



**Land and Environment  
Court**  
of New South Wales

Level 4 225 Macquarie Street SYDNEY NSW 2000  
Level 4 GPO Box 3565 SYDNEY NSW 2001  
DX 264, Sydney

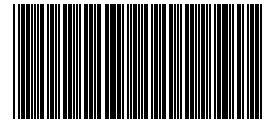
Telephone: 02 9113 8200  
Facsimile: 02 9113 8222  
02 91138208

Email: [lecourt@justice.nsw.gov.au](mailto:lecourt@justice.nsw.gov.au)  
Website: <http://www.lec.justice.nsw.gov.au>

ABN: 52 659 114 436

Adam Joseph Seton  
[Land\\_&\\_Environment@marsdens.net.au](mailto:Land_&_Environment@marsdens.net.au)

Your Ref:



D0001D6ZAK

11 January 2021

### NOTICE OF ORDERS MADE

Case number 2019/00270883  
Case title Ardill Payne & Partners v Byron Shire Council

---

On 11 January 2021 the following orders (and/or directions) were made:

The Court orders:

- (1) The Applicant is granted leave to amend Development Application No.10.2018.634.1 to rely on the following amended plans and documents: (refer to Attachment 1 with Table to Order (1)).
- (2) The appeal is upheld.
- (3) Development Application No. 10.2018.634.1 for demolition of existing structures, earthworks and the construction of a dwelling house with swimming pool on the land at Lot 1 in DP 112343, known as 1 Brownell Drive, Byron Bay, is approved subject to the Determination at Annexure "A".

For the Registrar

## Attachment 1

**Ardill Payne & Partners v Byron Shire Council**

## Table to Order (1)

| <b>Plan No.</b>  | <b>Description</b>                | <b>Prepared by</b> | <b>Dated:</b>    |
|------------------|-----------------------------------|--------------------|------------------|
| DA101 V3a        | Level 0 & Site Plan, Level 1 Plan | Beach Architects   | 23 December 2020 |
| DA102 V3a        | Level 2 & Level 3 Plan            | Beach Architects   | 23 December 2020 |
| DA301 V3a        | Elevations                        | Beach Architects   | 23 December 2020 |
| DA302 V3a        | Elevations                        | Beach Architects   | 23 December 2020 |
| DA501 V3a        | Sections                          | Beach Architects   | 23 December 2020 |
| DA502 V3a        | Sections                          | Beach Architects   | 23 December 2020 |
| 17919 – C01 – P7 | Driveway and Access Plan          | Cozen Regan Group  | May 2020 (5/20)  |
| 17919 – C02 – P6 | Sections and Details              | Cozen Regan Group  | May 2020 (5/20)  |

## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** No.10.2018.634.1

**Development:** Demolition of existing structures, earthworks and the construction of a dwelling house with swimming pool

**Site:** Lot 1 in DP 112343, known as 1 Brownell Drive, Byron Bay

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

**Date of determination:**

**Date from which consent takes effect:** Date the consent is registered on the NSW Planning Portal.

#### TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as Lot 1 in DP 112343, known as 1 Brownell Drive, Byron Bay.

The conditions of consent are as follows:

## 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:           |
|------------------|-----------------------------------|-------------------|------------------|
| DA101 V3a        | Level 0 & Site Plan, Level 1 Plan | Beach Architects  | 23 December 2020 |
| DA102 V3a        | Level 2 & Level 3 Plan            | Beach Architects  | 23 December 2020 |
| DA301 V3a        | Elevations                        | Beach Architects  | 23 December 2020 |
| DA302 V3a        | Elevations                        | Beach Architects  | 23 December 2020 |
| DA501 V3a        | Sections                          | Beach Architects  | 23 December 2020 |
| DA502 V3a        | Sections                          | Beach Architects  | 23 December 2020 |
| 17919 – C01 – P7 | Driveway and Access Plan          | Cozen Regan Group | May 2020 (5/20)  |
| 17919 – C02 – P6 | Sections and Details              | Cozen Regan Group | May 2020 (5/20)  |

The development is also to be in accordance with any 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. No Encroachments in Cape Byron State Conservation Area

This land adjoins the Cape Byron State Conservation Area. NSW National Parks & Wildlife Service require the following to be undertaken:

- a. Removal of all encroachments (including the existing driveway and timber retaining wall) from the Cape Byron State Conservation Area and restoration/rehabilitation of the land that is currently occupied, in consultation with, and to the satisfaction of, the National Parks and Wildlife Service (NPWS), noting that any necessary approvals and authorisations from the NPWS under the National Parks and Wildlife Act 1974 will need to be obtained by the proponent before this work can be undertaken.
- b. A permanent boundary fence to be constructed along the northern boundary to the Cape Byron State Conservation Area.
- c. No construction works including excavation, vehicle parking or material storage be permitted in the Cape Byron State Conservation Area.
- d. Protection of the tree labelled number 9 (on approved plans) to maintain the integrity of the tree's root zone and the tree itself, must be ensured during the construction phase of the development.

The works in (a) and (b) must be completed prior the issue of an Occupation Certificate.

### 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. **Bush fire safety measures**

This land is identified as being designated bushfire prone land and Under s4.14 of the Environmental Planning and Assessment Act 1979, Council must be satisfied prior to making a determination for development on bushfire prone land that the development complies with "Planning for Bush fire Protection 2006".

**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:

1. From the start of the building works, the property around the dwelling house will be managed as an Inner Protection Area as outlined within the requirements of 'Planning for Bush Fire Protection 2006', except for the littoral rainforest vegetation in the upper most part of the site. The littoral rainforest vegetation is to be protected in perpetuity and is subject to conditions of consent for a vegetation management plan to be prepared by the applicant and approved to the satisfaction of Council prior to issue of a construction certificate.

**Water and Utilities**

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Water, electricity and gas are to comply with 'Planning for Bush Fire Protection 2006'.

**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 construction shall comply with Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas Sections 3 and Section 9 Construction for Bushfire Attack Level Flame Zone (BAL—FZ) and shall comply with the relevant provisions of Planning for Bush Fire Protection 2006.

**Landscaping**

4. Landscaping to the site is to comply with Planning for Bush Fire Protection 2006.

**The following conditions are to be complied with prior to issue of a Construction Certificate for building works****6. 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.

**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 and is to be submitted to and approved by Council prior to the issue of a Construction Certificate.

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

A certificate from a professional Engineer experienced in soil mechanics is to be provided to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate, 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;
- c. adequate drainage has been provided;
- d. basement excavation and supporting structures can be designed to achieve a factor of safety greater than 1.5 against geotechnical instabilities and the retention system shall be suitably constructed from a geotechnical perspective;
- e. detailed design for the proposed shoring of the site to suit excavation depths up to 7.2m at the rear (eastern) of the site. A suitably qualified Structural shoring company will need to be engaged by the client specialising in steep sloping sites in order to provide a detailed design to both;
  - comply with the conditions set out above;
  - provide structural support to the proposed development including the suspended slabs; and
  - provide a permanent shoring solution to the site whilst being self-contained within the boundaries of the development.
- f. a suitable shoring system recommended by the professional Engineer experienced in Geotechnical Science for this site being a post and panel type retention system with a top down construction methodology, together with a sprayed infill panel system, subject to a detailed design by a specialist shoring contractor's Engineer;
- g. the proposed post and panel retention system will consist of a series of bored piers (both cantilevered and top supported) drilled at approx. 1.2-2.4m centres founded into suitable material (rock). Bored piers requiring support at the top will be connected via a capping beam interlocking the bored piers and supported with a series of internal steel struts propped to either deadman footings cast internal of the subject site or opposing bored piers/capping beams nullifying the loads. After construction of the bored piers, excavation internal to the subject site can begin using top down construction. Removal of say 1.5m depth of material will allow construction of the infill panels between the bored piers before further excavating and construction of panels;

- h. the proposed retention system does not warrant underpinning into neighbouring properties although if there is scope to do so then the owners of the adjoining properties may be approached and requested in writing for approval to do so;
- i. recommendations to be made to monitor the top of the shored walls for any movement. Where movement is observed greater than the design parameters, all construction to stop immediately and inspected by the relevant parties (Professional Engineer certifying the shoring works) before any further works are to be carried out; and
- j. detailed design and documentation of the shoring system by a specialist shoring contractor including integration of the building design and documentation including all footings, walls, columns, and slabs.

9. **Erosion and Sediment Control Plan**

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

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

10. **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 section 4.2 and 4.3 of Council's Comprehensive Guidelines for Stormwater Management, Section D5 of NRLG Guidelines and relevant Australian Standard. All stormwater drainage for the development must be conveyed by a gravity system to the existing drainage system in Brownell Drive.

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. Provide a trafficable trench grate along the driveway at the front boundary. The trench grate must be connect onto the internal stormwater drainage system of the site;
- b. a comply with any requirements for the disposal of stormwater drainage contained in Council's Development Control Plan, Stormwater Guideline and Local Approvals Policy; and
- 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.

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:

**Driveway (along the Council's road reserve)**

Driveway generally in accordance with Cozen Regan Group drawing 17919 – C01 – P7 and 17919 – C02 – P2, Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

A fully detailed design and construction of the driveway must include the following but not limited to:-

- a. pavement design;
- b. sealed surface comprising an all weather surface, such as asphalt, bitumen seal or concrete;
- c. seal width of a minimum of 3.0 metres plus 0.3 metre clearance on the eastern side of the driveway;
- d. the width at the first bend shall increase to a minimum 3.2 metres.
- e. compliance to Table 2.2 of AS2890.1: 2004;
- f. extend the turning area a further 5.0m to the north;
- g. retaining wall design;
- h. drainage;
- i. adjustment and/or relocation of services as necessary to the requirements of the appropriate service authorities and to ensure that the services are constructed flush with the finished surface levels; and
- j. civil & structural certification of the design.

**12. 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 and AS 2890.2 – 2010 - Parking facilities. 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;
- b. site conditions affecting the access;
- c. existing and design levels;
- d. longitudinal section from the road centreline to the car spaces;
- e. cross sections every 15 metres;
- f. drainage details; and
- g. retaining wall.

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".

**13. Traffic Control Plan**



Consent from Council must be obtained for a Traffic Control 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. The traffic control 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 plan shall 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 traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller.

**14. Water and Sewerage - Section 68 Part B approval 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 is 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.

**15. Details of Electricity Service Line**

Prior to the issue of a Construction Certificate, plans must be approved to the satisfaction of Essential Energy in accordance with the NSW Service and Installation Rules.

Detailed plans and specifications of the electricity service line including plans and cross section details and measurements in relation to the approved pool are required to confirm that the proposal is capable of meeting NSW Service and Installation Rules.

Any works to the electricity supply service and to obtain Essential Energy's approval will be at applicants cost.

**16. Building Height – Levels to match approved plans**

Prior to the issue of a Construction Certificate, all plans must clearly nominate the maximum height RL for each part of the building, as follows:

- a. Garage floor (RL 22.500)
- b. Level 0 Entry hall and plant room (RL 22.890)
- c. Level 1 (RL 26.120)
- d. Pool surround (RL 29.420)
- e. Level 2 (RL 24.920)
- f. Roof (RL 33.620)
- g. Roof Panels (RL 34.240 or less)
- h. Retaining Wall (RL 34.840 or less)

A Construction Certificate must not be issued unless the maximum height of the proposed building is no greater than 9m above ground level (existing).

Note: ground level (existing) means the existing level of a site at any point.

17. **Building materials and colours to be specified**

The application for a Construction Certificate is to include plans and specifications that indicate the proposed building materials and colours consistent with the provisions of Development Control Plan 2014 – Chapter D1.2.4 - Character and Visual Impact. Please note that colours must be non-reflective earth tone colours and that the use of white and near white colours is not permissible

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

18. **Compliance with BASIX Certificate requirements**

The development is to comply with Basix Certificate No.947648S\_02, dated 22 December 2020.

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.

19. **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.

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

A bond of \$10,000 is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development, together with payment of an asset inspection fee in accordance with Council's fees and charges. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

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

**21. 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.

**22. 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.

**23. 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.

**24. Vegetation Management Plan**

A Vegetation Management Plan must be prepared in accordance with the attached *Guidelines for Preparing a Vegetation Management Plan* and the plan submitted to and approved by Council prior to the issue of a Construction Certificate. This plan must detail protection and compensation measures proposed to retain and improve the area of identified littoral rainforest on the site.

The plan must

- a. illustrate on a map of a suitable scale (1:200 or better) the accurate extent of approved asset protection zones on the subject site.
- b. Illustrate on a map of a suitable scale (1:200 or better) trees to be removed and retained. The map must illustrate tree locations and indicate Tree Protection Zones for trees to be retained as per the Australian Standards 2009.
- c. detail the methodology for habitat restoration and specify the use of qualified and experienced bush regenerators only. Areas outside the approved development footprint and APZs must be restored or replanted.
- d. specify that planting and/or restoration works will commence immediately upon approval of the Management Plan.
- e. include lists of locally occurring native tree, shrub and ground cover plant species suitable for planting as part of the ecological restoration program and site landscaping. Species to be planted in the rear yard of the property to be predominantly endemic to a littoral rainforest.
- f. Include a list of environmental weed species present on the site and the proposed methodology to manage them. This list must be reproduced in separate form to inform individual community members when establishing plantings about future dwellings and detailing the threats posed by environmental weeds to local vegetation communities.
- g. Provide and implement strategies to decrease the likelihood of bird strike against windows of buildings including monitoring of effectiveness.
- h. The plan to include as a minimum two stages being Stage 1 Plantings Completed prior to Occupation of the dwelling and Stage 2 Ongoing Management Works post occupation of the dwelling.

25. **No tree removal prior to CC**  
No native trees or vegetation approved to be removed, may be cleared or removed until a Construction Certificate has been issued.
26. **Retained Trees**  
All trees to be retained in accordance with this development consent must be illustrated on any and all relevant Construction Plans, along with their Tree Protection Zones formulated in accordance with AS 4970-2009 – *Protection of Trees on Development Sites*.
27. **Care to be taken when placing services near trees**  
To minimise root disturbance where services are to be laid in close proximity to trees, any excavation within the Tree Protection Zone (TPZ) for installation of underground services is to be done by directional drilling or in manually excavated trenches in accordance with Section 4.5.5 of AS4970-2009. Works must be conducted under the supervision of the project arborist (minimum AQF level 5 qualified arborist), and may include the use of pneumatic or hydraulic tools such as air knives.
28. Deleted.
29. **Indemnity Agreement**  
Documentary evidence is to be provided to the Principal Certifying Authority that a signed Indemnity Agreement between Council and the owner of the land with legal description Lot 1 DP112343, indemnifying Council from any legal, maintenance and cost for the section of driveway inside Brownell Drive road reserve servicing Lot 1 DP112343 , prior to the issue of a Construction Certificate.

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

30. **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.
31. **Erosion and Sediment Control Management Plan**  
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.**

**32. 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.

**33. Disconnection of existing water and sewer prior to demolition**

Existing water and sewer services must be located on site and be properly capped at the main by a licenced plumber. All water and sewer disconnections must be inspected by the Byron Shire Council inspectors prior to backfilling.

- If a property is demolished and no longer needs water supply and/or a sewerage service, a licensed plumber must disconnect the service at the main (also known as 'capping the service').. The plumber must also return the water meter to Council's inspector at the time of inspection.
- If your development involves consolidating lots and you don't need all the existing services, you must correctly disconnect them. This ensures that you aren't billed for unused services and helps avoid future hidden leaks.

Your Plumber must obtain a **Plumbing Permit** at least **two (2) working days prior to commencing work**. Please forward an Application for a Plumbing Permit to your plumber to complete and to return to Council prior to commencement of disconnection works. Refer to [http://www.byron.nsw.gov.au/files/Forms/Plumbing\\_Drainage\\_Permit.pdf](http://www.byron.nsw.gov.au/files/Forms/Plumbing_Drainage_Permit.pdf).

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

**34. Construction times**

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

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

No construction work to take place on Sundays or public holidays.

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

**35. 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.**

**36. 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.

**37. 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.

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

Fill material must not encroach onto any adjoining land.

**39. 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.

**40. Stormwater drainage work**

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

**41. 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.

**42. 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.**

**43. 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>

**44. Removal of asbestos**

All asbestos wastes associated with removal of the existing dwelling to be disposed of in accordance with the requirements of the Workcover Authority. The applicant/owner is to produce documentary evidence that this condition has been met.

Please note the Byron Resource Recovery Centre can not accept asbestos. You will need to arrange disposal at an alternate landfill site.

**45. 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 construction management plans.

**46. 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.

**47. Trees to be retained and protected**

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 the Protective Fencing Plan included in the submitted arborist report prepared by Northern Tree Care and dated 11<sup>th</sup> November 2019. The fence must comply with Sections 3.2 and 4.3 of AS4970-2009 Protection of trees on development sites (Standards Australia 2009). The fence must:

- a) have a minimum height of 1.8 metres;
- b) be constructed of wire mesh panels, plywood, steel star pickets or similar, with a maximum distance of 2metres between star pickets;
- c) have a minimum of 3 strands of steel wire or similar;
- d) have high visibility barrier mesh (e.g. orange), shade cloth or similar, attached to the outside of the fence and continuing around its perimeter;
- e) 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.

**48. Protection of Native Trees**

All trees nominated to be retained by notation or condition as a requirement of the development consent shall be maintained and protected during demolition, excavation and construction on the site in accordance with AS 4970-2009 – Protection of Trees on Development Sites.

49. **Site Location and Survey Levels**

The location of the building on the site to be established by a suitably qualified Surveyor and must comply with this approval to the satisfaction of the principal certifying authority including any required setbacks to boundaries and Reduced Levels on stamped approved plans.

Upon completion of the slab for Level 0, the following must be surveyed prior to further works:

- a. Garage floor (RL 22.500)
- b. Level 0 Entry hall and plant room (RL 22.890)

Upon completion of the slab for Level 1, the following must be surveyed prior to further works:

- c. Level 1 (RL 26.120)
- d. Pool surround (RL 29.420)

Upon completion of the slab for Level 2, the following must be surveyed prior to further works:

- e. Level 2 (RL 24.920)

Upon completion of the remainder of the building, the following must be surveyed prior to the issue of an Occupation Certificate.

- f. Roof (RL 33.620)
- g. Roof Panels (RL 34.240 or less)
- h. Retaining Wall (RL 34.840 or less)

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

50. **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.

51. **Completion of Vegetation Management Plan works**



Prior to the issue of an Occupation Certificate, a report from a qualified and experienced ecologist and/or Bush Regenerator to demonstrate that all works required by the approved Vegetation Management Plan (VMP) for the site have been completed and that all performance criteria have been met, must be submitted and approved by Council and any private certifier.

**52. 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."

**53. Access and parking areas to be completed**

The access is to be constructed in accordance with the approved plans and Roads Act consent prior to the issue of an Interim or Final Occupation Certificate.

**54. Internal driveway in accordance with approved plans**

A driveway is to be constructed from the property boundary to the proposed car spaces in accordance with the approved plans prior to the issue of an Interim or Final Occupation Certificate.

**55. 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.

**56. Works-As-Executed Plans**

Following completion of works within the road reserve and prior to issue of the occupation certificate, Work-as-Executed Drawings, together with a Work-As-Executed Certification Report, in accordance with Council's requirements are to be submitted to Council. Two categories of Work-as-Executed Drawings are to be submitted to Council, being Amended Design Work-as-Executed Drawings and Summary Work-as-Executed Drawings.

Amended Design Work-as-Executed Drawings, being certified copies of all approved design plans with as constructed departures, deletions and additions clearly noted and detailed on the plans, are to be submitted to Council in the following formats:-

- a. One (1) paper copy at the same scale and format as the approved design plans, but, marked appropriately for as constructed information and with original signatures; and
- b. An electronic copy of above in PDF format and provided to Council on CD, DVD or via email.

Summary Work-as-Executed Drawings are to be prepared on a background plan of lot layout and kerb lines with a set of separate plans for stormwater drainage. Such drawings are to be submitted to Council in the following formats:

- a. One (1) paper copy of each drawing with original signatures and in accordance with Council's requirements.
- b. Electronic copy of the above in AutoCAD DWG or DXF format and provided to Council on CD, DVD or via email. The AutoCAD (DWG or DXF) files are to be spatially referenced to MGA Zone 56.

- c. Electronic copy of above in PDF format and provided to Council on CD, DVD or via email.

**Note:** Council's requirements are detailed in Council's adopted engineering specifications, currently the Northern Rivers Local Government Development Design and Construction Manuals, and on Council's website

**57. Geotechnical Certification**

Certification from a suitably qualified Geotech Engineer certifying that the site and driveway area in the road reserve has a risk level of low or better in accordance with Appendix C of the Australian Geomechanics Society (AGS) "Practise Note Guidelines for Landslide Risk Assessment" March 2007.

**58. Building Height – Final Certification**

Prior to the issue of an Occupation Certificate, a certificate from a registered surveyor must be submitted to the Principal Certifying Authority confirming the maximum height of the building is no greater than 9m above ground level (existing). An Occupation Certificate must not be issued unless the maximum height of the building is no greater than 9m above ground level (existing).

Note: ground level (existing) means the existing level of a site at any point.

**59. Site Location Survey**

The final survey of the structures showing setbacks and to boundaries in addition to the following Reduced Levels in the building are to be submitted to the Principal Certifying Authority with the Occupation Certificate demonstrating compliance with the approved plans.

- a. Roof (RL 33.620)
- b. Roof Panels (RL 34.240 or less)
- c. Retaining Wall (RL 34.840 or less)

**60. Swimming pool fencing**

Swimming pool fencing is to comply with the requirements of the Swimming Pools Act 1992 and Regulations prior to the issue of an Interim or Final Occupation Certificate.

**61. Swimming pool backwash**

Pool backwash to be connected to a sewer overflow relief gully prior to the issue of an Interim or Final Occupation Certificate.

**62. Asbestos Clearance Certificate**

An Asbestos Clearance Certificate demonstrating that all ACM have been removed from the site must be provided to the PCA prior to the issue of an Occupation Certificate for the buildings. The Asbestos Clearance Certificate must be prepared by an accredited Asbestos Assessor in accordance with Safe Work NSW requirements.

**63. Compliance with bushfire conditions**

Documentary evidence from a suitably qualified professional is to be submitted to Council prior to the issue of an Interim or Final Occupation Certificate, demonstrating that the bush fire conditions of this Notice of Determination have been complied with.

64. **S.88E Public Positive Covenant to be placed on title**

Prior to the issue of an Occupation Certificate, 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:-

**Driveway maintenance**

*The development granted via development consent number 10.2018.634.1 specifies that all on-going and emergency maintenance works and cost including landscaping of the driveway inside the Brownell Drive road reserve will be the sole responsibility of the owner of the land with legal description Lot 1 DP112343. Any major maintenance works will require a detailed design, construction, supervision and certification from a qualified practising structural engineer and/or geotechnical engineer. No driveway upgrade will be permitted without consent from Council.*

**Conservation of Vegetation**

*No works or activities shall be carried out on the burdened land that has a negative impact on Littoral Rainforest on, or adjoining, the burdened land. No works or activities shall be carried out on the burdened land that has a negative impact on native vegetation on the burdened land other than in accordance with the Vegetation Management Plan approved in accordance with conditions of development consent number DA 10.2018.634.1.*

**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

**The following conditions are to be complied with at all times**

65. **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”.

66. **Vehicles to enter/leave in a forward direction**

Vehicles using any off-street loading/unloading and/or parking area must enter and leave in a forward direction. All driveways and **turning areas** must be kept clear of obstructions that prevent compliance with this condition.

67. **Maintenance of driveway inside the road reserve**

The driveway must be regularly maintained (structurally and landscaping), together with all necessary turning areas to the satisfaction of Council. No car parking shall be allowed along this section of the driveway at all times.

68. **Limited Tree Removal**

Removal of existing native trees from the site is limited to those expressly permitted by this development consent as marked on stamped plans. All other trees and native plants within the site are to be retained and protected.

69. **Protection of Native Trees**

All trees nominated to be retained by notation or condition as a requirement of the development consent shall be maintained and protected during demolition, excavation and construction on the site in accordance with AS 4970-2009 – Protection of Trees on Development Sites.

70. **Protection of native fauna from disturbance**

- a) Any clearing of native vegetation and/or earthworks must not commence until the area proposed for clearing has been inspected for the presence of all fauna species using the site by a suitably qualified and experienced individual;
- b) Should fauna be present at the time of proposed clearing, relevant fauna spotter/catcher protocols must be followed to prevent injury to wildlife;
- c) Any injured wildlife must be taken to a local wildlife vet for treatment.
- d) Approval to proceed with the clearing of vegetation in accordance with this section is only valid for the day on which the inspection has been undertaken.
- e) The individual referred to in (ii) above, or a nominated representative, must remain on site during any approved clearing of vegetation.

71. **Window screening**

To minimize the risk of bird strikes, measures to prevent the reflection of sky and adjacent vegetation on windows must be retained in perpetuity.

72. **Retention of native vegetation within 10/50 Vegetation Clearing Entitlement Area**

Upon completion of the works authorized by this development consent, all remaining native vegetation that the 10/50 Vegetation Clearing Code of Practice would otherwise authorize to be removed, destroyed or pruned must be retained for conservation purposes.

73. **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.

74. **Swimming pool discharge**

Swimming pools must discharge or backwash to an overflow retention gully in accordance with AS/NZS 3500.2.2, Section 10.9 & Figure 10.2.

This work is exempt development in accordance with Councils Local Approvals Policy (2009), however, where it is not possible to discharge to an existing overflow retention gully, a new charged gully may be required. In such circumstances, an application under Section 68 of the Local Government Act is required.

**75. 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.

**76. Pool heat water pumps and filters**

Pool pumps must not be operated before 8am or after 8pm on any Saturday, Sunday or public holiday, or before 7am or after 8pm on any other day.

**77. Swimming Pool Fencing**

Swimming pool fencing is to comply with the requirements of the Swimming Pool Act 1992 and Regulations at all times.

**78. Roof Non trafficable**

The roof is to be non-trafficable other than for installation and maintenance of solar panels, television antenna and the like.

**79. Plant room**

The plant room on Level 0 is to be used exclusively for mechanical services or ducting and is not to be converted to gross floor area at any time.

**80. Garage**

The garage is to be used for the storage of vehicles and is not to be converted to gross floor area at any time.

## **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. 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:-

- 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).

**Access and Mobility – Advice**

In recognition of the objectives, principles and goals of the Byron Disability Access and Inclusion Plan, proponents are encouraged to provide Design and Access in accordance with AS 4299 - Adaptable Housing.