



**BYRON
SHIRE
COUNCIL**

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🌐 www.byron.nsw.gov.au

BSC File No: 36530D x 10.2019.294.3/#A2024/43538
Contact: Justin Telfer

NOTICE OF DETERMINATION FOR MODIFICATION OF DEVELOPMENT CONSENT

Application No.	10.2019.294.3 PAN-445443
Applicant	Town Planning Studio Pty Ltd
Property	22 Azalea Street MULLUMBIMBY LOT: 4 DP: 249892
Development	Modification to Delete Stage 2 (Studio)
Determination	Approved Consent Authority - Council
Date of determination	23 August 2024

Under of the EP&A Act, notice is given that the above application to modify 10.2019.294.2 has been approved, subject to the conditions specified in this notice and as described in the Modification Summary

Reason for approval

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.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 28 days from the date that you received this notice provided that an appeal under section 8.9 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.9 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

Signed on behalf of the Consent Authority

Justin Telfer
Assistant Planner

MODIFIED CONDITIONS OF CONSENT:**A. Delete the following description of the “Development” on the first page of the Notice of Determination**

Staged development:

Stage One – Secondary Dwelling

Stage Two – Studio (artist use)

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

Secondary Dwelling

C. Delete conditions 1A and 29 of the Notice of Determination**D. Modify conditions 1, 3, and 6 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:
D-02B	Proposed Site Plan	Joe Davidson Town Planning	19 June 2024
ACSA:03	Secondary Dwelling Floor Plan & Elevations	Toni Appleton Consultancy	23.7.2019
ACSA:04	Section A/A Secondary Dwelling & Window Schedule	Toni Appleton Consultancy	23.7.2019

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.

3. Development Contributions

Council resolved not to charge Section 94 contributions for secondary dwellings under SEPP (Affordable Rental Housing Policy) 2009 subject to the following requirements:

- That the maximum size of the secondary dwelling or granny flat does not exceed 60sqm.
- That the floor space ratio for the whole development of the site does not extend beyond the 0.5:1 and that 25% of the site must be covered by absorbent surfaces such as lawn or landscaping.
- That the secondary dwelling or granny flat does not increase the overall number of bedrooms on the site to greater than 5.
- That the applicant has applied for a secondary dwelling or granny flat and specifically advised that the development is not to be used for tourism purposes and accepts a condition of consent to the same effect.

Section 94 Contributions have not been charged on this application based on the above criteria. Should any of the above requirements change your development may be referred to Council's Compliance Department for further action.

6. Compliance with BASIX Certificate requirements

The development is to comply with Basix Certificate No. 1009525S_02, dated 20 July 2019.

The commitments indicated in the Certificate are to be indicated on the plans submitted for approval of the Construction Certificate.

Note that 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.

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.

Statement of Reasons	
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S.4.55	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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How community views were addressed	
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1	The application did not require public exhibition in accordance with the Community Participation Plan.
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NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

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

Development Application No. 10.2019.294.1

Town Planning Studio Pty Ltd
 ATT: Mr J Davidson
 PO Box 238
 BRUNSWICK HEADS NSW 2483

Email: joe@jdtownplanning.com.au

Property description:	LOT: 4 DP: 249892 22 Azalea Street MULLUMBIMBY
Development	Secondary Dwelling
Determination	Consent granted subject to the attached schedule of conditions
Date determined:	10 October 2019
Consent to operate from:	15 October 2019
Consent to lapse on:	15 October 2024

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:
D-02B	Proposed Site Plan	Joe Davidson Town Planning	19 June 2024
ACSA:03	Secondary Dwelling Floor Plan & Elevations	Toni Appleton Consultancy	23.7.2019
ACSA:04	Section A/A Secondary Dwelling & Window Schedule	Toni Appleton Consultancy	23.7.2019

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.

- 1A. Condition deleted by 10.2019.294.3 dated 23 August 2024**

2. Support for neighbouring buildings

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made or builder must:

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

3. Development Contributions

Council resolved not to charge Section 94 contributions for secondary dwellings under SEPP (Affordable Rental Housing Policy) 2009 subject to the following requirements:

- e. That the maximum size of the secondary dwelling or granny flat does not exceed 60sqm.
- f. That the floor space ratio for the whole development of the site does not extend beyond the 0.5:1 and that 25% of the site must be covered by absorbent surfaces such as lawn or landscaping.
- g. That the secondary dwelling or granny flat does not increase the overall number of bedrooms on the site to greater than 5.
- h. That the applicant has applied for a secondary dwelling or granny flat and specifically advised that the development is not to be used for tourism purposes and accepts a condition of consent to the same effect.

Section 94 Contributions have not been charged on this application based on the above criteria. Should any of the above requirements change your development may be referred to Council's Compliance Department for further action.

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. 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 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.

6. Compliance with BASIX Certificate requirements

The development is to comply with Basix Certificate No. 1009525S_02, dated 20 July 2019.

The commitments indicated in the Certificate are to be indicated on the plans submitted for approval of the Construction Certificate.

Note that 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.

7. Long Service Levy to be paid

In accordance with Section 6.8 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable).

These payments can be made online at www.longservice.nsw.gov.au. Proof of payment is required to be submitted with the Construction Certificate application.

For further information regarding the Long Service Payment please refer to the website above.

8. 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

9. Tree Removal

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

10. Stormwater Drainage – Dispersion Trench

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with the relevant Australian Standard. All stormwater drainage for the development must be conveyed by a gravity system to a dispersion trench or trenches complying with the requirements of Council's *Comprehensive Guidelines for Stormwater Management*.

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

11. Flood Planning Level for new buildings

The flood planning level for this development is 7.72m A.H.D. The plans and specifications to accompany the construction certificate application are to indicate a minimum habitable floor level that is at or above the flood planning level.

The plans and specifications to accompany the construction certificate application are to also indicate the use of flood compatible materials and services below the flood planning level in accordance with the requirements of Council's Development Control Plan 2014 – Chapter C2 – Areas Affected by Flood.

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

12. Compliance required with Building Over Pipelines Policy

All developments must comply with Policy 4.20. Swimming pools are classed as buildings and are required to comply with this policy.

Any brick / masonry fence crossing a pipeline requires Council approval. The fence must be supported such that it does not cause loading on the pipes zone-of-influence.

The use of displacement and screw pile construction methods will require approval by Council.

The following conditions are to be complied with prior to any building or construction works commencing**13. Erosion and Sediment measures**

Erosion and sedimentation controls are to be in place in accordance with the *Guidelines for Erosion & Sediment Control on Building Sites*. A copy may be downloaded from Council's web site. Particular attention is to be given to the provision of the following sediment and erosion control measures:

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

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

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

The following conditions are to be complied with during any building or construction works**14. 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.

15. 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.

16. 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.

17. 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.

18. Fill to be retained on the subject land

Fill material must not encroach onto any adjoining land.

19. 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.

20. 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.

21. 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

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

- 22. 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.
- 23. Stormwater disposal**
Stormwater must be collected and disposed of in a controlled manner such that stormwater flows are:
- Clear of buildings and infrastructure,
 - Clear of effluent disposal areas,
 - Not concentrated so as to cause soil erosion,
 - Not directly to a watercourse, and
 - Not onto adjoining land.
- 24. Floor Levels – Certification for Flooding**
Prior to the issue of an Occupation Certificate, a certificate from a registered surveyor must be submitted to the Principal Certifying Authority confirming the height of habitable and non-habitable floors. An Occupation Certificate must not be issued unless the floor levels are at or above the relevant flood planning levels.

The following conditions are to be complied with at all times

- 25. No subdivision**
In accordance with clause 24 of the State Environmental Planning Policy (Affordable Rental Housing) 2009, subdivision of the subject land is not to occur.
- 26. Use of dwelling houses**
The dwelling houses are not to be holiday let or used as tourist and visitor accommodation.
- 27. Relationship to Principal Dwelling**
The secondary dwelling must remain on the same lot as the principal dwelling.
- 28. No more than the principal dwelling and secondary dwelling**
There must not be any dwelling on the land other than the principal dwelling and the secondary dwelling.
- 29. Condition deleted by 10.2019.294.3 dated 23 August 2024**
- 30. Structures within the road reserve**
No structures, whether permanent or temporary, may be erected or kept within the road reserve at any time.

SCHEDULE 2 PRESCRIBED CONDITIONS

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

Construction Certificate required:

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

Principal Certifying Authority:

Work must not commence until the applicant has:-

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

Occupation Certificate required:

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

Protection of the Environment Operations Act 1997:

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

Penalties apply for failure to comply with development consents

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

Plumbing Standards and requirements.

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

Secondary dwellings

Approval of your Secondary Dwelling will be included in a register to provide accountability of the uptake of this affordable housing approach and to assist in any compliance action that may need to be taken in the circumstance that the dwellings are being used for tourism purposes rather than meeting the need for affordable housing (*Council Resolution No. 11-268*).

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).

SCHEDULE 4 – STATEMENT OF REASONS

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
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 relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Development Control Plan 2010/2014. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed

The DA was advertised in accordance with Development Control Plan 2014. The submissions received were considered on merit and addressed during assessment of the application.

To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

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 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 sincerely



Justin Telfer
Assistant Planner

Dated: 23 August 2024

General Advisory Notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the Conditions of development consent: advisory notes. The consent should be read together with the Conditions of development consent: advisory notes to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.