours, if this occurs, will be to contact the local police to close down such gatherings. If the regulation of noise can only be ensured if there is strong management, how realistic is it that the 'complex' is going to be strictly managed. It won't be because the management is not on site 24hours a day 7 days a week.

Constant noise from the proposed pool facility coupled with the lack of privacy will potentially result in loss of rental income for us or significantly reduced rental income as potential tenants will not want to live beside a noisy, unsupervised pool and leisure area.

This proposed development will result in the residents at 135 Jonson St being disturbed by noise at all hours of the day and night. This noise will not be limited to conversational noise but noise from portable BBQs, radios, etc. These residents (at 135 Jonson St) have a right to peaceful enjoyment of their residence. This will not be possible with a pool facility and leisure area bordering our house.

This development was approved by Byron Shire Council, with a substantial shortfall in open space and deep plantings. The developer successfully argued that he should be given major concessions to the SEPP 65 design rules for green space, communal space and natural light to units because 'The land is approximately 1 km from Main Beach and 0.5kms from the Byron Bay recreational grounds, both within easy walking and/or cycling distance of the land.' Now the community has this suboptimal development approved. Appropriate open space, communal space and natural light are basic requirements for any residential development in our subtropical climate. The development, due to the lack of green space and deep plantings and inadequate light, is a monolithic structure which does nothing to enhance the subtropical environment of Byron Bay. The developer can not on the one hand argue that he needs concessions for the above (essentially to cram more built structures into spaces and make more money!!) and use the examples of a local beach and park to

obtain such concessions; and then on the other hand say that he needs to add open space at the top of the building. BSC have granted the concessions to the developer and now he wants to abuse this by wishing to add a 4th level.

If this application is approved by BSC I would argue that there is no integrity in the approvals process. Exemptions were granted on the basis of representations from the developer. Whether these exemptions were valid or not is another matter. Had the 4th level pool been part of the original DA, the representations made to excuse compliance with communal space and therefore floor space ratios, would not be valid. The only rational result would have been to enforce the requirements on FSR and communal space. To maintain integrity of the approval process this proposal must be rejected.

This proposed 4th level adds to the bulk and height of the development, it negatively impacts surrounding residences and it does nothing to enhance the aesthetics of the area. This proposal must be refused because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minute walk of the development.

If this is approved it sets a detrimental and dangerous precedent for our town and the Shire. It will also call into question the integrity of the approval process, if developers are given concessions in the first round and then abuse these in subsequent additional proposals. Allowing such rooftop pools which do not meet the noise and privacy requirements will mean that future developments in Byron Bay will be allowed to intrude on the privacy of neighbouring residences and that noise emanating from such developments will be largely ignored and unregulated.

The pool facility and leisure area is proposed to be overlooking our backyard and not the street. When our tenants go out to our backyard they will be confronted with those accessing this facility peering over the inadequate glass balustrade. They will also be confronted with loud noises emanating from the facility. This will be a consistent issue.

The developer had supplied no plans of the development and the pool visually as it overlooks our place. D.P.TPI.20 shows in section the approved development and proposed swimming pool when

viewed from street level, the west side of Jonson St and also modeled perspectives- the west side of Jonson St north of the development, the west side of Jonson St opposite the development, the west side of Jonson St opposite the land and the roundabout opposite the land. Ironically the most impacted properties are ignored in the developer's proposal. The developer has recently put up this elevation (North). Given that this elevation was not provided until well into the second advertising period, surely the advertising period must begin again as we did not have access to this information.

We have a limited concept of how our privacy and amenity will be negatively impacted by this facility as there were no visual renderings or plans submitted by the developer until recently. In the submission by the developer there is discussion about the impact the proposal will have (according to the developer's reports) on these points noted above. There is no discussion or analysis of the visual impact or noise impact the pool facility and leisure area will have on our property- arguably the most impacted property under this proposal.

The height of the proposed pool facility and leisure area significantly increases the height of the development above the LEP limits. It will make an already bulky and dominating building even more imposing. There is no relief in this building. It does not capture the subtropical nature of the area nor does it invite its residents into an experience where they can enjoy adequate open communal spaces. This is because BSC gave concessions to the developer as there is plenty of 'open recreational space' in close proximity to the development. Adding this proposed facility makes this monolith more imposing. Approving this proposal above the acceptable height limits would call into question the integrity of the planning process.

This must be done for us to fully assess the impact of this development. This is a glaring omission in the documents submitted for this proposal. The proposal documents are incomplete, and as such, we are not in a position to fully evaluate the proposal. Given this, the development proposal must be readvertised with the required documents provided, so we, as submitters can avail ourselves of the full information regarding this proposal.

The developer cites *Wolgan Action Group Inc. v Lithgow City Council* (NSW LEC 1999, 2001, Talbot, J.) in support of his proposal as a 'minor' modification. The addition of a pool facility and leisure area is not a minor modification. The word 'modify' in this judgement was taken to mean 'to alter without radical transformation.' This proposal is a radical transformation to the development. The proposal is for a recreational area, sitting atop the development. It will significantly increase the height of the building above acceptable limits. The impacts of the proposed modifications are clearly not minor ones as has been discussed above. The proposal clearly creates adverse environmental impacts for all neighbouring properties and beyond.

The current proposal also have changed the position of the Plant Area For Retail Tenancies Air Conditioning Condensers and the 14 OFF Residential Air Conditioning Condensers so now this Plant is bordering our property. There appears to be a greater intensity regarding the number of condensers positioned in this area. This is a significant modification to the previous approved DA. This Plant borders a residential zone. It has a completely inadequate acoustic screen 1600 high. It is unclear what material this screen is made from but it appears to be just a wooden or wood type material, not acoustic glass or similar material, which would be required to moderate the noise emanating from the plant. There is also the issue that the plant is not situated in the permissible position on the development as it abuts a residential zone.

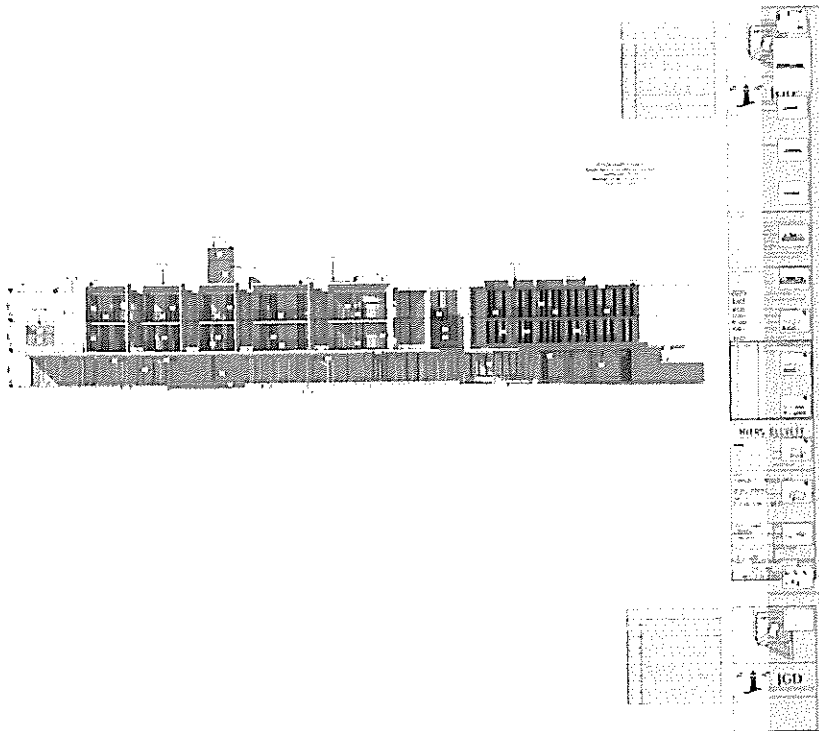
For these reasons this proposal must be rejected outright. The approved development is a suboptimal outcome. It fails to address the concerns of the community with regards to bulk, FSR, height, lack of light and ventilation, lack of deep plantings, lack of open space, traffic impacts, amenity impacts. It failed to comply with SEPP 65 on a number of grounds. Now we are faced with a proposal that increases the bulk and height of the development, further erodes the amenity of local residents (and probably many future residents of the development) and the *raison d'être* for this proposal is purely to enhance the saleability of the apartments and the developer's bottom line. This is a truly audacious and cynical move by the developer but at least he is honest in saying the proposal is to meet his own financial desires in being able to sell the apartments at a premium price.

If approved this proposal will set a dangerous precedent for any developer who wishes to add on a significant modification to an approved DA. Not only a significant modification but a modification which clearly fails to meet the requirements of SEPP 65 and the Byron LEP. The proposal does not meet the local community's expectations and must be rejected.



Given the stated reason for the lift overrun and the relatively small, thin profile it added, we decided that an objection would be pointless and accepted in good faith the Developer's reasons and Mr Van lersel's assurances.

The profile of the building approved in 10.2019.616.2 with the lift overrun is shown below.



Incremental Advancement to a 4th Level Structure:

Reflecting back on the history preceding this current modification application, it is clear that the Developer has followed a strategy to pursue 4th level development through the modification application channel, a course of action which many Planners hold is a less rigorous process than an all-inclusive initial DA.

Would Council have ever granted what is now sought on the 4th level if it had been included in the original DA?

Yet, in effect, that is what Council is now being asked to do.

Council originally allowed by way of concession, an estimated 3 more units valued at a minimum of \$3M at the expense of deep planting, green space and construction at lower standards than SEPP requirements. One of the reasons justifying this approval was that Main Beach was only a short distance away for recreational purposes. Accordingly, a 4th level pool and leisure area would have been highly problematical to seek back then. Clearly it has been held back for a 'down the track' presentation. Feeling a little manipulated?

Another reason advanced by the Developer in the original application was the need to make the project financially viable. At the time we expressed concern that this was in any way a proper request to be made of Council. Nevertheless, via the concessions granted in the original DA, the 28 units alone at \$1.2 million each will generate \$33.6 million without any account of the commercial stratas. Based on the DA estimate of construction costs at \$19.5 million, the project is doing well.

There is no evidence of a compelling reason to grant the application and that a refusal would in any way harm the Developer's financial interests.

We are not objecting to the Developer making a profit. However, Main Beach is still where it is, easily accessible by the development's residents for swimming and general recreation, thus voiding the need for a 4th level swimming pool and leisure area.

(continued) (D&I)

The Developer recently wrote to members of the BSRG:

"We had a lot of feedback from locals looking to buy into the building that they wanted a space where they can have open gardens and obviously were keen to see a pool in there given the climate here. Further, feedback from agents has been that unless we want young people and groups (given the central location) we would be wise to include "private" landscaped open space for residents, ideally with a pool, so there is space for relaxation beyond the confines of their apartments. We spent a lot of time considering the location of the pool so that it's not visible from Jonson, Browning streets or Ruskin Lane, and set it back so it can't be seen from 135 Jonson Street as well."

Clearly, the rooftop pool and gardens will lay the basis for higher rents and further increases in capital values. By seeking to avoid young people and groups, the Developer is moving completely away from the original intention to increase rental stock for the town's employees. The Developer was previously all about helping employees of the town's businesses and other professionals getting the chance to live/rent near the centre. Many of this group would be younger and live in groups of 2 or 3.

Does Council really want to diminish this type of rental to much needed employees by granting a modification application? This can form part of the **qualitative assessment** of the application as pointed out below.

Taken as a whole, the Developer, in his own words quoted above, confirms the substantial qualitative shift away from the original DA as approved.

The decision before Council:

Council has the jurisdiction to find that the Developer's modification application is significantly different to the original approval. It is the detailed comparison between the original DA and this modification application, leading to whether the final result is essentially either the same or a substantively different development that Council must decide.

The Developer submits (below in italics):

There are numerous decisions of the NSW Land and Environment Court relating to the modification of development consents. The key threshold questions are:

- 1. that the approved development when modified be substantially the same and*
- 2. the likely environmental impact of the proposed modifications.*

Our case is that, demonstrably, the development will:

- (a) Be significantly different in physical character and in breach of the LEP
- (b) Be an unnecessary structure in view of previous concessions granted and one which the Developer has acknowledge is not crucial to the project's financial viability.
- (c) Have adverse environmental effects by way of greater traffic in the laneway caused by short term renters and friends of owners and long-term renters visiting to enjoy the pool.
- (d) Create intrusive noise falling upon the immediately adjacent and close by residents.

The Developer cites the case **Moto Projects (No. 2) Pty Ltd v North Sydney Council (1999)**.

Bignold J described the following test in determining the threshold question relating to 'substantially the same': "The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is essentially or materially the same as the currently approved development.

The comparative task does not merely involve the comparison of the physical features or components of the development as currently approved and modified where the comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

Clearly, His Honour's findings give Council a wide scope to include all aspects of the differences between the original application and the current one, both quantitative and qualitative. This includes all of the circumstances and proposed benefits of the original DA approval.

The Developer also cites **Wolgan Action Group Incorporated - v - Lithgow City Council** (NSWLEC 1999, 2001,

Talbot J addressed the question of 'substantially the same development' in respect of s. 96 and said:

"Even if the present applicant is correct in that there will be a significant increase in the environmental impact..... that does not necessarily preclude a conclusion that the development, to which the consent as modified relates, is substantially the same development as that already permitted. There may be some additional environmental impact but that is a matter to be considered as part of the deliberations on the merits."
In this case,

His Honour also interpreted the meanings of the words 'substantially' and 'modify' (in the context of Section 96). The Developer submits that His Honour adopted meanings established in precedent cases. The word 'substantially' was taken to mean "essentially or materially or having the same essence". The word 'modify' was taken to mean "to alter without radical transformation".

The Developer continues with the argument that, following the tests established in these cases, the following key principles apply:

- *The comparison is undertaken at a general level rather than between detail.*

[We hold to the contrary, that Bignal J allows **every relevant qualitative and quantitative factor** in the modification application and the original application is to be considered]

- *The question is whether the development as a whole is essentially or materially similar to the original development*

[We hold that, as a whole, the modification application increases the height of the building well above the LEP limits, that it **substantially changes the impact of the building on the adjacent residents** and that it further encourages more short-term holiday rentals. If approved, it sets a **new acceptance of breaches in the LEP standards** by Council for all future constructions of this type.]

- *If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development*

[We hold that the modifications are not minor in any way. **They require substantial changes in plans and height exceedances** of at least 1.8 metres above the LEP standard]

- *It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land.*

[We hold that the size of the proposed development is of substantial magnitude by utilising a 4th level with **further increases in height probable** as shade umbrellas are installed post completion.]

- *The extent of any impacts arising from the modifications are matters for consideration on the merits of the application?*

[We hold that the Development is not surrounded by commercially zoned land but residentially zoned land whose owners have already had approval decisions causing around 1000 vehicle movements a day within 7 metres of some of them and who **should not be asked to accept intrusive noise** from a roof top swimming pool and leisure area. There is no adequate sound insulation above 1.3 metres on one side and no effective sound barrier on the south side.]

• *The development as modified must be essentially or materially the same or have the same essence as the approved development and the variations must not radically transform or alter the approved development.*

[We hold that this modification, if approved, will radically alter the original DA by transforming a commercial/residential amenity that was represented as providing much needed rental housing for a town in desperate need of such, into a series of privately owned units with owners, subject to final legal clarifications, able to rent their asset on a short-term holiday rental basis. That is the most likely case right now.

With the increased attractiveness of a 7 day a week, 365 day a year essentially unsupervised swimming pool area where individuals can congregate, and party with almost no effective monitoring of numbers present, the time of day of usage nor restriction of noise.

The modification application undermines the integrity of the original approval to allow more units on the site because of available off-site swimming and recreation opportunities.

All of the above propositions must now be considered in an unrestricted way as indicated by His Honour Justice Bignal, having regard to all qualitative and quantitative factors going back as far as the circumstances of the original approval and how substantially different the modification application would make it.

Short Term Holiday Rental in the Development

The NSW laws on short term holiday rental are in a state of flux. One thing is clear: the owners of their **principal place of residence can legally rent** independently of the by-laws of a Body Corporate. This may even preclude Council from banning such rental. The link to the relevant legislation is:

www.legislation.nsw.gov.au/view/html/inforce/current/act-2015-050#sec.137A

The precise provisions on annual length of short-term rentals in the Shire are also not yet determined.

The conditions of consent in the original DA state:

“The residential dwellings are not to be used as tourist and visitor accommodation or holiday let.”

It is not clear as to the legal basis Council would cite to enforce this condition. Indeed, in a recent Echo publication a Councillor was quoted that enforcement was expensive, with the outcome not guaranteed.

Is this condition connected to the enactment by the yet to be established Body Corporate of a by-law preventing short term rentals? If so, the current NSW exemption for owners of a principal place of residence renders such a by-law void.

Is there some other independent, firmly based legal head of power in NSW law that Council could rely upon to enforce this condition?

What length of term is a rental to a tourist or visitor considered to be a breach of the condition? 1 week, 21 days, 1 month, 3 months etc?

Who is a "visitor" as opposed to a "tourist"?

The condition is imprecise and confusing to the point where it could be declared invalid by the Courts.

Owners can be reliably expected to maximise their rental returns through this type of letting. No one, bar the ATO can check the claim by an individual concerning their principal place of residence. That information is protected by privacy laws.

Is Council or the Body Corporate seriously going to run a case against an owner undertaking short term holiday letting on the basis that it is not their principal place of residence?

The Developer states that the roof top pool and leisure area will operate from 8 am to 10 pm, 7 days a week, 52 weeks of the year. It is assumed the pool will be heated, otherwise why keep it open during winter?

He also states that there will be no cooking facilities or drinks bar. He wrongly concludes that owners and renters will not prepare, consume and drink food and beverages around the pool. His assertion denies the existence of 2 popular Australian items, the portable barbecue and the Esky. Indeed, the plan he proposes has table settings ideal for serving and consuming food and drink and upon which music amplification devices can be safely placed.

Council can confidently assume that the area will be heavily utilised. The hours of operation cannot be properly enforced and controlled without full time staff empowered to do this. To have half a chance of enforcing the controls proposed, an employee would have to be present to call out, at 9.45 pm each night:

"Last swim in the pool and drinks from your Eskies folks, closing at 10 pm."

How else can the residents, or people who have paid to come to the complex and enjoy its facilities on the many balmy Byron evenings we have, be forced to conform? Voluntarily? We don't think so!

On a different point to predictable human behaviour, in the proposed plan there are round holes in the table seating arrangements. Are these for umbrellas or pergolas to be erected post approval?

Will umbrellas be retrofitted by individuals with no standards for secure fitting? What happens to public safety if Bunnings style umbrellas in a big wind are blown away? Will and how would Council enforce an umbrella ban?

Is Council happy about further height increases beyond the LEP that the erection of such umbrellas or pergolas will cause? Logic dictates that in our skin cancer aware society people will want external sun protection. This has not been addressed openly in the modification application.

Further erosion of residential amenity:

Council has already required us, the adjacent and close by residents to accept the loss of Ruskin Lane by turning it into a commercial alleyway.

Council approved up to nearly 1000 vehicle movements a day into and out of the laneway in its first 8 metres from Browning Street. Further up the laneway in front of 1 Ruskin Lane, Council approved a truck loading bay with no reliable estimate of the number of truck deliveries that would occur daily. Each reversing movement creates extra noise through penetrating beeping alarms.

Given a presence of short-term holiday renters and visitors, the vehicle frequencies are likely to be constantly at or above the estimates in the original DA. A holiday renter will likely enter and leave the complex more often than the permanent occupiers as they explore the town and region during their shorter term of occupancy.

The Acoustic Report provided by the Developer gives no assessment of the noise most likely to be emitted by around 50+ occupants including their visitors utilising the facilities to their maximum.

The report itself is a highly esoteric document defying any ready understanding or critical interpretation by an ordinary person.

Its conclusions are fully qualified by stating acceptance of what the Developer says will be the operational circumstances to prevail under arrangements that he has described.

We have already shown how the popularity of the facility, the lack of direct supervisory controls, and the possibility of a number of short-term renters renders the report inadequate. It is not a reliable basis upon which approval of the modification application can be granted by Council.

While there is a 1.8m barrier to the south, described as a slatted screen, it will have no measurable sound proofing qualities. To the north east only a 1.3 metre glass barrier is to be built. This will allow noise near or above waist height to directly affect the home next door.

It will also affect the residential block directly behind this home which can be assumed as having a residence on it in the future. This block was not included in the report as a "Receiver". Presumably, it was overlooked because there is no development on it at the moment, a short-sighted approach.

The report omits any study of the nature of sound as it moves by fully radiating compression waves. Leakage around corners and over barriers occurs. Reflection off surfaces also enhances conduction, intensity and distribution of the noise.

Our practical experience with sound penetration into the lower level locations of our residences is comprehensive over many years. Noise currently experienced is disruptive and intrusive. The adjacent student accommodation has since its inception emitted sound by way loud conversation and music. Prior to Covid-19 we had to routinely request the full-time staff to intervene to moderate these emissions. In the evenings, especially with colder still nights, more dense air carries sound more strongly and clearly. Currently, with very few occupants the problem has been diminished.

To add a rooftop pool and leisure area to the development will add intrusive noise. This will be, on the likely balance of probabilities, greater than the current, highly qualified Acoustic Report predicts.

It is therefore not a reliable basis on which Council can confidently and fairly conclude that it has looked after the interests of its adjacent and the very close residents. Practical alternatives exist for the Developer. For example, he may wish to redesign the 3rd level to include a properly sound-proofed swimming pool if it is deemed to be an absolute necessity. This would how respect for the LEP and avoid noise problems. Perhaps that could be a conciliated outcome?

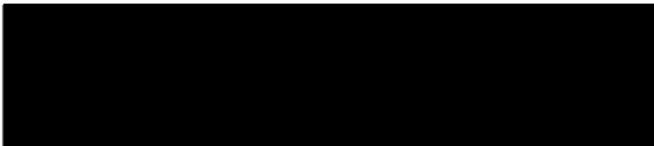
Recommendation:

We ask that Council acknowledge the obvious significant differences between the first modification (10.2019.616.2) that it approved, with a generous approach to a high lift overrun for maintenance purposes only, and the current much more elaborate modification application (10.2019.6163.3), that changes significantly the original approved application (10.2019.616.1).

On this basis we submit that application 10.2019.616.1 does not meet the strict conditions required by statute for approving modification of approved applications as it goes well beyond what the Developer sought and obtained in the original approval.

In reaching this conclusion we believe Council can rely on a combination of:

1. Its LEP.
2. The existing set of beneficial concessions granted at the Developers request, which included acceptance of the proximity to Main Beach for adequate recreation.
3. Its duty to protect the residential amenity of the adjacent and the very close by residential properties which have already been asked to accept many significant changes affecting the residential amenities of their properties.
4. The authority given by Bignall J to conduct a comprehensive qualitative and quantitative set of comparisons between the original approval and the current modification request.



7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.



From: [REDACTED]
Sent: Friday, 30 April 2021 1:12 PM
To: submissions@byron.nsw.gov.au
Cc: generalmanager@byron.nsw.gov.au; council
Subject: Fwd: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc

Dear Councillors and Council staff

I wrote a submission opposing the original DA for this proposal.
I do not support the proposed variation to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street for the following reasons. It is a gross overuse of the site.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
3. In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - green space
 - communal space
 - natural light in the units

If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.

5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.

6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.

7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.

7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures

are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,



Scott, Noreen

From: byroneforms
Sent: Friday, 30 April 2021 11:05 AM
To: council
Subject: 10.2019.616.3 - Submission of Object - [REDACTED]

Importance: Low

Development Application - Submission notification

Submission ID: BSC-005-946

DA number: 10.2019.616.3

Subject address: 139 Jonson st Byron Bay

Application type: Object

Other details:

Grounds: Dear Councillors, I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street. 1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area. 2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio? 3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for: • Green space • Communal space • Natural light in the units If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk. 4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold

Scott, Noreen

From: [REDACTED]
Sent: Monday, 3 May 2021 7:49 AM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

The development at 139 Jonson Street exceeds the LEP's height limit.

It will set a precedent for other non conforming development which will erode away the special character of Byron Bay.

We must continue to apply the LEP strictly according to planning guidelines despite pressure from greedy developers.

Thanks for considering my submission.

Scott, Noreen

From:

Sent:

To:

Subject:

Monday, 3 May 2021 8:17 AM
council

Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.
 2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?
 3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:
 - Green space
 - Communal space
 - Natural light in the units
- If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.
4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.
 5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.
 6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.
 7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.
 7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules

before this proposed pool and recreation area was added.

Yours sincerely,

Scott, Noreen

From: [REDACTED]
Sent: Monday, 3 May 2021 9:53 AM
To: council
Subject: Submission on S.4.5.5. variation to DA 10.2019.616.3 for rooftop pool etc

2 Lilli Pilli Dr
Byron Bay
2481

Dear Councillors,

I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street.

This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.

We must never lose sight of the reason for Byrons popularity: that it is settled within the environment not dominating over it. Raising height restrictions will destroy our point of distinction from other tourist destinations and reduce our liveability for residents. Our environment is not a mere backdrop to greedy aspiration. It is the most precious thing we have

We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio? Cemetery road is a nightmare to navigate permanently parked cars making it a one lane road. Will this become true of Jonson st too?

In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for: • green space • communal space • natural light in the units If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.

The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each. Once again the community loses for private gain.

Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.

Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.

The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present. This is Ibeza in the making.

The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.

I am alarmed at the size, scale and cultural impacts of this development in this location . Also the precedent it sets. Whatever has happened to councils Cultural policy and Cultural plan it adopted!

I urge you to support the expectations of Byron's residents that our planning measures are upheld, that our hard won height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added.

Yours sincerely,

A black rectangular box used to redact the signature of the sender.

From: [REDACTED]
Sent: Monday, 3 May 2021 1:56 PM
To: council
Subject: Submission on S.4.5.5, variation to DA 10.2019.616.3 for rooftop pool etc on Jonson St

Dear Councillors, I do not support the proposal to build a rooftop swimming pool and leisure area on the top of the development at 139 Jonson Street. 1. This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area. 2. We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio? 3. In 2019 the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for: • Green space • Communal space • Natural light in the units. If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk. 4. The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each. 5. Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance. 6. Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact. 7. The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present. 7. The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height. I urge you to support the expectations of Byron's residents that our planning measures are upheld, that height limits are observed and note that this development had already been allowed significant concessions to the planning rules before this proposed pool and recreation area was added. Yours sincerely,