

DEVELOPMENT APPLICATION EVALUATION REPORT

Doc No. #A2022/12150

DA No:	10.2021.825.1				
NSW PP	PAN-177569				
Proposal description:	Dwelling House and Swimming Pool				
Property description:	LOT: 12 SP: 83141				
	32 Kendall Street BYRON BAY				
Parcel No/s:	241465				
Applicant:	Planners North				
Owner:	Mr P J Ostick & Ms I Almasi				
Zoning:	7(f2) Urban Coastal Lands				
Date received:	22 December 2021				
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable		
Concurrence required	No				
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 1 advertising under Council's Community Participation Plan. - Exhibition period: 11 January 2022 to 24 January 2022 - Submissions received: 0 - Submissions acknowledged: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A 				
Other approvals	<input type="checkbox"/> N/R	<input type="checkbox"/> W & S (68)	<input type="checkbox"/> OSMS (68)	<input type="checkbox"/> ST (68)	<input type="checkbox"/> RA (138)
	Other:				
Planning Review Committee	Not applicable				
Variation request to Development Standards under an EPI (eg clause 4.6)	Not applicable				
Estimated cost	\$\$1,980,443.00				

Delegation to determine	Manager, Sustainable Development
Issues	<ul style="list-style-type: none"> • Coastal erosion precinct • Building height plane encroachments • 1.8m front fence
Summary:	<p>The DA proposes Dwelling House and Swimming Pool.</p> <p>The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.</p>
Recommendation:	Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.825.1 for Dwelling House and Swimming Pool, be granted consent subject to the conditions of approval at the end of this report
Determination	<p>Agree with recommendation: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Check for comments at the end of the report: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Further information required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
BCA Classification required?	<p><input type="checkbox"/> Yes - BCA Classification - Click here to enter text.</p> <p><input checked="" type="checkbox"/> No</p>
Roads Act Approval granted	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p>

1. INTRODUCTION

History/Background

The lot was registered on 7 June 2011. A review of the Deposited Plan reveals that it was created from subdivision approval no. 22/11. The subject site is part of a recently released subdivision, therefore no previous determinations have been made.

Description of the proposed development

This application seeks approval for Dwelling House and Swimming Pool. The proposed two storey dwelling house contains five bedrooms. The ground floor contains two bedrooms with ensuites and living areas, the upper level contains three bedrooms, kitchen, and living areas. The proposal incorporates the construction of a swimming pool and a roof terrace area. The proposed two storey dwelling has a total floor plan area of 372m². The proposed materials and finishes include rendered wall, timber cladding and clip block roofing.

Description of the site

A site inspection was carried out on 6 April 2022

Land is legally described	LOT: 12 SP: 83141	
Property address	32 Kendall Street BYRON BAY	
Land is zoned:	7(f2) Urban Coastal Lands	
Land area is:	746 m ²	
Property is constrained by:	Dip Site Cattle Dip Buffer Coastal Erosion Pre 1	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

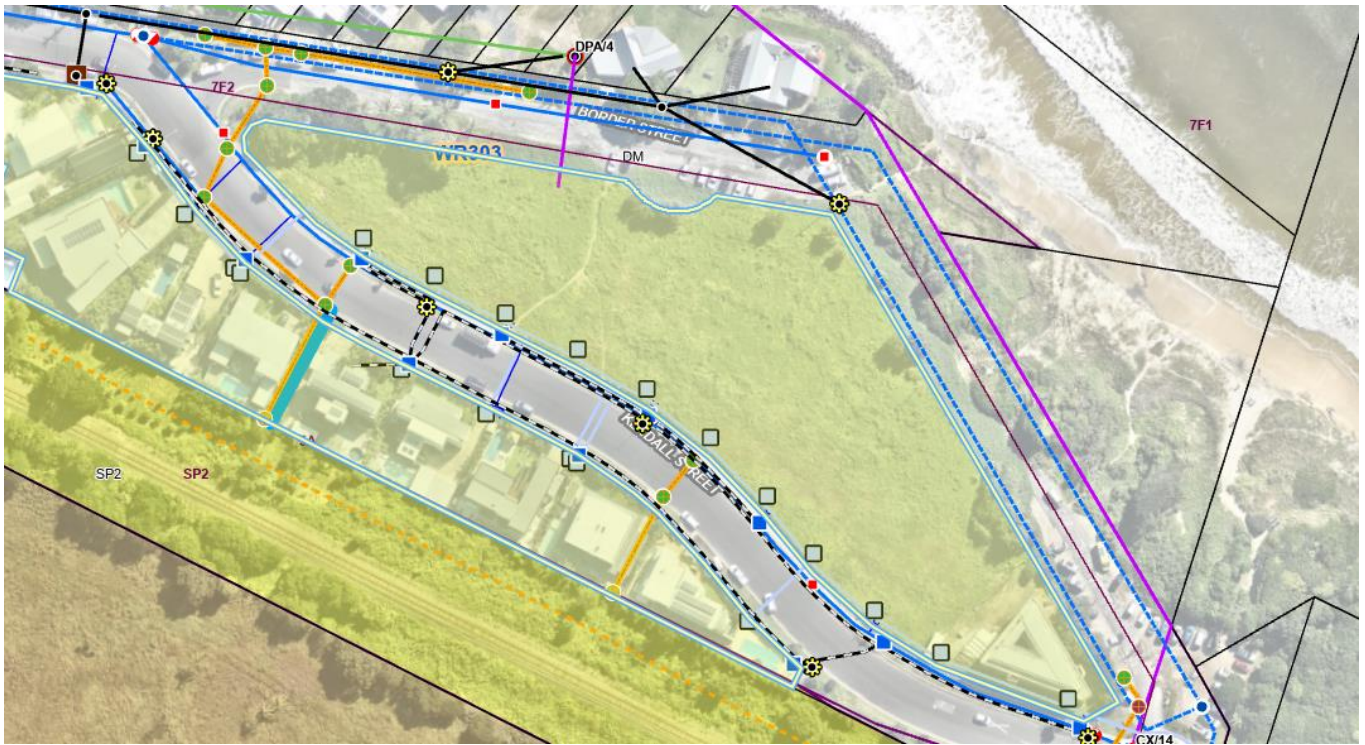


Figure 1 - LEP zoning and services map extract

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer*	No objections subject to conditions. Refer to Doc # A2022/69.

* Conditions provided in the above referral are included in the Recommendation of this Report below

Engineering notes:

Planner to note the architectural and landscape design guidelines referenced in the strata bylaws – see E2022/6042: *These are design guidelines created by the developer under clause 1.9A of LEP 2014, Council is not required to enforce these.*

Planner to consider the restriction on use requiring an onsite sewage pumping system: *Will be dealt under s68.*

Planner to consider if the outdoor shower compromises the terms of the landscaping easement: *This is considered acceptable.*

Planner to include suitable conditions for source and quality of fill: *Conditions recommended.*

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document ‘*Planning for Bush Fire Protection 2019*’. The site is not bush fire prone land.

4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP No 55—Remediation of Land</i></p> <p>Consideration: The subject site was recently subdivided for residential purposes. SEPP 55 was considered as part of the subdivision DA. The proposal is satisfactory having regard to this SEPP.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Building Sustainability Index: BASIX) 2004</i></p> <p>Consideration: A single dwelling BASIX was provided – 1243218S</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Coastal Management) 2018</i></p> <p>Consideration: The subject site is mapped within the 'coastal use area' and 'coastal environment area', the proposal is satisfactory having regard to clause 13 & 14 of this SEPP.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.2 Byron Local Environmental Plan 1988 (LEP 1988)

LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 1988 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2A <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input checked="" type="checkbox"/> LEP 1988 Dictionary <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8 <input checked="" type="checkbox"/> 9
Part 3	<input checked="" type="checkbox"/> 32 <input checked="" type="checkbox"/> 40 <input checked="" type="checkbox"/> 45
Part 4	N/A

In accordance with LEP 1988 clauses 5, 8 and 9:

- (a) The proposed development is defined in the LEP 1988 Dictionary as Dwelling House;
- (b) The land is within the LEP1988 7(f2) Urban Coastal Lands Zone according to the map under LEP 1988;
- (c) The proposed development is permissible with consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
to identify urban land likely to be influenced by coastal processes,	The proposed development comprises the construction of a new dwelling within the residential lot. The development is in Precincts 1 and 2 and the existing erosion escarpment is currently within 50m from proposed buildings. A removability report demonstrates the proposal can comply with the requirements outlined within Part J of DCP 2010.
to permit urban development within the zone subject to the council having due consideration to the intensity of that development and the likelihood of such development being adversely affected by, or adversely affecting, coastal processes,	
to permit urban development within the zone subject to the council having due consideration to— (i) the need to relocate buildings in the long term,	

(ii) the need for development consent to be limited to a particular period, (iii) the form, bulk, intensity and nature of the development, and (iv) continued safe public access to the site, and	
to allow detailed provisions to be made, by means of a development control plan, to set aside specific areas within the zone for different land uses and intensities of development.	

32 Development within Zone 7(f2) (Urban Coastal Lane Zone)

The proposed development involves the construction of a new dwelling within the residential lot. The development is in Precincts 1 and 2 and the existing erosion escarpment is currently within 50m from proposed buildings. The proposal is cognitive and responsive to the potential effects of coastal processes. The dwelling has been designed to be removed/relocated with a removability report and certification assessed by Council's Development Engineers, conditions also recommended.

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

Clause 64A Exceptions to Development Standards

Not applicable

4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

Not applicable

4.4 Byron Shire Development Control Plan 2010 (DCP 2010)

DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988. The DCP 2010 Chapters/Parts that are checked below are of relevance to the proposed development:

Chapter 1 Parts:	<input checked="" type="checkbox"/> A <input checked="" type="checkbox"/> C <input checked="" type="checkbox"/> F <input checked="" type="checkbox"/> J <input checked="" type="checkbox"/> N
Chapters:	<input checked="" type="checkbox"/> 17

Part C: Residential Development

C2.5 – Building Height Plane

The proposed dwelling involves building height plane encroachments on both side boundaries being the eastern and western boundaries. The building height plane encroachments arise from the need to meet the requirements of other development controls. Specifically, the dwelling has been located on the landward side of the immediate impact line to provide a suitable buffer to coastal erosion constraints. The positioning of the dwelling entirely within Coastal Erosion Precinct 2 reduces the footprint of the development at ground level. In response, the design provides habitable areas within an upper level. This ultimately causes encroachments into the building height plane. A review of other recently approved dwellings within the same strata confirms that double storey dwellings with similar encroachments into the building height plane are common.

The winter shadow diagrams demonstrates between 9am and midday the shadowing mostly occurs over Kendall Street. Between midday and 3pm the adjoining strata lot to the east experiences overshadowing over the south-western quarter of the site. The shadowing impacts are not considered to be significant due to the orientation of the sites and the need to situate the dwelling footprint on the

southern end of the lot. The window placement on the upper level does not create the potential for adverse privacy impacts. The encroachments are considered consistent with surrounding recently approved development and are a result of the site constraints, the remainder of these strata lots will involve similar built forms.

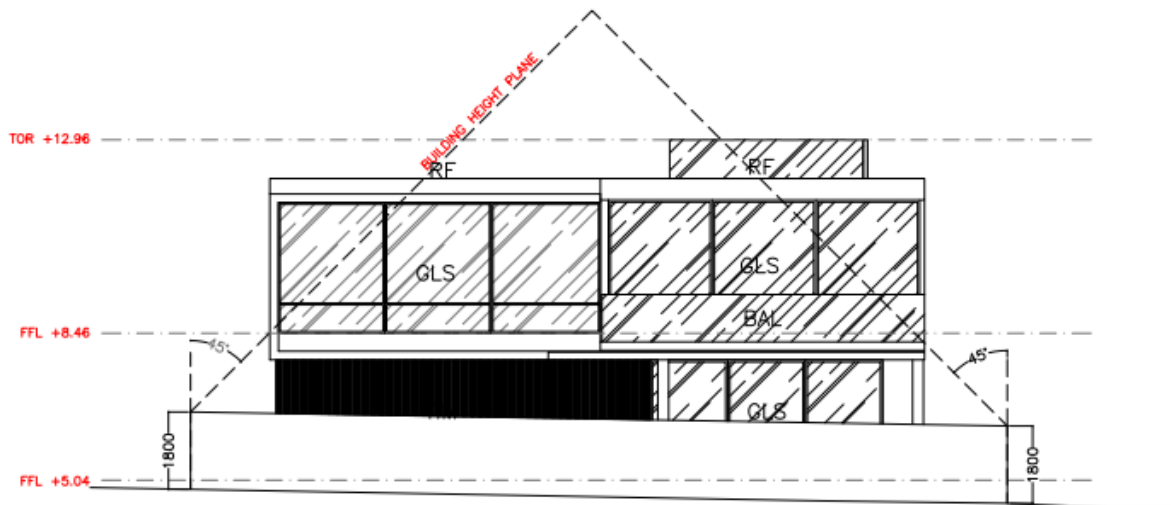


Figure 2 - Section showing BHP encroachments

C3.1 – Visual Impact:

The subject dwelling has been architecturally designed to suit the narrow configuration of the property. It incorporates high quality finishes that will complement the coastal setting. The bulk and scale of the proposed development is consistent with nearby dwellings. Landscaping within the rooftop and yard areas will soften the development on completion. It is satisfied that the proposal will not result in adverse visual impacts in the locality.

C3.6 – Fences:

The proposed development seeks approval for a 1.8 metre high fence along the front property boundary. Side boundary fencing with a height of 1.8 metres is proposed through to Border Street. The Border Street frontage is considered a rear boundary, to which a 1.8 metre high fence is generally accepted. Kendall Street extends from Ewingsdale Road in the south and connects to Childe Street to the west to provide vehicle access to over 100 residential properties, multi-unit tourist accommodation, an education facility and two cafés. The mix of residential, tourist and commercial properties within the Belongil locality presents vehicle impacts and security concerns for the landowner. The proposed fencing is designed to reduce these impacts and is considered compliant with this control. The proposed fence does not seem to be setback from the front boundary or involve bays to accommodate on-site landscaping. A condition has been recommended.

Part J: Coastal Erosion Lands

The development is in Precincts 1 and 2 and the existing erosion escarpment is currently more than 50m from proposed buildings. Removability report submitted with the application. Report includes details of the removal of the pool and deck within precinct 1 in 12 hours using one 4x4 truck and 3 workers in accordance with the requirements of J2.1. The removal procedure for precinct 1 does not include removal of the retaining and load bearing walls or provide details of how fill will be retained. However, the removal of the structures will be triggered by the dwelling rather than the pool and the site will be cleared of all development at the time of removal. The terms of the existing restriction require the consent to cease and removal when the escarpment is within 50m of any building which is consistent with the proposal and as such no additional restrictions or covenants are required.

These checked Chapters/Parts have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development is demonstrated to meet the relevant Objectives of DCP 2010 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	No	Not applicable	Not applicable
93	No	Not applicable	Not applicable
94	No	Not applicable	Not applicable
94A	No	Not applicable	Not applicable

* Non-compliances and any other significant issues discussed below

4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

Are there any Council Policies that are applicable to the proposed development? No

4.7 The suitability of the site for the development

The site is a serviced, unconstrained property and is suitable for the proposed development.

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited. There were **no** submissions made on the development application.

4.9 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

No Section 64 levies will be required.

5.2 Developer Contributions

No Developer Contributions will be required.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

7. CONCLUSION

The DA proposes Dwelling House and Swimming Pool. The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

8. RECOMMENDATION

It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.825.1 for Dwelling House and Swimming Pool, be granted consent subject to the following conditions:

9. CONDITIONS OF CONSENT

SCHEDULE 1. CONDITIONS OF CONSENT

Parameters of consent

1. Approved plans and supporting documentation

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

Plan No.	Plan Title	Drawn by	Dated
01 R.01	Floor Plan Area	R I E M Studio	Not dated
04 R.01	Site Plan	R I E M Studio	Not dated
06 R.01	Under Ground Plan	R I E M Studio	Not dated
07 R.01	Ground Floor Plan	R I E M Studio	Not dated
08 R.01	Upper Floor Plan	R I E M Studio	Not dated
09 R.01	Roof Plan	R I E M Studio	Not dated
10 R.01	Elevation	R I E M Studio	Not dated
11 R.01	Elevation	R I E M Studio	Not dated
12 R.01	Section 1 & 2	R I E M Studio	Not dated
13 R.01	Section 3	R I E M Studio	Not dated
18 R.01	Door Window Schedule – Key Plan	R I E M Studio	Not dated
19 R.01	Door Window Schedule	R I E M Studio	Not dated
20 R.01	Door Window Schedule	R I E M Studio	Not dated
21 R.01	Door Window Schedule	R I E M Studio	Not dated
N21-147	Removability Plan for Proposed New	Westera Partners	18/08/2021

	Residence		
N21-147-SW01 01 of 02 Rev A	Stormwater Management Plan	Westera Partners	31/03/2022
N21-147-SW02 02 of 02 Rev A	Infiltration Tank Details and Sections	Westera Partners	31/03/2022

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

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

2. **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. **Coastal Erosion**

The development must cease if at any time the coastal erosion escarpment comes within 50 metres of the building associated with this development. The buildings and works used in connection with the development must be removed immediately to an approved location by the owner of the land. The owner must return the landform of the subject land to the predevelopment state and suitably revegetate the land.

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

Note: at the end of a storm the escarpment may be nearly vertical; as it dries out, the escarpment slumps to a typical slope of 1 vertical to 1.5 horizontal.

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.

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

5. **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 must be approved as part of the Construction Certificate.

6. **Amendment to the plan required – Front fence**

The plans submitted for approval of the Construction Certificate must be amended to either:

- a) Provide two landscaping bays minimum 0.9m x 0.9m including native planting to soften the streetscape, or;
- b) Set back the fence a minimum of 0.5 from the front boundary and provide native plantings in front of the fence to soften the streetscape.

Such plans are to be approved as part of the Construction Certificate.

7. **Structural Engineers Certification – Coastal Erosion**

The dwelling must be designed and constructed so that it can be easily removed from the site by road vehicle. The application for a Construction Certificate is to include plans and specifications consistent with the approved Removability Report. Prior to issue of the Construction Certificate, a certificate from a practising structural engineer must be submitted to the Principal Certifying Authority certifying that the building and associated works has been designed in accordance with the approved Removability Report. The structural 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.

8. **Stormwater Drainage – Infiltration Trench**

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 consistent with the approved Stormwater Management Plan.

The stormwater drainage system must be designed by a qualified practising Civil Engineer to fully capture and infiltrate the 100 year ARI runoff from all impervious areas of the proposed development for all storm durations without surcharge onto neighbouring properties. 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.

Certification must be submitted from a suitably qualified engineer to certify the structural adequacy of footings and structures within 3m of the infiltration trenches.

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

9. **Consent required for Works within 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:

a) **Driveway**

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

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 suitably designed permeable pavements;
- b) site conditions affecting the access; and
- c) existing and design levels.

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. **Bond required to guarantee against damage to public land**

A bond of \$3,000 is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development. 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.

12. **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.

13. **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.

14. **Compliance with BASIX Certificate requirements**

The development is to comply with Basix Certificate No. 1243218S, dated 7 October 2021.

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. **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.

17. **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.

18. **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

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.

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

19. **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. A copy may be downloaded from Council's web site. 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.

20. **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

21. **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.

22. **Construction Noise**

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.

23. **Implementation of BASIX commitments**

While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.

24. **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.

25. **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.
26. **Fill to be retained on the subject land**
Fill material must not encroach onto any adjoining land.
27. **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.
28. **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.
29. **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.
30. **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 \(2014\)](#).
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](#).
32. **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

33. **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.
34. **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.”
35. **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.
36. **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.
37. **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.
38. **Structural Engineers Certification – Coastal Erosion**
 The development is to be constructed in accordance with the approved removability report and associated plans and specifications. Certification from a practicing Structural Engineer must be submitted to the Principal Certifying Authority prior to issue of an occupation certificate certifying that the dwelling and associated works have been constructed in accordance with the approved Removability Report. The structural 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.
39. **Swimming pool fencing**
 Swimming pool fencing is to comply with the requirements of the Swimming Pools Act 1992

and Regulations.

40. **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

41. **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”.

42. **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:
- Any complaints to Council about ‘offensive’ noise will be dealt with under the provisions of the Protection of the Environment Operations Act 1997.
 - Only clean and unpolluted water is permitted to be discharged to Councils’ stormwater drainage system or any waters.
 - All wastes shall be contained within appropriate containers fitted with a tight-fitting vermin-proof lid.
 - All waste storage and sewage facilities shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied.

43. **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.

44. **Swimming pool backwash and overflow**
Pool overflow and backwash to discharge to the overflow relief gully.

45. **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.

46. **Swimming Pool Fencing**
Swimming pool fencing is to comply with the requirements of the Swimming Pool Act 1992 and Regulations 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. 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 1988.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Council's Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed

The DA was notified/advertised in accordance with Council's Community Participation Plan. No submissions were received.

SCHEDULE 4. 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:-

- a. appointed a Principal Certifying Authority (if the Council is not the PCA); and
- b. given Council at least two days notice of the intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- c. notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

Occupation Certificate required:

The building must not be occupied until the Principal Certifying Authority has issued an Occupation Certificate.

Protection of the Environment Operations Act 1997:

It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution.

Penalties apply for failure to comply with development consents

Failure to comply with conditions of development consent may lead to an on the spot fine being issued pursuant to section 4.2(1) of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 9.50 of the Environmental Planning & Assessment Act 1979.

Plumbing Standards and requirements.

All Plumbing, Water Supply, Sewerage and Stormwater Works shall be installed in accordance with the Local Government Act 1993, Plumbers Code of Australia and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications. Any plumbing inspections required under a Section 68 Approval are to occur in accordance with that approval.

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).

10. ENDORSEMENT

Assessment Officer:	Miss R Mercer
Signature:	
Date:	13/04/2022

11. INSTRUMENT OF EXERCISE OF DELEGATED AUTHORITY

The application is determined in accordance with the above recommendation (amendments have been made where necessary) under delegated authority.

Name:	Chris Larkin
Position:	Manager - Sustainable Development
Signature:	
Determination Date:	13/4/22

Comments by delegated officer:

[Click here](#) add comments on amendments or other.