

CONDITIONS OF CONSENT: DA10.2019.648.1

SCHEDULE 1. CONDITIONS OF CONSENT

Parameters of consent

1. Development is to be in accordance with approved plans

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

Plan No.	Description	Prepared by	Dated:
S2	Proposed Layout	Balanced Systems Planning Consultants	20/8/2019
C1 Rev A	Demonstrated Property Access Driveways	SDS Civil Enterprise	Aug 2020

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

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

2. Conditions prescribed by the Regulation

This development consent is subject to the conditions prescribed by the regulations in accordance with subsection 4.17(11) of the Environmental Planning and Assessment Act 1979. Conditions are provided in **Schedule 2** of this consent.

3. Support for neighbouring buildings

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

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

4. Tree Removal

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

The following conditions are to be complied with prior to issue of a Construction Certificate for Building Works

5. Plans of retaining walls and drainage

The application for a Construction Certificate is to include plans and specifications that indicate retaining walls or other approved methods of preventing movement of the soil, where any excavation or filled area exceeds 600mm in height. Adequate provision must be made for drainage.

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

6. Amendment to Plan required - Garage

Plans submitted for approval of the Construction Certificate must demonstrate that:

- The garage door/ gate to be setback a minimum of 3 metres from the Leslie Street boundary under the existing deck;
- The cladding of the garage door/gate is to be visually consistent with the existing batten screening which disguises the undercroft of the dwelling house and to reflect the heritage character of the dwelling; and
- The floor to ceiling height of the parking of the dwelling in Lot A must be a minimum height of 2.1 metres.

Such plans are to be approved as part of the Construction Certificate.

The following conditions must be complied with prior to issue of a Subdivision Works Certificate.

7. Long Service Levy to be paid

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

These payments can be made online at www.longservice.nsw.gov.au. Proof of payment is required to be submitted with the Construction Certificate application.

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

8. Bond required to guarantee against damage to public land

A bond of \$3,000 is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development, together with payment of an asset inspection fee in accordance with Council's fees and charges. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repared to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc.

9. Site Waste Minimisation and Management

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

10. Consent required for works within the road reserve

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

a) Driveway in Campbell St

Sealed driveways, in accordance with Council's rural driveway standards R-14 & R-15, from the edge of the bitumen to the property boundary designed and constructed in proposed new Lot B.

b) Driveway in Leslie St

Sealed driveways, in accordance with Council's driveway standards R-05 & R-06, from the edge of the carriageway in Leslie St and up to Station 16 in SDS Civil drawing C2 inside the property boundary in Lot A .

11. Engineering Construction Plans

Engineering construction plans and specifications must accompany the Subdivision Works Certificate application demonstrating compliance with Council's standards for the required engineering works.

Each set of drawings must be accompanied by a Certification Report which must be signed by a suitably qualified Civil Engineer or Registered Surveyor. The Certification Report will comprise the certificate and check lists set out in Annexure DQS-A of the [Northern Rivers Local Government Development & Design Manuals](#).

The information shown on the drawings must be logically collected on discrete sheets generally in accordance with Annexure DQS-B and the Sample Drawings of the Northern Rivers Local Government Development & Designs. The drawings are to provide for the following works:

a) Inter-allotment Drainage

Inter-allotment drainage to the kerb and gutter in Leslie St to provide a lawful point of discharge of Lot B. Inter-allotment drainage pipe and swale shall be designed to cater for a Q₅ underground drainage system with positive relief overland system above the pipe. Swale shall be provided inside Lot B along the common boundary with Lot A to direct flows towards the inter-allotment drainage system and easement in Lot A.

b) Stormwater Drainage

Stormwater is to be collected and discharged in accordance with Council's standards, currently [Northern Rivers Local Government Development Design & Construction Manuals](#). A full and detailed stormwater management plan for the site must be provided for Council's records at the time of lodging detailed engineering plans for Subdivision Works Certificate approval. The drawings and management plan must be accompanied by a Design Submission Checklist as set out in APPENDIX C of the Northern Rivers Local Government Handbook of Stormwater Drainage Design, which must be signed by a suitably qualified Civil Engineer or Registered Surveyor. The drawings and management plan are to include, but not be limited to, the following items:

- a) Catchment plan including all contributing external catchment (included in the drawing set);
- b) Hydrological and hydraulic calculations based on the methods outlined in the Queensland Urban Design Manual (QUDM) and Australian Rainfall & Runoff (AR&R) 1987. A summary of the calculations must be included on

the drawings consistent with the Sample Drawings of the Northern Rivers Local Government Development & Design Manuals.

- c) Analysis and design of major design requirement.

12. Sewerage and Water Mains

An approval is to be obtained under Section 68 of the Local Government Act 1993 to carry out water supply and sewerage works. Sewerage and water mains are to be extended to service all residential allotments in the subdivision (including the vacant lot).

13. Erosion and Sedimentation Control Plan

The plans and specifications to accompany the Subdivision Works Certificate application are to include a sediment and erosion control plan to indicate the measures to be employed to control erosion and loss of sediment from the site. The sediment and erosion control plan is to be designed in accordance with the requirements of the *NSW Department of Housing Manual (1989), Managing Urban Stormwater, Soils and Construction*.

A suitably experienced person must prepare the sediment and erosion control plan. Suitably experienced people include those certified by:

- The Institution of Engineers, Australia, for engineering and hydrology matters.
- The International Erosion Control Association for soil conservation matters.
- The Australian Society of Soil Science for collection or analysis of soil data.

The plan must incorporate (without being limited to) information on general site management, material handling practices, soil stabilisation, water control, sediment control, wind erosion control and access measures

14. Traffic Control Plan

The plans and specifications to accompany the Subdivision Works Certificate application are to include a traffic control plan to indicate the measures to be employed to control traffic during construction of the subdivision. The traffic control plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual (1998), *Traffic Control at Work Sites*, and Australian Standard 1742.3 - 1985, *Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'*.

The traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller.

15. Fibre-ready Facilities and Telecommunications Infrastructure

Prior to the issue of the Subdivision Works Certificate, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

- a) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
- b) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project

demonstrated through an agreement with a carrier.
(Note real estate development project has the meanings given in section 372Q of the

The following conditions are to be complied with prior to commencement of works

16. Subdivision Work

Subdivision work in accordance with the development consent must not be commenced until a Subdivision Works Certificate has been issued, a principal certifying authority has been appointed and at least 2 days' written notice for the intention to commence works has been made, in accordance with the requirements of the Environmental Planning and Assessment Act and Regulations. The written notice for the intention to commence works must also include names and contact details of the certifying engineer and principal contractor.

Note. Subdivision work means any physical activity authorised to be carried out under the conditions of this development consent for the subdivision of land, including earthwork, road work, stormwater drainage work, landscaping work, tree/vegetation removal, erosion and sediment control, traffic control, etc.

17. Public Liability Insurance

The developer and/or contractor must produce evidence to the Principal Certifying Authority of public liability insurance cover for a minimum of \$20 million. Council is to be nominated as an interested party on the policy.

18. Erosion and sediment measures

Erosion and sedimentation controls are to be in place in accordance with the approved Erosion and Sediment Control Plan.

No soil or fill material is to be placed within the dripline of a tree so as to cause changes in surface level by more than 50mm from the existing level and such soil is not to be compacted. Such soil fill must not be finer than that being covered in situ, e.g. clay must not be placed over loam soil.

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

The following conditions are to be complied with during any construction of works

19. Construction times

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

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

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

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

condition.

20. Construction Noise

Construction noise is to be limited as follows:

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

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

21. Council Specification

All works to be constructed to at least the minimum requirements of the "[Northern Rivers Local Government Design and Construction Manual](#)"

22. Approved Plans to remain on site

A copy of the approved Subdivision Works Certificate including plans, details and specifications must remain at the site at all times during the construction of the subdivision.

23. Prevention of water pollution

Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.

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

24. Maintenance of sediment and erosion control measures

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

25. Aboriginal Relics

If any Aboriginal archaeological relics or items are exposed during construction works, the Applicant shall:

- a) immediately cease works;
- b) notify the NSW National Parks and Wildlife Service (NPWS);
- c) obtain any necessary permits and/or approvals to continue the work under the National Parks and Wildlife Act 1974.

The Applicant shall comply with any further request made by the NPWS to cease work for the purposes of archaeological assessment and recording.

The following conditions are to be complied with prior to issue of a Subdivision

Certificate

26. Subdivision Certificate application required

An application for a Subdivision Certificate must be made on the approved form. The Subdivision Certificate fees, in accordance with Council's adopted schedule of fees and charges, must accompany such application.

27. Occupation Certificate

An Occupation Certificate to be obtained for works proposed to the existing dwelling on Proposed Lot A in relation to the car park/ garage.

28. Plan of Subdivision

The final plan of subdivision must be in accordance with the approved plan/s. A Deposited Plan Administration Sheet (original plus one (1) copy), two (2) copies of the plan of subdivision and any necessary section 88B instrument (original plus one (1) copy) are to be submitted with the application for a subdivision certificate.

An additional copy of the final plan of subdivision is to be submitted showing the location of all buildings and/or other permanent improvements including any fences, internal access and driveways/roads. Where the building/s or improvements are close to boundaries, offset distances are to be included on the additional copy of the plan. This plan must be endorsed by a Registered Surveyor. Any encroachments affecting new boundaries or the road reserve must be removed or relocated wholly within the allotment. The new boundaries must not cause any existing building/s to contravene the Building Code of Australia.

29. Street addressing

In accordance with clause 60(c) of the Surveying and Spatial Information Regulation 2017 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each lot in the final plan of subdivision. The street addressing for this property must be approved by Council. A written request seeking approval of street addresses is to be submitted to Council's Land Information Officer (planning.certificates@byron.nsw.gov.au) with a copy of the final plan of subdivision showing driveway access to each lot from the public road servicing the lots.

Prior to issue of the subdivision certificate, the approved street number must be displayed in a prominent location near the approved driveway access for each lot with an existing dwelling/building approved for separate occupation.

30. Section 88B Instrument

A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:

a) Inter-allotment Drainage Easements

The creation of easements for drainage of water, with a minimum width of 1.5 metres, over all inter-allotment drainage pipelines and structures located within the proposed allotments.

b) Drainage Easements

The creation of easements for drainage of water over all drainage pipelines and structures located within the proposed allotments in accordance with Council's policy.

c) Easement for Services

The creation of suitable easements for services for proposed Lot B.

d) Easement for Electricity

The creation of any necessary easements for electricity purposes as required by the electricity supply authority.

e) Restricting Development – On-site Stormwater Detention

Restricting residential development of Lot B until the proprietor has constructed or made provision for the construction of an on-site stormwater detention system to the requirements of Byron Shire Council.

f) Positive Covenant – On-site Stormwater Detention

Creation of a positive covenant over the title of the property to ensure the maintenance of the future on-site stormwater detention system for Lot B.

31. Completion of All Works

All subdivision works required by this development consent, and associated Subdivision Works Certificate, are to be completed prior to issue of the subdivision certificate. A copy of the final completion letter/s, issued by the Principal Certifying Authority, and final plumbing certificate, issued by the water supply authority, for the relevant subdivision works must be submitted with the application for a subdivision certificate.

32. Certificates for engineering works

The submission of all test certificates, together with a certificate from a suitably qualified engineer certifying that all works have been constructed in accordance with the approved plans and Council's current "Northern Rivers Local Government Design and Construction Manuals and Specifications".

33. Electricity Supply Certificate

Prior to the issue of the Subdivision Certificate, a Notice of Arrangement (NOA) requested from the Distribution Network Service Provider, currently Essential Energy, must be submitted to the Principal Certifying Authority. The NOA must confirm that satisfactory electricity supply has been provided to each of the proposed lots and all necessary street lighting has been energised for the development.

Note: Requests for a NOA are to be made to the Contestable Works section at Essential Energy.

34. Geotechnical Report (Lot Classification)

A certificate from a practicing Geotechnical Engineer must be provided in conjunction with a Lot Classification Report prepared in accordance with Australian Standard AS2870.1. Such certificate must certify that all vacant allotments have a building site of adequate size and shape on each lot that is not subject to slip or subsidence.

35. Certificate for services within easements

The submission of a certificate from a registered surveyor certifying that all pipelines, structures, access driveways and/or services are located wholly within the relevant easements.

36. **Fibre-ready Facilities and Telecommunications Infrastructure**

Prior to the issue of the Subdivision Certificate, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

1. the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
2. the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note real estate development project has the meanings given in section 372Q of the Telecommunications Act).

SCHEDULE 2. PRESCRIBED CONDITIONS

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

- Clause 98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989 <http://www.legislation.nsw.gov.au/-/view/regulation/2000/557/part6/div9>
- Clause 98A Erection of signs
- Clause 98B Notification of Home Building Act 1989 requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Condition relating to maximum capacity signage
- Clause 98E Condition relating to shoring and adequacy of adjoining property

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

SCHEDULE 3 REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.

The proposed development complies with relevant State Environmental Planning Policies

The proposed development complies with relevant provisions of Development Control Plan 2014

The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Council's Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.
The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Clause 5.10 of Local Environmental Plan 2014.
The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Development Control Plan 2014.
The reasons for refusal of the original development application were addressed by the revised proposal and additional information provided to support the review of the development application in relation to car parking, access and heritage matters.

How community views were addressed
The DA was notified/advertised in accordance with Council's Community Participation Plan. No submissions were received.

SCHEDULE 4 NOTES

Construction Certificate required:

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

Principal Certifying Authority:

Work must not commence until the applicant has:-

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

Occupation Certificate required:

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

Protection of the Environment Operations Act 1997:

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

Penalties apply for failure to comply with development consents

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

Plumbing Standards and requirements.

All Plumbing, Water Supply, Sewerage and Stormwater Works shall be installed in accordance with the Local Government Act 1993, Plumbers Code of Australia and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications. Any plumbing inspections required under a Section 68 Approval are to occur in accordance with that approval.

Relics Provisions- Advice

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

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

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