

## DA 10.2022.71.1 RECOMMENDED CONDITIONS OF CONSENT

### SCHEDULE 1. CONDITIONS OF CONSENT

#### Parameters of consent

1. **Approved plans and supporting documentation**

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Plan Title	Drawn by	Dated
-	Level 2 Floor Plan. Address: 30/33-35 Childe Street, Byron	-	21.11.2021

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

**Note:** an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

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 a **Schedule** of this consent.

#### The following conditions are to be complied with prior to occupation of the building as Tourist Accommodation Unit and within three months of the date of this consent

3. **Works to be completed prior to issue of a Final Occupation Certificate**

All the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development including approvals issued under the *Local Government Act 1993* and the *Roads Act 1993*, are to be completed and approved by the relevant consent authority/s prior to the issue of a Final Occupation Certificate.

Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Council's road/footpath reserve.

4. **Final Fire Safety Certificate**

Prior to issue of any Occupation Certificate for the use approved under this development consent, the Registered Certifier is to be furnished with a final fire safety certificate signed by the owner(s) of the property. The certificate is to indicate that all fire safety measures required to be installed in the building as indicated in the below fire safety schedule have been installed and meet relevant Australian Standards for design and installation. Forms are available on Council's website.

## FIRE SAFETY SCHEDULE

*Section 78 & 79 of the Environmental Planning and Assessment (DC&FS) Regulation 2021*

<b>Premises</b>	East on Byron
<b>Address</b>	30/33-35 Childe Street BYRON BAY
<b>Development Consent No.</b>	10.2022.71.1
<b>Certificate No</b>	NA

The following essential fire safety measures shall be implemented in the whole of the building premises and each of the fire safety measures must satisfy the standard of performance listed in the schedule which, for the purposes of *Section 78 & 79 of the Environmental Planning and Assessment (DC&FS) Regulation 2021*, is deemed to be the current fire safety schedule for the building.

<b>SCHEDULE – Base Building BCA Year 2016</b>	
<b>Type of Construction</b>	C
<b>RIS</b>	2
<b>Effective height</b>	<25m
<b>Notes</b>	* Indicates whether the measure is new (N), Existing (E) or Modified (M) **Date (DD-MM-YYYY) measure was assessed by a properly qualified person

Item No.	Essential Fire and Other Safety Measures	Status*	Standard of Performance	Nature of Inspection or Test & Frequency AS1851	Date**	Pass/Fail
<b>General</b>						
1.	Portable fire extinguishers	E	BCA E1.6 AS 2444 – 2001			
2.	Fire seals	E	<b>BCA C3.15</b> , AS4072.1-2005	Physical Inspection of integrity		
3.	Lightweight construction - -/90/90 Fire Rating of Walls/floors/ceiling located within under stair cupboard and	E	<b>BCA C1.8</b> , <b>Spec C1.8</b> <b>BCA D2.8</b> (Enclosure of Space under Stairs and ramps)	Physical Inspection of integrity		

	surrounds of access stair to Unit 30					
4.	Fire doors to enclosed space under stair	E	<b>BCA D2.8</b> (Enclosure of Space under Stairs) AS/NZS 1905.1 – 2015	Physical Inspection of integrity		
5.	Solid Core Doors	E	<b>BCA C3.11</b> (Bounding Construction)	Physical Inspection of integrity		
<b>Electrical Services</b>						
6.	Automatic fire detection & alarm: - Clause 3 - AS3786 Smoke Alarm systems powered from consumer mains to all residential SOU's, and spaced, interlinked to AS1670.1 to all common areas connected to a BOWS @ 85dB(A).  <b>Note:</b> if there is a SSISEP or EWIS applies different dB(A) i.e. At bedheads not SOU doors.	E	<b>BCA E2.2, NSW Table E2.2a, Spec E2.2a</b> Spec E2.2a - Clause 3 (Smoke alarm system)- AS3786			
7.	Exit signs	E	<b>BCA E4.5</b> (Exit Signs) <b>BCA E4.8</b> (Design and Operation - Exits) AS/NZS 2293.1 –2005			
8.	Emergency lighting	E	<b>BCA E4.4</b> AS/NZS 2293.1 –2005			
<b>Hydraulic Services</b>						
9.	Fire hydrant systems	E	<b>BCA E1.3</b>			

	- NSW Storz Couplings		AS 2419.1 – 2005 FRNSW Guide Sheet No. 4 'Fire Brigade Hose Couplings' (current version 03 dated 22 Feb 2012)			
	<b>Parts of the building inspected</b>					
10.	Path of travel to all fire exits	E	EP&A Reg. 2000 Clauses 184-186	Physical Inspection of egress path		

5. **Land Use Conflict Management Plan**

A Land Use Conflict Management Plan to be submitted to Council for approval within three months of the date of this consent from owners of the subject unit detailing measures to manage any further amenity impacts that may arise with the use of the loading zone and potential noise from the preparation of the restaurant/ café. Such measures are to include:

- Double glazing of windows and other insulation measures to limit noise from entering the unit.
- Increased cleaning regime of the garbage bin area and or changes to the frequency of the bins to be collected to minimise any potential odour issues that may arise.
- Provision to advise guests prior to booking the unit whether it be by way of an online booking agent, real estate agent, other third party or directly with the owners of the unit that the unit is located next to a loading zone with garbage bins, and in the vicinity of restaurant.
- Provisions to advise guests to close windows in the event that noise and odour issues arise during their stay.
- Provisions for such measures are to be implemented at the additional expense of the owner of Lot 30 SP 87178 and not the body corporate or other unit owners within the development.

The Management Plan to be prepared by a suitably qualified professional such as an Environmental Health Consultant with expertise in noise and odour issues and land use conflicts.

6. **Plumbing Works**

When required, all works in relation to any associated Section 68 Water and Sewerage approval must be fully complied with and have a Final Plumbing Certificate issued prior to the issue of an Interim or Final Occupation Certificate.”

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

When required, 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) must be paid (as applicable).

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

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

8. **Existing building to be bought into compliance with fire safety provisions**

The existing building is to be brought into compliance with fire protection and structural capacity requirements appropriate to the proposed use of the upper floor (lot 30) as a Class 3 Building - tourist facility.

9. **Certificate of Compliance – s307 Water Management Act 2000**

Prior to issue of any Occupation Certificate, a Certificate of Compliance under Section 307 of the *Water Management Act 2000* must be obtained upon payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous County Council Development Servicing Plans. Where staging of the Construction Certificate occurs, a separate s307 Compliance Certificate must be obtained for each stage.

Byron Shire Council acts as Rous County Council's agent in this matter and will issue a Certificate of Compliance on behalf of Rous County Council upon payment of the Rous County Council Development Servicing Charge to this Council.

**Note:** For issue of the Certificate of Compliance, an application form and associated fee must be lodged via Council's website. Copies of Byron Shire Council's Development Servicing Plans are available via Council's website.

Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment. A check must be made with Council to ascertain the current rates by contacting Council's Principal Engineer Systems Planning, Utilities on 02 6626 7000. Applicable charges can also be found on Council's website: <https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement#section-3>

**The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.**

**Payment by Personal or Company Cheque will not be Accepted**

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

10. **Approved use**

**Tourist facilities** – Use of the development is approved for a tourist facility. Any activity other than that defined as tourist facility must not be carried out unless development consent is sought.

Note: Tourist facilities "means an establishment providing holiday accommodation or recreation and may include a boat shed, boat landing facility, holiday cabin, hotel, house-boat, marina, motel, playground, primitive camping ground, restaurant, water sport facility or a club used in conjunction with any such facility.". Lot 30 SP 87178 is not approved for use as a dwelling.

11. **Air conditioning in each bedroom**

Each bedroom must have an air-conditioning unit of sufficient capacity to enable comfortable room temperature to be maintained without the need to open windows. The air-conditioning unit in each bedroom must be maintained in good working order at all times. A written advice to be provided in the unit advising guests that windows may need to be closed to block out noise and odour and the air conditioning turned on as required

12. **Guests to be notified of proximity to loading area, Garbage area and Restaurant**

Guests must be notified in writing as per the Management Plan of the units proximity to the loading area, garbage area and restaurant and the potential for noise and odour from time to time.

**13. Response to Amenity Complaints**

In the event of complaints being received from guests of the tourist unit in relation to amenity impacts from the adjacent loading area, garbage area or restaurant, the owners of Lot 30 SP 87178 are to implement the recommendation of the Management Plan as appropriate to the complaint received at their expense.

**SCHEDULE 2. PRESCRIBED CONDITIONS**

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

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

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

**SCHEDULE 3. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED**

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

<b>Statement of Reasons</b>
The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Council's Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

**How community views were addressed**

The DA was advertised in accordance with Council's Community Participation Plan. The submissions received were considered on merit and addressed during assessment of the application.

To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

## **SCHEDULE 4. NOTES**

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### **Construction Certificate required:**

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

### **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).

**Water payments under the Water Management Act 2000**

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

**ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT**  
**(ET Policy 2018)**

Water	0.80 ET
Bulk Water	0.80 ET
Sewer	1.00 ET

NB: Information regarding Development Servicing charges can be found on the Byron Shire Council website (<https://www.byron.nsw.gov.au/Services/Water-sewer/Plumbers-and-developers/Calculate-the-cost-of-an-Equivalent-Tenement#section-3>).

These charges will enable you to calculate the total contribution charges payable when you are ready to pay them. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment.