



14 December 2022

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

**Application No - 10.2020.86.3**

Mr M Scott  
Consultant Town Planner  
440 Dorroughby Road  
DORROUGHBY NSW 2480

Email: mscott@spot.com.au

<b>Proposed modification description:</b>	S4.55 to Change Design and Layout of Shed 2 and for Changes to Worker Amenities Area
<b>Property description:</b>	LOT: 5 DP: 594645
	68 St Helena Road MCLEODS SHOOT
<b>DA No.:</b>	10.2020.86.1
<b>Determination:</b>	Approved subject to the following conditions
<b>Date determined:</b>	9 December 2022

**Amended conditions**

**MODIFIED CONDITIONS OF CONSENT:**

**A. Delete the following description of the “Development” on the first page of the Notice of Determination**

Agricultural Produce Industry (Storage Sheds)

**B. Insert instead the following description of the “Development” on the first page of the Notice of Determination**

Agricultural Produce Industry (Storage Sheds), Use of Alterations & Additions to Agricultural Produce Industry (Storage Sheds) including new storage, kitchenette & office space

**C. Modify condition 1 of the Notice of Determination to read as follows:**

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

The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
C02 – Issue 5	Site Layout Plan	MDE	20/08/20
C03 – Issue 5	Typical Sections & Details	MDE	20/08/20
C04 – Issue 5	Site Layout plan	MDE	20/08/20
C05 – Issue 5	Stormwater Longitudinal Section	MDE	20/08/20
C07 – Issue 5	Earthworks Cut & Fill	MDE	20/08/20
C08 – Issue 5	Erosion & Sediment Control Plan	MDE	20/08/20

C10 – Issue 5	Site access driveway plan	MDE	20/8/20
21188-DA-DRVW.C01	Site overview	Greg Alderson and Associates	11/3/21
21188-DA-DRVW.C02	Parking Facility	Greg Alderson and Associates	11/3/21
A02, Rev K	Floor Plan	AGS Commercial Pty Ltd	3/08/22
A03, Rev K	Mezzanine Details	AGS Commercial Pty Ltd	3/08/22
A04, Rev K	Elevations	AGS Commercial Pty Ltd	3/08/22

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**D. Insert the following condition under “Prior to issue of an Occupation Certificate” of the Notice of Determination:**

**38. Building Information Certificate required**

Prior to issue of any Occupation Certificate for the building, a Building Information Certificate is required to be issued by Council for the installed mezzanine floor (with Office area less than 10% of floor area), installation of internal partition walls, new openings and relocation and increase of amenities. Prior to issue of the Building Information Certificate the applicant is to demonstrate to Councils satisfaction with evidence in the form of detailed report/s from suitably qualified and experienced professionals the constructed works satisfies the following parameters:

1. The Performance Provisions of Section B, C, D E, F & J of the Building Code of Australia;
2. Any recommended works identified in this report/s or identified by Council must be completed prior to issue of the Building Information Certificate;
3. The development must be connected to the on-site sewage management system. Refer to Local Government Act Section 68 Application No. **70.2020.86.3** or Local Government Act Section 68 approvals issued subsequent to this consent;
4. All plumbing and drainage works is to be installed by a suitably qualified person. The plumber must adhere to the requirements of the NSW Code of Practice and AS/NZ 3500. The plumber is to arrange for the following inspections to be undertaken:
  - a. Internal drainage prior to covering of the works.
  - b. External drainage prior to the covering of works.
  - c. Irrigation installation prior to the covering of works.
  - d. Final
5. The on-site sewage management system is to be constructed in accordance with approved plans and in accordance with current specifications and standards. The system is not to be used and/or operated until a Council Officer has inspected the system and authorised its use;
6. In accordance with the Local Government Act, an Approval to Operate the onsite sewage management system must be obtained from Council. Forms may be downloaded from Council's website with '<http://www.byron.nsw.gov.au/on-site-sewage>'.

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

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

**Right of Review**

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

**Right of Appeal**

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

Yours sincerely



Chris Larkin  
Manager Sustainable Development

*Encl. Modified Consent No. 10.2020.86.1*

## STATEMENT OF REASONS

*Council is required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

<b>Statement of Reasons</b>
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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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<b>How community views were addressed</b>
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The application was publicly exhibited in accordance with the Community Participation Plan. No submissions were received.
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Schedule 2 – Amended conditions of development consent  
**AMENDED CONSENT 9 December 2022**

BSC File No: 80100D x 10.2020.86.1/#A2020/13274

Contact: Mr L J Munro

**NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**

issued under the  
*Environmental Planning and Assessment Act, 1979 Section 4.18(1)(a)*

**Development Application No. 10.2020.86.1**

Mr E Brook  
80 St Helena Road  
MCLEODS SHOOT NSW 2479

Email: eddie@capebyrondistillery.com

<b>Property description:</b>	LOT: 5 DP: 594645 <b>68 St Helena Road MCLEODS SHOOT</b>
<b>Development</b>	Agricultural Produce Industry (Storage Sheds), Use of Alterations & Additions to Agricultural Produce Industry (Storage Sheds) including new storage, kitchenette & office space
<b>Determination</b>	<b>Consent granted subject to the attached schedule of conditions</b>
<b>Date determined:</b>	14 April 2020
<b>Consent to operate from:</b>	14 April 2020
<b>Consent to lapse on:</b>	14 April 2025

**IMPORTANT INFORMATION**

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

***The Environmental Planning and Assessment Act 1979 require you to:***

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

## CONDITIONS OF CONSENT:

### SCHEDULE 1 CONDITIONS OF CONSENT

#### Parameters of consent

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

The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
C02 – Issue 5	Site Layout Plan	MDE	20/08/20
C03 – Issue 5	Typical Sections & Details	MDE	20/08/20
C04 – Issue 5	Site Layout plan	MDE	20/08/20
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A04, Rev K	Elevations	AGS Commercial Pty Ltd	3/08/22

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**2. Condition deleted by 10.2020.86.2 dated 8 April 2021**

**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:

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

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

**4. Plans of retaining walls and drainage**

The application for a Construction Certificate is to include plans and specifications that indicate retaining walls or other approved methods of preventing movement of the soil, where any excavation or filled area exceeds 600mm in height. Adequate provision must be made for drainage.

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

**5. On-site sewage management facility Section 68 approval required – if toilet installed in either Shed 1 or 2**

An approval under Section 68 of the Local Government Act 1993 for on-site effluent disposal must be obtained from Council prior to issue of a Construction Certificate. Such approval must be issued after the date of this consent. The application for Section 68 approval must be accompanied by a report prepared by a suitably qualified professional with demonstrated experience in effluent disposal matters, which addresses the site specific design of sewage management in accordance with the requirements of the NSW Local Government Act, and Approvals Regulation and Guidelines approved by the Director General.

**6. Site Waste Minimisation and Management Plan**

Chapter B8 of Byron Shire Development Control Plan 2014 (DCP 2014) aims to facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development. Prior to the issue of a Construction Certificate, a Site Waste Minimisation and Management Plan (SWMMP) must be submitted outlining measures to minimise and manage waste generated during demolition, construction and the ongoing operation and use of the development. The SWMMP must specify the proposed method of recycling or disposal and the waste management service provider.

A template is provided on Council's website to assist in providing this information

[www.byron.nsw.gov.au/files/publication/swmmp - pro-forma.doc](http://www.byron.nsw.gov.au/files/publication/swmmp-pro-forma.doc)

**7. Geotechnical Report required – Building Works**

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

**8. Geotechnical Report required – Engineering Works**

A certificate from a professional Engineer experienced in soil mechanics is to be provided to the Principal Certifying Authority, certifying that:

- a) the design of the civil engineering works, including retaining walls and/or cut & fill batters, has been assessed as structurally adequate,
- b) the civil engineering works will not be affected by landslide or subsidence either above or below the works; and
- c) adequate drainage has been provided.

**9. 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".**

**10. Stormwater Drainage – Connection to Existing Drainage System**

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with AS/NZS 3500.3:2003, *Plumbing and drainage, Part 3: Stormwater drainage*. All stormwater drainage for the development must be conveyed by a gravity system to the existing stormwater drainage system within the site.

The MDE C05 drawing must be amended to provide an end of line sediment basin at all proposed outlets in accordance with WSUD Technical Guidelines.

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

**11. 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</b>	A driveway in accordance with Type 1 of RMS Standard drawing 19.07.2016.
<b>Pavement and seal widening</b>	St Helena Road pavement widening to provide a modified Rural BAR and associated drainage construction in accordance with Greg Alderson drawing 21188-DA-DRVW.C01 rev A dated 11/3/21

**12. Traffic Management Plan**

Consent from Council must be obtained for a Traffic Management Plan 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 traffic management plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites Version 2, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

The report must incorporate measures and TCP 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 traffic management plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller.

**13. 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) 3.5m wide access with passing bays every 200m;
- b) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, pavers or other similar treatment;
- c) site conditions affecting the access;
- d) existing and design levels;
- e) longitudinal section from the road centreline to the car space(s);
- f) cross sections every 15 metres;
- g) drainage details; and
- h) turning paths.

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"

**14. Condition deleted by 10.2020.86.2 dated 8 April 2021**

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

In accordance with Section 4.68 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.

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

A bond of \$3000 is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repaired to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc.

**17. Section 7.12 Levy to be paid**

Prior to the issue of a construction certificate the section 7.12 levy required by the Byron Developer Contributions Plan 2012 must be paid to Council.

The levy will be calculated as follows:

**Levy payable = %C x \$C**

- **%C** is the levy rate applicable as set out in the latest Ministerial Direction issued under section 7.17.
- **\$C** is the proposed cost of carrying out the development.

The rate of **%C** is:

<b>Proposed cost of the development</b>	<b>Maximum percentage of the levy</b>
Up to \$100,000	Nil
\$100,001–\$200,000	0.5 percent
More than \$200,000	1.0 percent

The cost of development must be calculated in accordance with clause 25J of the Regulation. The Cost Summary Report (copy attached) as set out in schedule 2 of the

**18. Tree Removal**

No trees or vegetation to be cleared or removed until a Construction Certificate has been issued.

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

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

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.**

## **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. Construction times**

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a. Monday to Friday, from 7 am to 6 pm.
- b. Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

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

## **22. Construction Noise**

Construction noise is to be limited as follows:

- a. For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b. For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)

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

## **23. 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.

## **24. 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.

## **25. Fill to be retained on the subject land**

Fill material must not encroach onto any adjoining land.

**26. 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.**

**27. 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.

**28. Stormwater drainage work**

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

**29. 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 DECC Waste Classification Guidelines (2008) [www.environment.nsw.gov.au/resources/waste/08202classifyingwaste.pdf](http://www.environment.nsw.gov.au/resources/waste/08202classifyingwaste.pdf)

**30. Aboriginal Relics**

If any Aboriginal archaeological relics or items are exposed during construction works, the Applicant shall:

- a. immediately cease works;
- b. notify the NSW National Parks and Wildlife Service (NPWS);
- c. obtain any necessary permits and/or approvals to continue the work under the National Parks and Wildlife Act 1974.

The Applicant shall comply with any further request made by the NPWS to cease work for the purposes of archaeological assessment and recording.

**31. Muted bushland tones external finishes**

To ensure the development is compatible with the surrounding environment, colours and finishes are to be muted bushland tones. In this regard white, light or bright colours are not permissible.

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

**32. 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.

**33. Stormwater disposal**

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

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

**34. No interference with amenity**

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

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

**35. No Tours or Ancillary Retailing**

Tours and direct retail sales to the public must not be conducted from the Storage Sheds.

**36. Access to be completed**

The access to be constructed in accordance with the approved plans and Roads Act consent.

**37. Internal driveway, parking areas and manoeuvring areas in accordance approved plans**

A internal driveway, parking areas and manoeuvring area are to be constructed from the property boundary to the proposed car space(s) in accordance with the approved plans.

**38. Building Information Certificate required**

Prior to issue of any Occupation Certificate for the building, a Building Information Certificate is required to be issued by Council for the installed mezzanine floor (with Office area less than 10% of floor area), installation of internal partition walls, new openings and relocation and increase of amenities. Prior to issue of the Building Information Certificate the applicant is to demonstrate to Councils satisfaction with evidence in the form of detailed report/s from suitably qualified and experienced professionals the constructed works satisfies the following parameters:

1. The Performance Provisions of Section B, C, D E, F & J of the Building Code of Australia;
2. Any recommended works identified in this report/s or identified by Council must be completed prior to issue of the Building Information Certificate;
3. The development must be connected to the on-site sewage management system. Refer to Local Government Act Section 68 Application No. **70.2020.86.3** or Local Government Act Section 68 approvals issued subsequent to this consent;

4. All plumbing and drainage works is to be installed by a suitably qualified person. The plumber must adhere to the requirements of the NSW Code of Practice and AS/NZ 3500. The plumber is to arrange for the following inspections to be undertaken:
  - e. Internal drainage prior to covering of the works.
  - f. External drainage prior to the covering of works.
  - g. Irrigation installation prior to the covering of works.
  - h. Final
5. The on-site sewage management system is to be constructed in accordance with approved plans and in accordance with current specifications and standards. The system is not to be used and/or operated until a Council Officer has inspected the system and authorised its use;
6. In accordance with the Local Government Act, an Approval to Operate the onsite sewage management system must be obtained from Council. Forms may be downloaded from Council's website with '<http://www.byron.nsw.gov.au/on-site-sewage>'.

## **SCHEDULE 2      PRESCRIBED CONDITIONS**

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

- Clause 98      Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989
- Clause 98A    Erection of signs
- Clause 98B    Notification of Home Building Act 1989 requirements
- Clause 98E    Condition relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the [Environmental Planning and Assessment Regulation 2000](http://www.legislation.nsw.gov.au). This can be accessed at <http://www.legislation.nsw.gov.au>.

## **SCHEDULE 3      NOTES**

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### **Construction Certificate required:**

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing. Application forms are available from the customer services counter or Council's website [www.byron.nsw.gov.au](http://www.byron.nsw.gov.au)

### **Principal Certifying Authority:**

Work must not commence until the applicant has:-

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

**Occupation Certificate required:**

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

**Protection of the Environment Operations Act 1997:**

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

**Penalties apply for failure to comply with development consents**

Failure to comply with conditions of development consent may lead to an on the spot fine 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

**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).

**Section 94A Contributions**

Schedule 1 to be completed and submitted to Council with the payment of Section 94A contributions.

**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 Development Control Plan 2014. No submissions were received.
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 Development Control Plan 2014. No submissions were received.
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**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.

**NOTE:** This clause does not relate to Integrated Development Applications, applications determined by the Joint Regional Planning Panel or applications previously considered under Section 8.2 of the Environmental Planning and Assessment Act 1979.

**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



Chris Larkin  
Manager Sustainable Development

*Dated: 14 December 2022*