

## Scott, Noreen

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**From:** Daniel Turk <Daniel.Turk@turkslegal.com.au>  
**Sent:** Saturday, 16 March 2019 12:29 PM  
**To:** council  
**Subject:** DA (10.2018.466.1) 61 Kingsley St Byron Bay

Attn: Nancy Tarlau

Dear Nancy

I am the proprietor of 57 Kingsley St Byron Bay which is two houses west of the proposed development site of 61 Kingsley St.

I have great concerns regarding the size of the proposed development taking into account the Conservation Heritage policy and also the shading and loss of privacy.

Based on the shadow diagram provided in the application the winter morning shade will clearly have a massive detrimental negative affect on our neighbours at number 59 (cover it completely). In addition it is clear from the shadow diagram that the shadowing will affect my property at 57 which is two houses down. The shadow diagram does not show the affect of the shading on buildings on our property no 57 but it is obvious from the plan lodged that the proposed building will shadow land on no 57. The shadow plans lodged only deal with shadowing on the direct neighbours.

Our master bedroom at no 57 is at the south east corner of the house. We have high clerestory windows near the roof line on the Eastern wall of the bedroom to let sunlight in. We believe the proposed development may look in to those windows affecting our privacy and potentially block the sunlight (again we cannot tell as the shade diagram does not include the affect on buildings on no57 although it looks like it will as no59 gets covered completely).

Further the council must consider the fact it is a heritage conservation area. The proposed house is not consistent with others in the group. It is too large. The other houses in the group are low rise from Kingsley St. The proposed development is two stories at the street front. It will significantly stand out from others in the group.

Also both the raised third story rear verandah and the massive raised second story verandah will look in to our backyard at no57 (as the development house sets way further back than no59) affecting our privacy at our backyard and pool.

Please take the above into account when considering the plans lodged.

Regards

**Daniel Turk**  
Partner



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Scott, Noreen

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**From:** David Arter <arteremail@gmail.com>  
**Sent:** Monday, 18 March 2019 3:10 PM  
**To:** council  
**Cc:** Tarlao, Nancy; Larkin, Chris  
**Subject:** Submission to DA (10.2018.466.1 for 61 Kingsley St, Byron Bay) ...  
**Attachments:** DA Submission (8-Oct-18).pdf; Floor Plan.pdf

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:

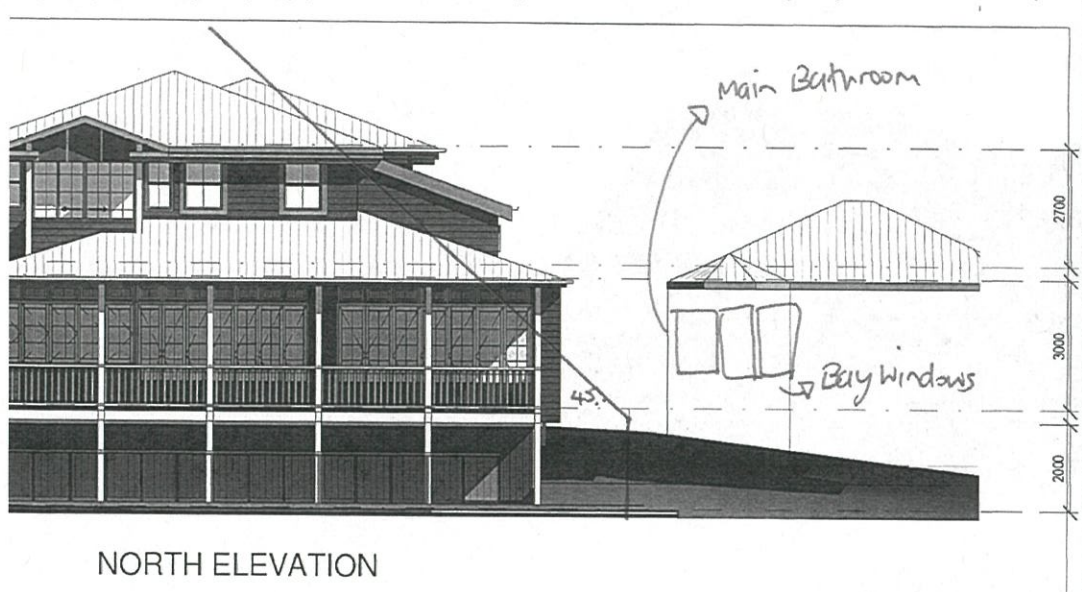
- **Access to solar amenity** resulting from material breaches to the building height plane, vertically and most notably on the western elevation (i.e. resulting in our dwelling's access to winter sun is eliminated in full via our key eastern elevation).
- **Privacy** (our master bedroom, baby's bedroom, 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:

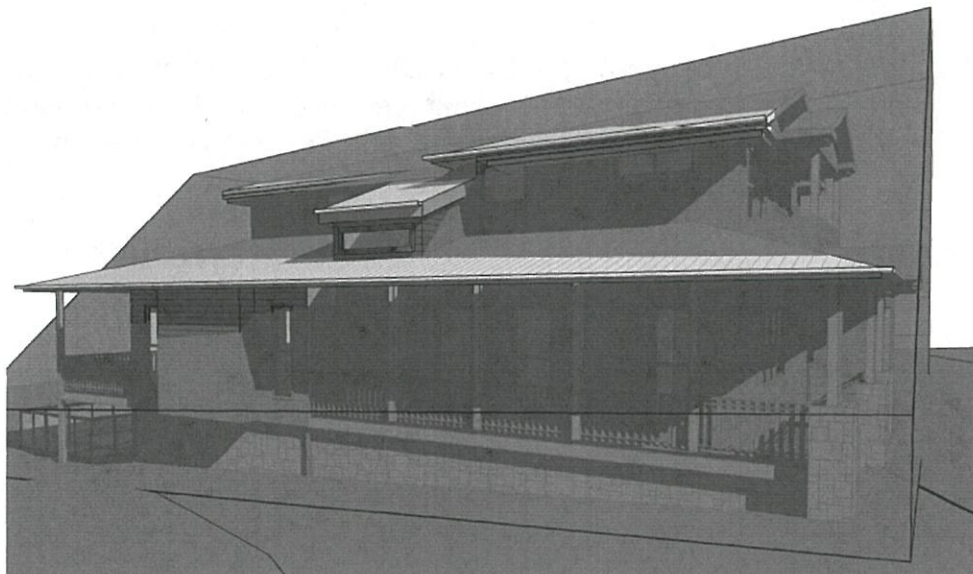
- significantly breaches the building height plain (vertically, but most materially on the horizontal western elevation overhanging our property, by up to an estimated 3-metres), &
- as a result, eliminates our access to winter sun on our eastern elevation (and into our main bedrooms and bathroom), &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



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):

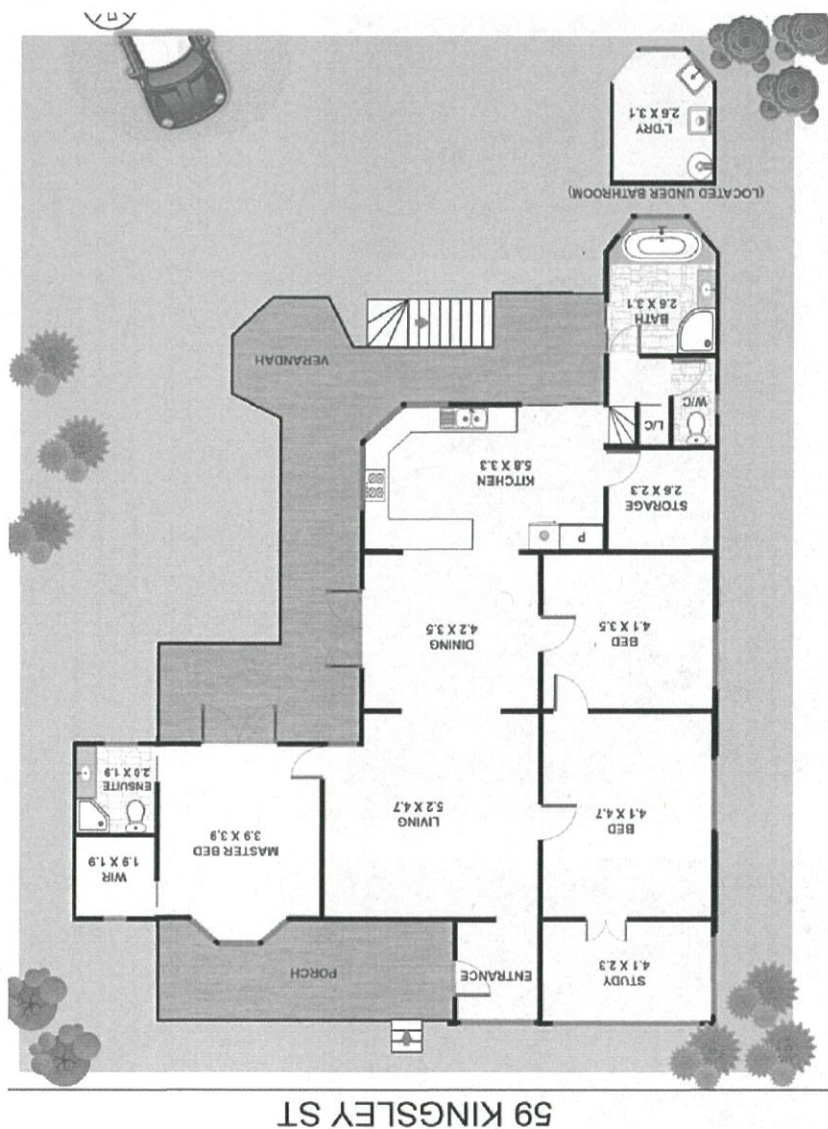


This continued height plane breach is supported by the 3D views provided in the amended plan (refer images below).



3D View 3

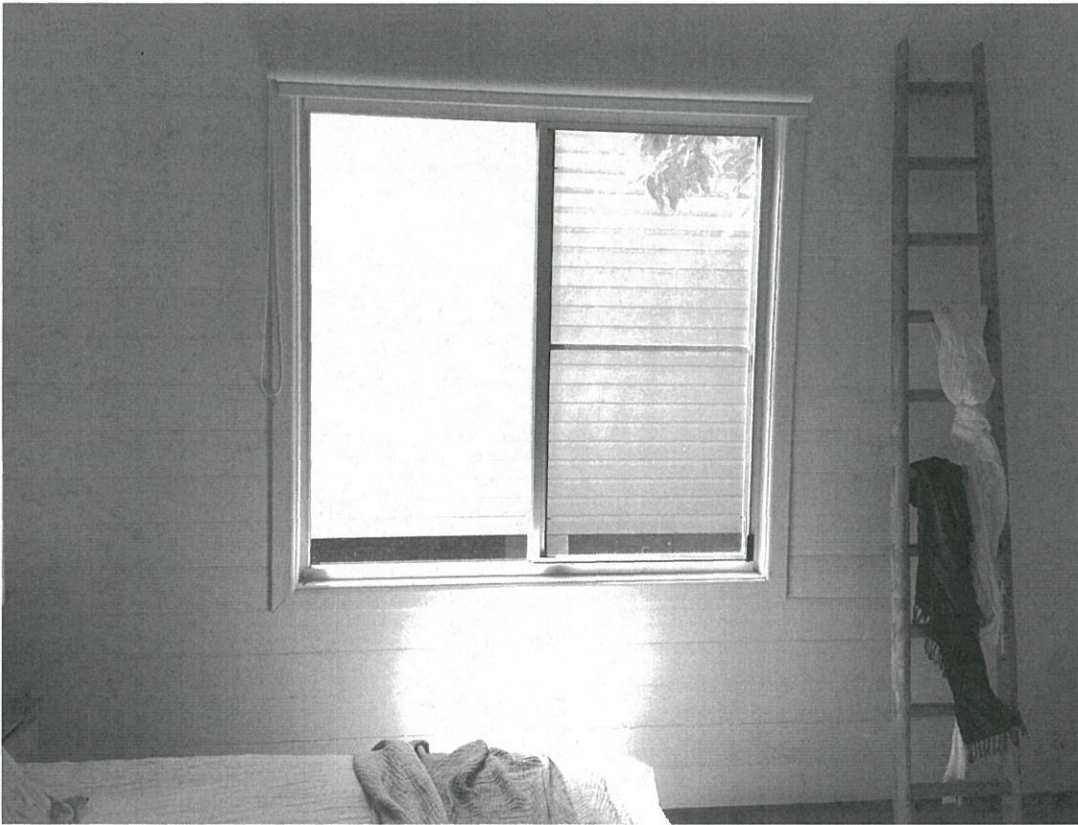




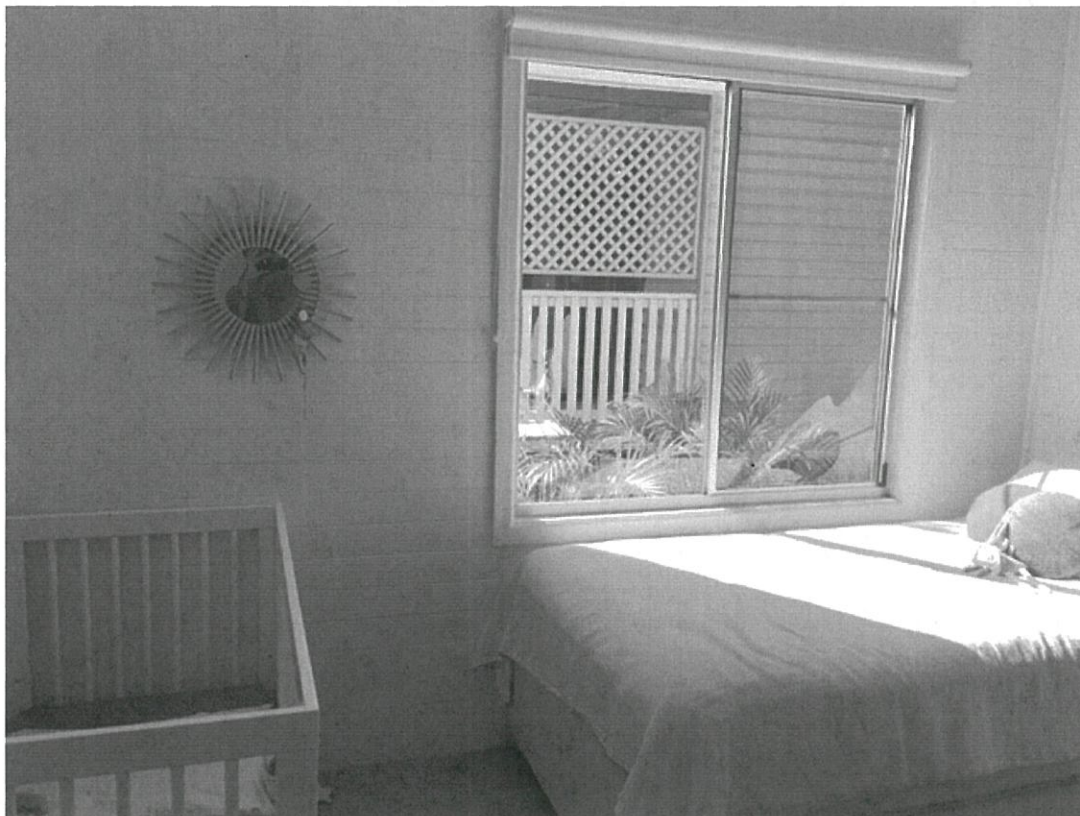
Also below are images of the private areas subject to the overshadowing and privacy breaches:

**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).





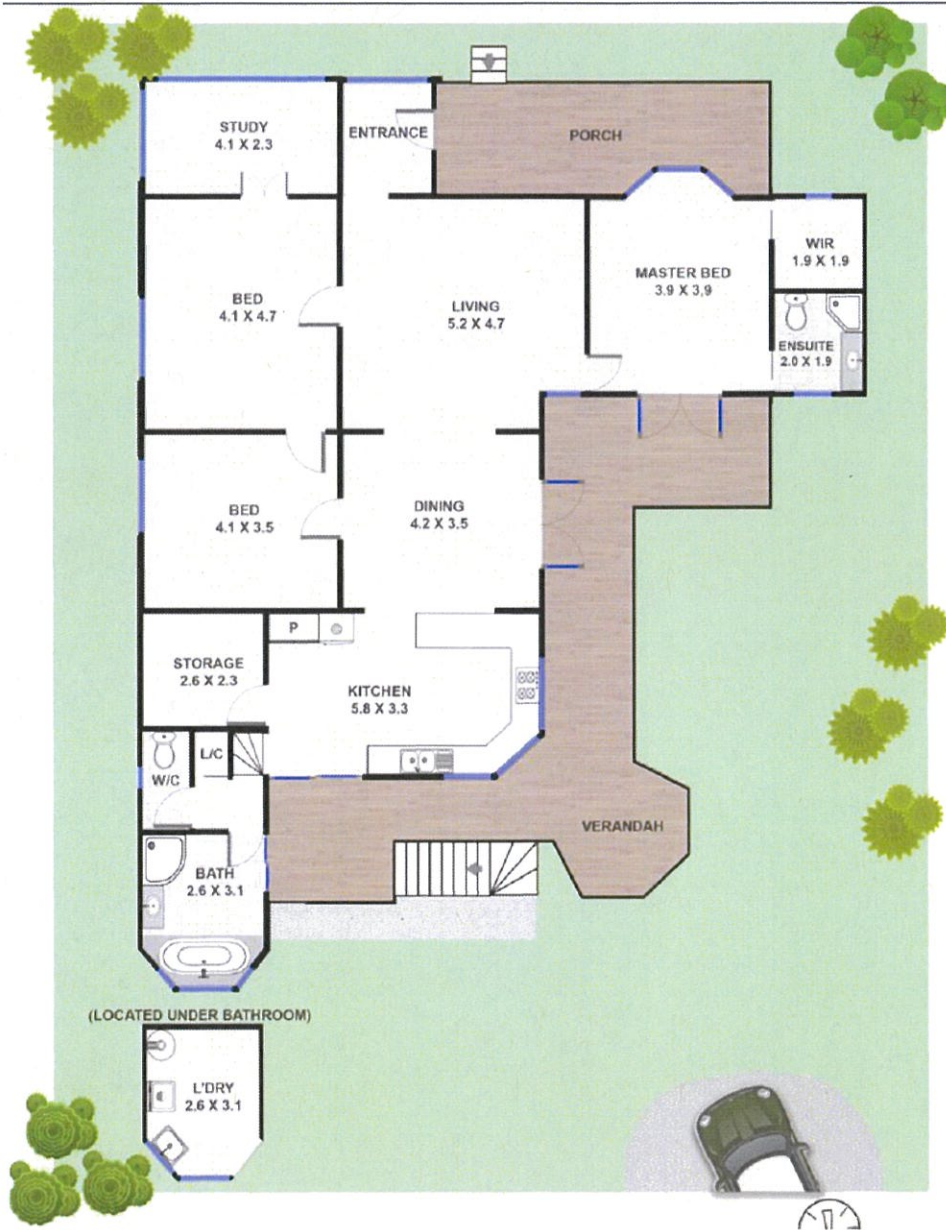
Plus our Baby's Bedroom (which will have the same large open verandah providing uninterrupted views into this private space):



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):

This floor plan represents current use of the property and does not claim to represent or confirm Council's approved plans and use of this property

## 59 KINGSLEY ST







**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*

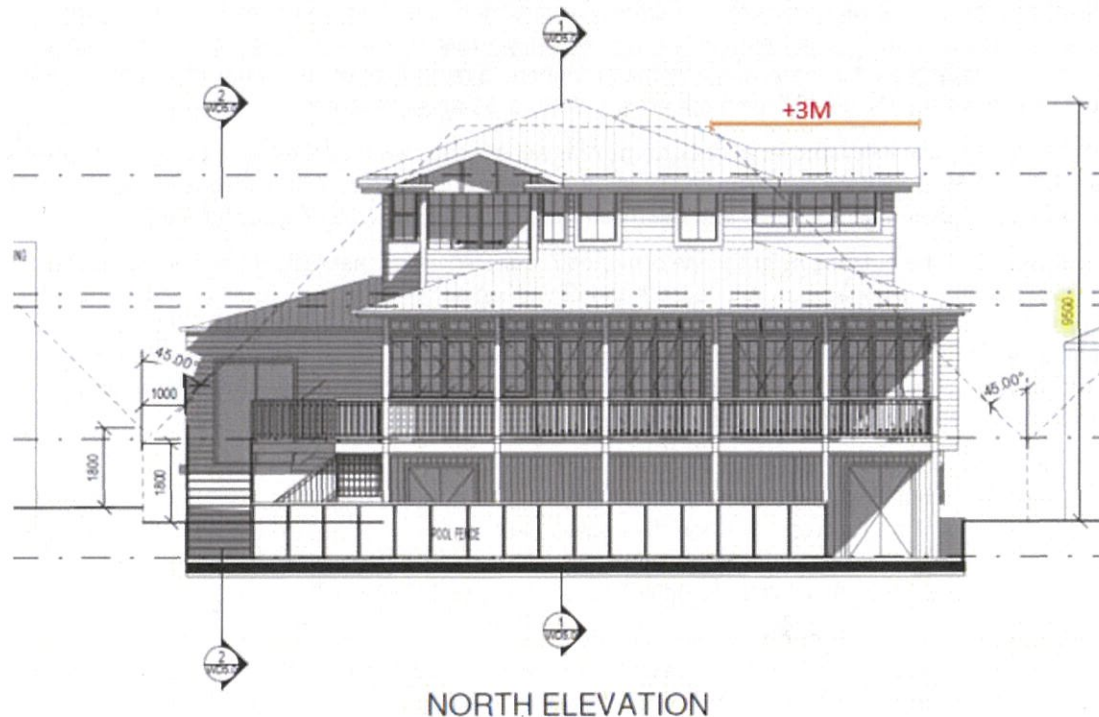
*(1) The objectives of this clause are as follows:*

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



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.



**Scott, Noreen**

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**From:** Kate Singleton <kate@plannersnorth.com.au>  
**Sent:** Wednesday, 22 May 2019 8:48 PM  
**To:** Larkin, Chris  
**Cc:** Tarlao, Nancy; Burt, Shannon; David Arter  
**Subject:** Re: 10.2018.466.1 - 61 Kingsley STREET- Byron Bay

Thanks for your email Chris.

Based on your advice that it is intended to determine the application without clarification re the finished floor and roof levels, we submit that the Applicant has failed to demonstrate compliance with both the performance criteria and the prescriptive measures in relation to the setback of the building from the side boundary adjoining 1/59 Kingsley Street (D1.2.1 - Building Height Plane). The proposal therefore is not able to be approved in accordance with Council's DCP Part A Section A12 which states:

**Dual Path Assessment**

The Sections are structured to provide a dual path to demonstrating your development's compliance with the various provisions of this DCP. Every development application must demonstrate compliance with the relevant Objectives. This will usually be achieved by meeting the Prescriptive Measures. The Prescriptive Measures are requirements that Council considers are likely to meet the Objectives and Performance Criteria of the particular Section. Alternatively Council may be prepared to approve development proposals that are demonstrated to meet both the Objectives and the Performance Criteria. This provision:

1. fosters flexibility in design
2. enables the development of innovative schemes that meet the particular characteristics of an individual site
3. provides for positive outcomes in terms of ecologically sustainable development.

Where applicants are departing from the prescriptive measures, it is the applicant's responsibility to highlight these departures and provide a written justification as to why compliance is unreasonable or unnecessary having regards to the circumstances of the case, the Objectives and Performance Criteria.

The solar studies for 21 December & 21 June below (based on the most recent elevations), clearly indicate that the performance criteria requiring the full retention of solar access to living areas between 9am and 3pm are not met. Further, the application fails to demonstrate that the scheme is innovative and meets the particular characteristics of the site or provides for positive outcomes in relation to ESD. In fact, there is no demonstrable need for the understorey storage that contributes substantially to the impacts on 1/59 Kingsley Street.

It is therefore submitted that should Council officers recommend approval of the proposal, the application should be reported to the Elected Councillors for determination. Alternatively, as previously advised, our clients would not object to an amendment to the design which results in compliance with the building height plane provisions.

As you are aware our clients have spent considerable resources to assess the potential impact of the proposal on their property - the onus of this assessment should have been placed on the Applicant. It is requested that, prior to the finalisation of the assessment and determination of the application, our client's be given the opportunity to discuss the above with yourself, preferably on site. If this is not possible we request a meeting with you at Council's offices.

We sincerely thank you on behalf of our clients for keeping us updated on the status of the application.

Regards,  
Kate



We will finish our assessment based on the information submitted.

Regards

**Chris Larkin** | Manager – Sustainable Development | **Byron Shire Council**  
70-90 Station Street Mullumbimby | PO Box 219 Mullumbimby NSW Australia 2482  
🖨️ Please consider the environment before printing this e-mail

**From:** Kate Singleton <[kate@plannersnorth.com.au](mailto:kate@plannersnorth.com.au)>  
**Sent:** Wednesday, 22 May 2019 10:41 AM  
**To:** Larkin, Chris <[clarkin@byron.nsw.gov.au](mailto:clarkin@byron.nsw.gov.au)>; Tarlao, Nancy <[ntarlao@byron.nsw.gov.au](mailto:ntarlao@byron.nsw.gov.au)>; council <[council@byron.nsw.gov.au](mailto:council@byron.nsw.gov.au)>  
**Subject:** Fwd: 10.2018.466.1 - 61 Kingsley STREET- Byron Bay

Dear Chris & Nancy

Our Architect has again looked at the material provided. Please see email trail below. It is evident that the conflicting information shown on the plans is making it very difficult to adequately determine the impacts on 1/59 Kingsley Street. There is a survey for the property. It is requested that Council request that the plans clearly indicate the proposed Finished Floor Level of the Ground & First Floor and the Roof Ridge Level. This will enable us to update the modelling.

Please call me if you would like to discuss further?

Thanks,  
Kate

Hi Kate and David,

I think is important in this instance to request the FFL and RL of their proposal because there are discrepancies between the Ground Floor Plan and the elevation and sections.

Hi Kate,

I was looking at the new elevations and comparing them:

In the last issue (H) David's house position is different (lower) than in ISSUE E. (issue E shown in green/issue H shown in black)

That is what changed from and why they said we had the wrong elevations.

I will have a detail look at this and get back to you.

I still think they are not adding important information (or is not clear) regarding the FFL (finish floor level) and RL (ridge level). They added a new FFL (9.8 AHD) on issue H but is located in a way that is not clear to what this FFL is referring too. Last but not least, the stairs still differ in plans and elevations so with all this discrepancies we can't do a proper SUN STUDY or PRIVACY cause we can't relate the houses positions.

## Thanks

