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PLANNING STATEMENT

Building Information Certificate

10 Hamiltons Lane, Byron Bay

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Building Information Certificate
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Hertzberg

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Acknowledgement of Country

GLN Planning Pty Ltd. respectfully acknowledges the Traditional Custodians of Country throughout Australia and recognises and respects their continuing cultural heritage, beliefs and connection to land, sea and community. We pay our respects to their Elders past, present and emerging. This land always was and always will be traditional Aboriginal Land.



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Executive Summary

This Planning Statement has been prepared by GLN Planning Pty Ltd for John and Melissa Hertzberg to accompany an application for a Building Information Certificate seeking to regularise approval for a deck and awning at 10 Hamiltons Lane, Byron Bay.

The site is currently being occupied for rural residential purposes and the reconstructed deck and awning connects two buildings on the property and is required for access and amenity reasons. This application therefore seeks a Building Information Certificate under Division 6.7 of the *Environmental Planning and Assessment Act 1979*.

Although the *Environmental Planning and Assessment Act 1979* does not include any 'matters for consideration' in relation to the assessment of a Building Information Certificate, it is recognised a number of factors should be considered, often including (but not limited to) structural adequacy of the works and whether the development consent would have been granted if consent had been sought.

This Statement outlines the site context and approval history and demonstrates that no further planning consideration of the works is required before a Building Information Certificate can be issued. The structural integrity of the works have been assessed by qualified structural engineers during the construction process and subsequent to completion.



1 Background

1.1 Site Context

The land at 10 Hamiltons Lane, Byron Bay is legally described as Lot 1 in DP1106002 (the **Site**). The Site is of an irregular shape with a 245m frontage to Hamiltons Lane and has a total lot area of approximately 3.86ha (**Figure 1**).

The Site includes three main buildings. The building that sits to the south of the pool is the main house and to the east is the addition. These two buildings are located in the south west portion of the Site and is surrounded by existing vegetation. The third building is located to the far western corner of the Site which is used as a shed. Surrounding the main house are walking paths that lead to the pool and carport area.

This report relates to the works undertaken to the deck and awning that surround the main house to the north, and the walkway to the east that connects with the addition. Refer to **Figure 2**.



Source: Near Maps, 16 September 2023

Figure 1 Aerial of the Site



Source: Near Maps, 16 September 2023

Figure 2 **Aerial of the works**

1.2 **Approval History**

In 1984/1985 development consent was granted for the construction of a dwelling.

On the 1 July 1994, development consent 94/219 was issued by Council for alteration and addition to the Hertzberg residence. This approval included an addition to the dwelling with a walkway and landing area that connects with the main house. Refer to **Figure 3** and **Figure 4**.

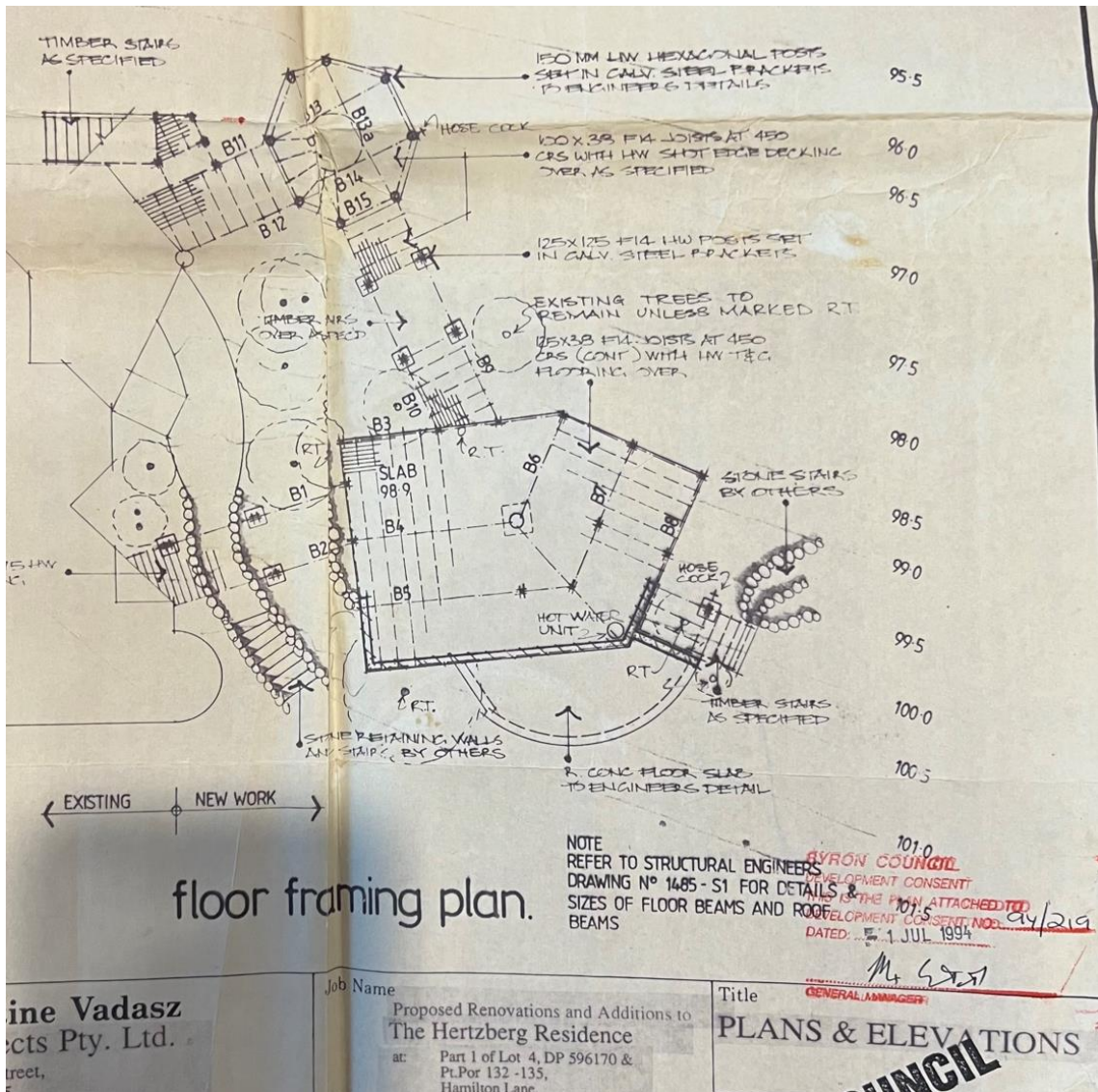


Figure 3 Stamped Plans from 1994

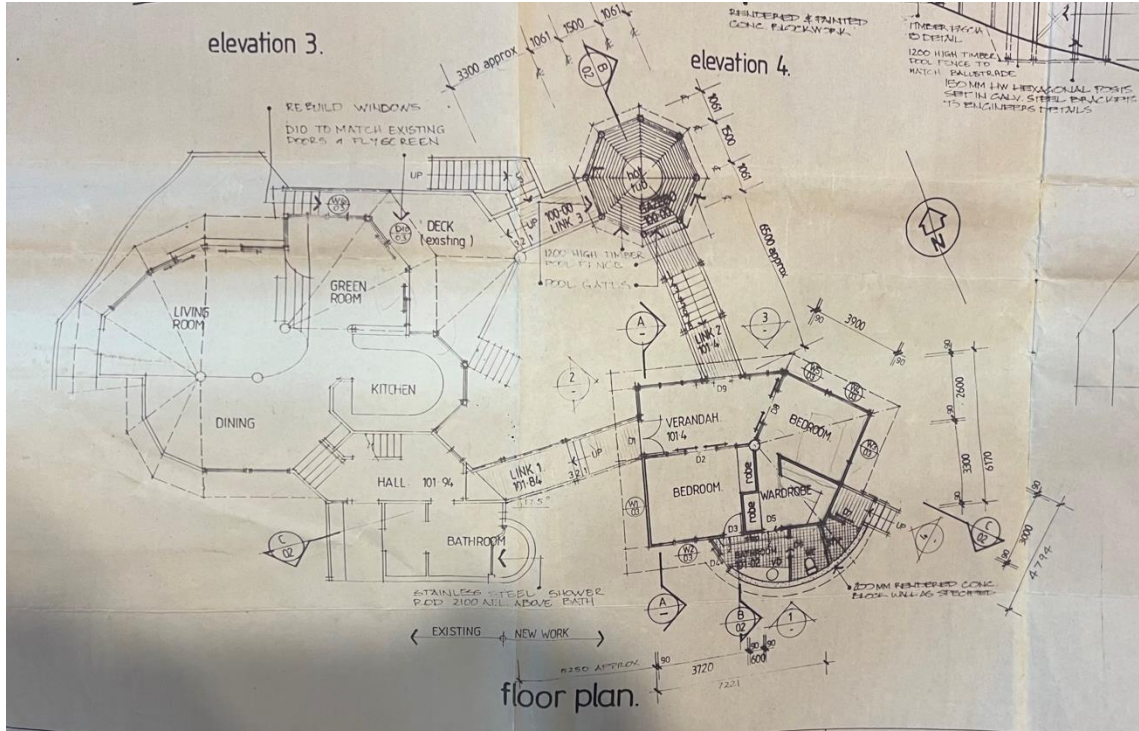


Figure 4 Floor Plan

On the 11 October 1994, a Building Approval was issued by Council for additions to the existing dwelling, refer to **Figure 5**.

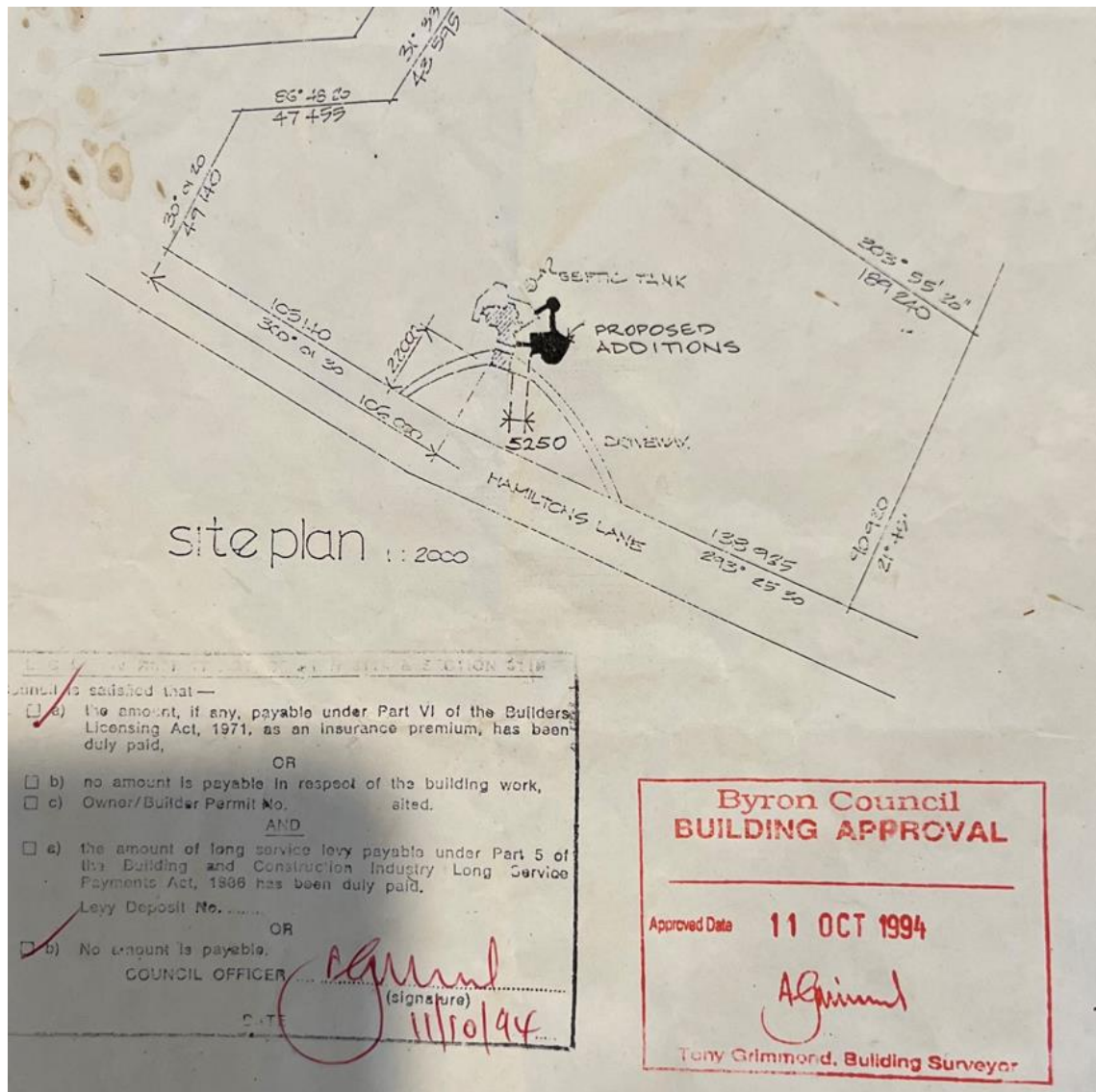


Figure 5 Building Approval in 1994

On the 14 March 2001, a complying development certificate was granted for the construction of a swimming pool.

On the 5 April 2004, development application (DA) 10.2003.260.1 was approved by Council for a boundary realignment to create 2 lots, comprising of approximately 1.1ha and 3.9ha respectively.

The reconstruction of the deck was carried out in 2018/2019 and experienced significant delays with the supply of the original steel material. As a result of the dilapidation and maintenance issue, the deck was required to be reconstructed and modifications were made to improve the usability and longevity, which inadvertently is not considered to now represent the reconstruction of an existing structure as originally approved.

Steps and ramps around the existing deck were also improved in 2018/2019, which included 1 in 20 ramps to allow wheelchair access from the carport, the main dwelling, the main deck area and entertaining areas of the original dwelling. This provided a substantial improvement in equitable



access, amenity and safety. Consequently, a BIC is being lodged with Council to regularise the approval of the structures.



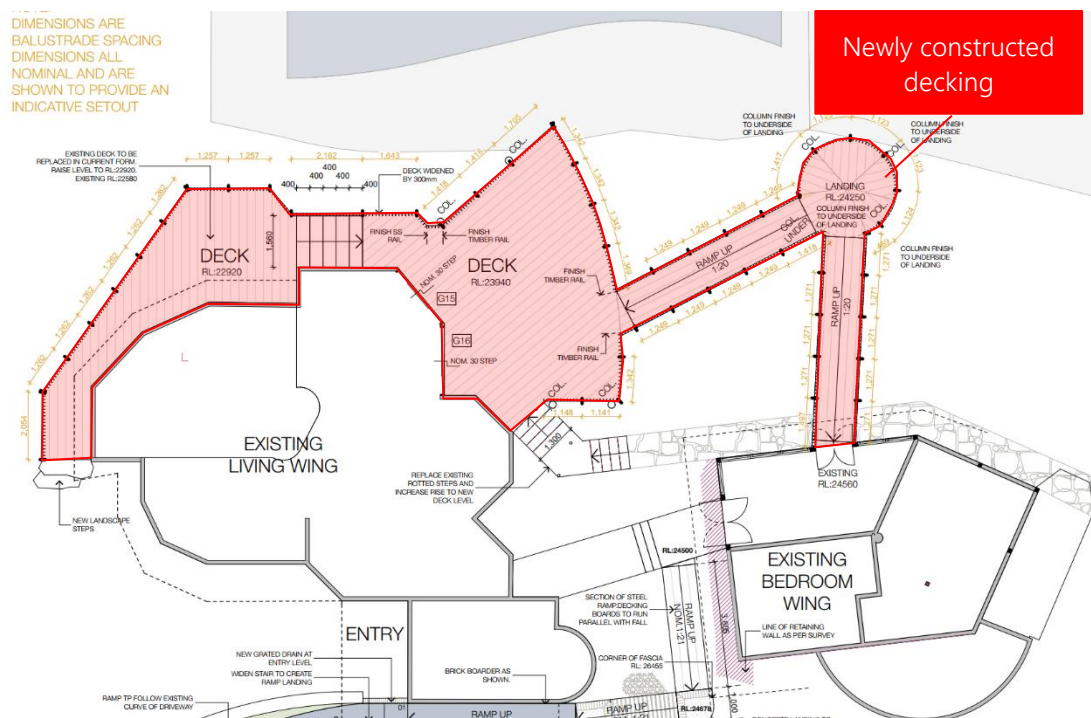
2 Relevant Works

As outlined above, the subject of this Building Information Certificate (**BIC**) relates to the deck and awning constructed to the north of the main house and walk way to the attached addition.

2.1 Deck

The deck, as now constructed, wraps from the west to the east of the main dwelling, and extends east to connect with the attached addition. The deck is irregular in shape with an approximate area of 89m² (**Figure 6**) and a height ranging between 1m and 4.92m measured from the existing ground level to the deck level. The overall maximum height, including the awning over the central portion of the deck, is 9.85m measured at RL 28.94. Refer to the Survey Plan provided at **Appendix A**.

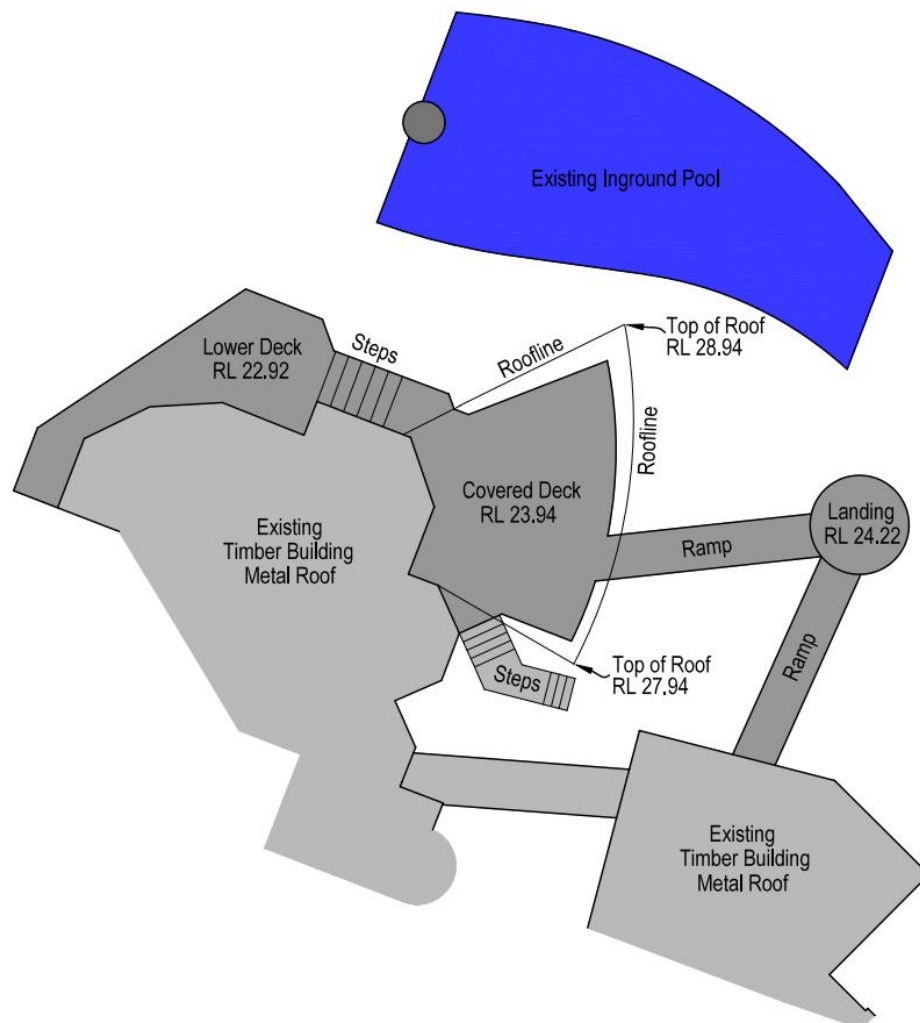
Due to the topography of the Site and existing dwelling, the western portion of the deck sits lower than the central portion where it fans out to the north. The deck level was raised slightly from its existing level (around 300mm) as there were two steps down from the internal rooms onto the surrounding decks in all locations. This was unsafe and prevented those with limited mobility moving between the internal and external areas. The deck is now level with the interior floor levels.



Source: Studio Dot, 2023

Figure 6 Deck

As outlined above, the western and central portion of the decking is a replacement of a previous structure but is located within the same location as approved in 1984/1985 and approved in 1994/1995. The deck has been marginally raised to better suit the existing levels of the house. Refer to **Figure 7** which illustrates levels as constructed. The height increase ranges between 0.34m – 0.37m.



Source: Heath & McPhail Surveying, 2023

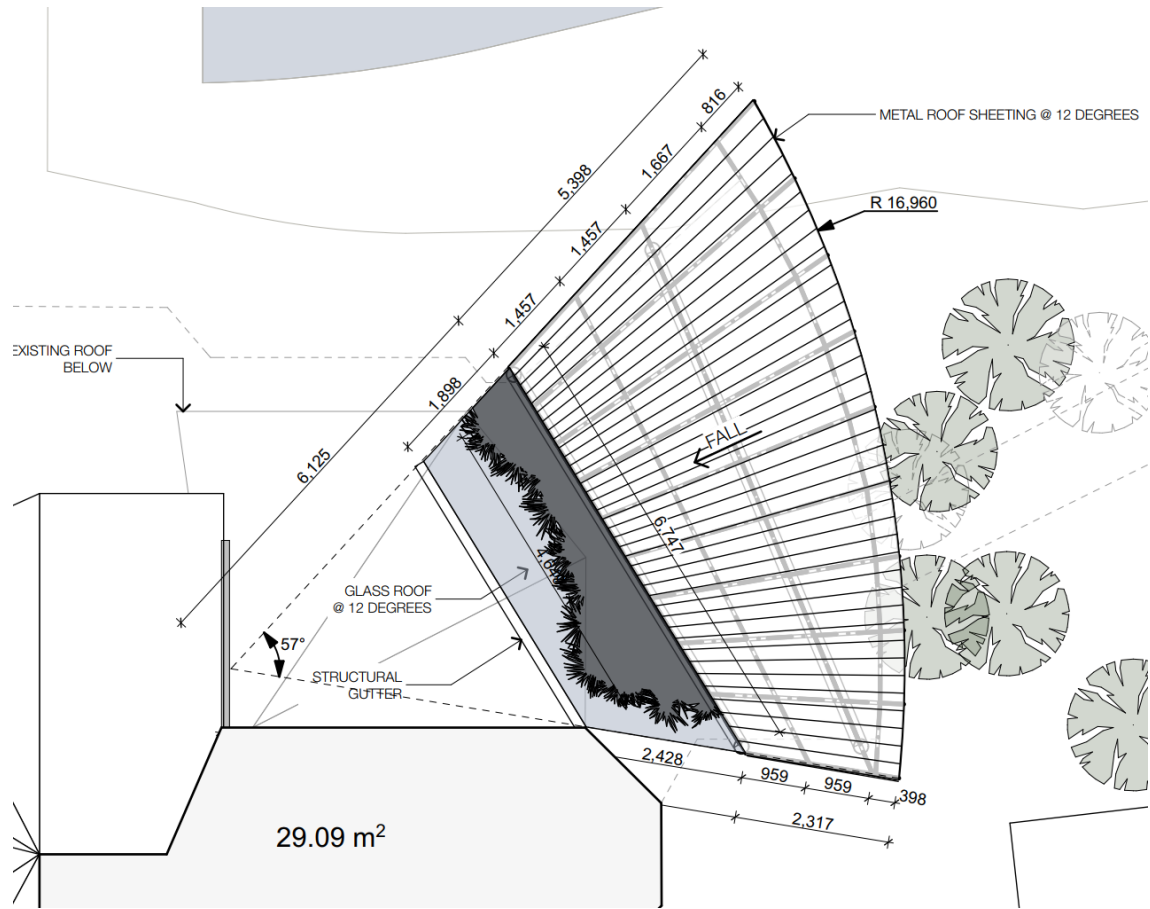
Figure 7 Survey of new deck

As a result of the new deck levels, the stairs to the south of the deck have also been reconstructed to suit the new levels.

2.2 Awning

An irregular shaped awning is constructed over the central portion of the deck with glass and metal roof sheeting. The awning is approximately 45m² in area with a depth ranging between 4.7m – 7.3m, and width ranging between 4.7m – 10.5m. The awning has a maximum height of RL 28.94, refer to **Figure 8** and Survey Plan provided at **Attachment A**.

A structural certification of the roof framing works is provided in **Appendix B**.

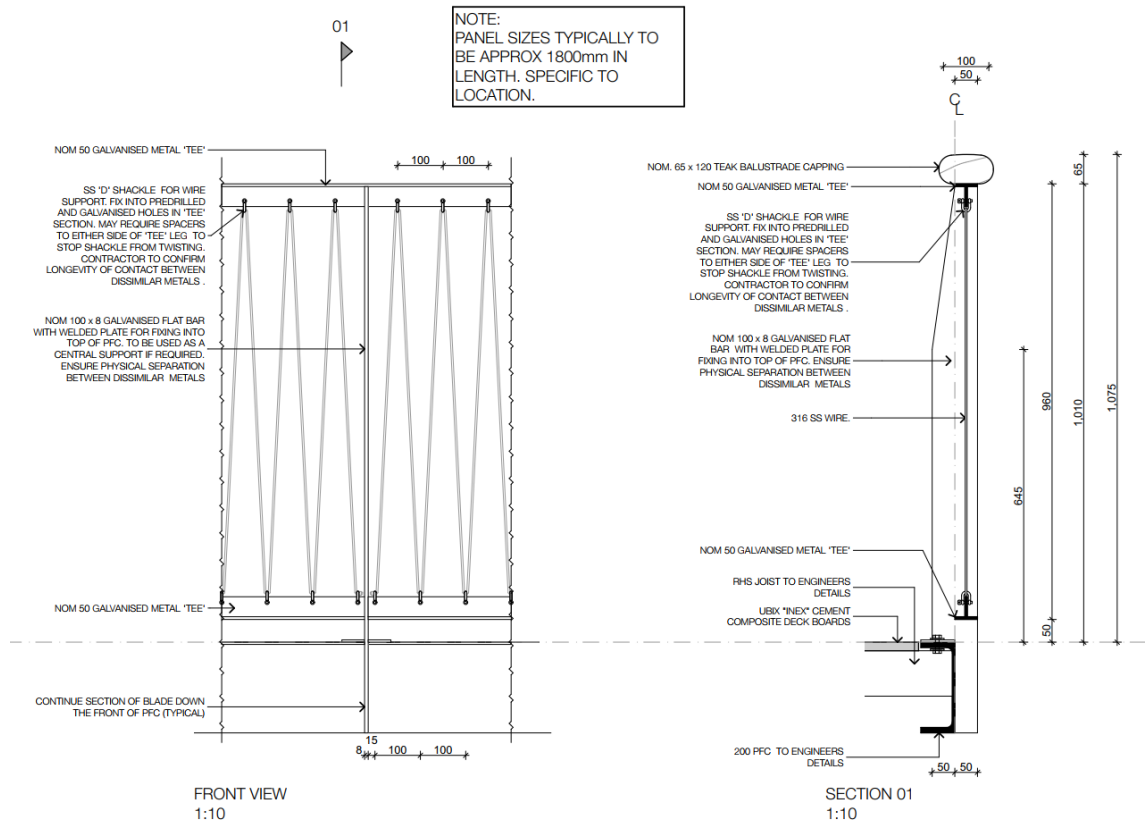


Source: Studio Dot, 2023

Figure 8 Awning Detail

2.1 Balustrade

A 1m steel balustrade wraps around the entire length of the deck for safety, refer to the details at **Figure 9** and **Appendix C** which provides structural certification of the steel work.



Source: Studio Dot, 2023

Figure 9 Balustrade Detail



3 Planning Discussion

3.1 General

The *Environmental Planning and Assessment Act 1979* (**EP&A Act**) or *Environmental Planning and Assessment Regulations 2021* (**EP&A Regulations**) does not contain any specific items of consideration related to the assessment of a BIC. However, there are a number of factors that have been considered and established by the NSW Land and Environment Court in determining an application for a BIC.

In *Taipan Holdings Pty Ltd v Sutherland Shire Council [1999] NSWLEC 276* at [58] two issues were set out for the consideration of a BIC; firstly, the structural adequacy of the building and secondly, the probability of development consent being granted had such an approval been sought (commonly referred to as the “notional development application”).

This Statement outlines the planning considerations as described in **Section 2** and demonstrates that the application is complete and reasonable and should not be refused on planning grounds. Matters of structural adequacy and compliance with relevant sections of the Building Code of Australia are assessed and provided under separate reports.

3.2 Structural Adequacy

Northern Rivers Structerre Consulting Engineers undertook an inspection, assessed and have provided certificates of structural adequacy dated 10 July 2023 and 25 July 2023. These certificates are included as **Appendix B** and **D**.

Engineering inspections were also undertaken, and certifications provided during the construction process and these are included as **Appendix E**.

3.3 Planning Considerations

This application for a BIC seeks approval to regularise works to the deck and awning at the Site. The Site is zoned part R2 Low Density Residential and part RU2 Rural Landscape under the *Byron Bay Local Environmental Plan 2014* (**LEP**). The deck and awning are ancillary to the existing dwelling on Site.

Height

The Site is mapped with a maximum building height of 9m under the LEP. The constructed deck and awning have a total building height of 9.82m which exceeds the maximum (section 7.3 of LEP), however this is considered acceptable given the existing topography of the Site that falls into the property. The location of the height exceedance is only limited to the northern portion of the awning and it is a result of the pool construction in 2001, which required approximately 1m of cut to level out the area. Nevertheless, the awning in its current form would be compliant in height if the construction of the pool did not require cutting. It is also noted that the awning is 1.71m lower than the roof height of the dwelling house.

The structure has been designed to integrate with the existing buildings on site, while providing shade and a sheltered area. The deck and awning are not visible within the streetscape or from any



public domain areas. Given the size of the property and sitting of the development no visual impact, view loss, loss of solar access or privacy impacts have occurred as a result of the development.

While the *Byron Bay Development Control Plan 2014 (DCP)*, does not contain provisions regarding decks, verandahs, balconies and the like it is considered that the deck and awning are essential for access and the amenity of the approved dwellings, providing protection against heavy rainfall and the summer sun, while allowing winter sun penetration.



4 Conclusion

This Statement supports an application for a BIC to regularise approval for unauthorised works to the deck and awning at 10 Hamiltons Lane, Byron Bay.

It has been established that in assessing an application for a BIC the authority should consider the structural adequacy of the works as well as the probability of development consent being granted had such an approval been sought.

This Statement includes certification demonstrating the deck and awning, appropriately sited and designed and addresses the key planning issues, and it is concluded that these would not have precluded development consent being granted had it been sought.

Accordingly, we conclude that Council should issue the BIC on the above grounds.



APPENDIX A: SURVEY PLAN 2023



APPENDIX B: ROOF FRAMING WORKS CERTIFICATE



APPENDIX C: STEEL FABRICATION AND WORKS CERTIFICATE



APPENDIX D: FLOOR FRAMING CERTIFICATE



APPENDIX E: FOOTING CERTIFICATE

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