



BSC File No: 201700D x 10.2021.370.4/#A2024/41080  
Contact: Christopher Larkin

## NOTICE OF DETERMINATION FOR MODIFICATION OF DEVELOPMENT CONSENT

<b>Application No.</b>	10.2021.370.4 PAN-455136
<b>Applicant</b>	BKA Architecture Pty Ltd
<b>Property</b>	10-12 Shirley Street BYRON BAY LOT: 1 DP: 847910
<b>Development</b>	Modification to vary Bushfire Conditions (S100B Bushfire Safety Authority)
<b>Determination</b>	Approved Consent Authority - Council
<b>Date of determination</b>	7 August 2024

*Under of the EP&A Act, notice is given that the above application to modify previous has been approved, subject to the conditions specified in this notice and as described in the Modification Summary*

### Reason for approval

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.

### Right of appeal / review of determination

If you are dissatisfied with this determination:

### Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 28 days from the date that you received this notice provided that an appeal under section 8.9 of the EP&A Act has not been disposed of by the Court.

### Rights to appeal

You have a right under section 8.9 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

### Signed on behalf of the Consent Authority

Christopher Larkin  
Manager Sustainable Development

## Schedule 1 – Modification Summary

### MODIFIED CONDITIONS OF CONSENT:

#### A. Amend Schedule 3 by inserting the updated schedule of conditions as follows



Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Your reference: (CNR-71656) 10.2021.370.4  
Our reference: DA20211219005542-54.55-1

**ATTENTION:** Chris Larkin

Date: Monday 5 August 2024

Dear Sir/Madam,

**Development Application**  
**s4.14 - Other - Commercial Premises**  
**10-12 SHIRLEY STREET BYRON BAY 2481, 1//DP847910**

I refer to your correspondence dated 31/07/2024 seeking advice regarding bush fire protection for the above Development Application in accordance with s4.55 of the *Environmental Planning and Assessment Act 1979*.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

#### **General Conditions**

1. The recommendations below are based upon Council continuing to manage a 17m wide section of Byron street consisting of a sealed cycleway and area of Council managed (mown) lawns.

#### **Asset Protection Zones**

*The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:*

2. From the commencement of building works and in perpetuity, the entire property must be managed as an inner protection area in accordance with Appendix 4.1.1 of *Planning for Bush Fire Protection 2019*.

#### **Construction Standards**

*The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:*

3 New external construction works (except roofing elevation) must comply with section 3 and section 5 (BAL 12.5) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019'.

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#### **Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### **Street address**

NSW Rural Fire Service  
4 Murray Rise Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)



**4. New roofing construction works must comply with**

- Tertiary component of building - section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019';
- Community Hub component of building - section 3 and section 5 (BAL 12.5) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019';

5. The existing building where no external works are proposed must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

**Landscaping Assessment**

*The intent of measures is for landscaping. To achieve this, the following conditions shall apply:*

6. Landscaping of the site shall comply with the principles of Appendix 4 of 'Planning for Bush Fire Protection 2019'.

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Allyn Purkiss  
**Manager Planning & Environment Services**  
**Built & Natural Environment**

## 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.
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### How community views were addressed

1	The application did not require public exhibition in accordance with the Community Participation Plan.
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**Schedule 2 - Conditions of Consent**

BSC File No: 201700D x 10.2021.370.1/#A2022/47764  
Contact: Ms K L Shapland

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

**Development Application No. 10.2021.370.1**

Newton Denny Chapelle  
PO Box 1138  
LISMORE NSW 2480

Email: [eportal@ndc.com.au](mailto:eportal@ndc.com.au)

<b>Property description</b>	LOT: 1 DP: 847910 <b>10-12 Shirley Street BYRON BAY</b>
<b>Development</b>	Community Hub including Community Facility, Office Premises, Health Services (Units 5A – 5D) and Restaurant or Cafe Components and Education Facility
<b>Determination</b>	<b>Consent granted</b> <i>Subject to the attached schedule of conditions</i>
<b>Date determined</b>	25 November 2022
<b>Consent to operate from</b>	29 November 2022
<b>Consent to lapse on</b>	29 November 2027

## 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.	Revision No.	Plan Title	Drawn by	Dated
21010-000	B	Cover Page	BKA Architecture	21/3/2023
21010-002	C	Demolition Plan	BKA Architecture	22/12/2023
21010-100	F	Proposed Ground Floor Plan	BKA Architecture	22/12/2023
21010-101	C	Proposed Roof Plan	BKA Architecture	22/12/2023
21010-200	C	Elevations	BKA Architecture	22/12/2023
21010-210	D	Elevations	BKA Architecture	22/12/2023
21010-211	C	Elevations	BKA Architecture	22/12/2023
21010-300	B	Section	BKA Architecture	21/3/2023
21010-500	B	Site Management Plan	BKA Architecture	21/3/2023
AB02	01	External Finishes Schedule	BKA Architecture	28/6/2021
		Byron Colab on Arakwal Country – Entry Sign		8/3/2024
		Old Byron Hospital Landscape works Document Set	Plummer and Smith	21/12/2022
230-000	B	Cover Page	Plummer and Smith	21/12/2022
230-400	B	Hardworks Plan	Plummer and Smith	21/12/2022
230-401	B	Hardworks Plan	Plummer and Smith	21/12/2022
230-402	B	Hardworks Plan	Plummer and Smith	21/12/2022
230-403	A	Hardworks Plan	Plummer and Smith	20/01/2023
230-500	B	Planting Plan	Plummer and Smith	21/12/2022
230-501	B	Planting Plan	Plummer and Smith	21/12/2022
230-502	B	Planting Plan	Plummer and Smith	21/12/2022
230-503	A	Planting Plan	Plummer and Smith	20/01/2023
230-900	B	Details	Plummer and Smith	21/12/2022
230-901	B	Details	Plummer and Smith	21/12/2022
230-902	B	Details	Plummer and Smith	21/12/2022
230-903	B	Details	Plummer and Smith	21/12/2022

230-904	B	Details	Plummer and Smith	21/12/2022
-	-	Plant Schedule	Plummer and Smith	-
J7463 – SK10	A	Concept Design Scenario 1	Planit Consulting	17/10/2022
2935 – CP01	A	Concept Plan	Byron Shire Council	25/02/2022
21GCA0014 R01_3		Environmental Noise Assessment Report	TTM	05/12/2023
ENV2163310		Asbestos Management Plan	ENV Solutions	16/12/2019
216310		Figure 1 – Site Suitability	ENV Solutions	11/01/2022
19286		Hazmat Removal and Pre-Remediation Mould Inspection Report	ENV Solutions	22/10/2021
P221_011-3 (BCA) JR		BCA Design Assessment Report	Design Confidence	15/02/2023
2021-1054 FER	A	Fire Engineering Report	Dolphin Fire Engineering Consultants Pty Ltd	31/5/2021

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.

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. Payment of security deposits (if applicable)

Before the commencement of any works on the site or the issue of a construction certificate, the applicant must make all of the following payments to Council and provide written evidence of these payments to the certifier:

Security deposit	\$ 3000
Inspection fee	In accordance with Council's fees and charges

The

payments will be used for the cost of:

- making good any damage caused to any council property (including street trees) as a consequence of carrying out the works to which the consent relates,
- completing any public work such as roadwork, kerbing and guttering, footway construction, stormwater drainage and environmental controls, required in connection with this consent, and
- any inspection carried out by Council in connection with the completion of public work or the making good any damage to council property.

**Note:** The inspection fee includes Council's fees and charges and includes the Public Road and Footpath Infrastructure Inspection Fee (under the *Roads Act 1993*). The amount payable must be in accordance with council's fees and charges at the payment date.

**3. Support for neighbouring buildings**

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

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

**4. 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.

**5. Existing building/s to be brought into compliance with fire safety provisions**

The existing building/s is to be brought into compliance with fire protection and structural capacity requirements appropriate to the proposed buildings use. A report is to be prepared by a suitably qualified person addressing the relevant Performance Requirements of the Building Code of Australia. The Construction Certificate plans and Specifications are to incorporate any recommendations in this report/s.

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

**6. Remedial Action Plan**

Prior to the commencement of any works associated with this development consent, the following is required:

- a) A supplementary investigation including soil sampling to establish the lateral and vertical extent of lead impacted soils identified by Epic and ENV Solutions. Where laboratory analysis results deem it necessary a Remedial Action Plan must be prepared.
- b) A Remedial Action Plan (RAP) must be prepared by an appropriately qualified person with experience in contaminated site remediation. The RAP must be prepared in accordance with the NSW EPA *Consultants Reporting on Contaminated Land – Contaminated Land Guidelines (2020)* and must be submitted to Council for approval at least 30 days before the commencement of the remedial work.
- c) The RAP must include options for remediation and management of contaminated land including engineering specifications and plans (as may be required) and reference to the UFP and EMP required by conditions of this consent.
- d) A suitably qualified person with experience in the management of contaminated land must be engaged by the proponent to oversee and be responsible for all works associated with the implementation of the Remedial Action Plan and subsequent site and soil validation.
- e) Contact details of the responsible person, including an emergency 24-hour phone number, must be provided to Council's Health and Compliance Unit.
- f) This information must be submitted to Council in accordance with *(Resilience and Hazards) 2021*.

- 7. Details and specifications of acoustic barrier to be submitted for approval**  
The application for a Construction Certificate is to include plans and specifications that demonstrate the inclusion of acoustic noise barrier recommended in Section 8 of Environmental Noise Assessment Report Ref: 21GCA0014 R01\_3 prepared by TTM dated 05/12/2023 (as approved by Council). Such plans and specifications must be approved as part of the Construction Certificate for building works.
- 8. Details and specification of mechanical plant to be submitted for approval**  
The application for a Construction Certificate is to include plans and specifications for mechanical plant that demonstrates the inclusion of acoustic treatments recommended in Section 8 of Environmental Noise Assessment Report Ref: 21GCA0014 R01\_3 prepared by TTM dated 05/12/2023 (as approved by Council). Such plans and specifications must be approved as part of the Construction Certificate for building works.
- 9. Details and specifications of acoustic building treatments to be submitted for approval**  
The application for a Construction Certificate is to include plans and specifications that demonstrates the inclusion of acoustic building treatments recommended in Section 8 of Environmental Noise Assessment Report Ref: 21GCA0014 R01\_3 prepared by TTM dated 05/12/2023 (as approved by Council). Such plans and specifications must be approved as part of the Construction Certificate for building works.
- 10. 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. 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) The plan is to be prepared by a suitably qualified landscape architect / architect / ecologist who has appropriate experience and competence in landscaping.

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

Note: Landscaping to the site is to comply with the principles of Appendix 4 of Planning for Bushfire Protection 2019.

**11. External Finishes**

A schedule of all external finishes and colours, sympathetic to the Heritage Conservation Area, in accordance with the provisions of Byron DCP 2014, are to be submitted to, and approved by Council, prior to the Construction Certificate being issued.

Note:

'Vivid White' rendered walls conflicts with Byron DCP Chapter C1 Non-Indigenous Heritage and is not to be used.

Colorbond Monument (very dark grey) windows conflicts with Byron DCP Chapter C1 Non-Indigenous Heritage for contrasting black and white.

Medium to light mid neutral wall colours should be used and should be complementary to the setting of the Conservation Area and the nearby Historic Police station and Courthouse complex. Black, white, and grey finishes should be avoided.

**12. Solar Panels**

The solar panel design is to avoid placement on the primary road frontage to Shirley Street and the corner of Wordsworth Street .in order to maintain the aesthetic significance of the Heritage Conservation Area and nearby setting of the Police Station. Details of the solar panel location are to be submitted and approved by Council prior to the Construction Certificate being issued. Details are to be included on the Construction Certificate plans.

**13. Cultural Heritage**

The following is to be included on the Construction Certificate and Landscape Plans:

- Cultural interpretive signage
- An outside meeting place/yarning circle incorporating natural made products as a centre feature
- The use of native bush and bush tucker plants as part of the landscape design.

These features are to be included in consultation with Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

**14. Essential Energy - Consultation**

Prior to the Construction Certificate being issued, Essential Energy is to be consulted concerning the compliance of the proposal with ISSC 20 (section 8.3.4, The construction of houses, buildings or substantial structures other than those permitted under clause 7.2.3) and the use of the existing building over the existing electricity easement. Any requirements of Essential Energy are to be considered during the detailed design of the proposed development.

**15. Detailed Environmental Management Plan – Contamination**

An Environmental Management Plan (EMP) must be submitted to Council for approval prior to any demolition or construction works commencing. Reference to recommendations contained in technical reports and environmental management plans prepared asbestos, lead, mould and radiation for the subject site by ENV Solutions P/L.

The EMP must be prepared by a suitably qualified professional and contain details of measures to be undertaken to ensure in-situ contamination is managed in accordance with any long-term management recommendations

All works must be in accordance with NSW WorkCover Authority. The EMP must be approved by Council as part of the application for a construction certificate for building works.

**16. Detailed Environmental Management Plan - Construction**

An Environmental Management Plan (EMP) must be submitted to Council for approval prior to any demolition or construction works commencing. Reference to recommendations contained in technical reports and environmental management plans prepared for the subject site by ENV Solutions P/L.

The EMP must be prepared by a suitably qualified professional and contain details of measures to be undertaken to ensure that demolition and/or construction works for the whole development do not result in any on and off-site impacts that could interfere with neighbourhood amenity by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise.

All works must be in accordance with NSW WorkCover Authority. The EMP must be approved by Council as part of the application for a construction certificate for building works.

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

The application for a Construction Certificate is to include plans and specifications that indicate the proposed waste material store area. The proposed garbage store area is to be designed and constructed to provide sufficient capacity for the range of waste storage containers required for all the waste management activities conducted in association with the development.

Adequate ventilation, lighting, fire response and access to be provided to ensure safe and healthy conditions can be maintained for the protection of workplace health and safety. Provision to be made for waste collection vehicle movement and lifting height requirements for all types of waste storage bins.

Such plans and specifications must be approved by Council prior to issue of the Construction Certificate.

**18. Unexpected Findings Protocol - Contamination & Remediation**

An Unexpected Findings Protocol (UFP) shall be prepared and submitted to Council for approval prior to the issue of Construction Certificate. The UFP shall be prepared by a suitable qualified person experienced in matters relating to Contamination of Land and Remediation.

**Advisory note:** The UFP must have consideration for recommendations contained in technical reports and environmental management plans prepared for the subject site by ENV Solutions P/L.

**19. Water and Sewerage - Section 68 Part B approval**

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.

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.

**20. 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 must be obtained prior to gaining Section 68 Part B approval to carry out water supply work and sewerage work.

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

Prior to issue of any Construction 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**

**22. 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 for approval. 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).

**23. Trees to be retained and protected – Land Remediation**

Trees to be retained are to be protected by a Tree Protection Zone (TPZ) exclusion fence. The fence is to be constructed in accordance with Sections 3.2 and 4.3 of AS4970-2009

Protection of trees on development sites (Standards Australia 2009). The fence must:

- a) be located outside the dripline of the tree so as to minimise disturbance to tree roots;
- b) have a minimum height of 1.8 metres;
- c) be constructed of wire mesh panels, plywood, steel star pickets or similar, with a maximum distance of 2metres between star pickets;
- d) have a minimum of 3 strands of steel wire or similar;
- e) have high visibility barrier mesh (eg orange), shade cloth or similar, attached to the outside of the fence and continuing around its perimeter;
- f) include at least one Tree Protection Zone (TPZ) sign in accordance with Section 4.4 of AS4970-2009.

Activities that are excluded within the TPZ (as per section 4.2 of AS4970-2009) include excavation, construction activity, grade changes, surface treatment and storage of material.

If these activities are required within the TPZ they may only occur under the supervision of the project arborist (minimum AQF level 5 qualified arborist).

The Tree Protection Zone (TPZ) exclusion fence is to be maintained for the duration of the site clearing, preparation, construction and landscaping works.

**24. Construction site management plan**

Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

**25. Sediment and Erosion Control Management Plan required**

The application for a Construction Certificate is to include plans and specifications that indicate the measures to be employed to control erosion and loss of sediment from the site. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as filter fences and sedimentation basins.

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".**

**26. Stormwater Drainage – Connection to Public or Inter-allotment 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 by a gravity system to the underground stormwater system in Wordsworth St.

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) Provision must be made to provide stormwater quality improvement devices to demonstrate compliance to Table B3.1 of Chapter B3 of the DCP
- b) comply with any requirements for the disposal of stormwater drainage contained in Council's Development Control Plan, Stormwater Guideline and Local Approvals Policy; and
- c) 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.

**27. Consent required for works within the road reserve**

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

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

<b>Driveway in Shirley St</b>	A seven (7) metre wide driveway in accordance with Council's standard "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings". The footpath crossing must be designed to provide a cross fall of 1 % or 1:100 (maximum 2.5% or 1 in 40) for a width of at least 2.4 metres to provide for pedestrians with access disabilities.

<b>Intersection upgrade Shirley St &amp; Wordsworth St</b>	Intersection upgrade in accordance with the approved plan, Austroads, Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings". The design is to include siting, signs, raised island, linemarking, parking restrictions and night-time visibility
<b>Wordsworth St upgrade</b>	Carparking (53 parking spaces including 2 accessible parking in accordance with AS2890.5) Pavement widening, sealing, kerb & guttering and associated drainage construction, footpath formation including any necessary relocation of services in accordance with the approved plan
<b>Footpath embellishment</b>	Grading, trimming, topsoiling and turfing of the unpaved footpath area.

## 28. Traffic Management Plan (TMP)

Prior to issue of the construction certificate, consent from Council must be obtained for a Traffic Management Plan (TMP) pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development. The TMP is to be designed in accordance with the requirements of the current version of the Transport for NSW *Traffic Control at Work Sites Technical Manual*.

The report must incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site.

The TMP and associated traffic guidance scheme/s must be prepared by a suitably qualified Transport for NSW accredited person.

## 29. 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) Three (3) user class 1 parking
- b) One (1) user class 4 parking
- c) One (1) Single Rigid Vehicle (SRV) loading bays
- d) One (1) Medium Rigid (MRV) loading bay
- e) Twenty-five (25) bicycle parking
- f) Five (5) motorcycle parking
- g) One (1) drop off facility
- h) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment;
- i) site conditions affecting the access;
- j) existing and design levels;
- k) longitudinal section from the road centreline to the car space(s);
- l) cross sections every 15 metres;

- m) drainage details;
- n) turning paths; and
- o) 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".

**30. Flood Planning Level**

The flood planning level for this development is R.L. 2.82m A.H.D. The plans and specifications to accompany the construction certificate application are to indicate the use of flood compatible materials and services below the flood planning level in accordance with the requirements of Council's Development Control Plan 2014 – Chapter C2 – Areas Affected by Flood.

**31. S.88E Public Positive Covenant to be placed on title – Coastal erosion**

Documentary evidence is to be provided to the Principal Certifying Authority that a public positive covenant, pursuant to the provisions of S.88E of the Conveyancing Act, 1919, has been placed on the title to the land, the subject of this consent, stating:-

*The development granted via development consent number DA10.2021.370.1 must cease if at any time the coastal erosion escarpment comes within 50 metres of the building subject of the consent. The development the subject of this consent must be demolished and removed immediately. Further the landowner must suitably revegetate the land.*

*In this covenant coastal erosion escarpment means the landward limit of erosion in the dune system caused by storm waves.*

**Please note:** Documents requiring the endorsement of Council associated with the creation or cancellation of easements, restrictions, covenants are subject to fees listed within Council's Fees & Charges.

**32. 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](http://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.

**33. Waste Management Plan**

Before the issue of a construction certificate, the applicant is to ensure that a waste management plan is prepared in accordance with the EPA's Waste Classification Guidelines and the following requirements before it is provided to and approved by the certifier:

a. Council's Waste Management Development Control Plan

**OR**

b. details the following:

- the contact details of the person(s) removing the waste
- an estimate of the waste (type and quantity) and whether the waste is expected to be reused, recycled or go to landfill
- the address of the disposal location(s) where the waste is to be taken

The applicant must ensure the waste management plan is referred to in the construction site management plan and kept on-site at all times during construction.

**33A. 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.

The use of displacement and screw pile construction methods will require approval by Council.

Any retaining wall / brick / masonry fence crossing a pipeline requires Council approval. The fence must be supported such that it does not cause loading on the pipes zone-of-influence.

A minimum horizontal clearance of 1.5m from the centre is required around existing access structures as well as minimum vertical clearance of 3m from finished ground level is required.

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

**34. Erosion and Sediment measures**

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

Sediment and erosion control measures in accordance with the approved Erosion and Sedimentation Control plan/s must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

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).

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

**35. Traffic Management Plan**

The approved traffic management plan is to be implemented.

**36. Public safety requirements**

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.

**37. Remedial works must be completed**

Remedial work must be completed in accordance with a Remedial Action Plan (RAP) required as a condition of this consent. The RAP must be dated subsequent to the date of this consent and conform to NSW EPA *Consultants Reporting on Contaminated Land – Contaminated Land Guidelines (2020)*.

**38. Environmental Noise Assessment Report**

Building and associated works to be carried out in accordance with the Environmental Noise Assessment Report Ref: 21GCA0014 R01\_3 prepared by TTM dated 05/12/2023 (as approved by Council).

**39. WorkCover Authority**

All works must be undertaken in accordance with the requirements of the WorkCover Authority.

**40. 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.

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

**41. Hours of work**

The principal certifier must ensure that building work, demolition or vegetation removal is only carried out between:

- 7am to 6pm on Monday to Friday.
- 8am to 1pm on Saturday.

The principal certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

**Note:** Any variation to the hours of work requires Council's approval.

**42. Construction Noise**

While building work is being carried out, and where a noise and vibration management plan is approved under this consent, the applicant must ensure that any noise generated from the site is controlled in accordance with the requirements of that plan.

**OR**

While building work is being carried out and where no noise and vibration management plan is approved under this consent, the applicant is to ensure that any noise caused by demolition, vegetation removal or construction does not exceed an LAeq (15 min) of 5dB(A) above background noise, when measured at any lot boundary of the property where the construction is being carried out.

**43. 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.

**44. Stormwater drainage work**

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

**45. Environmental Management Plan – Contamination**

Construction works must be carried out in accordance with the approved Environmental Management Plan – Contamination

**46. Environmental Management Plan – Construction**

Construction works must be carried out in accordance with the approved Environmental Management Plan – Construction

**47. Unexpected Findings Protocol - Contamination & Remediation**

Construction works must be carried out in accordance with the approved Unexpected Findings Protocol (UFP).

**48. Remedial works must be completed**

Remedial work must be completed in accordance with the approved Remedial Action Plan (RAP).

**49. Mould Remediation**

Strip out (as planned for refurbishment works), can be completed by demolition contractor. Following strip out an indoor environmental professional (IEP)/ occupational hygienist must be engaged to determine current state of indoor environment (specifically remaining building materials) with regard to potential microbial growth and provide additional remedial requirements (if any) to return building to Condition 1 status prior to re-instatement works, (refer to Hazmat Removal and Pre-Remediation Mould Inspection Report prepared by ENV Solutions dated 22/07/2019): Following mould remediation certification in writing by suitably qualified consultant is required to ensure remedial works have been successful and that the affected areas are deemed safe for occupancy.

Remedial works must be carried out in accordance with Standard for Professional Mold Remediation IICRC s520 – 2015, 3<sup>rd</sup> Edn Institute of Inspection, Cleaning & Restoration Certification, Vancouver, Washington 98661 USA, or equivalent.

Following mould remediation verification in writing by suitably qualified consultant will be required to ensure remedial works have been successful and that the affected areas are deemed safe for occupancy.

**50. Asbestos Management Plan**

Demolition and construction works must be carried out in accordance with the approved Asbestos Management Plan prepared by ENV Solutions Ref: 21GCA0014 R01\_2 dated 18/10/21 and Safe Work Australia.

**51. 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.

**52. 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.

**53. Fill to be retained on the subject land**

Fill material must not encroach onto any adjoining land.

**54. 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.**

**55. Destination for all excavated materials during construction**

The works contractor responsible for the construction must develop and maintain a register of materials that will be taken off-site for treatment, disposal, or any other purpose. The register must accurately record the destination and volume of every load of material (including clean soil, recyclable material, acid sulfate or potential acid sulfate soil, radiological waste, asbestos containing materials, sludge from dewatering treatment tanks, etc.). Individual vehicle registrations associated with off-site transport of materials and excavation waste to be recorded in the register.

Council must be provided with a copy of the completed register prior to the issuing of the Occupation Certificate.

**Advisory note:** No transporting of unclassified waste, hazardous materials or material contaminated by demolition waste is permitted to be delivered to unapproved private land within NSW. Heavy penalties apply under the Contaminated Land Management Act for any failure to manage site waste materials.

**56. 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.

- 57. 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.
- 58. 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.
- 59. 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 \(2014\)](#)
- 60. 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>
- 61. Cultural Site Monitors**  
Wherever ground disturbing works are being undertaken, Arakwal Traditional Owners are to be consulted and where required, engaged as Cultural Site Monitors for the duration of works to oversee and assess the potential for harm to our Aboriginal Cultural Heritage.
- 62. Aboriginal Relics**  
While demolition or building work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify the Secretary of the Department of Planning, Industry and Environment and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or the Secretary of the Department of Planning, Industry and Environment.

In this condition:

- “relic” means any deposit, artefact, object or material evidence that:
  - a. relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
  - b. is of State or local heritage significance; and
- “Aboriginal object” means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

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

### 63. 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.

### 64. Roadworks, access and parking areas to be completed.

The roadworks, access and parking areas are to be constructed in accordance with the engineering plans required by this consent and the Roads Act consent. Certification that the driveway has been constructed in accordance with the engineering plans and Work-As-Executed (WAE), prepared by a suitably qualified engineer, together with a final completion letter from Council for the Roads Act works, must be submitted to the Principal Certifying Authority prior to the issue of an occupation certificate.

### 65. Floor Levels – Certification for Flooding

Prior to the issue of any Occupation Certificate, a certificate from a registered surveyor must be submitted to the Principal Certifying Authority confirming the height of habitable and non-habitable floors. An Occupation Certificate must not be issued unless the floor levels are at or above the relevant flood planning levels. A copy of the floor level certification from the registered surveyor must also be submitted to Council for the attention of Council's Drainage and Flood Engineer.

### 66. 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.

### 67. Notice of Completion and Validation Report required

A notice of completion must be provided to Council's Health and Environment Section within 30 days of completion of the remediation work. The notice of completion must be accompanied by a Validation Report prepared by a suitably qualified person with experience in the remediation of contaminated land.

The Validation Report must specify the standard of remediation achieved and certify that the site is suitable for the approved land use. The report must conform to the NSW EPA *Consultants Reporting on Contaminated Land – Contaminated Land Guidelines (2020)*, and all other statutory requirements.

The Validation Report must be approved by Council and accompanied by any engineering specifications and details of any long-term monitoring for in-situ contamination.

Documentary evidence must be provided confirming the method of disposal and destination of all contaminated soil removed from the site.

- 68. Unexpected Findings Protocol - Contamination & Remediation**  
The works engineer must certify in writing to the Principal Certifying Authority that all works have been carried out in accordance with the recommendations contained in the approved Unexpected Findings Protocol (UFP).
- 69. Mould Remediation**  
An indoor environmental professional (IEP)/ occupational hygienist must be engaged to certify in writing to the Principal Certifying Authority that mould remediation has been carried out and /or the affected buildings have been returned building to Condition 1 status. This condition must be signed off by Councils Environmental Health Unit before issue of a Final Occupation Certificate.
- 70. Asbestos Management Plan**  
The accredited asbestos assessor responsible for overseeing the construction works must certify in writing to the Principal Certifying Authority that all management of asbestos uncovered or otherwise have been carried out in accordance with the approved ENV Solutions Ref: 21GCA0014 R01\_2 dated 18/10/21
- 71. Noise attenuation requirements for plant and building construction**  
A suitably qualified acoustic consultant must certify that attenuation measures for plant and building construction design requirements have been constructed to achieve compliance with Environmental Noise Assessment Report Ref: 21GCA0014 R01\_3 prepared by TTM dated 05/12/2023 (as approved by Council). Certification is to be submitted to the PCA prior to issue of a Final Occupation Certificate.
- 72. Construction - Food Premises**  
Prior to the issue of the occupation certificate the food premises must be constructed in accordance with design and layout plans approved by Council.
- Advisory note:***  
Requirements of Food Standard Code 3.2.3 and Australian Standard AS4674 – 2004 “Design, construction and fit-out of food premises” to be considered to achieve the necessary construction standards for the food business.
- 73. 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.
- 74. Exhaust System**  
On completion of the kitchen exhaust-hood installation, provide a certificate and system specifications detailing the air flow velocity readings to Council. The certificate should be completed by a suitably qualified professional and shall ensure that the installation satisfies AS1668.2 “Mechanical ventilation for acceptable indoor-air quality”
- 75. Airlock**  
An airlock shall be constructed between the toilet facilities and internal workspaces to prevent the transfer of contaminants into the food business and comply with the Building Code of Australia.

**76. 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.”

**77. 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,
- d. Not directly to a watercourse, and
- e. Not onto adjoining land.

**77A. 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).

**The following conditions are to be complied with prior to commencing operations**

**78. 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.

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

The operator of the food premises shall obtain a satisfactory pre-operational inspection from Councils 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**

**80. Management of Contaminated Land**

In-situ contamination must be managed at all times in accordance with any long-term management recommendations in the Remedial Action Plan and Environmental Management Plan including any associated engineers plans, legal instruments required to manage in-situ contamination.

**81. Access must be permitted to Council officers**

Access must be permitted to any authorised Council officers during normal business hours for the purpose of ensuring compliance with consent conditions.

**82. Trade Waste**

All trade waste pre-treatment devices shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied.

**83. Educational Establishment – Maximum Numbers**

The educational establishment is to operate with the following maximum numbers:

- maximum of 100 students at any given time
- maximum of 20 staff at any given time

**84. Hours of operation**

The development must not unreasonably interfere with the amenity of the neighbourhood. Operating noise, when audible on adjoining residential and commercial premises, can only occur:

Community Hub/Cafe

Monday to Friday, from 8am to 10pm.

Saturday and Sunday from 8am to 9pm.

Public Holidays Closed.

Loading Dock

Monday to Friday, from 7am to 6pm.

Saturday and Sunday from 8am to 12 noon

Public Holidays Closed

Tenancy 1 – Tertiary Education

Monday to Friday, from 8am to 9pm.

Saturday Closed.

Sunday and Public Holidays Closed.

**85. 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.

Waste including recyclable, putrescible and compostable material to be appropriately separated, stored and collected to the satisfaction of Council at all times.

**86. Must not interfere with the amenity of the neighbourhood**

The use of the development must 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. All guests and staff must be made aware that they must keep noise levels down to maintain neighbourhood amenity
- c. Only clean and unpolluted water is permitted to be discharged to Councils' stormwater drainage system or any waters.
- d. All wastes shall be contained within appropriate containers fitted with a tight-fitting vermin-proof lid.
- e. All waste storage and sewage facilities shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied.

- f. Goods deliveries shall be restricted to daytime operating hours from 8am to 6pm.

## **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. NSW RURAL FIRE SERVICE CONDITIONS



Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Your reference: (CNR-71656) 10.2021.370.4  
Our reference: DA20211219005542-54.55-1

**ATTENTION:** Chris Larkin

Date: Monday 5 August 2024

Dear Sir/Madam,

**Development Application**  
**s4.14 - Other - Commercial Premises**  
**10-12 SHIRLEY STREET BYRON BAY 2481, 1//DP847910**

I refer to your correspondence dated 31/07/2024 seeking advice regarding bush fire protection for the above Development Application in accordance with s4.55 of the *Environmental Planning and Assessment Act 1979*.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

### General Conditions

1. The recommendations below are based upon Council continuing to manage a 17m wide section of Byron street consisting of a sealed cycleway and area of Council managed (mown) lawns.

### Asset Protection Zones

*The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:*

2. From the commencement of building works and in perpetuity, the entire property must be managed as an inner protection area in accordance with Appendix 4.1.1 of *Planning for Bush Fire Protection 2019*.

### Construction Standards

*The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:*

3 New external construction works (except roofing elevation) must comply with section 3 and section 5 (BAL 12.5) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019'.

1

#### Postal address

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### Street address

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)



4. New roofing construction works must comply with

- Tertiary component of building - section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019';
- Community Hub component of building - section 3 and section 5 (BAL 12.5) Australian Standard AS3959-2018 'Construction of buildings in bushfire-prone areas' or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of 'Planning for Bush Fire Protection 2019';

5. The existing building where no external works are proposed must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

**Landscaping Assessment**

*The intent of measures is for landscaping. To achieve this, the following conditions shall apply:*

6. Landscaping of the site shall comply with the principles of Appendix 4 of 'Planning for Bush Fire Protection 2019'.

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Allyn Purkiss  
Manager Planning & Environment Services  
Built & Natural Environment

## SCHEDULE 4. 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.
The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Clause 5.10 of Local Environmental Plan 2014.
The proposed development will not have a detrimental impact on the heritage character of the precinct or the buildings contained on the site. It is considered consistent with the heritage provisions contained within Development Control Plan 2014.

### 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 5. 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](http://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.

**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)**

Sewer	8.25 ET
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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.

**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.

**NSW Environmental Protection Authority (where required)**

NSW Environmental Protection Authority advise that the applicant must contact Qld Department of Environment and Heritage Protection <https://www.ehp.qld.gov.au/> to obtain a consignment number for a Waste Transport Certificate which must be emailed to <https://www.hazardouswaste@epa.nsw.gov.au/>

**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.

**Enclosed public places (smoke-free environment)**

Environment Act 2000 and the Smoke-Free Environment Regulation 2000 and the guidelines in the Regulation for determining what an enclosed public place is. Enquiries may be directed to the NSW Department of Health. The legislation may be viewed on:

<http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0>

## **Work Health and Safety Act 2011 and Water Health and Safety Regulation 2017**

Work Health and Safety Act 2011 and Water Health and Safety Regulation 2017 control the health and safety of the public. For information and facts sheets refer to <https://www.safework.nsw.gov.au/legal-obligations/legislation>

### **Essential Energy Advice**

- As advised, there is an easement and cables in the ground under this building. Any works must avoid the easement area.
- Any vegetation or outdoor furniture etc must remain clear of the easement area.
- It must also be understood that if access to the cables is required, that the ground floor may have to be disturbed.
- When working near Essential Energy's assets, a construction works application should be submitted to Essential Energy to provide construction advice. This can be completed via Essential Energy's website <https://www.essentialenergy.com.au/safety/construction-safety>.
- The Applicant should determine if construction is possible in a safe manner while maintaining the requirements of the easement terms and SafeWork NSW working near underground powerlines.
- The Applicant might want to consider whether this cable is required in the development and plan to have it removed as a Contestable Works project, at their cost. This would remove any issues with the easement and restrictions within the easement area.

### **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](http://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



Mr C Larkin  
Manager Sustainable Development

*Dated: 12 August 2024*

## **General Advisory Notes**

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the Conditions of development consent: advisory notes. The consent should be read together with the Conditions of development consent: advisory notes to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.