



3 August 2022

**NOTICE OF DETERMINATION
OF AN APPLICATION TO MODIFY A DEVELOPMENT CONSENT**
Under Section 4.55 of the Environmental Planning and Assessment Act 1979

Application No - 10.2020.578.2

Town Planning Studio Pty Ltd
ATT: Mr J Davidson
PO Box 238
BRUNSWICK HEADS NSW 2483

Email: joe@jdtownplanning.com.au

Proposed modification description:	S4.55 Modification to Dwelling Layout and Swimming Pool Position
Property description:	LOT: 16 DP: 240303 16 Mackay Street BYRON BAY
DA No.:	10.2020.578.1
Determination:	Approved subject to the following conditions
Date determined:	2 August 2022

Amended conditions

MODIFIED CONDITIONS OF CONSENT:

- Delete Condition 7 of the Notice of Determination as it is superseded by amended plans.
- Delete Condition 4 and Schedule 3 LOCAL GOVERNMENT ACT 1993 SECTION 68 CONDITIONS OF APPROVAL of the Notice of Determination as the S68 has been decoupled under the S4.55 modification application.
- Modify conditions 1 and 14 of the Notice of Determination to read as follows:

- 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:
XX-00 Rev 1	Site Plan – Demolition	BVN Architecture	13/5/22
XX-01 Rev 1	Site Plan – Proposed	BVN Architecture	13/5/22
XX-02 Rev 1	Site Section	BVN Architecture	13/5/22
B1-00 Rev 1	Basement Floor Plan	BVN Architecture	13/5/22
00-00 Rev 1	Lower Floor Plan	BVN Architecture	13/5/22
01-00 Rev 1	Upper Floor Plan	BVN Architecture	13/5/22
02-00 Rev 1	Roof Plan	BVN Architecture	13/5/22

XX-02 Rev 1	Site Section	BVN Architecture	13/5/22
XX-01 Rev 1	Section 1	BVN Architecture	13/5/22
XX-02 Rev 1	Section 2	BVN Architecture	13/5/22
XX-03 Rev 1	Section 3	BVN Architecture	13/5/22
XX-04 Rev 1	Section 4	BVN Architecture	13/5/22
XX-05 Rev 1	Section 5	BVN Architecture	13/5/22
XX-01 Rev 1	Elevations	BVN Architecture	13/5/22
XX-02 Rev 1	Elevations	BVN Architecture	13/5/22
XX-03 Rev 1	Elevations	BVN Architecture	13/5/22
XX-04 Rev 1	Elevations	BVN Architecture	13/5/22
XX-01 Rev 1	Window/Door Schedule	BVN Architecture	13/5/22
XX-01 Rev 1	Window/Door Schedule	BVN Architecture	13/5/22

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.

14. **Compliance with BASIX Certificate requirements**

The development is to comply with Basix Certificate No. 1143737S_02, dated 27 May 2022.

The commitments indicated in the Certificate are to be indicated on the plans submitted for approval of the Construction Certificate.

The plans submitted must clearly indicate all windows numbered or identified in a manner that is consistent with the identification on the Basix Certificate.

Minor changes to the measures may be undertaken without the issue of any amendment under Section 4.55 of the Act, provided that the changes do not affect the form, shape or size of the building.

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

Enclosed for your information is the amended plan (where applicable) and consent.

Please note that modification of this consent under Section 4.55 of the Environmental Planning and Assessment Act may require amendment to any Construction Certificate for this development (if a Construction Certificate has been previously issued). It is recommended that you check with your Principal Certifying Authority.

Right of Review

You may request Council to review its decision under Section 8.2 of the *Environmental Planning and Assessment Act, 1979*.

Right of Appeal

If you are dissatisfied with this decision, Section 8.9 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patricia Docherty', written in a cursive style.

Ms P Docherty
Planner

Encl. Modified Consent No. 10.2020.578.1

STATEMENT OF REASONS

Council is 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	
S.4.55	The modifications are minor and the development as modified is substantially the same as the originally approved development, with no significantly detrimental environmental impacts.

How community views were addressed	
2	The application was publicly exhibited in accordance with the Community Participation Plan. No submissions were received.



Schedule 2 – Amended conditions of development consent
AMENDED CONSENT 2 August 2022

BSC File No: 46100D x 10.2020.578.1/#A2021/21870
Contact: Ms R Mercer

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION
issued under the
Environmental Planning and Assessment Act, 1979 Section 4.18(1)(a)

Development Application No. 10.2020.578.1

Town Planning Studio Pty Ltd
ATT: Mr J Davidson
PO Box 238
BRUNSWICK HEADS NSW 2483

Email: joe@jdtownplanning.com.au

Property description	LOT: 16 DP: 240303 16 Mackay Street BYRON BAY
Development	Demolition of Existing Dwelling and Construction of New Dwelling House and Swimming Pool
Determination	Consent granted <i>Subject to the attached schedule of conditions</i>
Date determined	15 June 2021
Consent to operate from	18 June 2021
Consent to lapse on	18 June 2026

IMPORTANT INFORMATION

It is the responsibility of the applicant, landowner, builder, and any other contractors or agents involved with the development to read and understand all conditions of consent prior to commencing work.

The Environmental Planning and Assessment Act 1979 require you to:

1. Obtain a **Construction Certificate** prior to the commencement of any **building works** as required by conditions of this consent. An application may be lodged with Council, or you may apply to a private accredited certifier for a Construction Certificate. An accredited certifier **must obtain Council's approval** to certain conditions of this development consent, where indicated before issuing the Construction Certificate. Additional fees are payable for this application.
2. Nominate a **Principal Certifying Authority (PCA)** which may be either Council or an accredited certifier and notify Council of that appointment. You **cannot lawfully** commence works without complying with this requirement.
3. Give Council at least two days notice of your intention to commence the erection of a building **before** commencing construction works. You cannot lawfully commence works without complying with this requirement.
4. Obtain an **Occupation Certificate** before commencing occupation or commencing to use the building or on the completion of other works including the erection of a sign. You cannot lawfully commence occupation or the use of a building without complying with this requirement.

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 plans listed below:

Plan No.	Description	Prepared by	Dated:
XX-00 Rev 1	Site Plan – Demolition	BVN Architecture	13/5/22
XX-01 Rev 1	Site Plan – Proposed	BVN Architecture	13/5/22
XX-02 Rev 1	Site Section	BVN Architecture	13/5/22
B1-00 Rev 1	Basement Floor Plan	BVN Architecture	13/5/22
00-00 Rev 1	Lower Floor Plan	BVN Architecture	13/5/22
01-00 Rev 1	Upper Floor Plan	BVN Architecture	13/5/22
02-00 Rev 1	Roof Plan	BVN Architecture	13/5/22
XX-02 Rev 1	Site Section	BVN Architecture	13/5/22
XX-01 Rev 1	Section 1	BVN Architecture	13/5/22
XX-02 Rev 1	Section 2	BVN Architecture	13/5/22
XX-03 Rev 1	Section 3	BVN Architecture	13/5/22
XX-04 Rev 1	Section 4	BVN Architecture	13/5/22
XX-05 Rev 1	Section 5	BVN Architecture	13/5/22
XX-01 Rev 1	Elevations	BVN Architecture	13/5/22
XX-02 Rev 1	Elevations	BVN Architecture	13/5/22
XX-03 Rev 1	Elevations	BVN Architecture	13/5/22
XX-04 Rev 1	Elevations	BVN Architecture	13/5/22
XX-01 Rev 1	Window/Door Schedule	BVN Architecture	13/5/22
XX-01 Rev 1	Window/Door Schedule	BVN Architecture	13/5/22

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. 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.

3. 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.

4. Condition deleted by 10.2020.578.2 dated 2 August 2022

5. Consent provided under section 138 of Roads Act 1993

Approval has been granted with this consent (Council reference No: 51.20##.###.1) for the works within the road reserve as follows and subject to the conditions contained in **Schedule 4** of this Notice of Determination:

(a) **Driveway**

A driveway in accordance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

(b) **Redundant Driveway Removal**

Removal of redundant driveway crossing/ apron and reinstalment of kerb and gutter in identical profile to existing kerb and gutter. Reinstating nature strip.

(c) **Kerb Adaptor**

When required, connection of stormwater outlet to street kerb with a galvanised metal kerb adaptor.

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

6. Building Height not to exceed 9m

Prior to the issue of a construction certificate, documentary evidence prepared by a registered surveyor must be provided to the Principal Certifying Authority, demonstrating the vertical distance from the ground level (existing) to the highest point of the building does not exceed 9m.

Such documentary evidence much be approved as part of the Construction Certificate.

7. Condition deleted by 10.2020.578.2 dated 2 August 2022

8. Geotechnical Report required – Building Works

A certificate from a professional Engineer experienced in Geotechnical Science is to be provided to the Principal Certifying Authority, certifying that the site is stable and will not be affected by landslide or subsidence at, above or below the site when the building is erected. The certificate must be prepared in accordance with AS 1726.

9. Stormwater Drainage – Connection to Public Drainage

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 in accordance with the approved drainage plan.

An earth bund must be constructed to the low side of the 900x600 pit within the boundary. Minor regrading of the road reserve is required to ensure overflow from the pit is directed to the kerb at the street.

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) comply with any requirements for the disposal of stormwater drainage contained in Council's Development Control Plan, Stormwater Guideline and Local Approvals Policy; and
- (b) 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.

10. Access & Parking

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. Plans are to include, but not be limited to, the following items:

- a) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment including suitably designed permeable pavements;
- b) site conditions affecting the access;
- c) existing and design levels; and
- d) longitudinal section from the road centreline to the car space(s).

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".

11. Water and Sewerage - Section 68 approval required

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

12. Easement required over pipelines

In all new subdivisions and/or developments, an easement in gross benefitting Byron Shire Council shall be provided for all pipelines in accordance with the Council Policy: Building in the Vicinity of Underground Infrastructure 2020.

Easement documentation shall be prepared in accordance with NSW Land Registry Services requirements over the pipeline/s within the allotment/s. Easement documentation must be submitted to Council for execution, together with a survey showing location, size and depth of the pipeline/s and payment of fees in accordance with Council's adopted fees and charges.

Prior to issue of the construction certificate, proof of lodgement to NSW Land Registry Services must be provided to the Principal Certifying Authority.

The minimum width of the required easement shall be 3.15 metres centred over the pipeline.

13. Compliance required with Building in the Vicinity of Underground Infrastructure Policy

All developments must comply with Policy: Building in the Vicinity of Underground Infrastructure 2020. Swimming pools are classed as buildings and are required to comply with this policy.

14. Compliance with BASIX Certificate requirements

The development is to comply with Basix Certificate No. 1143737S_02, dated 27 May 2022.

The commitments indicated in the Certificate are to be indicated on the plans submitted for approval of the Construction Certificate.

The plans submitted must clearly indicate all windows numbered or identified in a manner that is consistent with the identification on the Basix Certificate.

Minor changes to the measures may be undertaken without the issue of any amendment under Section 4.55 of the Act, provided that the changes do not affect the form, shape or size of the building.

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

15. 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.

16. Bond required to guarantee against damage to public land

A bond of \$3000 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/repaired 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.

17. Details of pool fence required

The application for a Construction Certificate is to include plans and specifications that indicate the details of the fence around the swimming pool in accordance with the Swimming Pools Act 1992 and AS1926.1.

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

18. Water and Sewerage - Section 68 Part B approval (where required)

An **Approval** under Section 68 Part B of the Local Government Act 1993 to carry out sewerage work must be obtained where the backwash is to be connected to the sewer via a new overflow relief gully.

19. 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.

20. 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 any building or construction works commencing

21. Erosion and Sediment measures

Erosion and sedimentation controls are to be in place in accordance with the [Guidelines for Erosion & Sediment Control on Building Sites](#). Particular attention is to be given to the provision of the following sediment and erosion control measures:

- a. Temporary driveway from the edge of road to the building site;
- b. Temporary downpipes immediately installed after the roof has been erected;
- c. Silt fence or sediment barrier.

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

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

22. Toilet facilities

Toilet facilities are to be provided, at or in the vicinity of the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be a toilet connected to an accredited sewage management system approved by the Council.

23. Water service to be connected

A water service must be connected to the property using an approved backflow prevention device. It is the applicant's responsibility to engage a licensed plumber who shall liaise with council during this process.

Any new water service will be at the applicants cost.

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

24. 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.

25. 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.

26. Signs to be erected on building and demolition sites

A sign must be erected in a prominent position on the work site:

- a. stating that unauthorised entry to the work site is prohibited, and
- b. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

27. 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.

- 28. Fill to be retained on the subject land**
Fill material must not encroach onto any adjoining land.
- 29. 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.**
- 30. All excavated soils to be disposed of off-site**
All excavated soils to be disposed of off-site and in accordance with NSW EPA *Waste Classification Guidelines* (2014) and approved environmental management plans.
- 31. Excavated natural materials and demolition waste disposal**
Any and all excavated natural materials and demolition and builders waste transported from the site must be accompanied (a copy kept with the transporter) by a NSW Protection of The Environment Operations Act s143 Notice. Template s143 Notices are available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/160095-notices143-form.docx>
- 32. Removal of asbestos**
All asbestos wastes associated with removal of the existing dwelling to be disposed of in accordance with the requirements of the Workcover Authority. The applicant/owner is to produce documentary evidence that this condition has been met.
- Please note the Byron Resource Recovery Centre can not accept asbestos. You will need to arrange disposal at an alternate landfill site.
- 33. 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.
- 34. Demolition**
Any required demolition works must be undertaken in accordance with the relevant requirements of Australian Standard AS 2601–1991: The Demolition of Structures published by Standards Australia, and the WorkCover Authority of NSW.
- 35. Removal of demolition and other wastes**
All wastes, including asbestos and lead-contaminated wastes, associated with these works are to be handled and disposed of in accordance with the requirements of the Work Cover Authority. The applicant/owner is to produce documentary evidence that this condition has been met. Wastes must be disposed of at a Licenced Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with the NSW EPA Waste Classification Guidelines (2014) <https://www.epa.nsw.gov.au/your-environment/waste/classifying-waste/waste-classification-guidelines>

36. 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 occupation of the building

37. 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 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.

38. Plumbing Works

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.”

39. Access and parking areas to be completed

The access and parking areas are to be constructed in accordance with the approved plans and Roads Act consent prior to the issue of an occupation certificate.

40. Stormwater drainage work

Stormwater drainage for the development must be constructed in accordance with the approved plans and specification prior to issue of an occupation certificate.

41. Building Height Survey

Documentary evidence, prepared by a registered surveyor, is to be submitted prior to the issue of an Occupation Certificate demonstrating the vertical distance from the ground level (existing) to the highest point of the building does not exceed 9m.

42. Easement required over pipelines

The easement over Council pipelines required by conditions of this consent must be registered on title and a copy of the title search and registered easement documentation, including plan of easement, must be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate (including Interim Occupation Certificates).

- 43. Swimming pool fencing**
Swimming pool fencing is to comply with the requirements of the Swimming Pools Act 1992 and Regulations.
- 44. Swimming pool backwash**
Pool backwash to be connected to a sewer overflow relief gully.

The following conditions are to be complied with at all times

- 45. Approved use**
Dwelling house – Use of the development is approved for a dwelling house. Any activity other than that defined as dwelling house must not be carried out unless development consent is sought.
- Note. *dwelling house* means “a building containing only one dwelling”, and dwelling means “a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile”. The dwelling house is not approved as short term rental accommodation, tourist and visitor accommodation or to be “holiday let”.
- 46. Pool Safety Sign**
The occupier of the premises must ensure that there is at all times a sign in the immediate vicinity of the swimming pool bearing the words ‘Young children must be supervised when using this swimming pool’. The sign is to be a prominent position and be otherwise in accordance with clause 9 of the Swimming Pools Regulation.
- A pool resuscitation sign is to be installed in a conspicuous location within the pool area to the satisfaction of the Principle Certifying Authority.
- 47. Swimming pool backwash and overflow**
Swimming pools must discharge or backwash to an overflow retention gully in accordance with AS/NZS 3500.2.2, Section 10.9 & Figure 10.2.
- This work is exempt development in accordance with Councils Local Approvals Policy (2009), however, where it is not possible to discharge to an existing overflow retention gully, a new charged gully may be required. In such circumstances, an application under Section 68 of the Local Government Act is required.
- 48. Swimming pool pump location**
The filter pump is to be located such that noise from its operations does not cause a nuisance to adjoining residents. If necessary an acoustic enclosure must be provided around the pump to achieve the required noise attenuation.
- 49. Swimming Pool Fencing**
Swimming pool fencing is to comply with the requirements of the Swimming Pool Act 1992 and Regulations at all times.
- 50. Swimming pool health requirements**
The swimming pool water is to be re-circulated, filtered and disinfected in accordance with the requirements of Council and NSW Health. The swimming pool water is to be maintained at satisfactory levels of purity for bathing at all times.

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. DELETED BY 10.2020.578.2 DATED 2 AUGUST 2022

SCHEDULE 4. ROADS ACT 1993 SECTION 138 CONDITIONS OF CONSENT

Approval has been granted with this consent for the following Roads Act approval/s:

- Council reference No: 51.2020.578.1

The following works in the road reserve are granted consent pursuant to Section 138 of the Roads Act 1993.

- a) Gutter and vehicular crossing from the kerb to the property boundary.
- b) Removal of redundant driveway crossing/ apron and reinstallment of kerb and gutter in identical profile to existing kerb and gutter. Reinstating naturestrip.
- 1) When required, connection of stormwater outlet to street kerb with a galvanised metal kerb adaptor.

Section 138 Details of Conditions

This consent is issued by Byron Shire Council, being the road authority, for the above proposed works and/or structures subject to the following conditions:

1. All work to be in accordance with Council's adopted engineering standards **R-05** of the Northern Rivers Design Guide.
2. The works shall be carried out in accordance with the plans as amended in red and stamped as approved by Council under this development Consent.

In regards to the plans you are advised of the following:

- The Engineering Plans have been checked and found to comply with Council's guidelines. All calculations, designs and details have not been thoroughly checked. This Notice of Determination does not relieve the applicant from rectifying any errors or omissions, which may become evident prior to or during construction.
 - Approval of Engineering Plans is current for a period of five (5) years from the date of this Notice of Determination, after which time Council may require alteration to Engineering Design to comply with Standards current at that date.
3. Erosion & Sediment Control measures shall be employed in accordance with an erosion and sediment control plan which has been submitted and approved by Council prior to commencement of works.
 4. A Traffic Management Plan shall be implemented in accordance with the RTA Traffic Control at Work sites Manual by a RTA accredited person.
 5. Twenty four (24) hours notice must be given for required inspections.

Inspections required –

- a) Upon compaction of sub-grade;
- b) Prior to backfilling service trenches, pipe trenches or behind retaining walls;
- c) On completion of the placement of reinforcement and formwork prior to concrete pours;
- d) Prior to pouring kerbs, edge restraints, kerb & gutter, medians, inverts or dish gutters
- e) Upon compaction of pavement sub base and base course at finished surface level prior to sealing;
- f) upon completion of all work including removal of redundant driveway and re-instatement of K&G.

Upon completion of works payment of inspection fees in accordance with councils adopted schedule of fees and charges is required.

6. All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. The public liability insurance cover, for a minimum of \$20 million, is to be maintained for the duration of the construction of the development. Council is not held responsible for any negligence caused by the undertaking of the works.
7. Works are to include the adjustment, reconstruction and/or relocation of existing infrastructure as necessary to the requirements of the appropriate authority. Covers, lids and grates to manholes, stormwater drainage pits and services are to be constructed flush with the finished surface levels.
 - of kerb and gutter in identical profile to existing kerb and gutter. Instalment of the naturestrip to marry in with the existing profile of the naturestrip. Removal of any trip hazards as a result of the reinstated kerb/ gutter & naturestrip.

SCHEDULE 5. 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 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 6. 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:-

- appointed a Principal Certifying Authority (if the Council is not the PCA); and
- 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'.
- 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.

Swimming pool discharge (reticulated systems)

Swimming pool waste - irrespective of the filtering system is to be disposed into the property’s house drainage - sewerage system via an overflow relief gully with a 100mm visible air gap in accordance with AS/NZS 3500.2, Section 10.9 & Figure 10.2.

This activity is now an exempt activity and does not require approval under Section 68 of the Local Government Act.

If however, site conditions prevent discharge through the existing gully and a new gully is required, this activity will require an approval under S68 before this work can commence.

Note also that this activity must be carried out by a licensed plumber.

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).

Reason for conditions

The conditions imposed have been included in response to development considerations and to ensure a high standard of development having regard to the effect upon the environment and the amenity of the neighborhood.

Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth) Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution.

Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

Are you dissatisfied with conditions of consent?

If you are unhappy with conditions of consent discuss your concerns with the officer who dealt with your application. You may submit an application to Council to modify the consent under Section 4.55 of the Environmental Planning & Assessment Act, 1979.

You will need to provide reasons why the conditions should be changed or deleted. You may lodge a Section 4.55 application at any time after the notice of determination. If you are not happy with Council's decision on your request for modification, then you may appeal to the Land & Environment Court within six (6) months of the notification by Council.

Right of Review

You may request Council to review its decision under Section 8.2 of the Environmental Planning and Assessment Act, 1979. Such a request must be made within six (6) months of the date of the determination, or if there is an appeal to the Land and Environment Court, up to the time when the court hands down its decision. In reviewing its decision Council is able to consider alterations to the above plans, provided that the Development Application remains substantially the same as the one for which the consent was originally sought, and the changes are publicly notified.

Right of Appeal

If you are dissatisfied with this decision, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.

Signed on behalf of the Consent Authority

Yours faithfully



Ms P Docherty
Planner

Dated: 3 August 2022