

Date: 12th July 2024
 Our Ref: 190638
 Your Ref: DA 10.2019.440.1

General Manager
 Byron Shire Council
 PO Box 219
 MULLUMBIMBY NSW 2482

**S4.55(1A) Modification Application to DA 10.2019.440.1
 Lot 100 DP 1209712, No. 530 Lismore Road, Binna Burra**

A. Executive Summary

Site Details

The site details relevant to the proposed development are provided within the below table.

Table 1: Site Details

Property Address	530 Lismore Road, Binna Burra
Property Description	Lot 100 DP 1209712
Registered Owner	Lynetta Love Stoneridge Pastures Pty Ltd
Proponent	T & L Love
Applicant	Newton Denny Chapelle for and on behalf of the proponent
Local Authority	Byron Shire Council
Land Zoning	RU1 – Primary Production RU2 – Rural Landscape
Integrated Development	Nil
Concurrence	Nil

Purpose

Newton Denny Chapelle has been engaged by T & L Love to lodge a Section 4.55(1A) application relating to Development Application 10.2019.440.1.

This report provides an outline of the sought amendments to the approved development, and its consistency with applicable statutory and planning policies of all tiers of government which relate to the site and the approved form of development.

Background

Development Application 10.2019.440.1 was approved by Byron Shire Council on 16 October 2019. The application approved the erection of a “shed” on the land.

It is noted that the consent was due to lapse on the 18 October 2024. However, due to the covid savings provisions for development consents, it now lapses on 18 October 2026.

Summary of Proposed Amendment

The proposed amendments simply relate to the location of the doors and windows of the shed as illustrated in the amended plan set provided in **Attachment 1**.

Further Information

Should Council require any additional information or wish to clarify any technical matter raised by this proposal or submissions made to same, Council is requested to consult with **Mr Adrian Zakaras** on (02) 6622 1011 or azakaras@ndc.com.au prior to determination of this application.

B. Proposed Amendments

As provided above, this application seeks to amend the location of the doors and windows of the shed. In this regard the following is proposed:

- The 6,000mm double tolt roller door will be relocated from the western façade to the northern façade;
- The PA door will be relocated from the northern façade to the western façade;
- The 2,400 x 1,200mm window will be relocated from the northern façade to the eastern façade.

The proposed amendments are illustrated on the plan set provided in **Attachment 1**. It is noted that the location and footprint of the approved shed is retained.

Changes to Approved Development

Condition 1 – Development is to be in accordance with approved plans

Existing Condition 1

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

Plan No.	Description	Prepared by	Dated:
DA-02, Rev C	Site Plan	Belinda Kehoe Design & Drafting	15.10.19
DA-03	Proposed Floor Plan	Belinda Kehoe Design & Drafting	05.06.19
DA-04	Elevations & Section	Belinda Kehoe Design & Drafting	05.06.19

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.

Proposed Condition 1

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

Plan No.	Description	Prepared by	Dated:
DA-02, Rev B	Site Plan	Belinda Kehoe Design & Drafting	09.05.24
DA-03, Rev B	Proposed Floor Plan	Belinda Kehoe Design & Drafting	09.05.24
DA-04, Rev B	Elevations & Section	Belinda Kehoe Design & Drafting	09.05.24

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.

Rationale

The approved plans require updating to reflect the changes to the door and window locations.

Condition 3 – “Farm shed” to be decommissioned from use as a dwelling

Existing Condition 3

The “Farm shed” as identified on stamped approved plan no. ‘DA-02, REV C’ titled ‘Site Plan’ and dated 15.10.19 must not at any time be used for separate habitation, for any business/commercial purpose, tourist and visitor accommodation or short term rental accommodation.

This Condition remains until documentation can be provided indicating that the use of the structure in this regard has been granted development consent.

Proposed Condition 3

The “Farm shed” as identified on stamped approved plan no. ‘DA-02, **REV B**’ titled ‘Site Plan’ and dated **09.05.24** must not at any time be used for separate habitation, for any business/commercial purpose, tourist and visitor accommodation or short term rental accommodation.

This Condition remains until documentation can be provided indicating that the use of the structure in this regard has been granted development consent.

Rationale

This condition requires amendment to update the details of the amended plans.

It is noted however that the structure referred to in this condition has approval to be converted into a dwelling via DA 10.2020.272.1.

Condition 4 – “Farm shed” to be decommissioned from use as a dwelling

Existing Condition 4

Use of the “Farm shed” as identified on stamped approved plan no. ‘DA-02, REV C’ titled ‘Site Plan’ and dated 15.10.19 as a dwelling must cease with the structure to be reinstated in accordance with DA 10.2008.120.1 (as modified). Internal walls, kitchen, laundry, and bedrooms inconsistent with DA 10.2008.120.1 (as modified) are to be removed **prior to issue of CC or within 6 months of the date of this consent, whichever occurs first.**

This Condition remains until documentation can be provided indicating that the use of the structure in this regard has been granted development consent.

Proposed Condition 4

Use of the "Farm shed" as identified on stamped approved plan no. 'DA-02, **REV B**' titled 'Site Plan' and dated **09.05.24** as a dwelling must cease with the structure to be reinstated in accordance with DA 10.2008.120.1 (as modified). Internal walls, kitchen, laundry, and bedrooms inconsistent with DA 10.2008.120.1 (as modified) are to be removed **prior to issue of CC or within 6 months of the date of this consent, whichever occurs first.**

This Condition remains until documentation can be provided indicating that the use of the structure in this regard has been granted development consent.

Rationale

This condition requires amendment to update the details of the amended plans.

It is noted however that the structure referred to in this condition has approval to be converted into a dwelling via DA 10.2020.272.1.

C. Planning Assessment

Introduction

Section 3 documents the range of planning controls and Council policies applicable to the application pursuant to Section 4.15 and Section 4.55 of the Act and tabulates the effect of these instruments on the proposed S4.55 application. This assessment will have particular regard to the following documents:

- S4.55(1A) and S4.15 of the Environmental Planning and Assessment Act 1979;
- Byron Local Environmental Plan 2014; and
- Byron Development Control Plan.

Section 4.55(1A) Environmental Planning & Assessment Act 1979

4.55(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

Comment: The proposed modification changes are not expected to result in any adverse environmental impact over and above those considered during the original assessment of the application. In this regard, the amendments are relatively minor and do not change the approved footprint of the shed.

(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

Comment: The proposed amendment is considered to be substantially the same development to which consent was originally issued based on the following grounds:

- The modification preserves the intent of the originally lodged Development Application relating to the erection of a shed;

- The proposed footprint and site location of the shed will be retained;
- The proposed amendments do not modify the development's quantitative or qualitative consistency with relevant development design standards under the Byron Development Control Plan.

(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

Comment: Any required community consultation will be conducted by Council as part of the processing and assessment of this application.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: Any submissions received concerning the proposal will be considered by Council as part of its assessment of the application.

S4.15 Evaluation

Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979, the following assessment is provided with respect to the proposed modifications to the development consent. We note that the original application was subject to detailed assessment to determine the suitability of the site for the development. Accordingly, the following focuses specifically on the changes proposed as part of the current S4.55(1A) application.

(a) the provisions of:

(i) any environmental planning instrument (EPI), and

Comment: The proposal is not considered to adversely impact upon the development's consistency with the relevant provisions of the Byron LEP 2014.

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and

Comment: No Draft EPI impacts the lodgement and subsequent assessment of this S4.55(1A) application.

(iii) any development control plan, and

Comment: The proposal is not considered to adversely impact upon the development's consistency with the relevant provisions of the DCP.

(iiia) Any planning agreement that has been entered into or any draft planning agreement that a developer has offered to enter into under section 7.4.

Comment: No existing or draft planning agreements are applicable to the current application.

(iv) the regulations (to the extent that the prescribed matters for the purposes of this paragraph),

Comment: The regulations in no way prejudice the sought amendment to the approved development.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

Comment: The environmental, social and economic impacts of the approved development were assessed in detail as part of Council's consideration of DA 10.2019.440.1. The proposed amendments to the development consent, as outlined in this report will not result in any adverse impact on the previous assessment of these matters.

(c) the suitability of the site for the development.

Comment: No adverse impacts have been identified during the preparation of the current S4.55 application which would indicate that the site is not suitable for the proposed development (as amended).

(d) the public interest.

Comment: The proposed modification is unlikely to compromise the public interest.

D. Conclusion

The Section 4.55(1A) report successfully addresses the issues relevant to Council's assessment of the proposed amendments to DA 10.2019.440.1

The details provided herein address the issues relevant to Council's assessment of this Section 4.55(1A) application to amend various matters associated with the development at 530 Lismore Road, Binna Burra.

Council can readily conclude the development, as proposed to be modified, is substantially the same as that for which consent was originally granted.



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ADRIAN ZAKARAS

Town Planner. BURP.

Date: 12th July 2024