

## DA 10.2019.517.1 RECOMMENDED CONDITIONS OF CONSENT

### SCHEDULE 1 CONDITIONS OF CONSENT

#### Parameters of consent

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

The development is to be in accordance with the plans prepared by Dominic Finlay Jones Architects Pty Ltd listed below:

Plan No.	Description	Prepared by	Dated:
DA 100 03	Site Plan	Dominic Finlay Jones Architects	07.01.2020
DA 150 04	External Works		07.01.2020
DA 200 03	Level 00 Plan		07.01.2020
DA 201 03	Level 01 Plan		07.01.2020
DA 202 03	Level 02 Plan		07.01.2020
DA 203 04	Roof Plan		07.01.2020
DA 300 03	Elevations		07.01.2020
DA 301 02	Elevations		20.08.2019
DA 302 03	Elevations		07.01.2020
DA 303 03	Elevations		07.01.2020
DA 304 03	Elevations		07.01.2020
DA 305 03	Elevations		07.01.2020
DA 306 02	Elevations		20.08.2019
DA 307 01	Elevations		20.08.2019
DA 308 01	Elevations		20.08.2019
DA 400 02	Sections		20.08.2019
DA 401 02	Sections		20.08.2019
DA 402 03	Sections		07.01.2020
DA 403 03	Sections		07.01.2020
7213-SW02 D	Stage 4 Stormwater Management Plan	Ardill Payne & Partners	27.08.2019

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. **Hours of Operation**

The opening hours of the various land uses contained within the development,

including use of the outdoor terrace for dining purposes, are 7:00am to 7:00pm.

3. **Use of outdoor terrace**

The use of the terraces within Easy Street are approved in association with the café and limited to outdoor dining only, excluding any amplified/ live music. This area must not be used for wedding receptions, ceremonies or other group functions.

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

4. **Trade Waste - Section 68 Part C approval required**

An **approval** under Section 68 Part C of the Local Government Act 1993 to discharge trade waste into Council's sewer must be obtained in accordance with NSW Office of Water Liquid Trade Waste Regulations Guidelines 2009, Council's Liquid Trade Waste Policy and Liquid Trade Waste Guidelines.

Commercial, business, trade and industrial activities discharging or proposing to discharge to the sewer are required to notify Council and complete the Trade Waste Registration Form available at the Mullumbimby Office and from Council's website at: [http://www.byron.nsw.gov.au/files/publications/liquid\\_trade\\_waste\\_application\\_form\\_0.pdf](http://www.byron.nsw.gov.au/files/publications/liquid_trade_waste_application_form_0.pdf)

Trade Waste approval is required prior to gaining Section 68 Part B approval to carry out water supply work and sewerage work.

5. **Water and Sewerage - Section 68 approval required**

An **Approval** under Section 68 of the Local Government Act 1993 to carry out water supply work and sewerage work must be obtained.

Water metering to be in accordance with Byron Shire Council's water metering requirements. See: <https://www.byron.nsw.gov.au/Services/Building-development/Other-approvals-and-permits/Plumbing-and-Drainage-Applications>

Any new water service and meter will be at applicants cost.

6. **Certificate of Compliance – Water Management Act 2000**

A Certificate of Compliance will be issued upon payment of developer charges for water and sewer as calculated in accordance with Byron Shire Council and Rous Water Development Servicing Plans.

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

**Note:** Copies of the application forms for Certificates of Compliance are available on Council's website

[http://www.byron.nsw.gov.au/files/Forms/Section\\_305\\_Certificate.pdf](http://www.byron.nsw.gov.au/files/Forms/Section_305_Certificate.pdf) or from Council's Administration Office. Copies of Byron Shire Council's Development Servicing Plans are available at Council's Administration Office.

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, Water on 02 6626 7081. Applicable charges can be found on Council's website: <http://www.byron.nsw.gov.au/development-contributions-plans-section-94-and-64>

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**

**7. Onsite stormwater detention required**

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with the relevant Australian Standard. All stormwater drainage for the development must be conveyed via an on-site stormwater detention system by gravity to Fullerton Lane & Easy St drainage system.

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

All stormwater drainage systems within the lot and the connection to a public or an inter-allotment drainage system must:

- a) provide an in-line GPT at all inlet pits within the parking area;
- b) provide a minimum OSD volume of 25KL;
- c) comply with any requirements for the disposal of stormwater drainage and on-site stormwater detention contained in Council's Development Control Plan, Stormwater Guideline and Local Approvals Policy; and
- d) unless exempt from obtaining an approval under section 68 of the Local Government Act 1993 by a Local Approvals Policy, an approval must be obtained under that Act prior to issue of a Construction Certificate

**8. Car parking layout, vehicle circulation and access plans required.**

The application for a Construction Certificate is to include plans and specification that indicate access, parking and manoeuvring details in accordance with the plans approved by this consent.

The access, parking and manoeuvring for the site is to comply with the requirements of AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking and AS 2890.2 – 2010 - Parking facilities, Part 2: Off-street commercial vehicle facilities. Plans are to include, but not be limited to, the following items:

- a) 34 spaces within the Stage 4 development area, meeting the requirements of User Class 3 as outlined in AS 2890;
- b) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment;
- c) site conditions affecting the access;
- d) existing and design levels;
- e) longitudinal sections from the road centreline to the car spaces;
- f) cross sections every 15m;
- g) drainage details;

- h) turning paths; and
- i) line marking and signage.

The engineering plans and specifications are to be designed by a qualified practising Civil Engineer. The Civil Engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.

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

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

**9. Detailed landscaping plan required**

The application for a Construction Certificate is to include plans and specifications that indicate the landscaping of the site. Such landscaping plan must incorporate adequate detail to demonstrate compliance with the provisions of Chapter B9 of Development Control Plan 2014. Species identified in Chapter B9 of Development Control Plan 2014 are to be planted wherever possible. T

The plan must not include species that represent translocation of native plants outside their geographic range, potential or known environmental weeds or species with potential for genetic pollution. The landscaping plan must indicate:

- a) proposed location for planted shrubs and trees
- b) botanical name of shrubs and trees to be planted
- c) mature height of trees to be planted
- d) location of grassed and paved areas, and
- e) location of trees identified for retention in the development application plans.
- f)

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

**10. Garbage storage area to be provided**

The application for a Construction Certificate is to include plans and specifications that indicate the proposed garbage store area. The proposed garbage store area is to be designed and constructed in accordance with the requirements of Chapter B8.3.3 of the Byron Shire Council Development Control Plan 2014. The enclosure must incorporate a concrete base with enclosure of suitable materials to provide adequate site and top screening and visual integration with the buildings and landscape treatment.

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

**11. Design and Layout Plans - Food Premises**

Detailed plans prepared by a suitably experienced person showing the design and layout of the premises to be used as a food business must be submitted to Council. The design details are to be drafted in accordance with relevant legislation and standards, including:

- a) Food Act 2003;

- b) Food Regulation 2015;
- c) Food Standards Code, Chapter 3.2.3;
- d) Relevant Australian Standards:
  - i. AS 4674 – 2004 Design, Construction and Fit-Out of Food Premises;
  - ii. AS 1668.1 & AS 1668.2 Mechanical Ventilation;
  - iii. Other relevant standards.
- e) The Building Code of Australia.

Such plans must be approved by Council's Environmental Health Department prior to the issue of a construction certificate for building works. Plans are to be submitted in duplicate and accompanied by fees as described in Council's adopted Fees and Charges.

***Advisory note:***

Application forms are available from Council's Environmental Health department. The following document [Food premises design, construction and fit-out guide](#) on Council's website can provide guidance about the design requirements of a food premises based on the Food Safety Standard 3.2.3 (Food Premises and Equipment) and the Australian Standard 4674-2004 (Design, construction and fit-out of food premises).

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

A Long Service Levy must be paid to the Long Service Payments Corporation. This is a State Government Levy and is subject to change.

These payments may be made online at [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au) or at Council's Administration Office, Station Street, Mullumbimby. When paying to Council, cheques are to be made payable to 'Byron Shire Council'.

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

**13. 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.

**14. Provision of public art**

In accordance with Chapter D8 of Development Control Plan 2014, public art is to be provided within the development with a minimum value of \$25,000. Details are to be submitted for approval as part of the Construction Certificate. Such details must achieve the following:

- a) Relevance and appropriateness of the work in relation to its site;
- b) Relevance and appropriateness of the work to Byron Shire, including the Shire's Aboriginal heritage, its particular natural environment and its diverse culture;
- c) Consistency with the Byron Shire Cultural Plan and Public Art Policy;
- d) Consideration of public safety, including public use of and access to the Public Art and associated space;
- e) Consideration of maintenance and durability, including potential for vandalism;
- f) Evidence of funding sources and satisfactory budget, including provision for ongoing maintenance; and

- g) Evidence of Public Liability Insurance to cover construction and installation of the work.

Note: Where similar conditions have been applied to other development consents at Habitat, a single installation to the combined value as specified would be acceptable.

**15. Access and facilities for disabled**

The application for a Construction Certificate is to include plans and specifications that indicate access and facilities for persons with access disabilities to and within the development in accordance with AS 1428.1 - Design for Access and Mobility and Part D3 of the Building Code of Australia.

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

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

Prior to the issue of the Construction Certificate in connection with a development, 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 Telecommunications Act).

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

**17. Erosion and sediment measures**

Where erosion of soils or runoff of any substance is likely to occur, erosion and sedimentation controls are to be in place in accordance with the Guidelines for Erosion & Sediment Control on Building Sites. This may include stockpiled materials such as sand, etc.

Any such measures that are deemed to be necessary because of the local conditions must be maintained at all times until the site is made stable (i.e. by permanent vegetation cover or hard surface).

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

**18. 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:

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- 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 Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

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

19. **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.**

20. **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.

21. **Stormwater drainage work**

Stormwater drainage for the development shall be constructed in accordance with the approved plans and specification by a suitably qualified person.

22. **Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

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.**

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

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

All of the works indicated on the plans and approved by this consent, including any

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

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

**25. On-site Stormwater Detention – Certification of works**

All stormwater drainage works, including on-site stormwater detention works, for the development must be constructed in accordance with the approved plans and specification prior to issue of an occupation certificate. Certificate/s of Compliance and Work-As-Executed (WAE) plans for the stormwater works must be submitted to the Principal Certifying Authority prior to the issue of an occupation certificate.

The certificate/s and WAE plans are to be prepared by a suitably qualified engineer and must be in accordance with Council's [Comprehensive Guidelines for Stormwater Management](#).

**26. Trade Waste**

An approved trade waste device shall be installed, inspected by Council and maintained to ensure that all relevant environment protection and plumbing code standards are satisfied.

**27. Kitchen exhaust**

Prior to use of the kitchen exhaust/hood installation associated with the cafe, a certificate and system specifications detailing the air flow velocity readings to be provided to Council. The certificate should be completed by a suitably qualified professional and shall ensure that the installation satisfies the requirements of AS 1668 Parts 1 and 2.

**28. Waste disposal facilities**

The operator shall demonstrate to Council's Environmental Health Officer's satisfaction that adequate waste disposal facilities are available on the premises for use by the cafe, and that such facilities can be maintained to prevent environmental harm or public nuisance.

**29. Steam Room Construction**

All saunas/steam rooms provided for the use of the guests shall:

- a) be located, constructed, equipped and finished so that it can be maintained in a safe and sanitary condition;
- b) be made such that any metal parts within three metres of the bath, tub or sauna, heating units, lighting units, electrical fixtures, motors, conduits and outlets are installed in a safe manner that protects the bather from injury;
- c) be made so that entry can be prevented when the facility is not open for use;
- d) be equipped with hose connections installed in a convenient and safe location for the sanitary operation of the facility;
- e) be made so that water and air temperature can be thermostatically controlled;
- f) have a notice posted in an obvious location with the following information:



- i) Prolonged use of this facility can be a hazard to health (10-15 minutes may be excessive for some people!).
- ii) Persons should seek medical advice if there is any concern about tolerance of intense heat exposures.
- iii) No food or glass containers may be brought into this facility.
- iv) All users shall shower using warm water and soap, and thoroughly rinse off all soap before using the facility, and
- v) Give the location of an alarm, telephone or personnel available for emergency use.

The steam room shall be constructed so that:

- a) a thermometer with an appropriate and clearly visible Celsius scale is located in a prominent place within the room,
- b) a clock is available and easily read either, in the room or, from the door or window.
- c) the door can be opened easily without resistance;
- d) full view of the inside of the sauna/steam room is provided by either, a full length transparent panel in the door, or a window providing an unobstructed view of the interior floor area, from the outside.

### 30. **Shower Requirements**

Shower facilities shall be provided for the use of all patrons before entering any sauna/steam room and shall be located, constructed and equipped so that:

- a) the shower access is close to the area of the sauna/steam room;
- b) the floors, walls and ceiling are made of materials that permit easy and thorough cleaning; and
- c) there is hot and cold running water with either, a tempering or mixing device on the hot water system designed to prevent scalding, or a maximum hot water temperature not exceeding 43°C at any time.

### 31. **Lighting Requirements**

Adequate lighting that complies with Australian Standard AS1680.1 "*Interior lighting*" must be provided throughout the area of sauna/steam room facility and any pertinent showers, corridors, hallways and change rooms.

### 32. **On-site Stormwater Detention – Certification of works**

All stormwater drainage works, including on-site stormwater detention works, for the development shall be constructed in accordance with the approved plans and specification prior to issue of an occupation certificate. Certificate/s of Compliance and Work-As-Executed (WAE) plans for the stormwater works must be submitted to the Principal Certifying Authority prior to the issue of an occupation certificate.

The certificate/s and WAE plans are to be prepared by a suitably qualified engineer and must be in accordance with Council's Comprehensive Guidelines for Stormwater Management.

### 33. **Stormwater disposal**

Stormwater must be collected and disposed of in a controlled manner such that stormwater flows are:

- a) Clear of buildings and infrastructure,
- b) Clear of effluent disposal areas,
- c) Not concentrated so as to cause soil erosion, and
- d) Not directly to a watercourse.

**The following conditions are to be complied with prior to commencement of operation of food premises**

**34. Notification – Food Business**

In accordance with Section 100 of the Food Act 2003, the operator of the food business must submit a completed [Food Business Registration form](#) five (5) working days prior to trading. The notification must occur before the food business commences any food handling operations.

**35. Council Inspection required – Food Premises**

The operator of the food premises shall obtain a satisfactory pre-operational inspection from Council's Environmental Health Officer prior to trading.

***Advisory note:***

Inspections by Council's Environmental Health Officers can be arranged during the fit-out stage and the final pre-operational inspection. Inspection fees are levied as per Council's adopted Fees and Charges. Note requests for a final inspection must be made with at least five (5) working days notice

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

**36. Stormwater Maintenance**

The stormwater collection and treatment devices must be inspected and maintained in accordance with the maintenance program contained in the approved Integrated Water Cycle and Soil Management Plan.

**37. No interference with amenity**

The use of the premises shall not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise. In particular:

- a) Any complaints to Council about 'offensive' noise will be dealt with under the provisions of the Protection of the Environment Operations Act 1997.
- b) Only clean and unpolluted water is permitted to be discharged to Councils' stormwater drainage system or any waters.
- c) All wastes shall be contained within appropriate containers fitted with a tight-fitting vermin-proof lid.
- d) All trade waste pre-treatment devices and other waste storage facilities shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied.
- e) Goods deliveries, fuel deliveries and waste collection shall be restricted to daytime operating hours.

## SCHEDULE 2    PRESCRIBED CONDITIONS

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**The prescribed conditions in accordance with Division 8A of the Environmental Planning and Assessment Regulation apply as are of relevance to this application:**

Clause 98      Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

Clause 98A    Erection of signs

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

Refer to the NSW State legislation for full text of the clauses under 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            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 (generally \$600) being issued pursuant to section 127A of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 125 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.

**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 No:13/005)**

Water	17.73 ET
Bulk Water	17.73 ET
Sewer	12.58 ET

NB: Information regarding Development Servicing charges can be found on the Byron Shire Council website (<http://www.byron.nsw.gov.au/development-contributions-plans-section-94-and-64>). 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.