

**Scott, Noreen**

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**From:** David Arter <arteremail@gmail.com>  
**Sent:** Thursday, 14 November 2019 9:22 AM  
**To:** Cr. Simon Richardson; Cr. Sarah Ndiaye; Cr. Michael Lyon  
**Cc:** Tarlao, Nancy; Burt, Shannon; council; Kate Singleton  
**Subject:** Councillors - A Plea for Protection Re: DA: 10.2018.466.2 (61 Kingsley St, Byron Bay ) ...  
**Attachments:** Arter Submission (6-Nov-19).pdf; KS Submission (8-Oct-18).pdf; Arter Submission (18-Mar-19).pdf; KS Submission (18-Mar-19).pdf; Arter Submission (3-May-19).pdf; KS Submission (8-May-19).pdf; Arter Notice (19-Jun-19).pdf

Dear Mayor Richardson, Deputy Mayor Ndiaye & Councillor Lyon,

**Re: Plea to Council for Protection against DA Modification No: 10.2018.466.2 (61 Kingsley St, Byron Bay).**

My name is David Arter and our family home (1/59 Kingsley Street, Byron Bay) is located directly next door to the Applicant (61 Kingsley Street).

At **Council's Planning Meeting** (on 20-Jun-19), Councillors unanimously approved Planning's recommendation for the imposition of explicit **Conditions of Consent** for DA approval.

These Explicit Conditions were designed to address the material non-compliance of the DA and to reduce the extent of the devastating impact on our home from:

- **Significant overshadowing** resulting from material breaches of the building height plane (by +2-metres on the western side elevation) via a large 3-level (no excavation) development proposal in the heart of Byron's Heritage Conservation Area, &
- **Significant privacy breaches** - from two large (& elevated) external decks / verandahs providing direct visual access into our master bedroom, baby's bedroom, master bathroom & across our entire rear backyard.

This has been a long, frustrating and very expensive process for us to simply protect our rights as home-owners from what has been a materially non-compliant DA from inception (+12-months ago).

Even more distressing for us, the Applicant has now lodged a DA Modification (Oct-19), which effectively **seeks to delete (or non-comply) with all the key Conditions imposed by Councillors** to protect our home from non-compliance.

**We Plead with Council to up-hold the Conditions recommended by Planning and unanimously approved by all Councillors at its Planning Meeting (held on 20-Jun-19).**

### **Recent Background:**

Simon, Sarah and Michael - I met and spoke with you both at the Council Planning Meeting on 20-Jun-19 and I also presented to all Councillors at that meeting. I apologise for contacting you and know you are all very busy. I contact you on the basis of an issue that is of material concern to us and our rights as homeowners.

At the Planning Meeting (Jun-20) all Councillors approved Planning's recommendation to impose a number of Explicit Conditions on the Applicant's DA. These Conditions were clearly explained and designed to reduce the detrimental impact on our home from the DA's non-compliance.

**Council's Planning Department** (via Nancy Tarlao & Shannon Burt) have been diligent and professional, and tabled recommendations that were balanced in the interests of all parties. Specifically, the Conditions recommended by Planning, and approved by ALL Councillors endorsed key protections of our basic rights as home-owners.

While there were many aspects of Planning's recommendation that we did not like, we viewed it as a balanced outcome for all parties and supported it in full (as evidenced by my email to Council prior to the meeting & via my formal address at the Planning Meeting).

### **Latest Developments**

In short, the Applicant (61 Kingsley St, Byron Bay) has lodged a new DA, seeking to delete all-important conditions (and non-comply with others), specifically non-compliance with Explicit Conditions imposed (& designed to address):

- **Condition 6: Reduce ceiling heights at all levels** - to reduce the extend of the building height plane breach on the western side elevation (overshadowing our home);
- **Condition 37: Planting of native hedges for privacy** from visual invasion from a (elevated) rear deck (looking into our master bathroom & across our entire backyard);
- **Condition 1: Compliance with the approved Conditional Plan**, notably privacy screens on side verandah to a height of 1.8m(plus all other items in the Plan).
- ... we also note the proposed **non-compliance with Condition 5** (via the proposal in the Latest DA to continue to use **prohibited external finishes** for the colorbond roof and wall cladding finishes (in the Heritage Conservation Area).

Our request is simple, and it is one of a balanced resolution ... we are merely asking for Council to up-hold and impose its Approved Conditions of Consent for this DA.

**In other words, We again PLEAD with Council to review this Latest DA (Oct-19) and to up-hold strict compliance with Council's existing explicit Conditions of Consent.**

### **Our Submissions Lodged with Council**

Attached is our **formal Submission lodged with Council (on 6-Nov-19)** in relation to the Latest DA (Oct-19). This submission clearly notes the basis of our objections.

Also attached are other **previous submissions**(from over the past ~13-months) from:

- us (as home-owners of 59 Kingsley Street)
- Kate Singleton from Planners North (our Town Planner),
- and our Consultant Architect (via Kate Singleton)

Should you require any additional information, then please do not hesitate to contact me.

Kind regards,

**David Arter**

(refer further information below & attached)  
1/59 Kingsley Street,  
BYRON BAY NSW 24191  
m: 0419 564 191  
e: [arteremail@gmail.com](mailto:arteremail@gmail.com)

----- Forwarded message -----

From: **David Arter** <[arteremail@gmail.com](mailto:arteremail@gmail.com)>  
Date: Wed, 6 Nov 2019 at 13:23  
Subject: Submission - Re: DA: 10.2018.466.2 ( 61 Kingsley St, Byron Bay ) ...  
To: Tarlao, Nancy <[nancy.tarlao@byron.nsw.gov.au](mailto:nancy.tarlao@byron.nsw.gov.au)>, <[shannon.burt@byron.nsw.gov.au](mailto:shannon.burt@byron.nsw.gov.au)>  
Cc: <[Council@byron.nsw.gov.au](mailto:Council@byron.nsw.gov.au)>, Kate Singleton <[Kate@plannersnorth.com.au](mailto:Kate@plannersnorth.com.au)>

Dear Nancy & Shannon,

**Re: DA Modification No: 10.2018.466.2 (61 Kingsley Street, Byron Bay):**

Hello again. My name is David Arter, and as you are aware, our family home (59 Kingsley Street) is located directly next door (to the west) of the Applicant property (61 Kingsley Street).

**Reluctantly, and once again, we have no choice but to PLEAD with Council to REJECT key provisions (of non-compliance) within the latest DA (Oct-19), and adhere to Council's existing Approved Plan (& ALL explicit Conditions).**

**Background:**

Councillors unanimously approved an **Adjusted Plan (with explicit Conditions)** at its **Planning Meeting held on 20-Jun-19**. This followed a long period of consideration by Council at all levels. The Applicant (61 Kingsley Street) has now lodged a new DA (Oct-19), which attempts to:

- **Delete key conditions** (Condition 6: specified ceiling heights at all three levels);
- **Non-comply with other conditions** (height of privacy screen, planting of 3m high native hedges for privacy, & external finishes), &
- **Amend key conditions** (Condition 1: compliance with Approved Plan).

The Latest DA seeks non-compliance with all the key protections of our basic rights, as recommended by Planning & approved by all Councillors, at its Planning Meeting (20-Jun-19). The Latest Plan seeks to unwind the basic protections put in place to protect our home from: (a) **over-shadowing**, & (b) **privacy breaches**, resulting from various versions of a non-compliant Plan (including a **material breach of the building height plane** on the western (side) elevation at all levels).

Hence, I write to Council reluctantly, and with considerable frustration and irritation given the long, expensive and time-consuming history of the Applicant attempting to push through a DA that is materially non-compliant and imposes a profoundly detrimental impact on our home.

***Once again, we plead with Council to REJECT key provisions within the latest DA (Oct-19) and strictly adhere to Council's Approved Plan (and all Explicit Conditions).***

**Attached** is our **Detailed Submission** highlighting the many proposed changes under the Latest DA (Oct-19), and critical non-compliance with Council's existing Approved Plan (with Attached Conditions):

- **Submission to Council from David Arter (6-Nov-19) - refer attached**

Also attached are historical copies of Submissions lodged with Council (over the past 1-year and beyond), by ourselves, our consultant Town Planner (Kate Singleton), and our Consultant Architect, detailing the ongoing non-compliance of various versions of the DA ,and the resultant detriment imposed on our home.

Attached are (historical submissions) highlighting ongoing non-compliance:

- Submission by Kate Singleton (8-Oct-18)
- Submission by Darter (18-Mar-19)
- Submission by Kate Singleton (18-Mar-19)
- Submission by David Arter (3-May-19)
- Submission by Kate Singleton & Consultant Architect (8-May-19)
- Letter to Councillors from David Arter (19-Jun-19)

Should you require any additional information, then please do not hesitate to contact me (contact details below), and/or Kate Singleton at Planners North (m: 0438 803 021, e: [kate@plannersnorth.com.au](mailto:kate@plannersnorth.com.au))

**Please up-hold the Approved Plan and ALL the explicit Conditions (dated 24-Jun-19), as approved by All Councillors at its Planning Meeting (on 20-Jun-19).**

Kind regards,

**David Arter**  
1/59 Kingsley Street  
BYRON BAY NSW 2481  
m: 0419 564 191  
e: [arteremail@gmail.com](mailto:arteremail@gmail.com)



David Arter &lt;arteremail@gmail.com&gt;

**Planning Meeting & DA 10.2018.466.1 (61 Kingsley St, Byron Bay) ...**

message

**David Arter** <arteremail@gmail.com>

19 June 2019 at 10:18

To: shannon.burt@byron.nsw.gov.au, chris.larkin@byron.nsw.gov.au, "Tarlao, Nancy" <nancy.tarlao@byron.nsw.gov.au>, Council@byron.nsw.gov.au  
Cc: Kate Singleton <Kate@plannersnorth.com.au>, NScott@byron.nsw.gov.au  
Bcc: David Arter <arteremail@gmail.com>

Dear Shannon, Chris &amp; Nancy,

**Re: Council Planning Meeting (20-Jun-19) & DA 10.2018.466.1**

Firstly, thank you for recognising our concerns in relation to the proposed development at 61 Kingsley St and the material impact (shadowing & privacy) on our home resulting from the breach of the building height plane under the proposed plan.

I write to you in appreciation of the proposal being put forward to the Council Planning Meeting (scheduled for 20-Jun-19). While there are aspects that we do not like, we believe the recommendation tabled for approval and subject to conditions of consent, presents a balanced proposal for all parties.

**On the basis of the recommendation to be considered at the Council Planning Meeting, if it was approved in full, and complied with in full by the Applicant, then we would be satisfied with this as being a balanced outcome for all parties, and would cease our objection.**

Our position above, is on the basis that the recommendation of council officers as tabled in the meeting agenda (and the attachment documents), is approved in full by Council. This includes the adoption of all the conditions, as specified in Schedule 1 & 2 of the Public Attachments Notice, most notably:

Parameter of Consent Items (extract):

- 1. Development to be in accordance with approved plans (as presented to the Planning Meeting)
- 6. Amended plans to be submitted with the Construction Certificate (including lowering of the dwelling by 500mm, with total height no greater than 8.5m)
- 32. Height Survey (by registered surveyor to certify building heights, as prescribed above)
- 37. Hedge Planting (minimum 5 native hedge plants to mature growth max of 3m located within fence line where pool & verandah are to be located).

The above is also subject to inclusion of the privacy screens as per the current proposed plans (and noted in the comments on page 108 of the Agenda).

We also view condition **5. External Finishes** as being a sensible and well founded recommendation of Council.

**We are happy for this email communication to be forwarded to the Councillors prior to the Planning Meeting scheduled for Thursday 20-Jun-19.**

Thank you again for fully investigating the DA, recognising our concerns in relation to the detrimental impact on our home resulting from the material BHP breach, and for recommending a solution that incorporates the protection of our basic rights as home owners.

Kind regards,

**David Arter**

59 Kingsley Street  
Byron Bay NSW 2481  
m: 0419 564 191  
e: arteremail@gmail.com



David Arter &lt;arteremail@gmail.com&gt;

**Important - Re: DA 10.2018.466.1 (61 Kingsley Street, Byron Bay) ...**

1 message

David Arter &lt;arteremail@gmail.com&gt;

3 May 2019 at 09:56

To: "Tarlao, Nancy" <nancy.tarlao@byron.nsw.gov.au>, chris.larkin@byron.nsw.gov.au, shannon.burt@byron.nsw.gov.au, sburt@byron.nsw.gov.au, Council@byron.nsw.gov.au  
Cc: Kate Singleton <Kate@plannersnorth.com.au>  
Bcc: David Arter <arteremail@gmail.com>

Dear Nancy, Chris &amp; Shannon,

**Re: DA 10.2018.466.1 (61 Kingsley Street Byron Bay)**

I communicate to again formally record our objection to the DA (as referenced above) given the **material detrimental impact** the current plan would have on our home as a result of the plan's **non-compliance with regulation**.

Our family home is 59 Kingsley Street, located directly next door to the applicant (61 Kingsley Street).

Firstly, thank you Nancy for attending a site visit to our home (on Tuesday 9-Apr-19). At that time, the amended plan lodged with Council deliberately omitted details of material breaches to the building height plan on the western and northern elevations of 61 Kingsley Street.

We understand, at the request of Council, this information has since been provided (received this week). This information indeed confirms the material breaches to the building height plan (by +2-metres on 2nd and 3rd levels) - refer to image further below.

These breaches are consistent with the clear assertions that our Town Planner (Kate Singleton, Planners North) and we personally made in our formal submissions to Council (dated 18-Mar-19, & prior to that on 8-Oct-18, copies attached).

In addition to the above, the applicant has not provided any information to Council to illustrate the impact (overshadowing, etc) that the building height plane breaches would inflict on our home. As such, Council does not have the critical information to make a determination with respect to the DA.

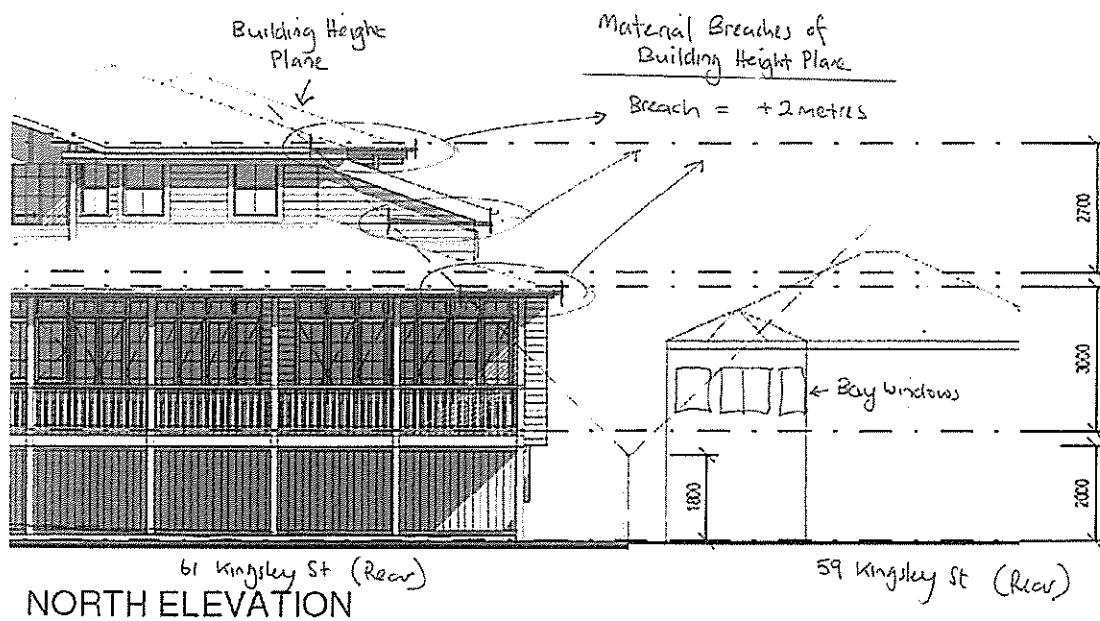
In fact, it is clear that the **material building height plane breaches** would have a **significant detrimental impact on our right to solar access and privacy** ... this is the fundamental basis to our ongoing objection to the DA, with the material building height plane breach clearly illustrated in the plan subsequently supplied to Council this week (as below).

This non-compliance inflicts resultant over-shadowing and a devastating impact on our access to solar amenity (and privacy). Additional vital information (impact on solar amenity and privacy) will be supplied by our Town Planner to Council in the coming days.

**Material Building Height Plane Breach**

EAST (morning sun)

WEST



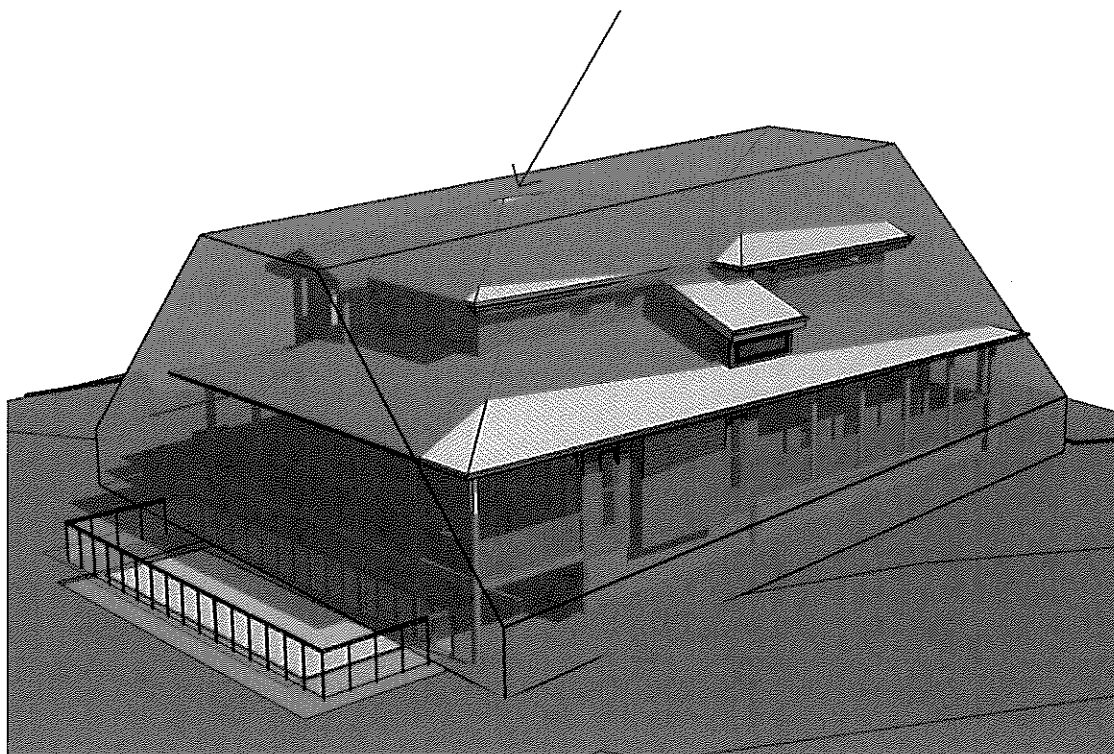
### Summary of Objection

As previously recorded by ourselves and our Town Planner (Kate Singleton, Planners North), the amended plan proposes a building that is **materially non-compliant**, based on:

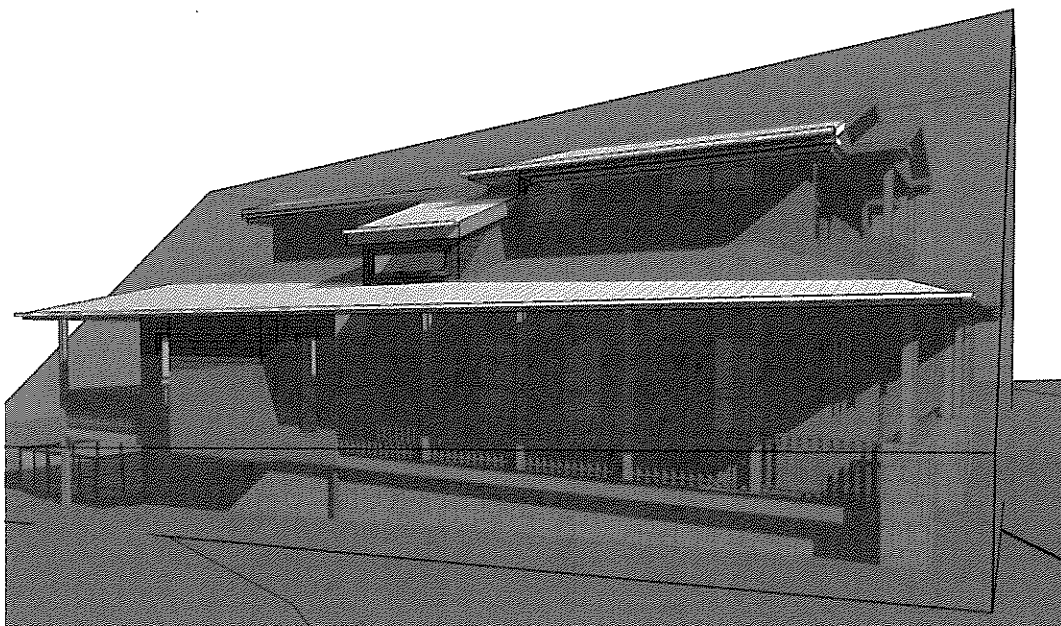
- **Height Plane Breach** - In material breach of the building height plane, notably on the western & northern elevations (our eastern elevation), by +2-metres on the second & third levels.
- **Eliminates our Solar Access** - As a result of the above, our access to solar amenity (winter sun) is eliminated into our eastern elevation (and into our key private living spaces, main bedroom, baby's bedroom and main bathroom), which is vital to the enjoyment and amenity of our home.
- **Material Privacy Breaches** - Further, the area of the material building height plane breach at the rear of the building is part occupied by a large outdoor deck which looks directly into our main bathroom, and across our entire backyard (in effect, a virtual viewing deck into our private spaces & located in the breached Building height plane).
- Our privacy is also breached by the proposed verandah across the majority of the western elevation of 61 Kingsley Street, and looks directly, and without hindrance, into our main bedroom and our baby's bedroom.

These objections have been previously communicated to Council (refer copies attached).

In addition, the extent of the breach of the building height plan is clearly further illustrated in the 3D views included in the amended plan (refer extracts below).



3D View 2



3D View 3

**Summary**

So, once again, we record our strong objection and our deep concern regarding the non-compliance of the

amended plan for 61 Kingsley Street. Moreover, these breaches of compliance inflict a material adverse impact on our property (solar access & privacy).

We are, and have always been, fully supportive of our neighbours building their new home. We fully support a compliant building plan, and specifically acknowledge and support the right of the owners of 61 Kingsley Street to build within the set-backs and height plane allowances, as provided by the regulations.

Regrettably, the original and the current amended **plans are materially non-compliant** (and have a **significant negative impact on our home**). As a result, we maintain our strong objection and our resolve to take all necessary measures to protect our rights.

We kindly plead with Council to review our submissions and act to protect our basic rights as property ("home") owners, as prescribed by the regulations.

Additional vital information (impact on solar amenity and privacy) will be supplied to Council by our Town Planner in the coming days.

*Note: refer to previous submission to Council (attached).*

Kind regards,

**David Arter**  
59 Kingsley Street  
Byron Bay NSW 2481  
m: 0419 564 191  
e: arteremail@gmail.com

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#### 4 attachments



**DA Submission (18-Mar-19).pdf**  
1104K



**DA Submission (8-Oct-18).pdf**  
131K



**Arter Submission Email (18-Mar-19).pdf**  
8028K



**BHP - Marked (May-19).pdf**  
1686K



David Arter &lt;arteremail@gmail.com&gt;

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**Submission to DA (10.2018.466.1 for 61 Kingsley St, Byron Bay) ...**

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**David Arter** <arteremail@gmail.com>  
Draft

18 March 2019 at 15:12

----- Forwarded message -----

From: **David Arter** <arteremail@gmail.com>

Date: Mon, 18 Mar 2019 at 15:09

Subject: Submission to DA (10.2018.466.1 for 61 Kingsley St, Byron Bay) ...

To: &lt;Council@byron.nsw.gov.au&gt;

Cc: Tarlao, Nancy &lt;nancy.tarlao@byron.nsw.gov.au&gt;, &lt;chris.larkin@byron.nsw.gov.au&gt;

Dear Nancy,

**Re: DA No. 10.2018.466.1 (61 Kingsley Street, Byron bay):**

We are the owners of 59 Kingsley Street, and we are writing to formally record our **Strong Objection** to the amended plans for DA (10.2018.466.1) in relation to 61 Kingsley Street, Byron Bay.

Our Town Planner (Kate Singleton from Planners North) has today lodged a submission on our behalf (relating to the amended plans).

This email (& it's contents) represent our personal objection to key elements of the amended plans and our concerns regarding material detriment to our home.

Our proprietary family home is the adjoining property at 59 Kingsley Street, and the amended plans in no way address the material detriment to our property, as expressed in our original submission to Council (as presented by our Town Planner, Kate Singleton at Planners North, as emailed to Council on 8-Oct-18) - refer original copy of submission attached, and Kate's submission communicated today in relation to the amended plans.

As per Kate Singleton's request, we personal kindly request that you (and/or your relevant colleagues) visit our property to gain a first hand appreciation of the development proposal and the detrimental impact on our home.

The amended plans continue to exhibit a development plan that is non-compliant with regulations, and a plan that inflicts a devastating negative impact on our:

- **Access to solar amenity** resulting from material breaches to the building height plane, vertically and most notably on the western elevation (i.e. resulting in our dwelling's access to winter sun is eliminated in full via our key eastern elevation).
- **Privacy** (our master bedroom, baby's bedroom, main bathroom & entire rear garden are directly overlooked by a closely positioned wrap-around verandah, a massive open 2nd level entertainment deck, & a vast number of direct facing windows).

The significant detriment to our home and our property is the result of a large and bulky non-compliant development proposal, positioned over 3-levels, which:

- significantly breaches the building height plain (vertically, but most materially on the horizontal western elevation overhanging our property, by up to an estimated 3-metres), &
- as a result, eliminates our access to winter sun on our eastern elevation (and into our main bedrooms and

bathroom), &

- inflicts significantly breaches of our privacy

The amended plans in no way address the significant breaches of regulation (building height plain, access to solar amenity, breaches to basic privacy protections) as presented in the original plans and the subject of our original submission to Council.

We are fully supportive of our neighbours building a new home, but we will not accommodate the proposed breaches of our interests and basic rights.

This is our family home and we are committed to taking whatever action is required to protect our interests and basic rights from being breached.

### **Background:**

The amended plans do nothing at all to address the foundation of our strong objection to the original plans (refer to original Planners North submission letter attached and today's submission in relation to the amended plans).

The amended plans do nothing other than reduce the vertical height by 0.4M (but still breach the vertical height plane), with the horizontal height plane breaches remaining intact (by what appears to be ~3-metres on the 2nd and 3rd levels), and no alterations whatsoever to the material breaches of privacy to almost all the private areas of our home.

We maintain our significant concerns with respect to this DA and the adverse impact on our home.

Following receipt of the amended plans, the objections raised in our previous submission remain unchanged i.e:

- **Height Plane Breach & Over-shadowing** - Proposed construction outside of the height plane, most notably on the western elevation (and the resultant material negative impact on overshadowing of our property), &
- **Significant privacy breaches** - facilitated by the horizontal height plane issues (as above) and exacerbated by the two large balconies, plus a large number of 2nd and 3rd level windows (including a 3rd level window bed) facing directly into our private space (i.e. complete & direct invasion of privacy into our main bedroom, our baby's bedroom, main bathroom and across our entire backyard).

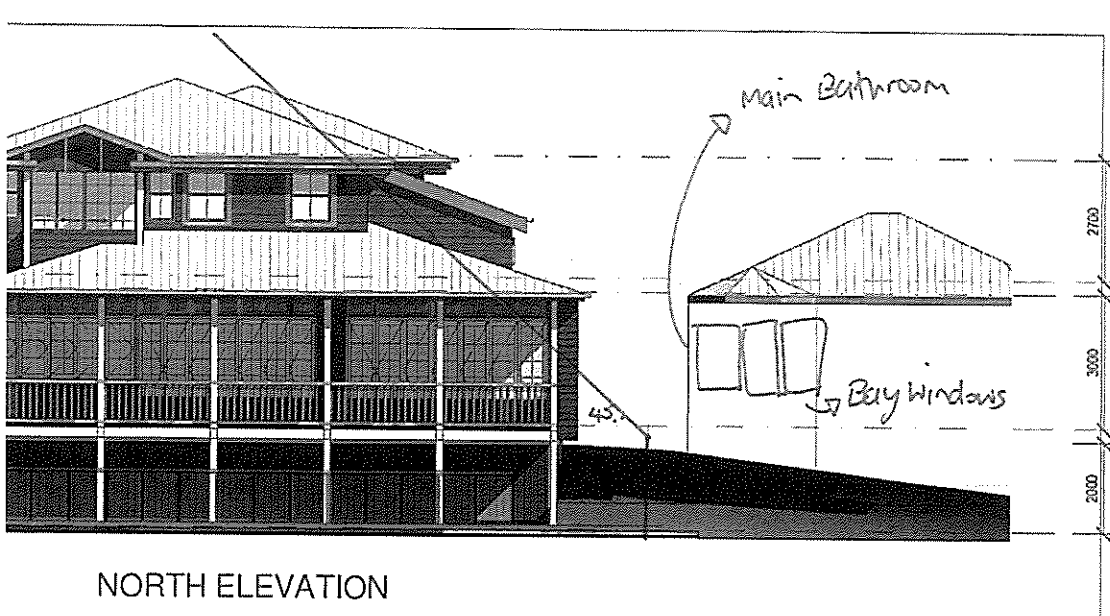
### **Amended Plan**

The amended plans appear to incorporate the only change of construction height being lowered by 0.4 metres. Key negative features include:

**Bulky Development** - This remains a bulky development proposal and significantly dwarfs our 2-level home (refer image further below) and is not in step with other nearby houses located on the northern side of Kingsley Street and the Heritage Conservation precinct.

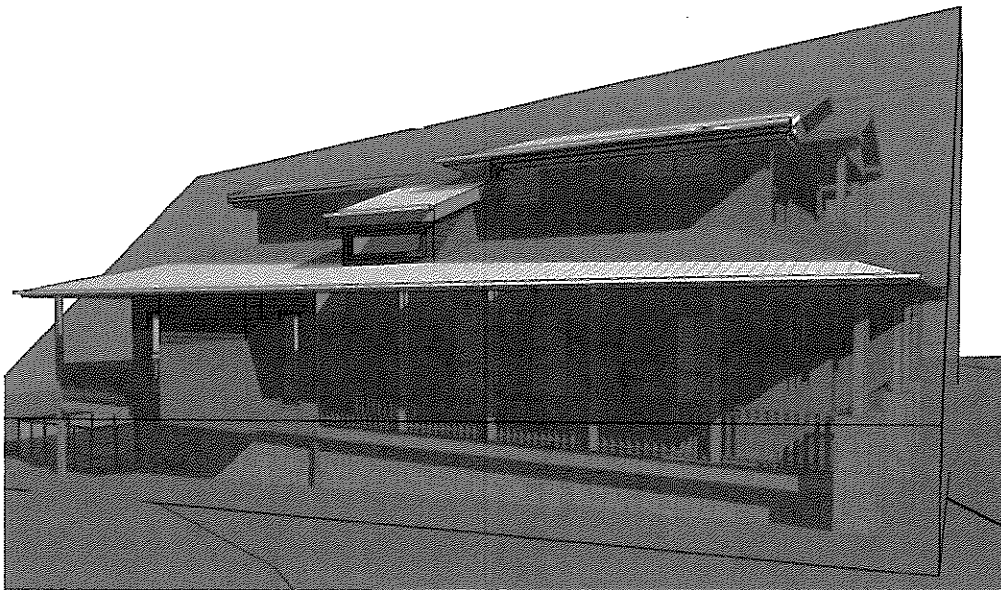
**Horizontal Height Plane Breaches** - The amended plan does nothing to address our primary concern, being the significant horizontal height plane breaches on the West Elevation (of 61 Kingsley) and significantly overshadowing our property on our East Elevation (refer image below) and entirely eliminating our access to winter sun.

The amended plans are misleading and have included height plane profiles from Kingsley Street, but have (conveniently) omitted to include a diagram showing the continued breach of the horizontal height plane on the West Elevation (notably at the rear). I am not sure of the exact dissection, but it appears to remain material (2-3 metres) and virtually unchanged, and directly impacts significant overshadowing (eliminating our winter sun entirely on our eastern elevation - refer shadow diagrams below) and also inflicting devastating impacts on our privacy, as highlighted by my approximate interpretation of the height plane breach (refer image below):

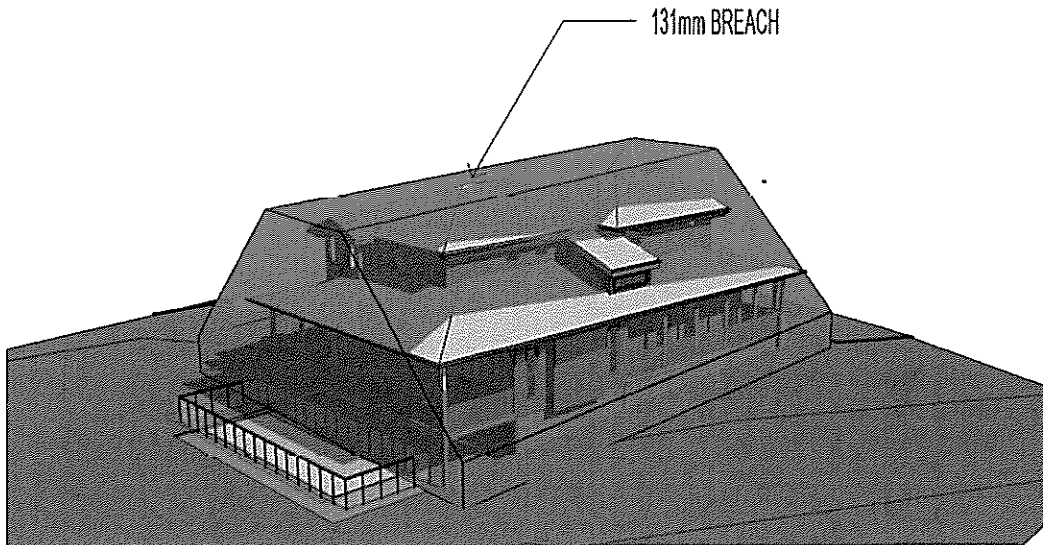


NORTH ELEVATION

This continued height plane breach is supported by the 3D views provided in the amended plan (refer images below).



3D View 3

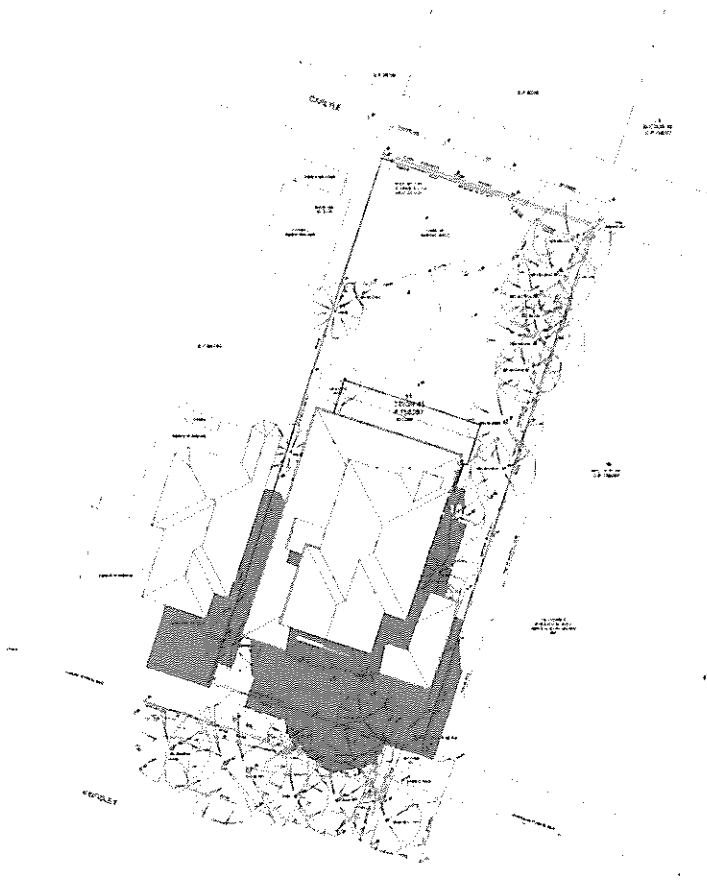


## 3D View 2

**Shadow Diagrams** - Further, the amended plans show shadow diagrams completely blocking out our access to winter sun (all day) on our East Elevation, and into our key private living spaces, however once again there are no shadow diagrams to show the current (pre-construction) shadowing.

In fact, we currently have full access to winter sun on the East Elevation, from as early as 6.30am and into the early afternoon, and this would be completely eliminated all day under the proposed plan, and as confirmed by the shadow diagrams contained in the amended plan (as per image below).

**Winter Solace (extract from amended plan highlighting elimination of winter sun):**



shadow diagram - june 21st, 12.00pm.

**Material Privacy Breaches** - With regard to material privacy breaches, the amended plans do not address (at all) the proposed construction of two separate and imposing balconies extending the majority of the West Elevation, and directly facing and providing un-interrupted visual (only feet away) into our main bedroom, children's bedroom and living/dining space.

The proposed large 2nd level balcony/entertainment deck at the rear (3.5M deep) directly looks into our main bathroom, and directly over the expanse of our entire backyard (and into other neighbours private spaces). These balconies look directly into all our main private living spaces and devastate our privacy - refer diagram below.

**Authority : BYRON SHIRE COUNCIL**

2 - 1012 sq.m

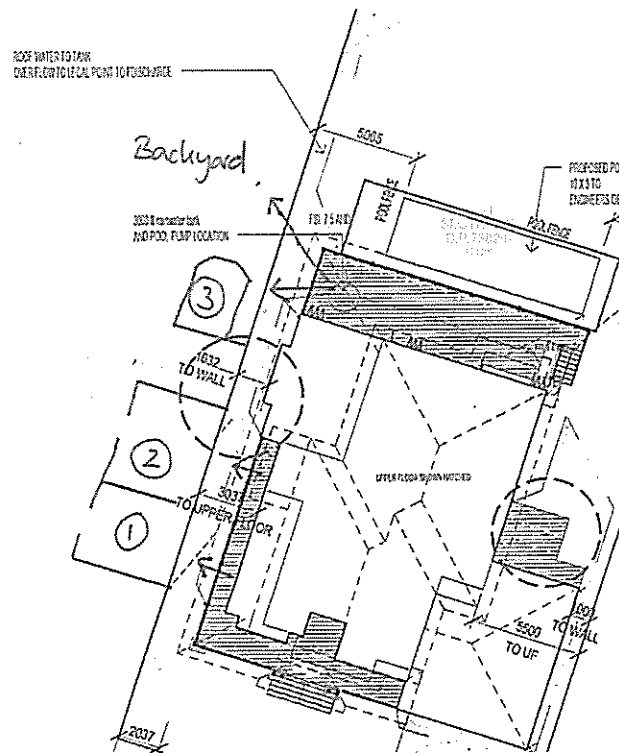
er = 311.55 sq.m (30.7%)

indicates downpipe location  
refer floor plan for exact locations

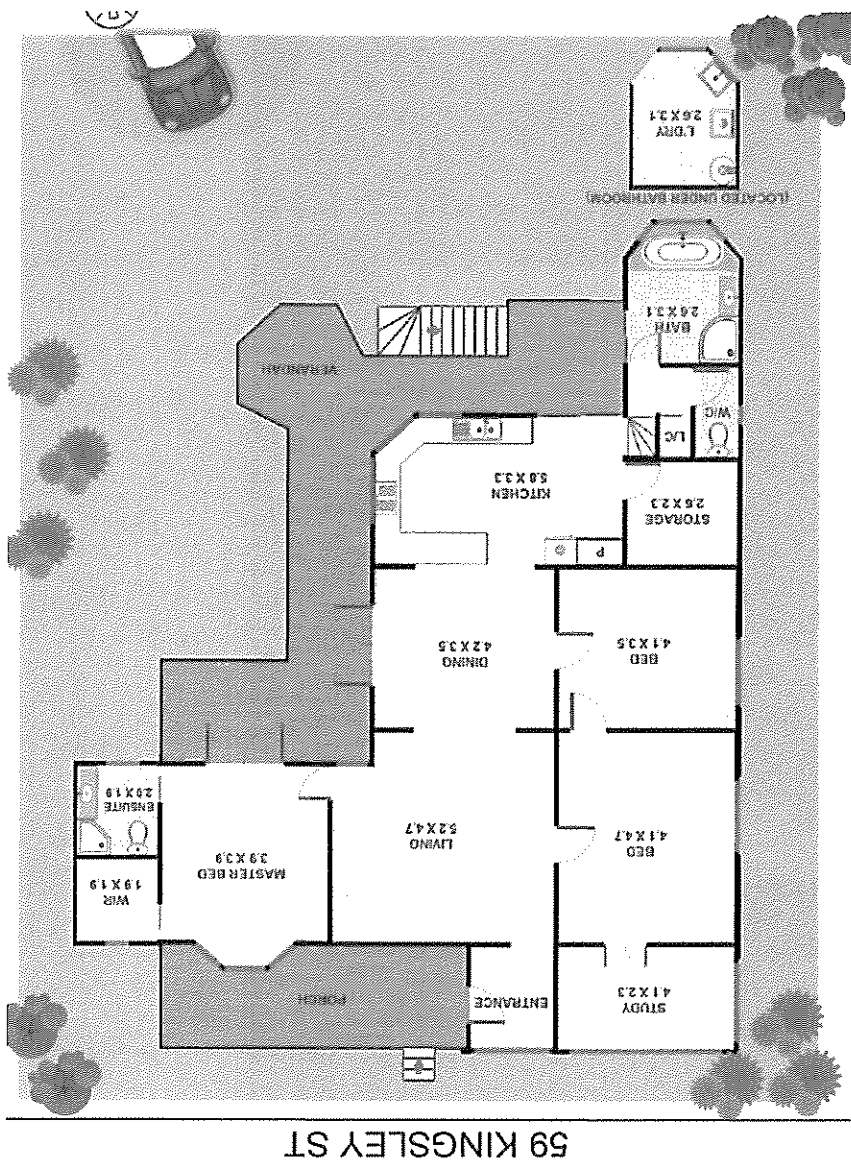
Indicates 300x300 yard gully  
with graded 5d

Indicates 1000 upvc s.w  
channel boxes

- ① Master Bedroom
- ② Baby's Bedroom
- ③ Main Bathroom



To assist further, below is a floor plan diagram for our home (copy also attached), with 61 Kingsley Street located to the right of the diagram.



Also below are images of the private areas subject to the overshadowing and privacy breaches:

**Main Bathroom** (which will have rear entertainment deck built outside the high plane and looking directly into the main bathroom - with a birds eye view into the bath tub).



Main Bedroom (which will have a large open verandah providing uninterrupted views into this private space):



Plus our Baby's Bedroom (which will have the same large open verandah providing uninterrupted views into this private space):



Further, the proposed large 2nd level entertainment deck (3.5M deep and across the rear of the entire building)

will overlook the entire private backyard of our home, providing an open virtual viewing galley of (our main bathroom ), plus our entire backyard (and that of neighbouring properties):



We again kindly request that the appropriate representatives of Council visit our family home for a site visit.

We please request that any contact on this matter be directed via our Town Planner, Kate Singleton from Planners North.

Kind regards,

**David Arter & Petrea McGhee**

59 Kingsley Street  
Byron Bay NSW 2481  
m: 0419 564 191  
e: arteremail@gmail.com

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**2 attachments**

 **DA Submission (8-Oct-18).pdf**  
131K

**Floor Plan.pdf**



559K

## **Submission to Council ( Re: DA Modification: 10.2018.466.2 )**

- 
- DA Number: 10.2018.466.2 (61 Kingsley St, Byron Bay)
  - Submission by: David Arter (1/59 Kingsley St, Byron Bay)
  - Date: 6-Nov-19
- 

Dear Nancy & Shannon,

Hello again. My name is David Arter, and as you are aware, our family home (59 Kingsley Street) is located directly next door (to the west) of the Applicant property (61 Kingsley Street).

### **(1) Overview:**

Councillors unanimously approved an Adjusted Plan (with explicit Conditions) at its Planning Meeting held on 20-Jun-19. This followed a long period of consideration by Council at all levels.

The Applicant (61 Kingsley Street) has now lodged a new DA (Oct-19), which attempts to:

- **Delete key conditions** (Condition 6: specified ceiling heights at all three levels);
- **Non-comply with other conditions** (height of privacy screen, planting of 3m high native hedges for privacy, & external finishes), &
- **Amend key conditions** (Condition 1: compliance with Approved Plan).

The Latest DA seeks non-compliance with all the key protections of our basic rights, as recommended by Planning & approved by all Councillors, at its Planning Meeting (20-Jun-19).

The Latest Plan seeks to unwind determinations put in place to protect our home from: (a) **over-shadowing**, & (b) **privacy breaches**, resulting from various versions of a **Non-Compliant Plan**.

Hence, I write to Council reluctantly, and with considerable frustration and irritation given the long, expensive and time-consuming history of the Applicant attempting to push through a DA that is materially non-compliant and imposes a profoundly detrimental impact on our home.

***Once again, we have no choice but to plead with Council to REJECT key provisions within the latest DA (Oct-19) and adhere to the explicit Conditions of Council's Approved Plan.***

### **(2) Background**

This Latest DA (Oct-19) is frustrating given the previous DA was referred to all Councillors for determination at its Planning Meeting on 20-Jun-19. Planning conducted a thorough review of the DA, provided clear recommendations & conditions, and All Councillors approved these in full.

At that time, we appreciated and respected the detailed consideration Council had provided the previous versions of the DA. While there were many elements of Planning's recommendation to Councillors that we did NOT like, we Accepted it as balanced outcome for all parties.

As such, we formally supported the recommendation (& all the attached conditions) in full, as evidenced prior to the meeting (via email), and in my verbal address to Councillors on the day.

The Latest DA's attempt to effectively unwind ALL the key protections specified by Council's Approved Plan (with conditions of consent) is **Strongly Rejected** by us.

### **(3) Latest DA (Oct-19): Summary of Non-Compliance**

The Latest DA submitted by the Applicant attempts to effectively delete the key condition specified by Council and unanimously approved by all Councillors, and non-comply with others.

Specifically, this latest DA attempts to:

#### **(A) Delete Condition 6 (ceiling height determinations at all three levels):**

- This condition is explicitly designed to reduce the impact of the **material breach of the building height plane** (by +2-metres on the middle & upper floors) on the western (side) elevation facing our home (thereby reducing overshadowing of our key living spaces).
- Specifically, Condition 6 prescribes explicit: (a) reductions to the ceiling height on the (above ground) basement storage, (b) reductions to the ceiling height of the middle level, & (c) specifies that the FFL of the dwelling must be at a height of 9.6m AHD.
- The explicit specifications of Condition 6 are directed to reduce the extent of the significant building height plane breach on the western (side) elevation of the Applicant's proposed development (& reduce the resultant overshadowing inflicted on our home).
- The Applicant is now seeking to delete this all-important Condition 6.
- In doing so, the Applicant is seeking to Non-Comply with Council's determination to: (i) reduce the ceiling of the above ground floor storage (from 2.0m to 1.8m), and (ii) to reduce the ceiling height of the middle level (from 3.0m to 2.7m), to achieve an overall (combined) height reduction of 0.5m from the ceiling of the middle level to ground level.
- Instead, the Applicant is seeking approval for a **meagre 10cm reduction** (the size of a pack of cards!) to the height of the middle level ceiling to ground level (rather than Council's condition of a 0.5M reduction), and the deletion of Condition 6 in its entirety.
- The proposal above seeks to Non-Comply with Council's all-important Condition 6, and thereby delete the protection of our home (from material over-shadowing) caused by the **significant building height plane breach** on the western (side) elevation at all levels.
- We **Strongly Reject** non-compliance with Condition 6.

#### **(B) Non-Comply with Condition 37 (Hedge Planting for Privacy):**

- Council's Condition 37 requires planting of a minimum of **five native hedge plants** (growing to a mature **maximum height of 3-metres**) to be located in a **clearly defined location** along the fence line of 59 Kingsley Street (our home).
- This condition is explicitly designed to provide privacy protection from the large (12.6-metre x 3.5-metre) outdoor deck (elevated at 2.0-metres above ground level), and extending across the expanse of the rear of the Applicant property.
- The mature height limit of 3-metres of the prescribed native hedges is designed to provide privacy, but also not impact our right to solar access to the morning easterly sun.
- In the Lasted DA, the Applicant is seeking approval to non-comply with this all-important condition. Instead, the latest DA is seeking approval to ...*"Attempt to relocate 3x [mature] Bangalow Palms to this [exact] Location"*.

- Not only is the word "attempt" tenuous, the planting of mature (~10 metre high) Bangalow Palms in that location would provide none of the privacy protections intended by Condition 37.
- Moreover, the palms would also introduce significant direct overshadowing (given their large expanse at height) from the morning easterly sun across our entire backyard.
- We **Strongly REJECT** this proposal in the Latest DA.
- We insist on the strict compliance with Council's Condition 37 (for the planting of a minimum 5 native hedge plants with a mature maximum height of 3-metres, in that location).

**(C) Non-Comply with Privacy Screen Height (as per Council's Approved Plan):**

- The Adjusted Plan approved at Council's Planning Meeting (Jun-19) included the requirement for privacy screens on the: (a) western side of the large rear deck, and (b) the length of the (10.8-metre long) verandah located on the western (side) elevation.
- These privacy screens are specified to provide privacy from direct and clear visual intrusion into our master bathroom, master bedroom and our baby's bedroom.
- The proposed plan in the Latest DA has the Applicant seeking to non-comply with Council's determination.
- Specifically, the latest DA incorporates a proposal to reduce the height of the privacy screen on the western (side) verandah from the **approved 1.82-metres** (as per the Council approved plan of 24-Jun-19) to an ineffective 1.72-metres.
- We **Strongly REJECT** the latest DA proposal to reduce the height of this privacy screen to 1.72-metres (which would effectively make the screen ineffective as a measure to protect privacy into our master bedroom and baby's bedroom).

**(D) Seeks to Amend Condition 1 (Compliance with Council's Approved Plan):**

- The Latest DA is seeking to amend Condition 1 and its reference to the Key Conditions, and other determinations of Council's Approved Plan (as highlighted above & below).
- Specifically, the proposal is to: (i) delete Condition 6 (ceiling height specifications at all levels & building height plane breaches), (ii) non-comply with Condition 37 (native hedge planting for privacy from outdoor deck), & (iii) non-comply with the height determination for the privacy screen on the 10.8m long verandah on the western (side) elevation.
- Amending Condition 1, and seeking to non-comply with key determinations with the Plan approved by Council (& subject to conditions of consent), is disturbing to say the least.
- These Conditions within Council's Approved Plan were recommended by Planning and approved by all Councillors to; (i) reduce the impact of over-shadowing (from material breaches of the building height plane) & (ii) reduce the impact of privacy breaches (from large open decks/verandahs).
- We **Strongly REJECT** the Latest DA and the proposal to amend Condition 1.

In addition to the critical items highlighted overleaf, we also note that the Latest DA attempts to:

**(E) Non-comply with Condition 5 (External Finishes):**

- Council's Approved Plan (24-Jun-19) included an explicit Condition prohibiting the use of **Surf Mist** roof cladding & **Deep Water Dark** wall colour (given they are non-compliant with the Heritage Conservation Area).
- Despite this explicit Condition, the Latest DA and Plan continues to incorporate these non-compliant colours (as above) and is indirectly seeking approval to do so (refer p6 of the DA document).
- We are sympathetic to Council's position (re: the use of appropriate external finishes in the Heritage Conservation area of Kingsley Street, Byron Bay), and support compliance with Condition 5.

**(4) Additional Information: Illustration of Non-Compliance with Council Determination**

This has been a long, frustrating and expensive process that we have endured to simply protect our rights from the impact of **over-shadowing** (via material breaches of the building height plane on western side elevation) & **privacy breaches** (from large overlooking open decks/verandahs).

Under the Latest DA proposal, these impacts would continue to devastate our home, hence we provide additional information (with illustrations) below, to highlight the negative impact of the proposals on our basic rights as home owners.

**(a) A Large Dwelling with Significant Breaches of The Building Height Plane**

From the initial lodgement of the first DA (Sep-18) we have been forced to protect our home from the impact (overshadowing and privacy breaches) from what is a very large three-level (no excavation) development proposal.

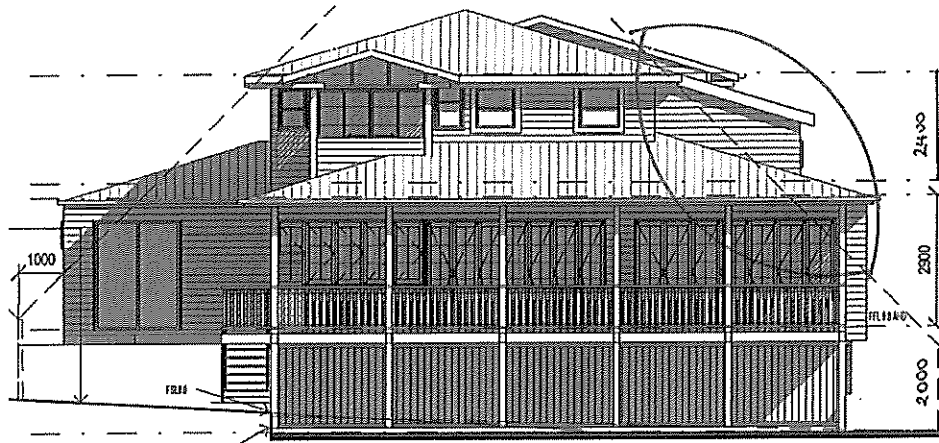
The various versions of the Applicant's DA (including the latest one) continue to include:

- significant **breaches of the building height plane** on the western (side) elevation (facing our home). This breach has failed the performance criteria from inception, with significant over-shadowing across the entire eastern side of our home, and into prime living spaces (master bedroom, our baby's bedroom and master bathroom).
- **material privacy breaches** from: (i) a long (10.8-metre) verandah on the western (side) elevation looking directly into our master bedroom and baby's bedroom, and (ii) a large (12.6m x 3.5m) open deck (elevated at 2.0m above ground) and looking directly into our master bathroom and over our entire backyard.

The proposed dwelling is a very large building, comprising three levels above ground (no excavation). The size of the dwelling is an issue for us given the impact of the breach of the building height plane on the western (side) elevation facing our home (refer drawing overleaf).

Extract of Latest Plan – WD 4.0 (Oct-19):

*Material Breaches of the Building Height Plane on the western side elevation (of +2-metres)  
(facing and overshadowing our home)*



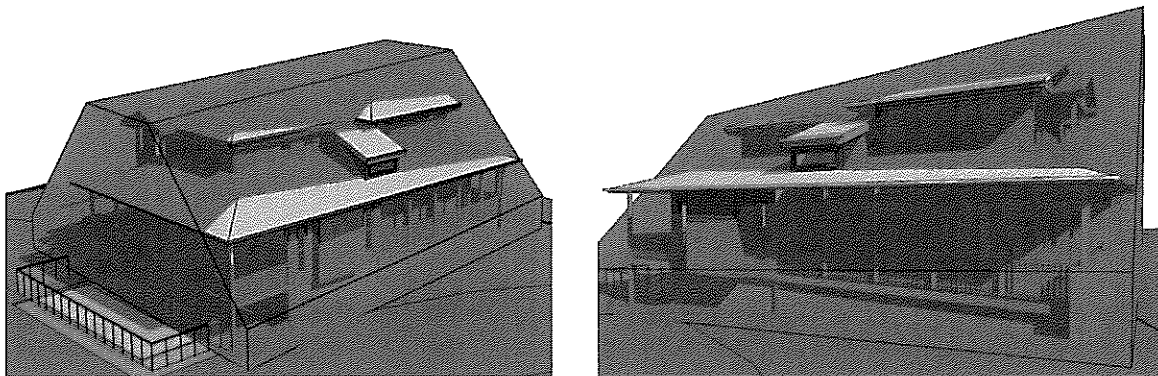
*Note: A large proposed dwelling over 3 levels above ground (no excavation)*

It is also notable, once again, that the Applicant has NOT included the building height plane envelope diagram in the Latest DA (Oct-19).

Nonetheless, below is diagram from the previous DA Plan (Feb-19), illustrating the extent of the building height plane breach. Most notable is the breach on the middle level (which is essentially unchanged under the Latest DA).

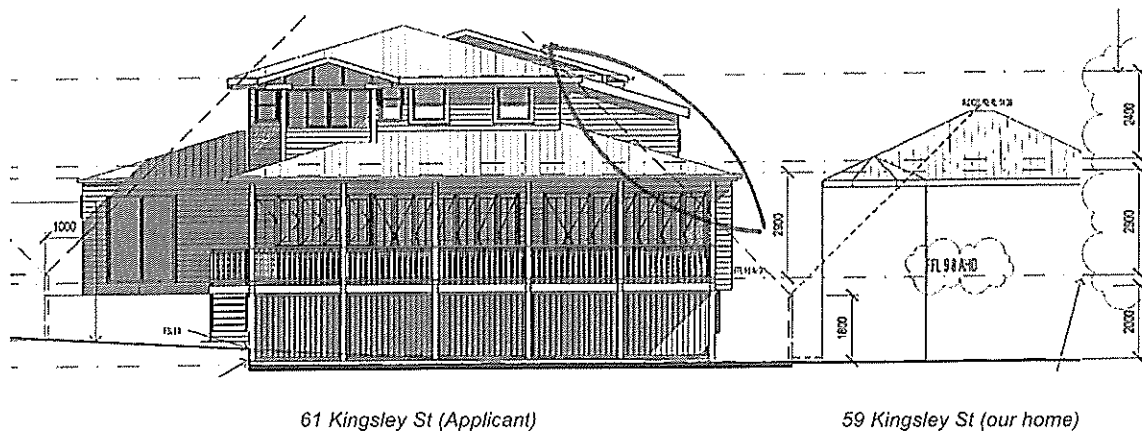
Extract of Previous Plan: Building Height Plane Envelope (refer BHP breach on level one):

*Material Breaches of the Building Height Plain (of +2-metres)  
(on the western side elevation facing & overshadowing our home)*



*Image of the Applicant's proposed dwelling (breaches of the building height plane highlighted in grey)*

Extract of Latest Plan (Oct-19): Highlighting Building Height Plane Breach (& overshadowing):



Importantly, as explained earlier, our concern has never been the vertical height of the narrow apex of the roof (as long as it is sub-9.0-metres and compliant), our Strong Rejection has always been based on the extent of the building height plan breach at all levels on the western (side) elevation over-shadowing our home. This breach and over-shadowing primarily occurs on the middle level of the proposed dwelling (as highlighted by the diagrams above).

While the Latest DA proposes to reduce the height of the upper floor and the narrow roof pitch, the Latest DA proposes only a negligible (10cm) reduction to the middle level ceiling, and thereby **defy Council's Condition of a combined 0.5-metre reduction of the ceiling height of the middle level to ground level**.

This is non-compliant with Council's Condition 6, and would provide virtually nil protection from overshadowing inflicted by the building height plan breach (of +2-metres) of the middle level of the western (side) elevation (as highlighted in the diagrams above).

There are 3 key proposals in the latest DA which we **Strongly REJECT** (as highlighted earlier). All three proposals are Non-Compliant with Council's Adjusted Plan (and attached Conditions).

We provide further clarification of our reason for rejection (with illustrations) below.

**Rejection 1 – Non-compliance with Condition 6 (ceiling heights at all three levels)**

The building height plan breaches have been clearly highlighted in all our previous submissions. Specifically, our issue has centred on the building height plane breaches on the western (side) elevation directly facing our home. This (the breach of the BHP on western side elevation) imposes material over-shadowing across the entire eastern side of our home across.

We have never expressed an opinion on the vertical height of the proposed building at the small area of the apex of the roof (this is an issue for Council, and we are aware of, and expect compliance with, a maximum height limit of 9-metres exists under current regulation).

As formally recorded, we supported the adjusted Plan and attached conditions recommended by Planning and approved at Council's Planning Meeting. The Applicant is now seeking to have this all-important condition (Condition 6 – Ceiling height Limits at all 3 levels) deleted.

Condition 6 is clearly intended to deliver a balanced outcome for all parties in relation to the building height plane breach, as highlighted in Planning's Recommendation to Councillors:

Intention of Condition 6: Extract of Agenda for Planning Meeting (Jun-19):

- 20 The application was lodged on 12.09.2019 with architectural plans that were non-compliant with the LEP height limit and the DCP controls for the Building Height Plane. The building has been through various architectural changes which have lowered the building height to less than 9m at the roof pitch, however a breach of the building height plane remains. In this regard the dwellings either side of the proposed building also breach the Building Height Plane, however the
- 25 development through the use of 3 metre ceilings on the ground floor, has exacerbated the breach. To bring the development more into compliance and to reduce overshadowing on neighbouring properties, it is recommended the ground floor be lowered 200 mm and the floor to ceiling height on this level be reduced a further 300 mm lowering the dwelling a total 500mm.

Planning's recommendation to Councillors was subsequently adopted in full. Key provisions within Condition 6 are explicit determinations to reduce the ceiling heights of: (a) the above ground basement, & (b) middle level of the dwelling to reduce the extent of the building height plane breach (& the resultant over-shadowing), as detailed below:

Extract: Schedule 1 – Approved Condition of Consent No.6:

6. **Amended Plans to be submitted with the Construction Certificate**  
To lower the Dwelling by 500 mm amended Plans to be submitted to Council for approval prior to the issue of the Construction Certificate to accurately reflect the approved plans as marked in red and as per the following requirements:
- Reduce the floor to ceiling height on the ground floor from 3.0 m to be 2.7 m in height;
  - Reduce the floor to ceiling height in the undercroft basement storage (adjacent to the pool) from 2 m to 1.8 m in height;
  - Set the ground floor of the dwelling at 9.6 m AHD
  - The maximum height of the roof to be no greater than 8.5 m above natural ground level.

Compliance with Condition 6 is critical to us, as it reduces (but does not eliminate) the impact of the over-shadowing across the eastern side of our home, resulting from the material building height plane breach on the western elevation of the Applicant's Plan.

Importantly, the explicit details in Condition 6 are directions to:

- reduce the ceiling height of the above ground basement (by 0.2m) to 1.8m,
- reduce the middle floor ceiling height (by 0.3m) to 2.7m
- to achieve a combined 0.5m to the reduction in the height (from the ceiling of the middle level from ground level)
- in order to reduce the extent of the building height plane breach on the western (side elevation) at all levels, and the extent of the resultant the over-shadowing on our home.

The Applicant is effectively seeking approval to delete Condition 6. It is validating doing this by reducing the height of the small apex of the roof by 0.5m, achieving this primarily by reducing the narrower upper level only (by 0.3m), reducing the roof pitch (by 0.1m), & the all-important middle level by a meagre 10cm.

Note: It is reducing the ceiling height of the above ground storage and the middle level ceilings (by a combined 0.5-metres from ground level) that facilitates the reduction to the building height plane breach on the western (side) elevation (& the extent of the resultant significant over-shadowing on our home).

The Latest DA proposes a meagre 10cm reduction in height from the ceiling of the middle level to the ground level (10cm is the mere height of a pack of cards!). This would have negligible impact on reducing the building height plane breach on the western (side) elevation (and resultant over-shadowing that occurs on our home).

Compliance with Condition 6 is critical to achieving the outcome intended.

This is can be visualised in the building height plan envelope diagram (refer previous page).

While the diagram relates to the previous Plan (it was not provided in the Latest DA), Condition 6 is designed to prescribe a **combined reduction of 0.5m from the ceiling of the middle level to the ground level**. It is the height reduction at this level which Condition 6 intends to achieve a reduction to the level of over-shadowing (on our home), resulting from the material building height plane breach on the western (side) elevation.

The primary source of the overshadowing occurs via the material building height plan exacerbated the overall height (and girth) of the middle level ceiling (from ground level), as clearly stated in Planning's Recommendation to Councillors (refer previous page).

We **Strongly REJECT** the proposal to delete Condition 6.

## **Rejection 2: Non-Compliance with Height of Privacy Screens:**

Planning recognised the need for privacy screens in its Recommendation to Councils Planning Meeting (20-Oct-19).

Extract of Planning Meeting Agenda (6.11, p108):

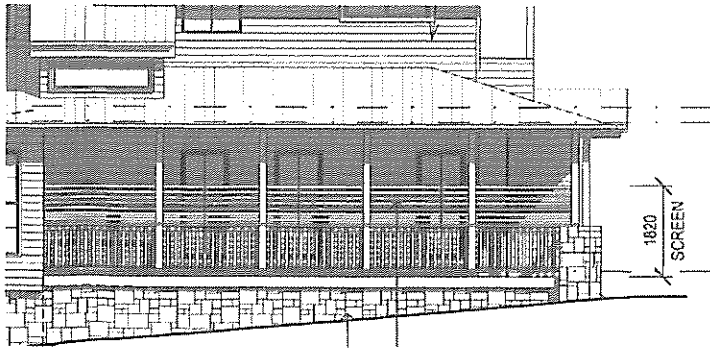
Privacy Impacts from rear decks and swimming pool	The decks are to be screened as per proposed plans, whilst conditions are proposed in relation to landscaping the fence line adjacent to the pool.
---	--

The Conditional Plan approved by Councillors (24-Jun-19) included privacy screens on the western elevation of the proposed dwelling.

These included a privacy screen across the expanse of the return verandah running along the western side of the building (facing directly into our master bedroom and baby's bedroom).

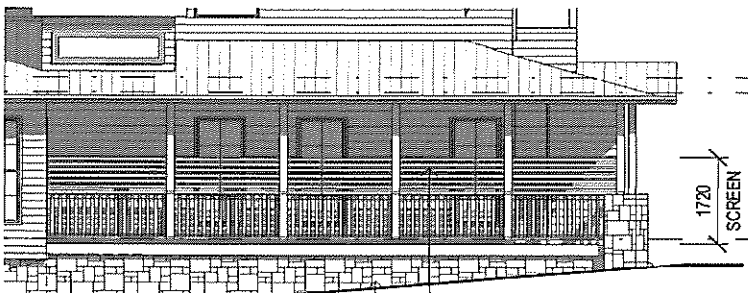
While we do not like the position of this verandah (given it looks directly into master bedroom and baby's bedrooms), we accepted and supported Council's Approved Plan requiring a privacy screen along the length of the verandah at a height of 1.82-metres.

Extract of Council's Approved Plan (24-Jun-19):



The Latest DA however, is seeking non-compliance by reducing the height of the privacy screen to 1.72-metres (which makes it ineffective as a privacy protection measure).

Extract of Latest DA Plan – WD4.1 (Oct-19):



We **Strongly REJECT** the privacy screen being reduced from the approved 1.82-metres (to 1.72-metres).

### **Rejection 3: Non-compliance Condition 37 (Native Hedge Planting to provide privacy from Rear Deck)**

Condition 37 of Council's Conditional Plan requires the planting of a minimum of five native hedge plants (growing to a mature maximum height of 3-metres) to be located along the fence line of 59 Kingsley Street (our home).

Condition 37: Hedge Planting:

#### **37. Hedge Planting**

A minimum of 5 x native hedge plants are to be located along the neighbouring fence with No. 59 Kingsley Street where the pool and verandah are located. These must be able to reach a mature maximum height of 3 m.

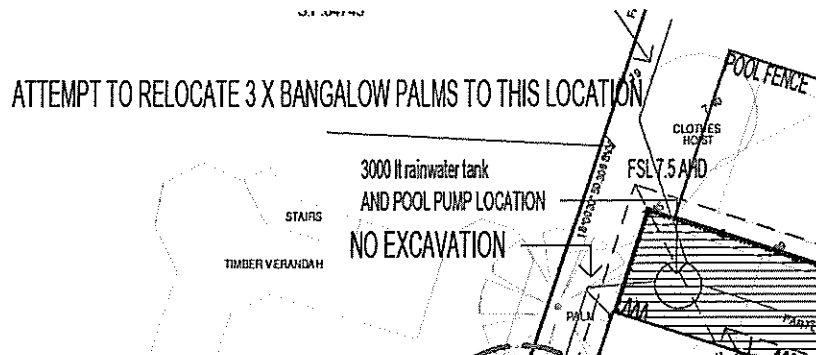
This condition is explicitly designed to provide some privacy protection from the large (12.6 x 3.5-metre) outdoor deck (elevated at 2.0 metres above ground level) and extending across the entire expanse of the rear of the proposed dwelling.

The mature height limit of 3-metres is clearly designed to provide privacy, but also not impact solar access to the morning easterly sun.

In the latest DA (Oct-19), the Applicant is seeking approval to NOT comply with this all-important condition designed to protect our right to privacy (i.e. the Latest Plan does not incorporate the Native Hedge Planting as per Condition 37 of Council's Determination).

Instead, the latest DA is seeking approval to ... *"Attempt to relocate 3x [mature] Bangalow Palms"* ... and plant them in the clearly defined location (prescribed for the hedge planting).

Extract of Latest Plan – WD 2.0 (Oct-19):



Not only is the word "attempt" tenuous, the planting of mature (~10 metre high) Bangalow Palms in that location provides none of the privacy protections intended by Condition 37.

Moreover, the planting of mature Bangalow Palms would also introduce significant oveshadowing (given their expanse at height) from the morning easterly sun across our private backyard living space.

We **Strongly REJECT** non-compliance with Condition 37 under the Latest DA proposal.

We also **Strongly REJECT** the Planting of Bangalow Palms in the proposed (or any other location) across our eastern boundary (given over-shadowing of our home and backyard from the morning easterly sun).

We insist on the strict compliance with Council's Condition 37 (for the planting of a minimum 5 native hedge plants with a mature maximum height of 3-metres, in that location).

#### **Other Relevant Matters: Non-Compliance with Condition 5 (External Finishes)**

In addition to the matters detailed, we again note that the latest DA attempts to:

- **Non-comply with Condition 5 – External Finishes.** Council explicitly included a Condition prohibiting the use of Surf Mist roof cladding and Deep Water Dark wall colour (as non-compliant with the Heritage Conservation Area) – refer further below.
- Despite this explicit Condition, the Latest DA and Plan continues to include the non-compliant colours as above, and is again seeking approval to do so:

Extract of Latest DA (Oct-19), p6:

- The proposed building presents a sensitive neo-heritage style, with a 17 degree pitched roof clad in a Colorbond Roof (Surfmist), and Sycon Lineboard Cladding (Deep Water).

The proposal for External Finishes in the Latest DA (Oct-19) are non-compliant with Council's Approved Conditional Plan (Jun-19).

Extract of Council's Approved Conditional Plan (Jun-19):

5. **External Finishes**

The application for a Construction Certificate is to include plans and specifications that indicate the proposed building materials and colours.

A schedule of all external finishes and colours, sympathetic to the heritage item, and/or Heritage Conservation Area, in accordance with the provisions of Chapter C1 Non Indigenous Heritage, Byron DCP 2014, are to be submitted to, and approved by Council, prior to approval of the Construction Certificate.

(NB The use of surf mist for the roof cladding and the Deep Water Dark wall colour are not permitted as proposed and are out of keeping with the setting and significance of the Conservation Area. The revised schedule of colours to include a light grey roof to reflect the predominant pattern of light grey roofing in the area, and light to mid tone walls, appropriate to the Conservation Area context and in accordance with the DCP policies to maintain a harmonious streetscape.)

We agree with Council's position (re: the use of appropriate external finishes in the Heritage Conservation area of Kingsley Street, Byron Bay), and support Compliance with Condition 5.

**CONCLUSION**

With all the points above, we are simply trying to protect our basic rights to protection from: (a) material over-shadowing, and (b) privacy breaches, resulting from a non-compliant development.

This has been our sole reason for engaging with Council throughout this long, arduous and expensive process for us.

It is now beyond frustrating that we are once again compelled to respond to the Latest DA (Oct-19) in order to protect our rights from the Applicant's ongoing attempt to Non-Comply, this time with Key Conditions in the Determination made at Council's Planning Meeting on 20-Jun-19.

Once again, we Accept the Adjusted Plan (with all Conditions of Consent) recommended by Planning and unanimously approved by Councillors at Council's (Jun-19) Planning Meeting.

We **Strongly REJECT** Non-Compliance with this Conditional Plan for the clear reasons detailed.

We plead with Council to Reject the material items of proposed Non-Compliance within the Latest DA, and to up-hold Council's Approved Plan (and ALL the explicit Conditions).

We thank Council for its diligent assessment of this DA since inception, and for its recommendation of a balanced outcome for all parties (as endorsed by all Councillors at its Planning Meeting on 20-Jun-19).

**Please up-hold the Approved Plan and ALL the explicit Conditions (dated 24-Jun-19).**

Should you require any additional information, then please do not hesitate to contact me. Please refer to the introductory email for copies of prior submissions to Council (as attached).

Kind regards,

**David Arter**

1/59 Kingsley Street  
Byron Bay NSW 2481  
m: 0419 564 191  
E: arteremail@gmail.com



abn: 56 291 496 553  
6 Porter Street, Byron Bay, NSW, 2481  
PO Box 538, Lennox Head, NSW, 2478  
Telephone: 1300 66 00 87

8 May 2019

Our reference: 1394.2823

The General Manager  
Byron Shire Council  
PO Box 2109  
MULLUMBIMBY NSW 2482

Email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)  
Attention: Ms N Tarlao

Dear Sir

**RE: Submission in relation to amended plans - Development Application No. 10.2018.466.1,  
Demolition of existing dwelling house and construct new dwelling house and swimming pool at  
Lot 11 Section 45 DP 758207, No. 61 Kingsley Street, Byron Bay.**

Further to my email dated 7 May 2019 and brief discussions with Chris Larkin, the owners of 1/59 Kingsley Street, Byron Bay have engaged the services of an architect to review the material submitted with the development application and provide an analysis in relation to the impact of the proposal on No. 1/59 Kingsley Street.

Firstly, it must be stated that it is disappointing to say the least, that the applicant has not supplied material to demonstrate compliance with the Performance Measures provided in D1.2.1 in relation to the Building Height Plane. As indicated in the sun study diagrams prepared for our client, the proposal results in overshadowing of living areas at 9am on 21 December and 21 June. Further, the privacy analysis provided clearly demonstrates the proposal will directly overlook living areas and bathrooms of 1/59 Kingsley Street. The impacts are not considered minor and it is submitted that the proposed scheme should be modified to comply with the Building Height Plane Prescriptive Measures given its failure to meet the Performance Criteria.

D1.2.1 clearly states that developments must not adversely affect development on adjoining properties by way of overshadowing or impinging on privacy. The Performance Criteria also require that applications must demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens etc) of development on adjoining properties will as a minimum retain full solar access between the hours of 9am and 3pm on any day. The failure of the application to demonstrate compliance with the Prescriptive Measures or Performance Criteria means that the proposal does not satisfy the objectives of the Building Height Plane provisions which are to ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing dwellings; and to ensure that the occupants of the building or buildings will enjoy optimum use of winter sunlight and summer shade.

For these reasons we submit that the proposal must be amended to demonstrate compliance with the Prescriptive Measures. In the event that Council officers do not concur with this we respectfully request that the matter be reported to the Elected Council for determination.



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The architect has also identified discrepancies in the plans submitted to Council. The omission of detail in relation to finished levels in particular is concerning and must be addressed. We have attached a comparison between ISSUE A and ISSUE E to show omissions and discrepancies in the documentation that need to be clarified in order to understand the relationship with the adjoining property and Building Height Plane.

Our client would be happy to meet with you to discuss these issues should you wish.

Yours faithfully,

**PLANNERS NORTH**



**Kate Singleton RPIA**

PARTNERSHIP PRINCIPAL

(m) 0438 803 021

(e) [kate@plannersnorth.com.au](mailto:kate@plannersnorth.com.au)

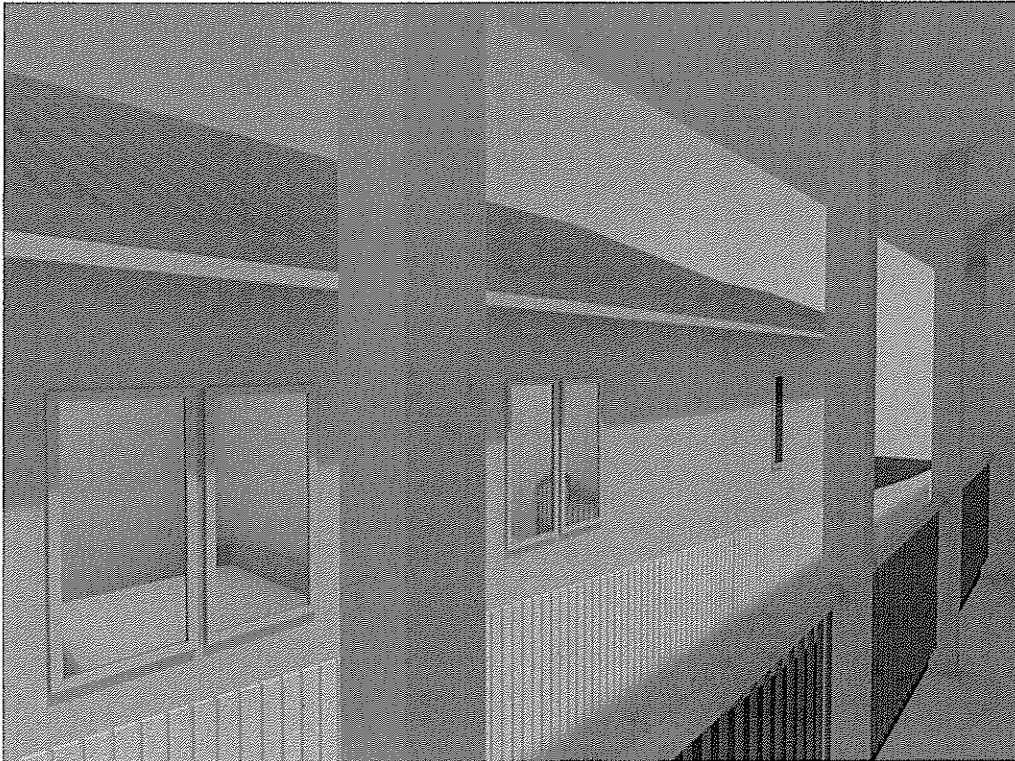
Encl. Attachment A – Sun Study and Privacy Assessment

**ATTACHMENT A****Sun Studies and Privacy Assessment from No. 1/59 Kingsley Street**

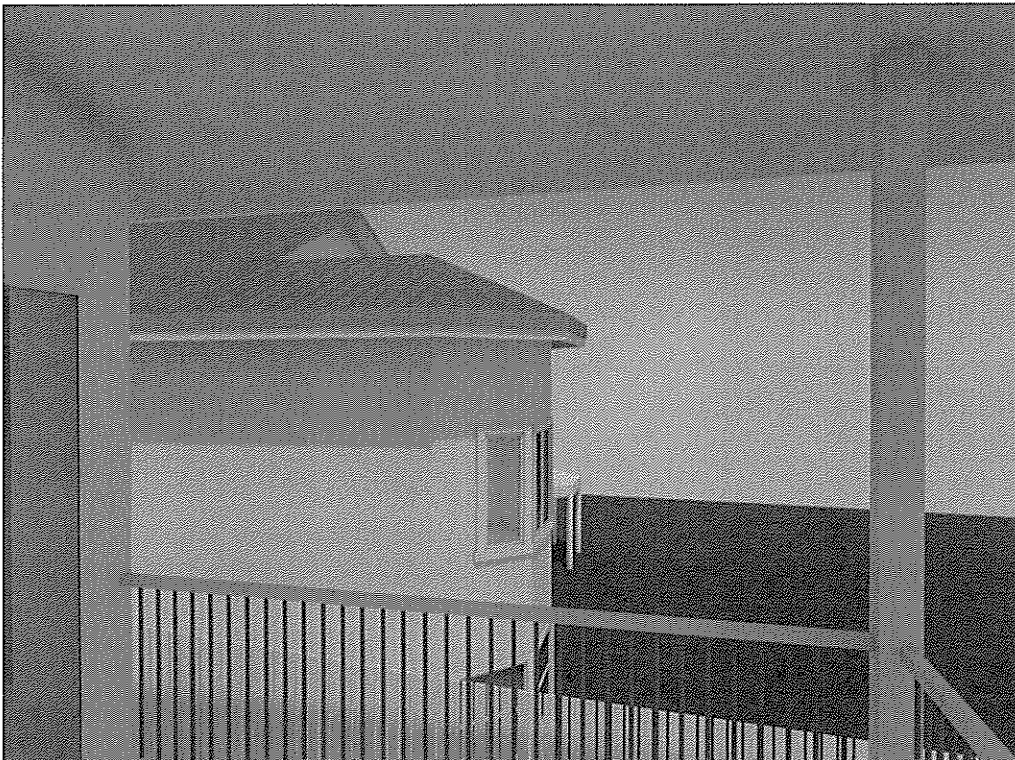
Sun Study, 9am 21 December



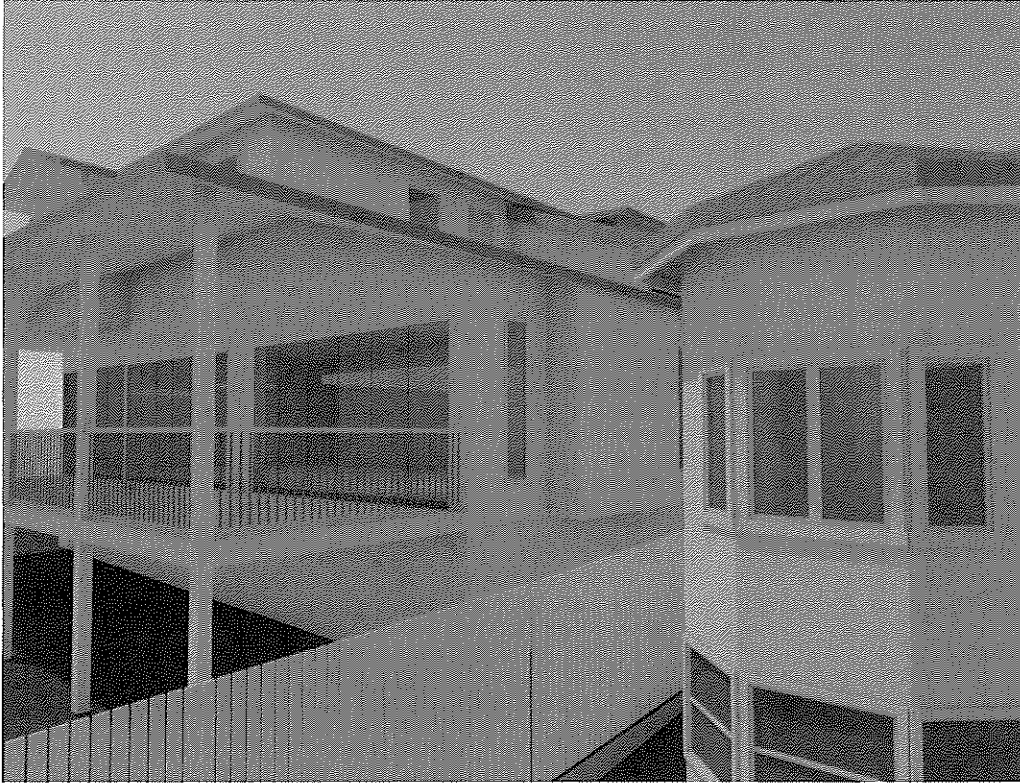
Sun Study, 9am 21 June



Privacy, Bedrooms



Privacy, Bathroom 1



Privacy, Bathroom 2

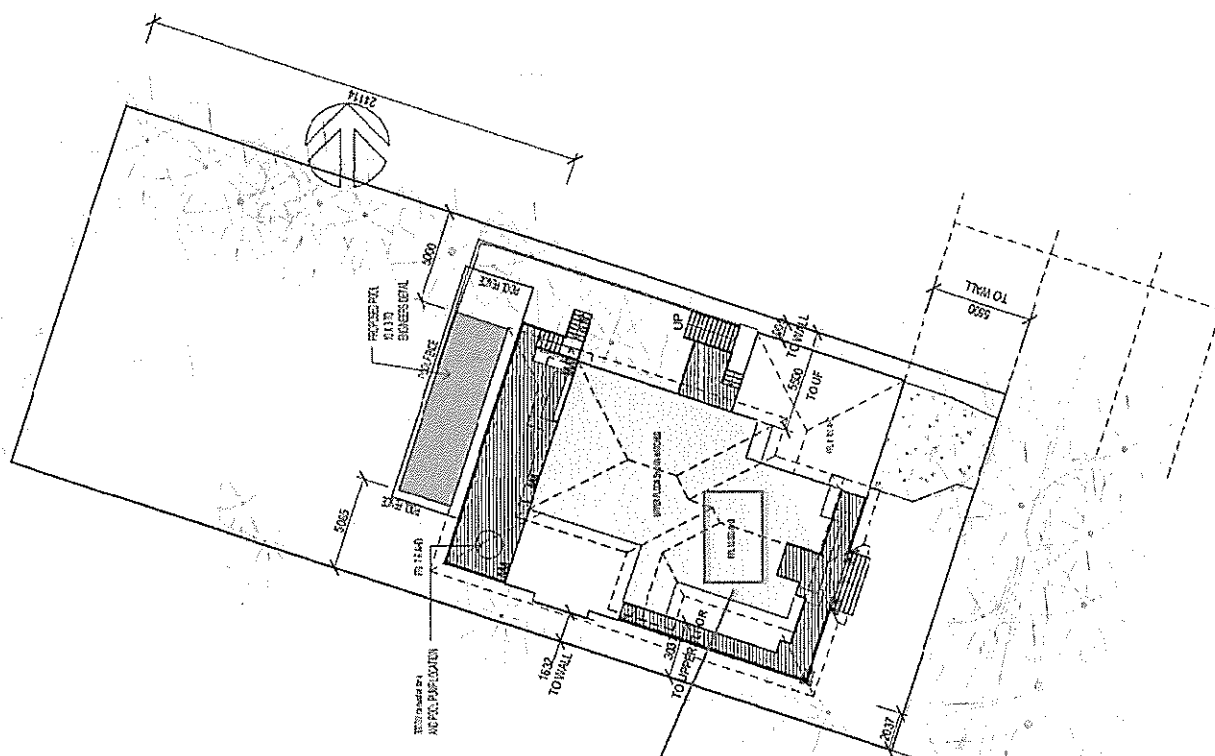


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NORTH

1394.2823



ISSUE: MISSING INFORMATION  
NO DETAILS OFFFL



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**PRINCIPAL DESIGNER LUKE STEPHENS**  
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## SITE PLAN

Scale	1 : 200
Quantity	105
Date	JULY 2018
Sheet	A

61 KINGSLEY STREET BYRON BAY

WD2.0  
Serial 2

r.p.d.

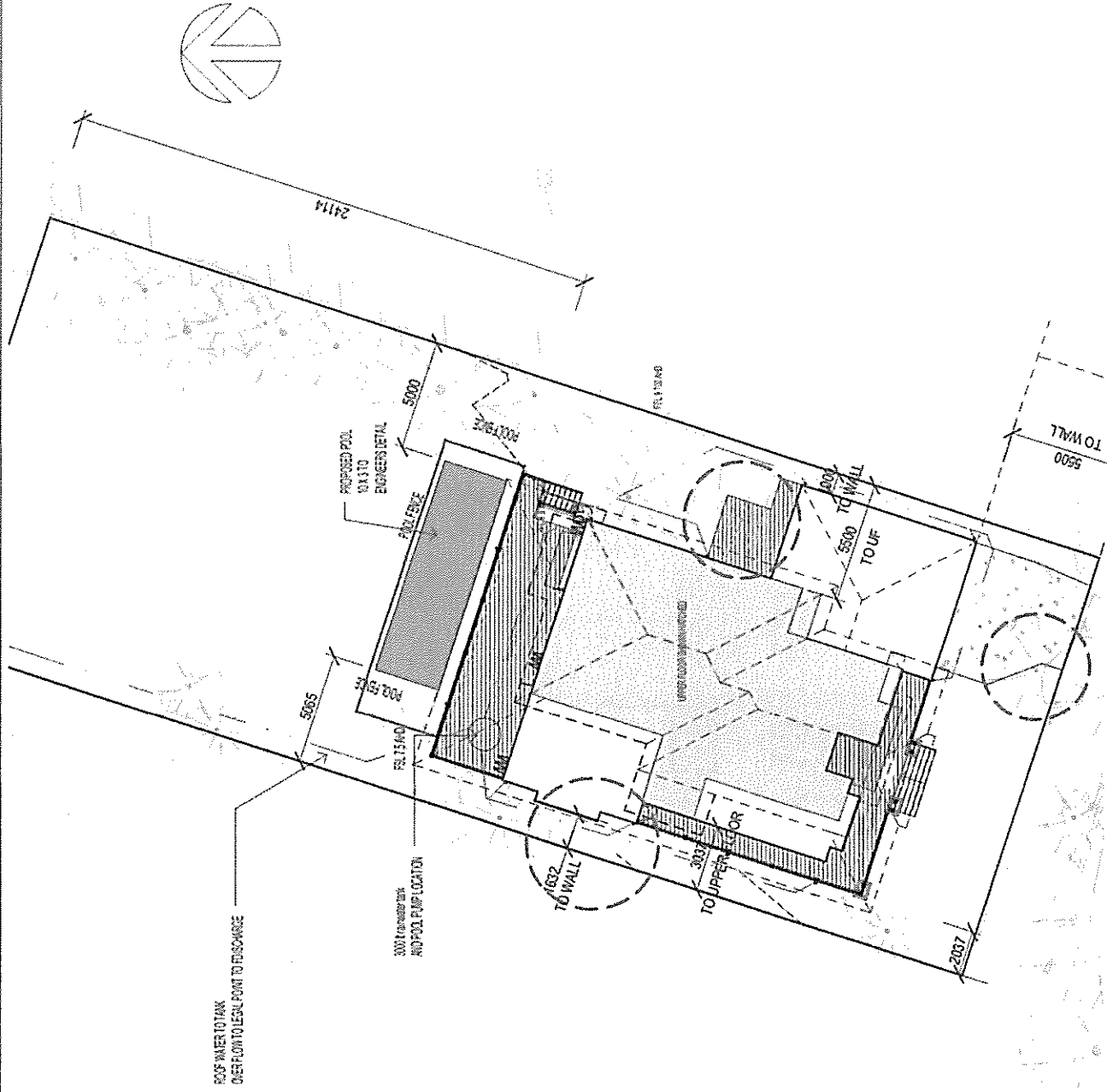
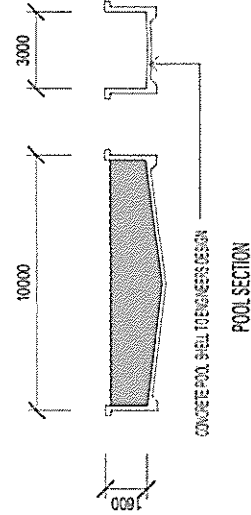
LOT 11 SECTION 45 DP 758207  
NO 61 KINGSLEY STREET,  
BYRON BAY

local authority : BYRON SHIRE COUNCIL

site area - 1012 sq.m  
site cover - 311.55 sq.m (30.7%)

- dp<sub>o</sub> indicates downpipe location  
refer floor plan for exact locations
- indicates 300x300 yard gully  
with grated lid
- indicates 1000 upvc s/w  
drain to street

ISSUE A:  
PROPOSED HOUSE FFL +10.300 AHD  
EXISTING DECK FFL +9.570 AHD  
  
ISSUE E: MISSING INFORMATION  
NO DETAILS OF FFL



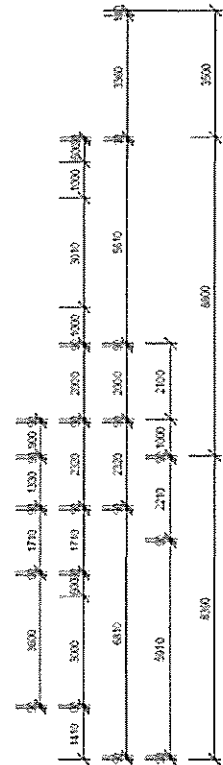
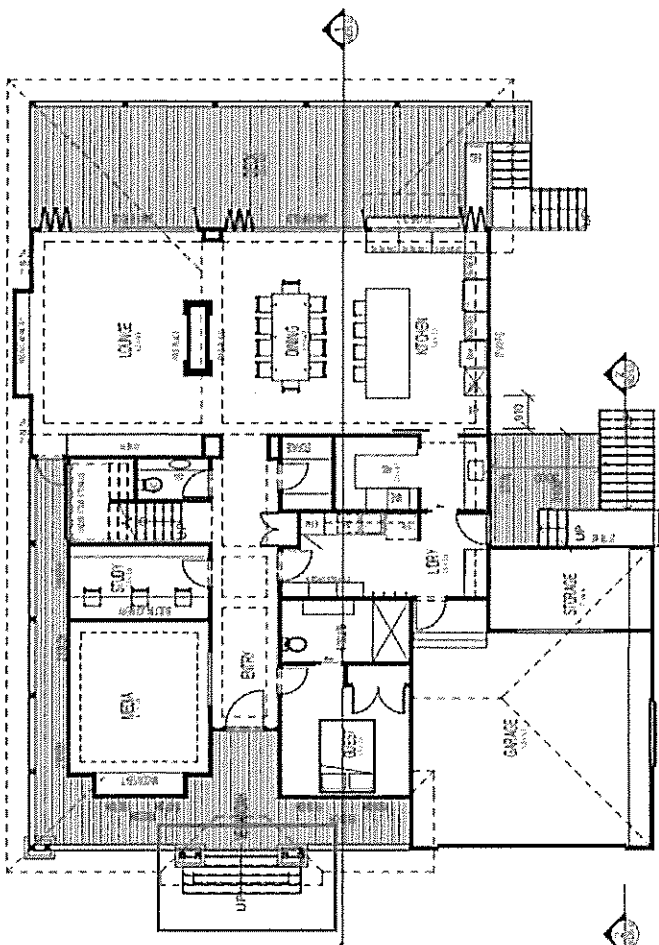
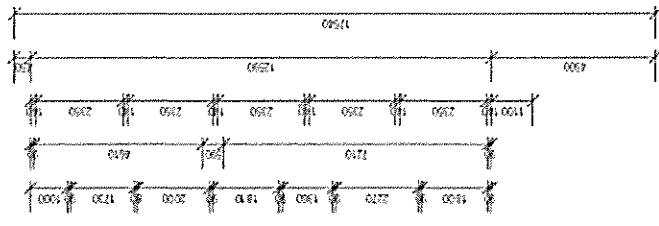
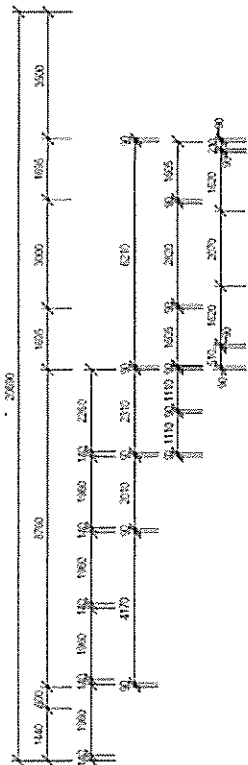
PRINCIPAL DESIGNER LUKE STEPHENS  
ORAL LC NO. 118527  
E 10/01/2014  
W 04/03/2014  
A 22/03/2014

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Scale 1:200  
Quantity LCS  
Date JULY 2018  
Issue E

61 KINGSLEY STREET BYRON BAY  
Job number DA ISSUE

Sheet No  
WD2.0



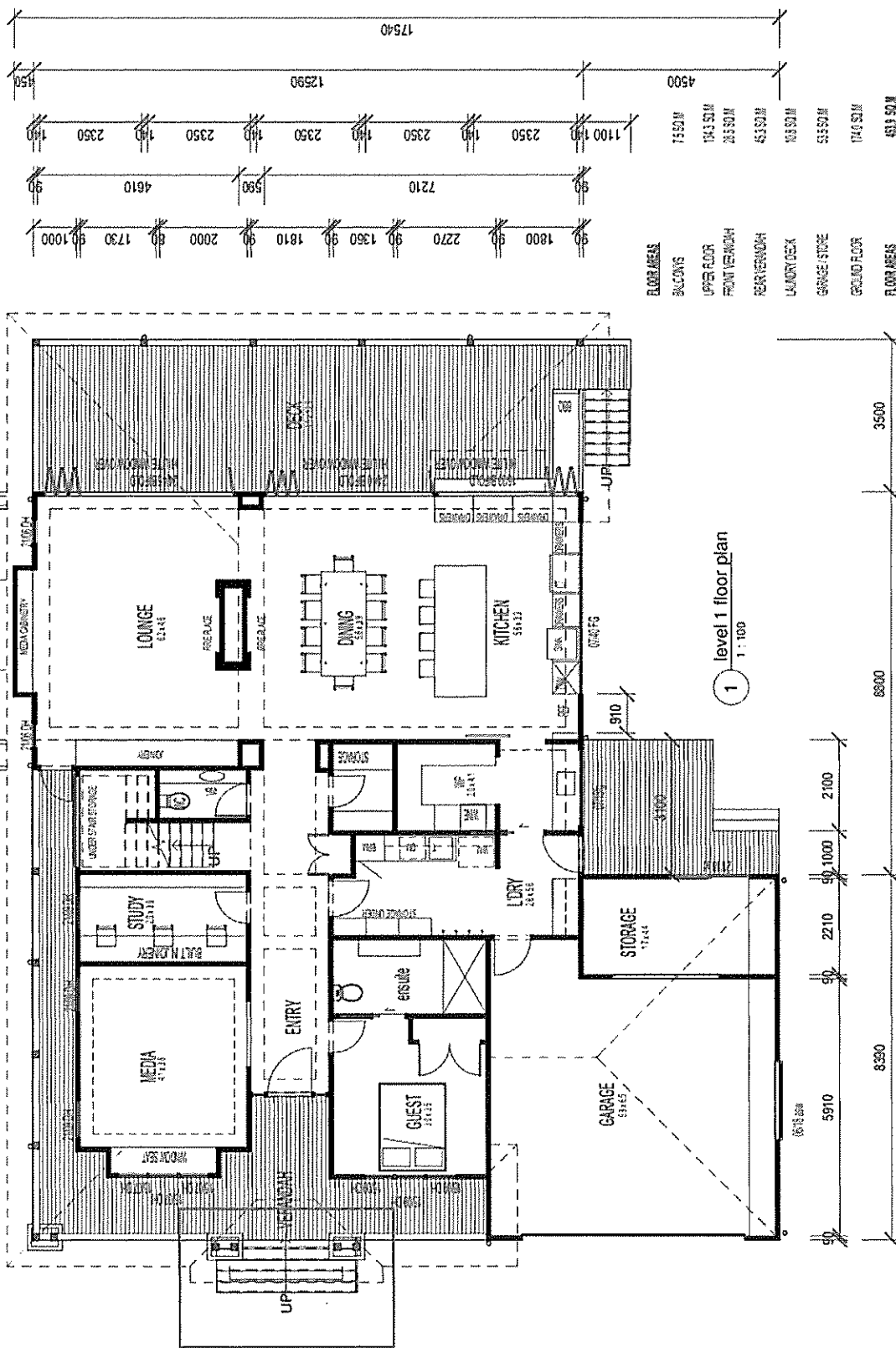
FLOOR AREA	7/15/00	7/16/00
BALCONY	7150 M	7150 M
UPPER FLOOR	174150 M	174150 M
BASE FLOOR	28150 M	28150 M
REAR TERRACE	4150 M	4150 M
LANDSCAPE	3150 M	3150 M
GRASSY GROVE	5150 M	5150 M
GROUND FLOOR	174150 M	174150 M
FLOOR AREA	41150 M	41150 M

	indicates daylight/darkness panel is closing
	min. 300mm from surrounding wall
	road access panel
	subject first to road signage to B.C.A. requirements
	recessed externalised to ceiling
	recessed anti-inboard
	indicator vehicle detector
	indicator plugging duct
	emergency lighting to electrical equipment close by refer electrical service drawings for exact locations
	notes
	1. lift up door to be fixed to w.c.
	2. smoke alarm to comply with BCA class 1A IC para 7.2 and with AS 3766
	3. External windows to be glazed obscure
<b>Health treatment</b>	
Termite treatment to BCA 4.4.5. RECO 1. Termite treatment to be applied during construction, post-construction and post-occupancy. System with termite notification plate to be installed in main antechamber and above cupboard	

ಅವರ ಮೇಲೆ ದಾಳಿ ನಡೆಸಿದಾಗ ಅವರು ಬೇರೆಯಾರೂ ಇರಲಿಲ್ಲವೆಂದು ತಿಳಿದು ಬಂದಿತು. ಈ ದಾಳಿಯಲ್ಲಿ ಅವರ ಮೇಲೆ ದಾಳಿ ನಡೆಸಿದಾಗ ಅವರು ಬೇರೆಯಾರೂ ಇರಲಿಲ್ಲವೆಂದು ತಿಳಿದು ಬಂದಿತು.

 <p>phorm BUILDING SYSTEMS</p>	<p><b>PRINCIPAL DESIGNER/LIKE STEPS/NS</b></p> <p>2000 L.A. ROAD LOS ANGELES, CA 90008 TEL: (213) 475-1111 F: (213) 475-1111</p>	<p>100% COMPLETE FOR PROJECTS OF 2 ROOMS AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM</p>	<p><b>GROUND FLOOR PLAN</b></p>	<p>Scale: 1" = 100' Date: 12/1/2014 Sheet: 1 of 1</p>	<p><b>61 KINGSLEY STREET BYRON BAY</b></p> <p>100% COMPLETE FOR PROJECTS OF 2 ROOMS AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM</p>	<p>100% COMPLETE FOR PROJECTS OF 2 ROOMS AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM</p>	<p>100% COMPLETE FOR PROJECTS OF 2 ROOMS AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM AND 100% COMPLETE FOR PROJECTS OF 1 ROOM</p>
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STAIRS SHOWING APPROX 1.00  
METER DIFFERENCE BETWEEN  
VERANDAH AND LAND LEVEL(?)



**PRINCIPAL DESIGNER**  
CEESA LLC NO. 110E547  
E: info@qipham.com.au  
M: 0432 597 528  
A: 220 Dackington Drive Barunga Point

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Scale 1 : 100  
Drawn by LCS  
Date JULY 2018  
Issue E

...  
Job number DA ISSUE

61 KINGSLEY STREET BYRON BAY

## GROUND FLOOR PLAN

WD3.1  
Sheet No.

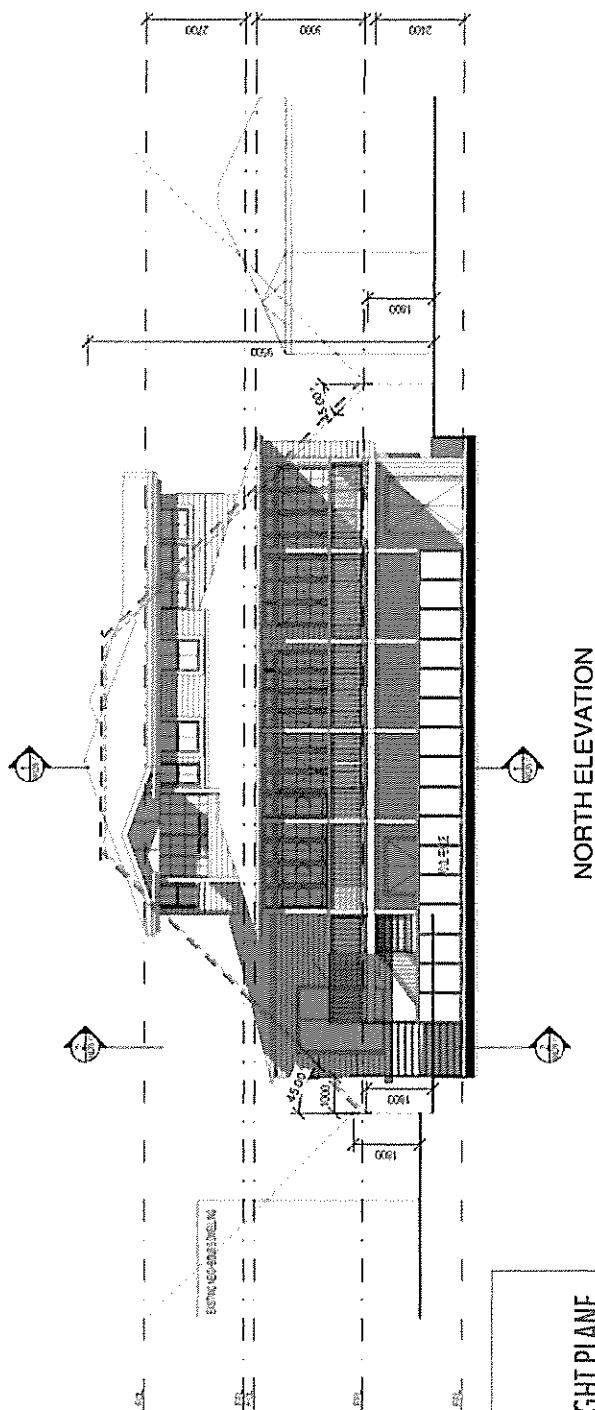


陳永發

**ELECTRIC TOWN PAPER BALUSANCE**

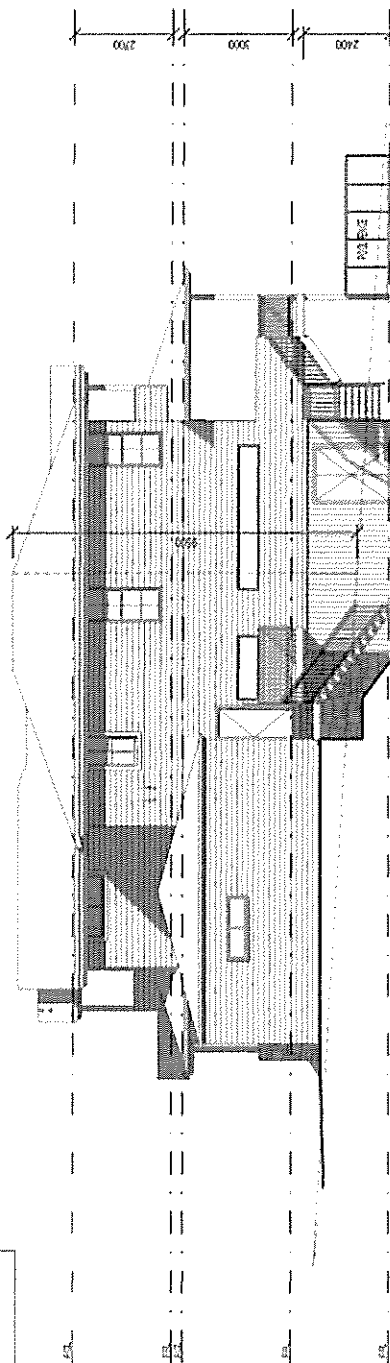
REC'D. MAGNANO CLOUTIER  
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 2002/0002  
 2002/0002

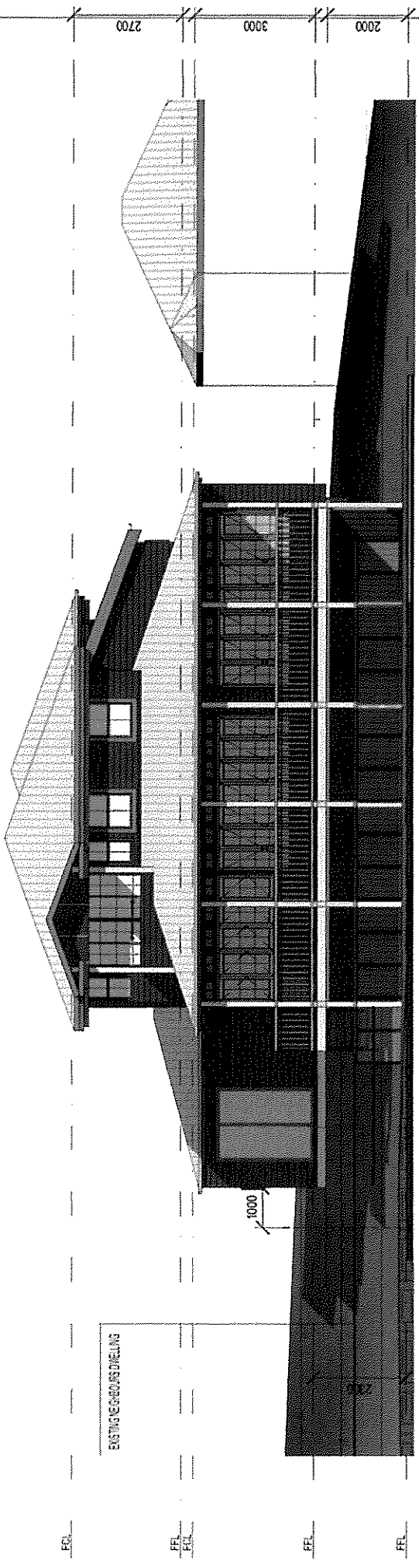


**ISSUE E:  
MISSING BUILDING HEIGHT PLANE  
IN NORTH ELEVATION.**

NORTH ELEVATION

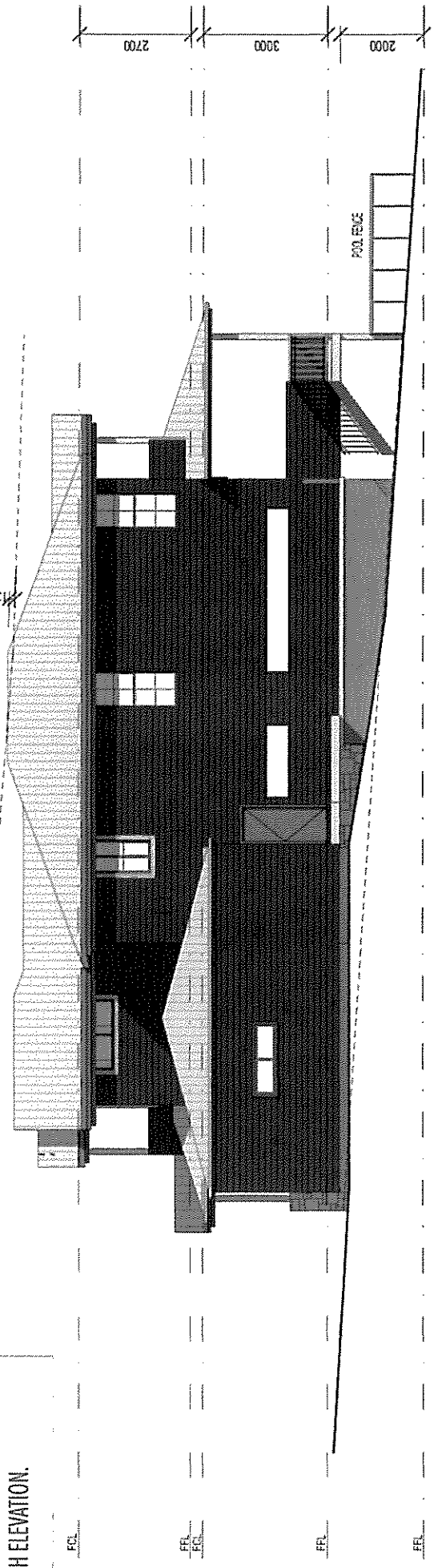


EAST ELEVATION



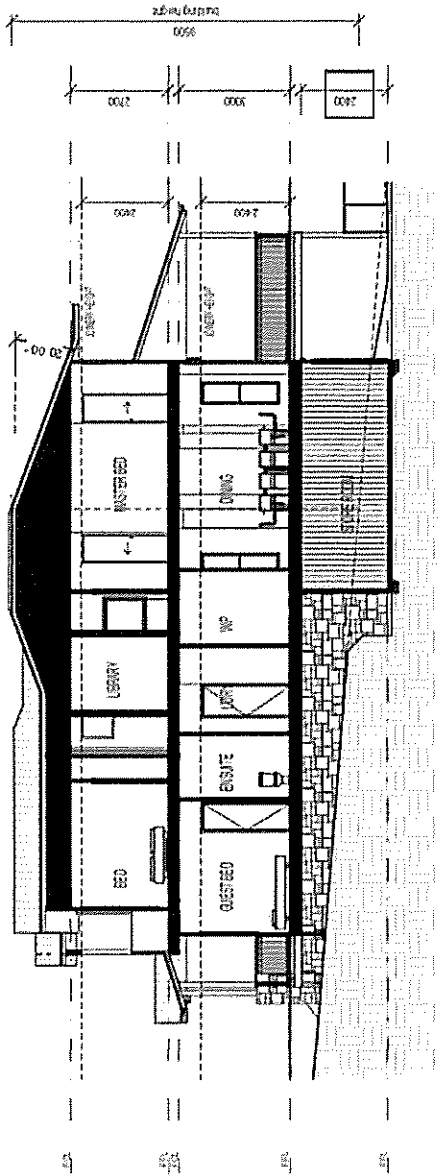
NORTH ELEVATION

ISSUE E:  
MISSING BUILDING HEIGHT PLANE  
IN NORTH ELEVATION.



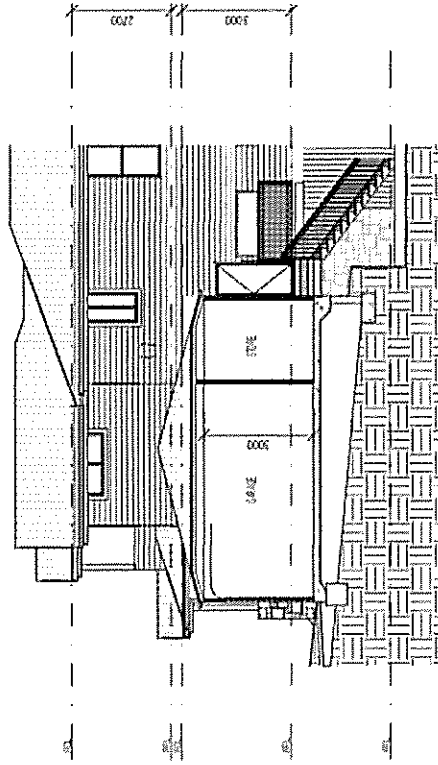
EAST ELEVATION

	<p>PRINCIPAL DESIGNER LUKE STEPHENS</p> <p>0834140 110547 E info@iphorm.com.au M 0431597539 A 233 Darlingford Drive Byron Bay</p>	<p>THIS DRAWING REMAINS THE PROPERTY OF IPHORM BUILDING DESIGN AND LUXE STEPHENS AND IS PROVIDED ON THE UNDERSTANDING ABOVE AND MAY NOT BE USED OR REPRODUCED IN WHOLE OR ANY PART WITHOUT WRITTEN PERMISSION</p>	<p>Scale 1:100 Drawn by LCS Date JULY 2018 Issue E</p>	<p>61 KINGSLEY STREET BYRON BAY</p> <p>Job number DA ISSUE</p>	<p>Sheet No WD4.0</p> <p>ELEVATIONS</p>
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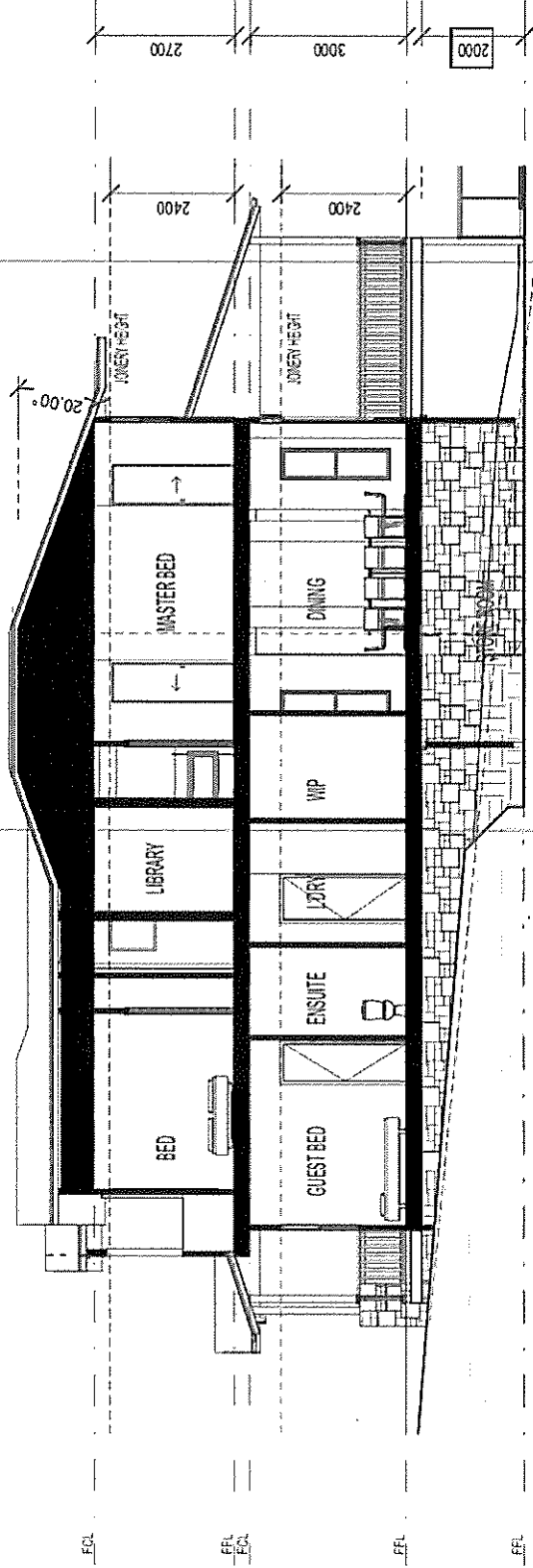


Section 1

ISSUE A:  
2400 STORE ROOM HEIGHT  
ISSUE E:  
2000 STORE ROOM HEIGHT  
(GROUND FLOOR PLAN AND ELEVATION  
DISCREPANCY)



Section 2



2  
WD5.0

Section 1



PRINCIPAL DESIGNER LUKE STEPHENS  
CASA LUNO 110527  
E. [luke@iphorm.com.au](mailto:luke@iphorm.com.au)  
M. 0431591233  
A. 223 Darling Drive, Barossa Park

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Drawn by LCS  
Date JULY 2018  
Issue E

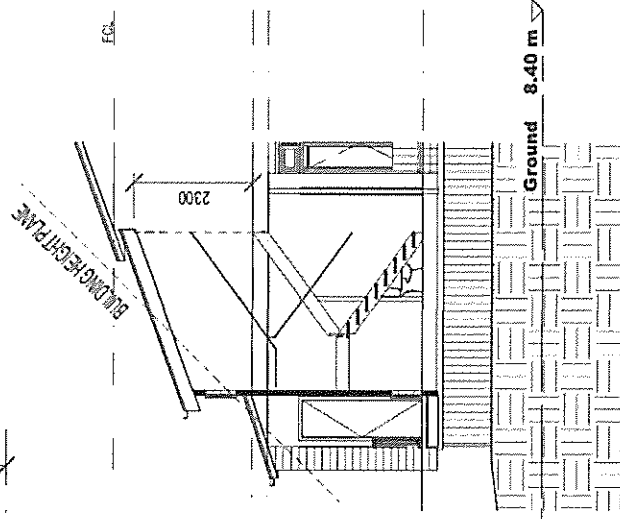
61 KINGSLEY STREET BYRON BAY

Job number DA ISSUE

SECTION A & B

Sheet No  
WD5.0

ISSUE A:  
2400 STORE ROOM HEIGHT  
ISSUE E:  
2000 STORE ROOM HEIGHT  
(GROUND FLOOR PLAN AND ELEVATION  
DISCREPANCY)



Section 3



abn: 56 291 496 553  
6 Porter Street, Byron Bay, NSW, 2481  
PO Box 538, Lennox Head, NSW, 2478  
Telephone: 1300 66 00 87

18 March 2019  
Our reference: 1394.2769

The General Manager  
Byron Shire Council  
PO Box 2109  
MULLUMBIMBY NSW 2482

Email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)  
Attention: Ms N Tarlao

Dear Sir

**RE: Submission in relation to amended plans - Development Application No. 10.2018.466.1,  
Demolition of existing dwelling house and construct new dwelling house and swimming pool at  
Lot 11 Section 45 DP 758207, No. 61 Kingsley Street, Byron Bay.**

PLANNERS NORTH has been engaged by the owners of No. 1/59 Kingsley Street Byron Bay to prepare a submission in relation to the amended plans submitted for Development Application No. 10.2018.466.1 for the demolition of the existing dwelling house and construction of a new dwelling house and swimming pool at Lot 11 Section 45 DP758207 No. 61 Kingsley Street Byron Bay.

This submission supplements our letter dated October 2018 in regard to the initial plans lodged with Council.

As previously stated, our clients do not object to a new dwelling house on the property. Their concerns relate solely to the non-compliance of the application with key planning controls and the associated impacts on No. 1/59 Kingsley Street, particularly in relation to solar access, privacy and amenity.

The revised plans submitted by the Applicant do not address the concerns raised in our previous submission. The additional material prepared by the Applicant fails to properly assess the impacts of the proposal on No. 1/59 Kingsley Street.

The following issues are raised in relation to the application as amended:

**INCOMPLETE PLANS**

The revised plans submitted with the Development Application still do not contain a floor plan of the lower floor, identified as 'store' on the plans. It is also evident that this area has not been included in the calculation of gross floor area and the floor space ratio for the proposed development. The definition of gross floor area in accordance with Byron Local Environmental Plan 2014 (BLEP 14) is (our highlighting):

***gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:***

- (a) the area of a mezzanine, and***
- (b) habitable rooms in a basement or an attic, and***
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,***

*but excludes:*

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
  - (i) storage, and*
  - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

The definition of basement in accordance with BLEP14 is:

***basement*** means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

It is submitted that the area the Applicant has excluded from the calculation of FSR is not predominantly below ground level and the floor level of the storey immediately above is not less than 1 metre above ground level (existing). The lower floor is therefore not basement storage and is required to be included in the calculation of the gross floor area of the proposal.

#### BYRON LOCAL ENVIRONMENTAL PLAN 2014 (BLEP14)

Clause 4.3 of BLEP14 provides as follows:

##### *4.3 Height of buildings*

*(1) The objectives of this clause are as follows:*

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*
- (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The maximum building height permitted is 9 metres in accordance with the height of buildings map.

Whilst the height of the building has been amended to reduce the degree of the variation, the building still exceeds the 9m height limit. It is submitted that the variation application fails to adequately substantiate the need for the proposed variation to the height limit. The grounds for varying the standard appear to rely on the "majority of the building" complying with the standard and the fact that the variation is in the central part of the roof. The proposed variation request also states that the variation seeks to provide a building which will have a lesser impact on solar access of adjoining properties. It is submitted that the building height plane provisions of Byron Development Control Plan 2014 (BDCP14) provide provisions for setbacks to adjoining properties to address impacts on solar access, and that the subject building is indeed non-compliant with these provisions as discussed below.

In our view, there is ample potential for the height of the building to be reduced to comply with the height limit. A reduction in the height of the lower ground floor would easily achieve compliance with the overall height limit. Similarly, the floor to ceiling height of the ground floor and first floor proposed are 3 metres and 2.7 metres respectively. A reduction in the height of the floor to ceiling levels would achieve compliance with the height limit.

Further, a reduction of the height of the building and associated floor levels will also improve the relationship between the dwellings in terms of potential privacy impacts. A reduction in the floor levels will

improve the relationship between the proposed outdoor deck of No. 61 and the indoor and outdoor areas of No. 1/59 Kingsley.

It is submitted that the proposed variation fails to adequately justify non-compliance with the height limit, and that a complying scheme is easily able to be achieved on the site. It is noted that this is not the only area of non-compliance with Council's planning provisions, which indicates overdevelopment of the site.

#### BYRON DEVELOPMENT CONTROL PLAN 2014 (DCP14)

A review of the proposed plans in relation to the provisions of Chapter D1 Residential Accommodation in Urban Village and Special Purpose zones indicates the following areas of noncompliance with the provisions of the DCP:

### **D1.2 General Provisions**

#### **D1.2.1 Building Height Plane**

##### **Objectives**

- 1. To ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing buildings.*
- 2. To ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.*

##### **Performance Criteria**

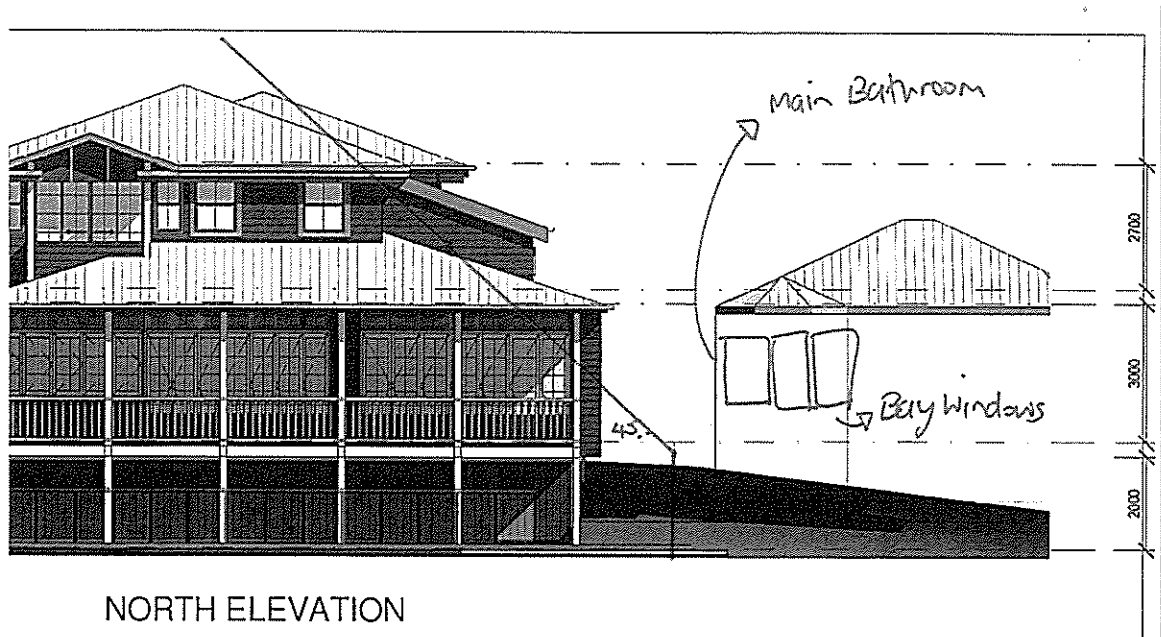
- 1. Developments must be set back progressively from the site boundaries as height increases so that they do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.*
- 2. Developments must be designed so that they will promote energy efficiency and so that residents may enjoy optimum use of winter sunlight and summer shade.*
- 3. Development applications must demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc.) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9.00am to 3.00pm on any day.*

##### **Prescriptive Measures**

- 1. The building height plane in combination with boundary setbacks prescribed in this DCP, and building height prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development other than for shop top housing and ancillary dwellings in Zones IN1, IN2 and B7.*
- 2. An exemption from the building height plane may be considered in relation to one or more boundaries in the following circumstances:*
  - a) where the floor level is required to be above ground level to comply with Council's requirements for flood protection; or*
  - b) for the zero lot line boundaries of semi-detached dwellings and attached dwellings; or*
  - c) in circumstances referred to in Prescriptive Measure 2. of Section D1.2.2.*

The plans submitted with the development application when lodged with Council indicated a significant breach to the building height plane on the western boundary adjoining our clients' property. The amended plans submitted to Council simply remove the building height plane from the northern elevation. It is submitted that the building height plane should be depicted on all elevations and sections through the site as well. Whilst the roof form has been modified, the building remains non-compliant with the building height plane as it applies to the western boundary, impacting on our client's property.

The information provided on the Northern Elevation makes it difficult to determine the existing ground level however, the following conservative depiction of the building height plane demonstrates a significant breach is proposed notwithstanding the modification to the building height.



The shadow diagrams provided clearly indicate that the proposal does not comply with the provisions of D1.2.1 Building Height Plane. As the proposal does not comply with the prescriptive measures of this provision, the development is required to satisfy the performance criteria specified in D1.2.1.

The proposal does not ensure that the building will not impact on adjoining properties by way of overshadowing or impinging on privacy. As clearly stated in our previous submission, the provisions of the DCP require Development Applications to demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9am to 3pm on any day. As was the case with the original development application plans, the amended shadow diagrams submitted clearly illustrate impacts on No. 1/59 Kingsley Street in terms of solar access to living areas. It is also noted that the impacted windows of No. 1/59 Kingsley Street provide for the penetration of sunlight through to the key living, dining and lounge areas of the dwelling.

The shadow diagrams remain incomplete as they do not identify the impact on the existing windows to the living areas of No. 1/59. That is, the shadows in elevation, during the critical hours of 9am to 3pm, are not provided. It is submitted that diagrams clearly illustrating the impacts of the existing building in comparison to the proposed building are required to be submitted.

In relation to the issue of privacy, the application fails to address the concerns raised in our previous submission. No amendment to the elevations in terms of overlooking windows, or setback of the building has been incorporated in the revised plans. Further, no assessment whatsoever is provided in relation to the relationship of the proposed building with No. 1/59 Kingsley Street. The proposed development directly overlooks bedrooms and bathrooms and the entire outdoor private open space, as illustrated in the diagram below.

Authority: BYRON SHIRE COUNCIL

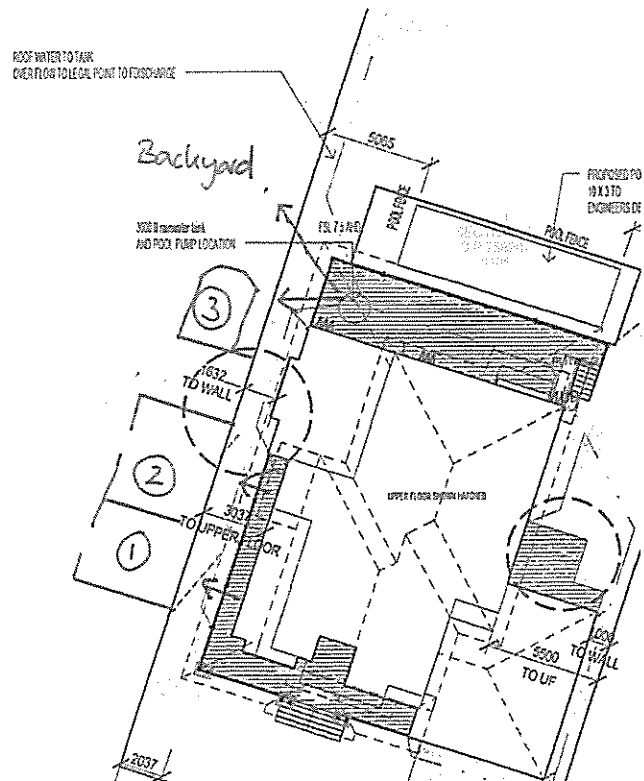
Area - 1012 sq.m  
 Cover - 311.55 sq.m (30.7%)

Indicates downpipe location  
 refer floor plan for exact locations

Indicates 300x1000 yard gully  
 with grated lid

Indicates 1000 Upvc s.w  
 drain to street

- ① Master Bedroom
- ② Baby's Bedroom
- ③ Main Bathroom



The proposed large elevated deck to the rear will directly overlook the entire outdoor private open space of No. 1/59 Kingsley Street and, as stated in our previous submission, the height of the floor, extent of the deck and absence of any screening also provide for overlooking directly into the master bathroom of No. 1/59 Kingsley Street.

The photographs provided at **Attachment A** clearly indicate the potential impacts on No. 1/59 Kingsley Street in terms of privacy.

The concerns raised in our previous submission remain in relation to the non-compliance with the building height plane. Specifically, the application fails to demonstrate compliance with the relevant performance standards, given the breaches of the building height plane. The proposed building has little or no regard for the impact on the adjoining property in terms of both solar access and privacy, and it is concluded that the proposed breach is unacceptable in the circumstances.

We request a site meeting with Mr. Chris Larkin and yourself to discuss the issues associated with this application on site. Please advise us of your availability for such a meeting. We do appreciate Council providing the opportunity to comment on the amended plans. It is disappointing that the amendments made did not consider the issues raised in our submission. Please do not hesitate to contact the writer should you require any additional information in relation to this submission.

Yours faithfully,

**PLANNERS NORTH**

**Kate Singleton RPIA**  
 PARTNERSHIP PRINCIPAL  
 (m) 0438 803 021  
 (e) [kate@plannersnorth.com.au](mailto:kate@plannersnorth.com.au)

Encl. Attachment A – Photographs

**ATTACHMENT A**

Photographs from No. 1/59 Kingsley Street



Baby's Bedroom



Main Bathroom



Main Bedroom



Looking from No. 1/59 towards No. 61



PLANNERS  
NORTH

1394.2769



Looking from No. 1/59 towards No. 61



**PLANNERS  
NORTH**

abn: 56 291 496 553  
6 Porter Street, Byron Bay, NSW, 2481  
PO Box 538, Lennox Head, NSW, 2478  
Telephone: 1300 66 00 87

8 October 2018  
Our reference: 1394.2606

The General Manager  
Byron Shire Council  
PO Box 2109  
MULLUMBIMBY NSW 2482

Email: [council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)

Attention: Ms N Tarlao

Dear Sir

**RE: Submission in relation to Development Application No. 10.2018.466.1, Demolition of existing dwelling house and construct new dwelling house and swimming pool at Lot 11 Section 45 DP 758207, No. 61 Kingsley Street, Byron Bay.**

PLANNERS NORTH has been engaged by the owners of 1/59 Kingsley Street Byron Bay to prepare a submission in relation to the Development Application No. 10.2018.466.1 for the demolition of the existing dwelling house and construction of a new dwelling house and swimming pool at Lot 11 Section 45 DP758207 No. 61 Kingsley Street Byron Bay.

Firstly, we must emphasise that our clients do not object to a new dwelling house on the property and as detailed in this submission, their concerns relate solely to the non-compliance of the application with key planning controls and the associated impacts on 1/59 Kingsley Street, particularly in relation to solar access, privacy and amenity.

A detailed assessment of the documentation submitted with the Development Application and site inspection has been undertaken and the following issues are raised in relation to the application in its current form.

#### INCOMPLETE PLANS

The plans submitted with the Development Application do not contain a floor plan of the sub floor, identified as 'store' on the plans. It is also evident that this area has not been included in the calculation of gross floor area and the floor space ratio for the proposed development.

#### BYRON LOCAL ENVIRONMENTAL PLAN 2014 (BLEP14)

Clause 4.3 of BLEP14 provides as follows:

##### *4.3 Height of buildings*

*(1) The objectives of this clause are as follows:*

*(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*



Planning  
Institute  
Australia

- (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The maximum building height permitted is 9 metres in accordance with the height of buildings map.

As documented in the Development Application the proposal provides for a 0.5 metre variation to the maximum building height provision. It is submitted that the variation application fails to acknowledge that a reduction in the overall height of the building will result in a reduction in the impact of the proposed development in terms of the overshadowing of No. 1/59 Kingsley Street.

Further a reduction of the height of the building and associated floor levels will also improve the relationship between the dwellings in terms of potential privacy impacts. A reduction in the floor levels will improve the relationship between the proposed outdoor deck of No. 61 and the indoor and outdoor areas of No. 1/59 Kingsley.

It is submitted that the proposed building has a "bulky" presentation to Kingsley Street and presents as a three storey building to the north, east and west elevations. It is concluded that the application fails to adequately justify the proposed building height variation.

#### BYRON DEVELOPMENT CONTROL PLAN 2014 (DCP14)

A review of the proposed plans in relation to the provisions of Chapter D1 Residential Accommodation in Urban Village and Special Purpose zones indicates the following areas of noncompliance with the provisions of the DCP:

### **D1.2 General Provisions**

#### **D1.2.1 Building Height Plane**

##### **Objectives**

- 1. To ensure that residential development is designed to minimise impacts on solar access and privacy on adjoining properties, and on the views from adjacent existing buildings.*
- 2. To ensure that the occupants of the building or buildings will enjoy the optimum use of winter sunlight and summer shade.*

##### **Performance Criteria**

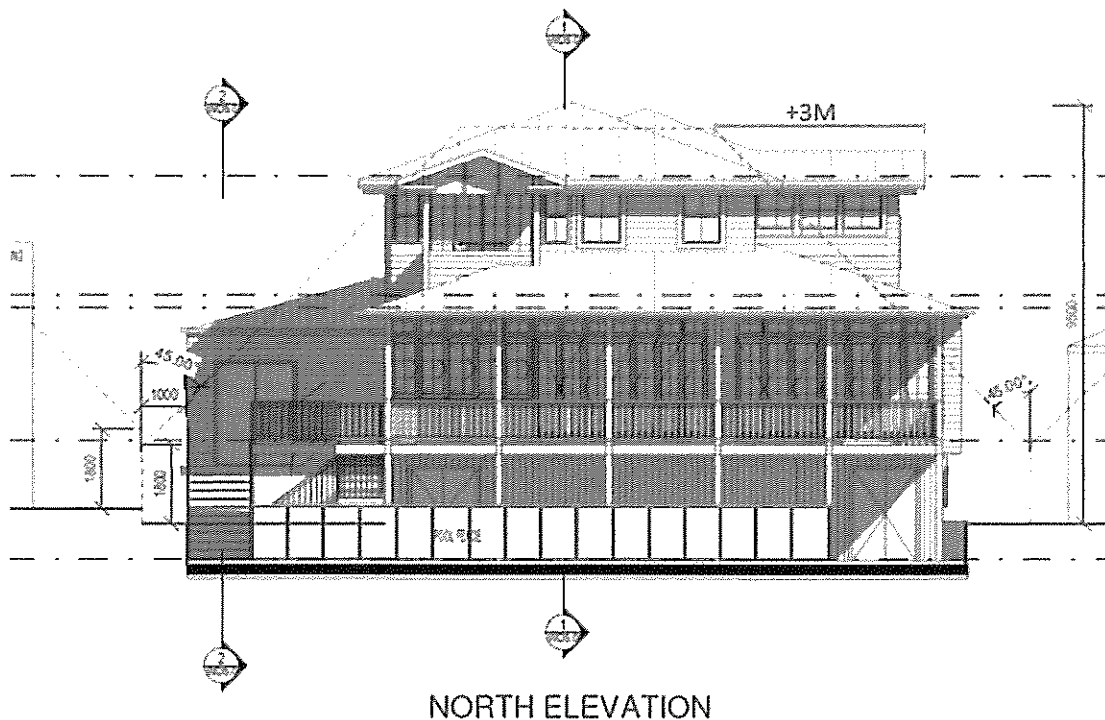
- 1. Developments must be set back progressively from the site boundaries as height increases so that they do not adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views.*
- 2. Developments must be designed so that they will promote energy efficiency and so that residents may enjoy optimum use of winter sunlight and summer shade.*
- 3. Development applications must demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc.) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9.00am to 3.00pm on any day.*

##### **Prescriptive Measures**

- 1. The building height plane in combination with boundary setbacks prescribed in this DCP, and building height prescribed in the Byron LEP 2014, form the maximum building envelope for all residential development other than for shop top housing and ancillary dwellings in Zones IN1, IN2 and B7.*
- 2. An exemption from the building height plane may be considered in relation to one or more boundaries in the following circumstances:*
  - a) where the floor level is required to be above ground level to comply with Council's requirements for flood protection; or*
  - b) for the zero lot line boundaries of semi-detached dwellings and attached dwellings; or*

*c) in circumstances referred to in Prescriptive Measure 2. of Section D1.2.2.*

The plans submitted with the application indicate a significant breach to the building height plane on the western boundary adjoining our clients' property. The breach of the height plane as it applies to the western boundary extends along the full length of the proposed building and at the first floor level the building extends some 3 metres beyond the building envelope, as illustrated in the plan extract below.



This breach is not minor and will materially impact on the solar access and privacy of the adjoining property. The Statement of Environmental Effects submitted with the application states that the building steps in to minimise loss of solar access to adjoining properties and concludes that the breaches are inconsequential in relation to achieving solar access and maintaining privacy and views for the adjacent dwellings to the east and west. The Statement of Environmental Effects states that the proposal is consistent with the objectives set out in DCP2014.

It is our submission that the proposed development does not satisfy the provisions of D1.2.1 Building Height Plane. The proposal does not comply with the Prescriptive Measure, namely the building height plane. The proposed development is therefore required to satisfy the Performance Criteria as specified in D1.2.1.

Whilst the building is progressively set back from the side boundaries as the height increases, the proposal does not ensure that the building will not impact on adjoining properties by way of over shadowing or impinging on privacy. The provisions of the DCP require development applications to demonstrate that the windows of living areas (decks, living rooms, bedrooms, kitchens, etc) of development on adjoining properties will, as a minimum, retain full solar access between the hours of 9am to 3pm on any day. The shadow diagrams submitted with the development application clearly illustrate impacts on No. 1/59 Kingsley Street in terms of solar access to living areas. It is also noted that the impacted windows of No. 1/59 Kingsley Street provide for the penetration of sunlight through to the key living, dining and lounge areas of the dwelling.

The shadow diagrams are considered incomplete as they do not identify the impact on the existing windows to the living areas of No. 1/59. That is the shadows in elevation, during the critical hours of 9am to 3pm, are not provided.

In relation to privacy, the western elevation of the proposed development identifies numerous large windows and doors facing directly into No. 1/59 Kingsley Street. The rooms directly overlooking No. 1/59 include a media room, a study, lounge room and upper floor sitting area with a window seat. Further the proposed development also includes a verandah extending the majority of the western side of the building. Collectively, these large windows, doors and the side verandah face directly into the existing master bedroom and the children's bedroom of No. 1/59 Kingsley Street and present material adverse impacts on privacy. No assessment has been made by the proponent in relation to the potential impact of these large doors / windows and the verandah on the privacy of No. 1/59 Kingsley Street.

Further, the proposed elevated large deck to the rear will directly over look the entire outdoor private open space of No. 1/59 Kingsley Street. The height of the floor, extent of the deck and absence of any screening also provide for overlooking directly into the master bathroom of No. 1/59 Kingsley Street.

The objectives of the building height plane provision require ensuring that residential development is designed to minimise impacts on solar access and privacy on adjoining properties. It is evident that the proposed breaches of the building in height plane combined with the non-compliance with the overall building height provision of BLEP14, result in a building design which has little or no regard for the impact on the adjacent property in terms of both solar access and privacy. It is submitted that the proposed breach is unacceptable for the reasons outlined above.

It is submitted that the application fails to justify the proposed variation to the 9 metre building height limit. The breach of the building height plane and building height limit significantly contribute to the impacts on No. 1/59 in terms of solar access. Further, the application has little or no regard for the potential impacts on No. 1/59 in terms of privacy. It is submitted that the proposed impacts are such as to warrant an amended design to thoroughly address the issues raised in this submission.

We ask that Council advise us and our clients in the event that a request for further information is forwarded to the proponent to address the issues raised in this submission. We also request that we be provided with the opportunity to review any additional information or amended plans submitted to Council. We would also welcome Council officers to undertake a site inspection, including No. 1/59 Kingsley Street, to gain a greater appreciation of the issues of concern.

Yours faithfully,

**PLANNERS NORTH**



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