

## 1. CONDITIONS OF CONSENT

### SCHEDULE 1. CONDITIONS OF CONSENT

#### Parameters of consent

1. **Development is to be in accordance with approved plans**

The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
DA 1.02	Proposed Site Plan	Unattributed	1/04/2021
DA 2.02	Proposed Floor Plans	Unattributed	1/04/2021
DA 2.03	Proposed Roof Plan	Unattributed	1/04/2021
DA 2.04	Proposed FSR Plans	Unattributed	1/04/2021
DA 3.01	Elevations	Unattributed	1/04/2021
DA 3.02	Elevations & Section	Unattributed	1/04/2021

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

2. **Support for neighbouring buildings**

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made or builder must:

- a. Inform the neighbouring property owner immediately.
- b. Engage a structural engineer to determine any remedial works that may need to be undertaken.
- c. Preserve and protect the adjoining building from damage.
- d. If necessary, underpin and support the building in an approved manner.

3. **Coastal Erosion**

The development must cease if at any time the coastal erosion escarpment comes within 50 metres of any building associated with this development. The buildings and works used in connection with the development must be removed immediately to an approved location by the owner of the land. The owner must return the landform of the subject land to the predevelopment state and suitably revegetate the land.

In this condition coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.

**Note: at the end of a storm the escarpment may be nearly vertical; as it dries out, the escarpment slumps to a typical slope of 1 vertical to 1.5 horizontal.**

4. **Conditions prescribed by the Regulation**

This development consent is subject to the conditions prescribed by the regulations in accordance with subsection 4.17(11) of the Environmental Planning and Assessment Act 1979. Conditions are provided in **Schedule 3** of this consent.

5. **Concurrent Approvals**

The following approvals are provided under Section 4.12 of Environmental Planning and Assessment Act, subject to the conditions contained in **Schedule 4** of this Notice of Determination:

## Concurrent Approvals under Section 68 of the Local Government Act 1993

### Part B Water supply, sewerage and stormwater drainage work

- B1 Carrying out water supply work
- B4 Carrying out sewerage work

These works must be carried out to the satisfaction of Byron Shire Council and can not be assessed for the purpose of compliance, or otherwise deemed acceptable by a private certifier.

#### 6. Bush fire safety measures

This land is identified as being designated bush fire prone land and under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with "Planning for Bush Fire Protection 2019". The development is approved subject to the following conditions:

##### Asset Protection Zones

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel and other assisting fire fighting activities.

1. At the commencement of building works and in perpetuity, to assist in the ongoing protection from the impact of bush fires, the entire property shall be managed as an Inner Protection Area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

##### Water and Utilities Services

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel and other assisting fire fighting activities.

2. Any new or extension of existing water, electricity, and/or gas service must comply with table 7.4a of Planning for Bush Fire Protection 2019.

##### Construction Standards

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities. To achieve this, the following conditions shall apply:

3. New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2018 'Construction of buildings in bush fire-prone areas' and the relevant provisions of Section 7.5 of Planning for Bush Fire Protection 2019.

##### Landscaping Assessment

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

4. Landscaping within the required inner protection area is to comply with the principles of Appendix 4 of 'Planning for Bush Fire Protection 2019'

### The following conditions are to be complied with prior to issue of a Construction Certificate for building works

#### 7. S.88E Public Positive Covenant to be placed on title – Coastal erosion

Documentary evidence is to be provided to the Principal Certifying Authority that a public positive covenant, pursuant to the provisions of S.88E of the Conveyancing Act, 1919, has

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been placed on the title to the land, the subject of this consent, stating:-

*The development granted via development consent number 10.2021.178.1 must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of this consent must be demolished and removed immediately. Further the landowner must suitably revegetate the land.*

*In this covenant coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.*

**Please note:** Documents requiring the endorsement of Council associated with the creation or cancellation of easements, restrictions, covenants are subject to fees listed within Council's Fees & Charges.

8. **Stormwater Drainage – Connection to Existing Drainage System**

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with AS/NZS 3500.3:2003, *Plumbing and drainage, Part 3: Stormwater drainage*. All stormwater drainage for the development must be conveyed by a gravity system to the existing stormwater drainage system within the site. Such plans and specifications must be approved as part of the Construction Certificate.

9. **Flood Planning Level**

The flood planning level for this development is 3.63m A.H.D. The plans and specifications to accompany the construction certificate application are to indicate a minimum habitable floor level that is at, or up to 0.3m above, the flood planning level unless a greater floor level has been shown on the plans approved by the development consent.

The plans and specifications to accompany the construction certificate application are to also indicate the use of flood compatible materials and services below the flood planning level in accordance with the requirements of Council's Development Control Plan 2014 – Chapter C2 – Areas Affected by Flood.

Such plans and specifications must be approved as part of the Construction Certificate.

10. **Long Service Levy to be paid**

In accordance with Section 6.8 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable).

These payments can be made online at [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au). Proof of payment is required to be submitted with the Construction Certificate application.

For further information regarding the Long Service Payment please refer to the website above.

11. **Bond required to guarantee against damage to public land**

A bond of \$3000 is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development, together with payment of an asset inspection fee in accordance with Council's fees and charges. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repaired

to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc.

12. **Site Waste Minimisation and Management**

All works must comply with the objectives of waste minimisation and waste management of Part B8.1.2 of DCP 2014.

13. **Tree Removal**

No trees or vegetation to be cleared or removed until a Construction Certificate has been issued.

**The following conditions are to be complied with prior to any building or construction works commencing**

14. **Erosion and Sediment measures**

Erosion and sedimentation controls are to be in place in accordance with the Guidelines for Erosion & Sediment Control on Building Sites. A copy may be downloaded from Council's web site. Particular attention is to be given to the provision of the following sediment and erosion control measures:

- a) Temporary driveway from the edge of road to the building site;
- b) Temporary downpipes immediately installed after the roof has been erected;
- c) Silt fence or sediment barrier.

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

**The following conditions are to be complied with during any building or construction works**

15. **Construction times**

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a. Monday to Friday, from 7 am to 6 pm.
- b. Saturday, from 8 am to 1 pm.

No construction work to take place on Sundays or public holidays.

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

16. **Construction Noise**

Construction noise is to be limited as follows:

- a. For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b. For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

17. **Signs to be erected on building and demolition sites**  
A sign must be erected in a prominent position on the work site:
- a. stating that unauthorised entry to the work site is prohibited, and
  - b. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- Any such sign is to be removed when the work has been completed.
18. **Builders rubbish to be contained on site**  
All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.
19. **Fill to be retained on the subject land**  
Fill material must not encroach onto any adjoining land.
20. **Prevention of water pollution**  
Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.
- Note: Council may impose on-the-spot fines for non-compliance with this condition.**
21. **Maintenance of sediment and erosion control measures**  
Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.
22. **Demolition**  
Any required demolition works must be undertaken in accordance with the relevant requirements of Australian Standard AS 2601–1991: The Demolition of Structures published by Standards Australia, and the WorkCover Authority of NSW.
23. **Removal of demolition and other wastes**  
All wastes, including asbestos and lead-contaminated wastes, associated with these works are to be handled and disposed of in accordance with the requirements of the Work Cover Authority. The applicant/owner is to produce documentary evidence that this condition has been met. Wastes must be disposed of at a Licenced Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with the [NSW DECC Waste Classification Guidelines \(2008\)](#) .
24. **Aboriginal Relics**  
If any Aboriginal archaeological relics or items are exposed during construction works, the Applicant shall:
- a. immediately cease works;
  - b. notify the NSW National Parks and Wildlife Service (NPWS);
  - c. obtain any necessary permits and/or approvals to continue the work under the National Parks and Wildlife Act 1974.
- The Applicant shall comply with any further request made by the NPWS to cease work for the purposes of archaeological assessment and recording.

**The following conditions are to be complied with prior to occupation of the**

## building

25. **Works to be completed prior to issue of a Final Occupation Certificate**  
All of the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development including approvals issued under the Local Government Act 1993 and the Roads Act 1993, are to be completed and approved by the relevant consent authority/s prior to the issue of a Final Occupation Certificate.
- Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Councils road/footpath reserve.
26. **Plumbing Works**  
All works in relation to any associated Section 68 Water and Sewerage approval must be fully complied with and have a Final Plumbing Certificate issued prior to the issue of an Interim or Final Occupation Certificate.
27. **Stormwater drainage work**  
Stormwater drainage for the development must be constructed in accordance with the approved plans and specification prior to issue of an occupation certificate.

## The following conditions are to be complied with at all times

28. **Studio building not to be used as a separate dwelling and use must not interfere with amenity**
- The studio building must not contain any lounge room, dining room, rumpus room, kitchen, bedroom or other habitable room and must not be used as a separate dwelling.
  - The studio must only be used as a non-habitable workspace including activities that cannot be carried out by their nature within the residential house.
  - The studio not to be used for short-term rental accommodation.
  - The use of the studio building must not be conducted in such a manner as would interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise.

## SCHEDULE 2. PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Part 6 Division 8A of the Environmental Planning and Assessment Regulation as at the date of this development consent as are of relevance to this development must be complied with:

- |            |  |
|------------|--|
| Clause 98  | Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989 |
| Clause 98A | Erection of signs  |
| Clause 98B | Notification of Home Building Act 1989 requirements  |
| Clause 98C | Conditions relating to entertainment venues  |
| Clause 98D | Condition relating to maximum capacity signage   |

Clause 98E Condition relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Part 6 Division 8A of the [Environmental Planning and Assessment Regulation 2000](http://www.legislation.nsw.gov.au). This can be accessed at <http://www.legislation.nsw.gov.au>.

### **SCHEDULE 3. LOCAL GOVERNMENT ACT 1993 SECTION 68 CONDITIONS OF APPROVAL**

Approval has been granted with this consent for the following activity approval/s:

- Council reference No: 60.2021.178.1

#### **Description of Activity granted approval:**

- **Staging:** Nil
- **Part 1 Private works:** Water and sewer works associated with a studio/work space to install a shower, toilet and basin only.
- **Part 2 Council Assets:** No Consent given for any works on council assets. (Councils assets deemed to start at the outlet of the water meter and sewer boundary shaft.)

A copy of the approved plans and this approval must be onsite at all times and during all inspections. The contractor employed to do the works must be given a full copy of this approval and approved plans. The contractor must present the approved plans during any inspection, failure to produce the approved plans will result in a failed inspection at the applicants cost. Reinspection for the works will be required to be booked in by the contractor; this may lead to costly delays.

#### **PART 1: Private works conditions**

##### **Deemed from the outlet of the water meter(s) and sewer boundary shaft.**

- 1. All works associated with this approval must be fully contained inside the properties boundaries unless prior approval from Byron Shire Council has been granted.**
- 2. Prior to commencement of works**

In accordance with the Local Government Act and the NSW Code of Practice for Plumbing and Drainage your Plumber **must obtain a Plumbing Permit at least two (2) working days prior to commencing work**. Please forward this to your plumber to complete and to return to Council prior to commencement of work. All work is to be completed by a suitably qualified person licensed for the purpose by the NSW Department of Fair Trading. If the property is to be connected to council water mains, no internal sewer inspections shall take place until a water meter is installed. Drawing off of the council water main without a meter will result in a fine and possibly a stop works notice.

##### **3. Unapproved fixtures**

Any unapproved fixtures shall be removed to council's satisfaction.

##### **4. During Construction**

Plumbing, Water Supply and Sewerage works shall be installed in accordance with the Local Government Act 1993, Plumbers Code of Australia and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications. The changes made are from Plumbers and Drainage Regulation 2012 NSW Government

The licensee is to provide 24 hours notice and attend the site for the following **INSPECTIONS**, prior to covering of work. Inspections will be carried out a mutually convenient time for any works that fall under the following descriptions for inspections. (If there are no applicable works, for example, a new water supply with no sewer services, then an inspection for "external drainage" will not be required)

Typical inspections that must be booked in include but are not limited to:

- Internal Drainage;
- External Drainage;

- Sewer connection to council boundary shaft/asset
- Water Rough In;
- Stack work;
- Final - all work completed. - \* Note below.

The licensee is required to provide to Council and owner of the property a Compliance Certificate and Sewer Services Diagram. Failure to provide Council with the required documents within 48 hours of the final inspection taking place will render the inspection as failed. Another final inspection will be required, fees apply.

All documents must be submitted directly to [Council@byron.nsw.gov.au](mailto:Council@byron.nsw.gov.au)

Do not send documents to Council officers. Any document sent directly to an officer will not be actioned.

Sewer services diagram to be to NSW fair trading requirements.

See link below.

[http://www.fairtrading.nsw.gov.au/ftw/Tradespeople/Plumbers\\_and\\_drainers/Plumbing\\_and\\_drainage\\_inspections/Plumbing\\_inspection\\_documents.page?#sewer\\_service\\_diagram](http://www.fairtrading.nsw.gov.au/ftw/Tradespeople/Plumbers_and_drainers/Plumbing_and_drainage_inspections/Plumbing_inspection_documents.page?#sewer_service_diagram).

## 5. Ancillary Conditions

### a) BASIX Certificate

All works must be in accordance with the corresponding BASIX certificate if there is an affiliated DA with BASIX requirements.

### b) Back flow protection Register

Any testable backflow device installed shall be commissioned with a copy of the commissioning certificate submitted to council.

This in addition to a scale floor or site plan detailing the device location and what it serves.

### c) Thermostatic Mixing Valve/warm water system Register

Any Thermostatic Mixing Valve/warm water system installed shall be commissioned with a copy of the commissioning certificate submitted to council.

This in addition to a scale floor or site plan detailing the device location and what it serves.

### d) Outdoor Showers:

The external shower must be one of the following:

- Coldwater supply only, discharging directly onto the ground; or
- Hot and cold water supply, connected to sewer and protected by a roof structure to prevent rainwater ingress. Any hardstand surrounding the shower base must be graded away from the shower gully to prevent the ingress of stormwater. The shower base must have a minimum 30mm bund or approved equivalent.

Note: The required roof overhang is to be 10 deg. larger than the shower base. The 10 deg. angle is projected upwards from the edge of the shower base.

### e) Garbage disposal units

Garbage disposal units or the like are not allowed to be installed.

### f) Storm water Ingress

Sewer inlets shall be protected from storm water ingress. As a minimum a permanent roof cover shall over hang any plumbing fixture and exceed the outermost edges of any fixture (sink, bowl etc) measured 10 degrees from the vertical to the lowest part of the roof. The cover must be all weather and structurally supported. This may require a certificate from the building certifier.

### g) Commercial/Industrial buildings with Bin Storage Areas.

Development Control Plan Appendix B8.6 Commercial/ Industrial Waste and Recycling Storage Areas, Waste/recycling storage areas must be serviced by a hose cock complete with a RPZD back flow device. The hose cock and backflow device must be protected from



the waste containers and must be located in a position that is easily accessible when the area is filled with waste containers. The storage area MUST drain to sewer and will therefore be required to be protected from rain water ingress. This will require adequate bunding and roofing or such storage areas.

- h) Flood Level:** The “Declared Flood Level” as per AS3500.2 Clause 3.15 is determined to be the “1 in 100 year flood event”, which can be derived from the corresponding DA or Council generated flood certificate by taking 500mm from the “flood planning level”.

Therefore:

- i) Any inlet to any fixture must be 150mm above the “1 in 100 year flood event”, or discharge via an ejector pump and float shut off (Clause 3.15.2).
- ii) The Overflow relief gully (ORG) must be a minimum 150mm above the “1 in 100 year flood event” in accordance with Clause 4.6.6.8.
- iii) Fixtures inlets must be 150mm above the ORG Clause 4.6.6.6, Otherwise a reflux valve is required as per Clause 4.5.

6. Any Please note Council has sent each plumber proformas of these documents when your permit was issued to commence work. If the works cannot be plotted on the supplied proforma, the NSW fair trading website has alternative sizes of submission sheets. It is the applicant’s responsibility to engage a licensed plumber who shall liaise with council during this process.

#### **SCHEDULE 4. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED**

*Note: From July 1 2018, Council’s are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

<b>Statement of Reasons</b>
The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Council’s Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.
<b>How community views were addressed</b>
The DA was notified/advertised in accordance with Council’s Community Participation Plan. No submissions were received.

#### **SCHEDULE 5. NOTES**

##### **Construction Certificate required:**

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing. Application forms are available from the customer services counter or Council’s website [www.byron.nsw.gov.au](http://www.byron.nsw.gov.au)

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**Principal Certifying Authority:**

Work must not commence until the applicant has:-

- a. appointed a Principal Certifying Authority (if the Council is not the PCA); and
- b. given Council at least two days notice of the intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- c. notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

**Occupation Certificate required:**

The building must not be occupied until the Principal Certifying Authority has issued an Occupation Certificate.

**Protection of the Environment Operations Act 1997:**

It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution.

**Penalties apply for failure to comply with development consents**

Failure to comply with conditions of development consent may lead to an on the spot fine being issued pursuant to section 4.2(1) of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 9.50 of the Environmental Planning & Assessment Act 1979.

**Relics Provisions- Advice**

Attention is directed to the NSW Heritage Act 1977 and the provisions of the Act in relation to the exposure of relics. The Act requires that if:

- a) a relic is suspected, or there are reasonable grounds to suspect a relic in ground, that is likely to be disturbed damaged or destroyed by excavation; and/or
- b) any relic is discovered in the course of excavation that will be disturbed, damaged or destroyed by further excavation;

Those responsible for the discovery must notify nominated management personnel who will in turn notify the Heritage Council of New South Wales or its delegate, the Office of Environment and Heritage, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss139, 146).