



SECTION 4.55(1A) APPLICATION

Submission to Byron Shire Council

To modify the terms and conditions of DA 10.2016.757.2 (as modified)

Lot 1 DP 301742 (now known as Lot 1 DP 1274722)
659 Left Bank Road, Mullumbimby Creek

for:
Alysian Estate Pty Ltd

February 2024

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1. Introduction

This section introduces the proposal and provides a general overview of the project.

1.1 Background

Ardill Payne and Partners (APP) have been commissioned by Alysian Estate Pty Ltd to provide town planning services in the preparation and lodgement of a Section 4.55 application and statement of environmental effects with Byron Shire Council.

Consent is sought to modify the terms and conditions of DA 10.2016.757.2 (as amended) under the provisions of Section 4.55(1A) of the *EP & A Act 1979*.

The proposal involves the re-classification of the approved secondary dwelling as the principal dwelling and the deletion/amendment of conditions related to such.

1.2 Structure and Scope of Report

This report contains a number of sections and appendices, detail of which are provided below:

Section 2	Describes the subject land and its local environmental context.
Section 3	Describes the proposed modification in detail.
Section 4	Reviews the key environmental interactions and proposed management measures.
Section 5	Reviews the statutory and planning policy provisions applying to the proposed modification.
Section 6	Provides a summary and conclusions.
Appendix A	Locality plan

- Appendix B** Copy of deposited plan
- Appendix C** Notice of Development Consent 10.2016.757.2 and stamped approved plans
- Appendix D** Notice of Development Consent 10.2016.758.1 and stamped plans

1.3 Planning and Land Use History

A search of Council's DA Tracker identified the following applications that have been determined by Council in respect of No. 659 Left Bank Road, Mullumbimby Creek:

Application Number	Application Type	Lodgement Date	Details
10.2016.757.2	DA Modification	20/04/2022	659 Left Bank Rd, Mullumbimby Creek 2482 NSW S4.55 for Changes to Approved Plans
10.2016.757.1	Development Application	15/11/2016	659 Left Bank Rd, Mullumbimby Creek 2482 NSW Use of an Existing Building as a Secondary Dwelling
10.2016.758.1	Development Application	15/11/2016	659 Left Bank Rd, Mullumbimby Creek 2482 NSW Dwelling House

Council granted consent to DA 10.2016.758.1 being:

- Property Description – Lot 1 DP 301742, No. 659 Left Bank Road, Mullumbimby Creek
- Development – Dwelling house
- Date Determined – 29th March 2017

Council granted consent to DA 10.2016.757.1 (deferred commencement consent) being:

- Property Description – Lot 1 DP 301742, No. 659 Left Bank Road, Mullumbimby Creek
- Development – Use of existing building as secondary dwelling
- Date Determined – 30th March 2017

Council granted consent to modify DA 10.2016.757.2 under s4.55 of the Act on the 6th June 2022 for “Changes to approved plans” in respect of Lot 1 DP 1274722.

As both consents related to dwellings, the dwelling associated with the DA 10.2016.757.2 was defined as a “secondary dwelling”. Accordingly, this development consent applied a number of secondary dwelling specific conditions (including the payment of developer contributions), due to the secondary dwelling being a second habitable dwelling approved on-site.

Since the grant of these consents, the ownership of the property has changed. As a consequence, the needs and expectations of the new owners do not align with the consents for the site. Specifically, the current owners do not wish to construct the approved principal dwelling that was approved under DA 10.2016.758.1

DA 10.2016.757.1 was issued as a deferred commencement consent. The deferred commencement condition required a Building Certificate application to be lodged and issued for the existing building to be converted to habitable purposes as a secondary dwelling.

Building Certificate 50.2017.16 for the use of the building as a dwelling was lodged by the previous landowner in 2017. However, a request for additional information dated 25th October 2017 to the landowner was never satisfied and remains outstanding. The additional information to satisfy this correspondence will be lodged concurrently with this modification application.

1.4 Overview of Statutory Framework

Byron Council was the consent authority for DA 10.2016.757.2 and is also the consent authority for this s4.55 application.

DA 10.2016.757.2 did not constitute integrated development for the purposes of Section 4.46 of the *EP & A Act 1979*.

This application is made under the provisions of Section 4.55(1A) of the Act on the basis that this application involves a modification which is of minimal environmental impact and the development to which the consent as modified relates is substantially the same development as that to which the consent was originally granted.

2. The Site and Its Context

This section describes the subject land and identifies the geographical context of the site and its relationship to the surrounding locality.

1.1 Location and Property Description

The subject land is described in real property terms as Lot 1 DP 1274722 (previously known as Lot 1 DP 301742) and is commonly known as No. 659 Left Bank Road, Mullumbimby Creek.

1.2 Site Analysis

A site analysis was provided in the documentation that was provided to Council in support of DA 10.2016.757.2 which has essentially not changed since that time.

The information and relationship of this site analysis has not effectively changed since that time and provided detailed information in respect of the following, which remains pertinent to the site and to this Section 4.55 application:

- location
- topography
- ecology
- visual context
- contamination
- stormwater
- adjoining and surrounding land uses
- access
- water and sewerage
- electricity
- telecommunications

3. Description of Proposal

This section describes the proposed development and identifies any environmental and development objectives that will be adopted in conjunction with the project.

1.3 Description of Proposed Modified Development

Consent is sought to modify the terms and conditions of DA 10.2016.757.2 under the provisions of Section 4.55 (1A) of the *EP & A Act 1979*, details of which are as follows:

- Amend the development description as follows:

Use of an Existing Building as a Dwelling

The proposed modification will require the following conditions to be deleted/amended:

- **Condition 8 – Occupation of Secondary Dwelling** – To be deleted/amended to enable the subject dwelling to be issued an Occupation Certificate following the issue of a Building Certificate to satisfy Schedule 1 Condition 1 as the subject dwelling/building will be the principal and only dwelling on the subject land.

Should it be deemed necessary, integral to this proposal is the formal surrender of DA 10.2016.758.1, notwithstanding that it has already likely lapsed, with the lapse date on the notice of consent being 30 March 2022.

- **Condition 9 – Developer Contributions to be Paid** – To be deleted given the dwelling will become the only dwelling on the site and therefore no contributions would be applicable. As mentioned above, this deletion would be subject to the surrender of DA 10.2016.758.1 (if required).
- **Condition 16 – No subdivision – Secondary Dwelling** – To be deleted – No longer applicable.
- **Condition 17 – Relationship to principal dwelling** – To be deleted – No longer applicable.
- **Condition 18 – Use of Dwelling Houses** – To be amended such that it refers only to one dwelling (or deleted if no longer applicable to a single dwelling on the land).

- **Condition 19 – No more than the principal dwelling and secondary dwelling** – To be deleted – No longer applicable.
- **Schedule of Development Contributions** – To be deleted – No longer applicable.

4. Statement of Environmental Effects

Section 4.15 of the EP & A Act 1979 requires the consideration of likely impacts of the development on the natural and man-made environment of the locality.

This modification will not result in or have any tangible new, different or consequential impacts on the natural or man-made environment, with the status quo of the visual appearance of the development in the local landscape being retained.

It will actually reduce the possible environmental impacts and/or consequences on the natural and man-made environment as there will now only be one dwelling house on the subject land.

No changes to the approved dwelling are proposed.

4.1 Section 4.55(1A) considerations

APP has prepared this application on behalf of Alysian Estate Pty Ltd. The owner's consent to the making of this application is attached to these documents.

- (1A) *Modifications involving minimal environmental impact. A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*
- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
 - (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

This application seeks to have the approved secondary dwelling identified as the principal dwelling upon the large rural lot. The new landowner does not wish to proceed with the approved principal dwelling. Accordingly, the landowner will surrender this development consent, if required.

It is suggested that Condition 8 be amended to permit the issue of an Occupation Certificate of the approved dwelling following the surrender of DA10.2016.758.1, noting Schedule A of DA 10.2016.757.2 is to be satisfied.

No changes to the approved use of the building for the purposes of a dwelling are proposed or required.

The development is considered to be the same development as the development for which consent was originally granted (and subsequently modified) for the following reasons:

- This modification does not change the use of a building as a dwelling.
- No intensification to the approved use is proposed.
- The building as approved under the terms and conditions of DA 10.2016.757.2 will not change in any way.
- No changes are proposed nor required to the approved building/dwelling layout.
- There will actually be a potential reduction in the environmental impacts and/or consequences on the basis that the dwelling approved under DA 10.2016.758.1 will not be built (and the consent surrendered if required).

5. Justification of Proposed Modified Development

It is proposed to modify the approved development to permit the landowner to lawfully occupy a building approved for use as a secondary dwelling, such that it will become the principal and only dwelling on the subject land.

The principal dwelling approved under DA 10.2016.758.1 will not be constructed by the new landowner. This approved principal dwelling is not the subject of a Construction Certificate nor has any progress been made to obtain a Construction Certificate. This consent has likely lapsed and if not, the landowner will raise no objection to the formal surrender of this development application (being DA 10.2016.758.1) if required.

5.1.1 Environmental Planning and Assessment Act 1979

Implicit in the grant of consent to DA 10.2016.757.1 and modification DA 10.2016.757.2 is the fact that the development must have satisfied the provisions of the *EP & A Act 1979* and the *EP & A Regulation 2021*.

The proposed development remains consistent with the provisions of both the Act and Regulation given:

- There will not be any change to the use of the building (to be a dwelling), with the only change being that it will not be a “secondary dwelling” but will be the principal and only dwelling on the subject land.
- There will not be any change of land use (building to be occupied and use as a dwelling) and no intensification of use.
- There will not be any consequential impacts, consequences or effects on the natural or man-made environment.

5.2 Byron LEP 2014

Dwelling houses are expressly permitted with consent within the RU1 zone and are consistent with the zone objectives.

Clause 4.2A relates to the erection of dwelling houses and dual occupancies on RU1 and RU2 zoned land. The proposal as approved remains consistent with subclause (5)(a) which provides that consent may be granted for the erection of a dwelling or a dual occupancy if *“(c) is a lot created before this Plan commenced and on which the erection of a dwelling house or a dual occupancy was permissible immediately before that commencement”*.

Clause 4.3 relates to building height. No change to the approved building is proposed nor required.

Clause 5.16 relates to dwellings on certain rural, residential or environmental protection zoned lands. The objective of this clause is *“to minimise potential land use conflict between existing and proposed development on land in the rural zones”*. This modification does not seek to alter or change the location of the existing building to be converted to a dwelling.

Clause 6.6 relates to essential services and provides that Council must be satisfied when determining whether to grant consent, that adequate and appropriate services exist for water supply, electricity supply, removal or disposal of sewage, stormwater drainage or on-site conservation and suitable vehicular access or that satisfactory arrangements have been made with the relevant service provider. No change to the approved arrangements for infrastructure provision is proposed nor required.

The proposed development as approved and as to be modified is consistent with all relevant provisions of the BLEP 2014.

5.3 Byron DCP 2014

5.3.1 Chapter B1 – Biodiversity

The existing building is not within the mapped area of biodiverse vegetation on-site. No modification to the approved site plan is proposed.

5.3.2 Chapter B4 – Traffic Planning, Vehicular Parking, Circulation and Access

The development as modified does not propose any alteration to the approved parking or access arrangements.

5.3.3 Chapter D2 – Residential Accommodation and Ancillary Development in Rural Zones

D2.2 – General Provisions

D2.2.1 – Location and Siting of Residential Accommodation and other Buildings

The modification does not propose to change the existing location of the approved building.

D2.2.2 – Setbacks from Boundaries

The modification does not propose to change the existing location of the approved building.

D2.2.3 – Character and Visual Impact

The modification does not propose to change the existing location of the approved building.

D2.2.4 – Internal Access Between Storeys in Residential Development

Not applicable – the proposal relates to a single storey building.

D2.5 – Dual Occupancies and Secondary Dwellings

The building approved to be altered for the purposes of a dwelling is proposed to be the principal dwelling on the site. The site will now only have one dwelling.

D2.5.1 – On-Site Car Parking

No change to the approved car parking is proposed nor required.

D2.5.2 – Character and Siting of Dwellings

The modification does not propose to change the existing location or layout of the approved building.

The dwelling has access to generous open space areas.

D2.5.3 – Sound Proofing

Not applicable.

D2.5.4 – Private Open Space

The dwelling as approved will continue to have access to expansive private open space at ground level that is not within the front setback, exclusive of the OSSMS area.

D2.5.5 – Adjoining and Nearby Development

Having regard to the existing approved building to be converted to a dwelling on the site, and absence of any changes to this approved dwelling, it is considered that the development will result in no changes to or impacts in respect land use conflict, bulk, scale, height and character of the locality and nearby development, scenic amenity of the locality, solar access, views, privacy and access to natural light for the approved and any adjacent dwellings.

6. Conclusion

This section of the report provides a conclusion of the development proposal.

Consent is sought to modify the terms and conditions of DA 10.2016.757.2 under the provision of Section 4.55(1A) of the *EP & A Act 1979*.

The proposal involves a minor amendment to the approved development. The proposed development, as modified, is permissible upon the site via existing consent provisions, complies with all other relevant planning controls, and such is substantially the same as the approved and modified development and will have nil to minimal environmental impacts.

The circumstances of the case and the public interest are such that the application warrants the granting of this consent.

7. Scope of Engagement

This report has been prepared by Ardill Payne & Partners (APP) on behalf of Alysian Estate Pty Ltd for the purpose of lodging a Section 4.55(1A) application with Byron Shire Council and is not to be used for any other purpose or by any other person or corporation.

This report has been prepared from the information provided to us and from other information obtained as a result of enquiries made by us. APP accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

No part of this report may be reproduced, stored or transmitted in any form without the prior consent of APP.

APP declares that it does not have, nor expects to have, a beneficial interest in the subject project.

To avoid this advice being used inappropriately it is recommended that you consult with APP before conveying the information to another who may not fully understand the objectives of the report. This report is meant only for the subject site/project and should not be applied to any other.

8. Appendices

Appendix A	Locality plan
Appendix B	Copy of deposited plan
Appendix C	Notice of Development Consent 10.2016.757.2 and stamped approved plans
Appendix D	Notice of Development Consent 10.2016.758.1 and stamped approved plans

APPENDIX A

Appendix A: Locality plan

APPENDIX B

Appendix B: Copy of deposited plan

APPENDIX C

Appendix C: Notice of Development Consent
10.2016.757.2 and stamped approved
plans

APPENDIX D

Appendix D: Notice of Development Consent
10.2016.758.1 and stamped approved
plans