

MODIFICATION APPLICATION TEMPLATE
(UPDATED TO NEW PLANNING ACT)

EDITORIAL LOG:

Project No: 1414

Project Name: Hunt

Stage: 2.4 Mod 2020.651

Doc Reference: K_1414.4625

Version	Date	Author	Notes
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2.	19/4/24	KMS	Edits & additions RJH
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10.			
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13.			
14.			
15.			



4.55(1A) Modification Application

DA 2020.651.1

Staged Affordable Housing Development comprising Nine (9)
Boarding Houses, Community Building, Managers Residence and
Strata Subdivision to create Three (3) Lots and a Common Lot

Lot 2 DP1206972 at 2 Bangalow Road BYRON BAY

PLANNERS NORTH, July 2024

COMPLIANCE AND USAGE STATEMENT

This Modification Application has been prepared and submitted under Part 4 of the *Environmental Planning and Assessment Act 1979* by:

Preparation

Name: Kate Singleton
Company: PLANNERS NORTH
Address: P.O. Box 538, Lennox Head NSW 2478
In respect of: A Modification Application under S.4.55(1A) of the Act

Application

Proponent: EW & AM Pearce, N & RG Hunt, and Daygage Pty Ltd ACN: 073510666
Office: c/ - PLANNERS NORTH
6 Porter Street, Byron Bay 2481
Land to be developed: Lot 2 DP1206972, 2 Bangalow Road Byron Bay 2481
Proposed development: Minor Modification to existing consent 10.2020.651.1
Environmental Assessment: Modification Application S.4.55 of the Act

Certificate

I certify that I have prepared the content of this Modification Application and to the best of my knowledge:

- it is in accordance with the Act and Regulations, and
- it is true in all material particulars and does not, by its presentation or omission of information, materially mislead.

Notice

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PLANNERS NORTH declares that it does not have, nor expects to have, a beneficial interest in the subject project. Nor does it have any reportable political donations within the meaning of Section 10.4 of the Act to declare.

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Kate Singleton RPIA

PARTNERSHIP PRINCIPAL



ABN 56 291 496 553
6 Porter Street,
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Ref: K_1414.4625
Date: July 2024

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1. INTRODUCTION

This section of the report identifies the nature of client instructions, relevant background information and the structure of the report.

1.1 BACKGROUND

PLANNERS NORTH has been engaged by EW & AM Pearce, N & RG Hunt, and Daygage Pty Ltd to provide Town Planning advice with respect to the preparation and lodgement of a Modification Application to DA 10.2020.651.1 relating to land described as Lot 2 DP1206972 2 Bangalow Road Byron Bay.

1.2 STRUCTURE OF REPORT AND ITS SCOPE

Section 2 of this report describes the amendments proposed. Having regard to the provisions of Section 4.55(1A) Section 3 sets out an examination of the statutory considerations relevant to the proposal described in Section 2. The final section of the report undertakes a general review of the project and summation as to the appropriateness of the project having regard to the planning controls applying to the land.

1.3 SPECIALIST TECHNICAL ADVICE

Specialist advice was sought from Lucena Civil and Structural Engineers.

Such advice is embodied in this report.

1.4 THE HISTORY OF DA 10.2020.651.1

Development Application No. 10.2020.651.1 was approved on 27 April 2023. The application is described in the consent as follows:

Staged Affordable Housing Development comprising Nine (9) Boarding Houses, Community Building, Managers Residence and Strata Subdivision to create Three (3) Lots and a Common Lot.

No amendments have been made in relation to the development.

1.5 THE POWER TO MODIFY

In *Agricultural Equity Investments Pty Limited v Westlime Pty Limited (No.3) [2015] NSWLEC 75* Justice Pepper sets out a useful summary of the relevant principles to the consideration of "substantially the same". She observed the applicable legal principles governing the exercise of the power may be stated as follows:

1. the power contained in the provision is to "modify the consent". Originally the power was restricted to modifying the details of the consent but the power was enlarged in 1985. Parliament has therefore "chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity";
2. the modification power is beneficial and facultative;
3. the condition precedent to the exercise of the power to modify consents is directed to "the development", making the comparison between the development as modified and the development as originally consented to;
4. the applicant for the modification bears the onus of showing that the modified development is substantially the same as the original development;
5. the term "substantially" means "essentially or materially having the same essence";

6. the formation of the requisite mental state by the consent authority will involve questions of fact and degree which will reasonably admit of different conclusions;
7. the term “modify” means “to alter without radical transformation”;
8. in approaching the comparison exercise “one should not fall into the trap” of stating that because the development was for a certain use and that as amended it will be for precisely the same use, it is substantially the same development. But the use of land will be relevant to the assessment made under s 96(2)(a);
9. the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified. The comparison should involve a qualitative and quantitative appreciation of the developments in their “proper contexts (including the circumstances in which the development consent was granted)”; and
10. a numeric or quantitative evaluation of the modification when compared to the original consent absent any qualitative assessment will be “legally flawed”.

1.6 FURTHER INFORMATION

Should Council require any additional information, or wish to clarify any matter raised by this proposal or submissions made to same, Council is requested to consult with **Kate Singleton** prior to determination of this application.

2. PROPOSED AMENDMENTS

This section details the proposed amendments to Development Application No. xx pertaining to a Section 4.55 of the Environmental Planning & Assessment Act 1979.

2.1 TYPE OF APPLICATION

This modification is made pursuant to:

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*
- (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.*

2.2 MODIFICATIONS SOUGHT

The existing development consent condition is recited and the proposed condition is then set out below with additions to the consent condition show in red font and deletions shown as ~~crossed through~~. The amendment will require the modification of the following Conditions:

2.2.1 DEFERRED COMMENCEMENT CONDITION 1

Existing:

1. Deferred Commencement Consent

This consent does not operate until Council is satisfied as to the following matters:

a. Access and Manoeuvring Plan

An updated Access Plan is to be provided, demonstrating that the ultimate access arrangements can cater for vehicle entry to and exit from the site in forward direction, for all vehicles, including the maximum size refuse collection vehicle anticipated for the site, in accordance with Appendix B8.5 & B8.6 of Chapter B8 of DCP2014. The plan is to provide for left in and left out manoeuvring movement at the southern access and left out manoeuvring movement at the northern access.

To satisfy Council of the above, an Access Plan is to be submitted for approval, which addresses the following matters:

- a) The submission of detailed engineering plans for the internal and external access arrangement for the development.*
- b) Plans to comply with the requirements of AS 2890.1-2004: Parking facilities, Part 1: Off-street carparking and AS 2890.2 – 2010 - Parking facilities, including but not limited to:*

- Access in accordance with Council's standard drawing or AS2890
- Redundant driveways to be removed and reinstated to match the existing verge and kerb & gutter
- Left-in and left-out arrangement for the southern access
- Left out only for the northern access
- Manoeuvring diagram to cater for the entry and exit in forward direction of the maximum size refuse collection vehicle in accordance with Appendix B8.5 & B8.6
- Manoeuvring diagram for commercial vehicles and car to include manoeuvring clearances of 0.5m and 0.3m respectively. Manoeuvring clearances must not encroach into building structures and other structures.
- Internal access width to cater for the maximum sized vehicle and road capacity in accordance with AS2890
- Dimensions, finished levels and grades demonstrating compliance with AS 2890
- Pavement design
- Site conditions affecting the access
- Existing and design levels
- Drainage
- Cross sections and
- Longitudinal section from the road centreline

b. Parking and Loading Bay

This consent does not operate until Council is satisfied that adequate parking and loading bay arrangements can be implemented to cater for the development in accordance with Chapter B4 of DCP2014.

To satisfy Council of the above, a Parking and Loading Bay Plan is to be submitted for approval, which addresses the following matters:

- a) The submission of detailed parking and loading bay plans in accordance with AS2890*
- b) Minimum of 42 parking spaces*
- c) Minimum 25 bicycle parking*
- d) Minimum 16 motorcycle parking*
- e) Bicycle and motorcycle parking design in accordance with AS2890*
- f) Accessible parking supply in accordance with BCA requirements*
- g) Dimensions, finished levels and grades demonstrating compliance with AS 2890*
- h) Parking User Class 1A for angle car parking*
- i) Parking User Class 4 for angle accessible parking*
- j) Parallel parking*
- k) Accessible parallel parking*
- l) Blind aisle extension and*
- m) Circulation roadway*

NOTE: The plans must be in compliance with Council's DCP 2014 and Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

In satisfying Council as to the above conditions Council must be furnished with fully detailed engineering design plans and specifications, to be designed by a qualified practicing Civil Engineer. The Civil Engineer is to be a

corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.

Evidence of the above relevant matter(s) must be produced to the consent authority, within two years of the date of the determination, otherwise the consent will lapse.

Under section 88(3) of the EP&A Regulation, the consent authority will notify you in writing if the matters above have been satisfied and the date from which this consent operates.

Proposed:

1. Deferred Commencement Consent

This consent does not operate until Council is satisfied as to the following matters:

a. Access and Manoeuvring Plan

An updated Access Plan is to be provided, demonstrating that the ultimate access arrangements can cater for vehicle entry to and exit from the site in forward direction, for all vehicles, including the maximum size refuse collection vehicle anticipated for the site, in accordance with Appendix B8.5 & B8.6 of Chapter B8 of DCP2014. The plan is to provide for left in and left out manoeuvring movement at the southern access and left out manoeuvring movement at the northern access.

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- b) Plans to comply with the requirements of AS 2890.1-2004: Parking facilities, Part 1: Off-street carparking and AS 2890.2 – 2010 - Parking facilities, including but not limited to:*
 - Access in accordance with Council's standard drawing or AS2890*
 - Redundant driveways to be removed and reinstated to match the existing verge and kerb & gutter*
 - Left-in and left-out arrangement for the southern access*
 - Left out only for the northern access*
 - Manoeuvring diagram to cater for the entry and exit in forward direction of the maximum size refuse collection vehicle in accordance with Appendix B8.5 & B8.6*
 - Manoeuvring diagram for commercial vehicles and car to include manoeuvring clearances of ~~0.5m and 0.3m respectively~~. Manoeuvring clearances must not encroach into building structures and other structures.*
 - Internal access width to cater for the maximum sized vehicle and road capacity in accordance with AS2890*
 - Dimensions, finished levels and grades demonstrating compliance with AS 2890*
 - Pavement design*
 - Site conditions affecting the access*
 - Existing and design levels*
 - Drainage*
 - Cross sections and*
 - Longitudinal section from the road centreline*

b. Parking and Loading Bay

This consent does not operate until Council is satisfied that adequate parking and loading bay arrangements can be implemented to cater for the development in accordance with Chapter B4 of DCP2014.

To satisfy Council of the above, a Parking and Loading Bay Plan is to be submitted for approval, which addresses the following matters:

- a) The submission of detailed parking and loading bay plans in accordance with AS2890*
- b) Minimum of 42 parking spaces*
- c) Minimum 25 bicycle parking*
- d) Minimum 16 motorcycle parking*
- e) Bicycle and motorcycle parking design in accordance with AS2890*
- f) Accessible parking supply in accordance with BCA requirements*
- g) Dimensions, finished levels and grades demonstrating compliance with AS 2890*
- h) Parking User Class 1A for angle car parking*
- i) Parking User Class 4 for angle accessible parking*
- j) Parallel parking*
- k) Accessible parallel parking*
- l) Blind aisle extension and*
- m) Circulation roadway*

NOTE: The plans must be in compliance with Council's DCP 2014 and Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

In satisfying Council as to the above conditions Council must be furnished with fully detailed engineering design plans and specifications, to be designed by a qualified practicing Civil Engineer. The Civil Engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.

Evidence of the above relevant matter(s) must be produced to the consent authority, within two years of the date of the determination, otherwise the consent will lapse.

Under section 88(3) of the EP&A Regulation, the consent authority will notify you in writing if the matters above have been satisfied and the date from which this consent operates.

Comment:

As indicated in the accompanying letter prepared by Lucena Civil and Structural Engineers, the 0.5m clearance is not applicable to the proposed form of development and this amendment seeks to rectify this to enable the Deferred Commencement consent condition to be satisfied.

2.2.2 CONDITION 1 APPROVED PLANS AND SUPPORTING DOCUMENTATION

Existing:

SCHEDULE 2 CONDITIONS OF CONSENT

1. Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans prepared by Running Dog Design (stamped by Council), except where the conditions of this consent expressly require otherwise.

Modification to DA 10.2020.651.1

7

Plan No.	Title	Dated	Plan No.	Title	Date
0441-03-00/01 Issue G	Site Plan Layout	21/09/22	0441-03-00/02 Issue A	Site Plan Layout Detail #1	21/09/22
0441-03-00/03 Issue A	Site Plan # 2 Detail Siting	21/09/22	0441-03-00/10 Issue J	Site Plan Parking	21/09/22
0441-03-00/13 Issue E	Street Scapes + Section	10/09/22	0441-03-00/14 Issue B	Site Plan Staging	21/09/22
0441-03-01/02 Issue E	House 1 Lower Ground Floor	21/09/22	0441-03-01/03 Issue D	House 1 Ground Floor Plan	01/09/22
0441-03-01/04 Issue D	House 1 Elevations	01/09/22	0441-03-02/02 Issue E	House 2 Ground Floor Plan	07/09/22
0441-03-02/03 Issue E	House 2 First Floor Plan	09/09/22	0441-03-02/04 Issue D	House 2 Elevations	09/09/22
0441-03-03/02 Issue E	House 3 Lower Floor Plan	27/08/22	0441-03-03/03 Issue D	House 3 Upper Floor Plan	27/08/22
0441-03-03/04 Issue E	House 3 Elevations	01/09/22	0441-03-04/02 Issue E	House 4 Lower Floor Plan	08/09/22
0441-03-04/03 Issue D	House 4 Upper Floor Plan	08/09/22	0441-03-04/04 Issue E	House 4 Elevations	08/09/22
0441-03-05/02 Issue F	House 5 Ground Floor Plan	08/09/22	0441-03-05/03 Issue E	House 5 First Floor Plan	08/09/22
0441-03-05/04 Issue E	House 5 Elevations	08/09/22	0441-03-06/01 Issue E	House 6 Ground Floor Plan	04/09/22
0441-03-06/02 Issue D	House 6 First Floor Plan	04/09/22	0441-03-06/03 Issue E	House 6 Elevations	04/09/22
0441-03-07/01 Issue F	House 7 Ground Floor Plan	21/09/22	0441-03-07/02 Issue F	House 7 First Floor Plan	05/09/22
0441-03-07/03 Issue E	House 7 Elevations	21/09/22	0441-03-08/01 Issue F	House 8 Ground Floor Plan	21/09/22
0441-03-08/02 Issue E	House 8 First Floor Plan	05/09/22	0441-03-08/03 Issue E	House 8 Elevations	05/09/22
0441-03-09/01 Issue G	House 9 Ground Floor Plan	06/09/22	0441-03-09/02 Issue H	House 9 First Floor Plan	06/09/22
0441-03-09/03 Issue F	House 9 Elevations	06/09/22	0441-03-10/01 Issue F	Community- Manager Ground Floor Plan	21/09/22
0441-03-10/02 Issue E	Community- Manager First Floor Plan	21/09/22	0441-03-10/03 Issue E	Community- Manager Elevations	21/09/22



**PLANNERS
NORTH**

K_1414.4625

Proposed:**SCHEDULE 2 CONDITIONS OF CONSENT****1. Approved plans and supporting documentation**

Development must be carried out in accordance with the following approved plans prepared by Running Dog Design and Lucena Civil & Structural Engineers (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Title	Dated	Plan No.	Title	Date
0441-03-00/01 Issue G	Site Plan Layout	21/09/22	0441-03-00/02 Issue A	Site Plan Layout Detail #1	21/09/22
0441-03-00/03 Issue A	Site Plan # 2 Detail Siting	21/09/22	0441-03-00/10 Issue J	Site Plan Parking	21/09/22
0441-03-00/13 Issue E	Street Scapes + Section	10/09/22	0441-03-00/14 Issue B	Site Plan Staging	21/09/22
0441-03-01/02 Issue E	House 1 Lower Ground Floor	21/09/22	0441-03-01/03 Issue D	House 1 Ground Floor Plan	01/09/22
0441-03-01/04 Issue D	House 1 Elevations	01/09/22	0441-03-02/02 Issue E	House 2 Ground Floor Plan	07/09/22
0441-03-02/03 Issue E	House 2 First Floor Plan	09/09/22	0441-03-02/04 Issue D	House 2 Elevations	09/09/22
0441-03-03/02 Issue E	House 3 Lower Floor Plan	27/08/22	0441-03-03/03 Issue D	House 3 Upper Floor Plan	27/08/22
0441-03-03/04 Issue E	House 3 Elevations	01/09/22	0441-03-04/02 Issue E	House 4 Lower Floor Plan	08/09/22
0441-03-04/03 Issue D	House 4 Upper Floor Plan	08/09/22	0441-03-04/04 Issue E	House 4 Elevations	08/09/22
0441-03-05/02 Issue F	House 5 Ground Floor Plan	08/09/22	0441-03-05/03 Issue E	House 5 First Floor Plan	08/09/22
0441-03-05/04 Issue E	House 5 Elevations	08/09/22	0441-03-06/01 Issue E	House 6 Ground Floor Plan	04/09/22
0441-03-06/02 Issue D	House 6 First Floor Plan	04/09/22	0441-03-06/03 Issue E	House 6 Elevations	04/09/22
0441-03-07/01 Issue F	House 7 Ground Floor Plan	21/09/22	0441-03-07/02 Issue F	House 7 First Floor Plan	05/09/22
0441-03-07/03 Issue E	House 7 Elevations	21/09/22	0441-03-08/01 Issue F	House 8 Ground Floor Plan	21/09/22
0441-03-08/02 Issue E	House 8 First Floor Plan	05/09/22	0441-03-08/03 Issue E	House 8 Elevations	05/09/22
0441-03-09/01 Issue G	House 9 Ground Floor Plan	06/09/22	0441-03-09/02 Issue H	House 9 First Floor Plan	06/09/22
0441-03-09/03 Issue F	House 9 Elevations	06/09/22	0441-03-10/01 Issue F	Community- Manager Ground Floor Plan	21/09/22
0441-03-10/02 Issue E	Community- Manager First Floor Plan	21/09/22	0441-03-10/03 Issue E	Community- Manager Elevations	21/09/22
210343 LDY1 Revision A	Laundry Rooms Layout	08/05/24	210343 LDY2 Revision A	Laundry Room Details	08/05/24
210343 LDY3 Revision A	Laundry Room Details	08/05/24			



Comment:

Constructions Certificate advice has been provided by the Building Services Unit in relation to a National Construction Code NCC requirement for the provision of laundries in Class 1b Boarding Houses which came into effect in May 2023. In order to comply with the requirements, six (6) washing machines and wash tubs will be provided in the community centre building for Boarding Houses 1, 2, 5, 6, 8 & 9. Boarding Houses 3, 4 & 7 will be provided with a washing machine and wash tub. The revised plans seek to amend the approved plan set to reflect the above.

2.2.3 57.11 SCHEDULE OF DEVELOPMENT CONTRIBUTIONS**Existing: Section 7.11 contributions Schedule**

Section 7.11 contributions Schedule						
Byron Bay Suffolk Park						
Catchment						
This schedule was calculated in spreadsheet #E2021/99005						
1 bedroom units =		0	@	0.55 SDU	=	0
2 bedroom units =		0	@	0.75 SDU	=	0
3 bedroom units/dwellings =		0	@	1 SDU	=	0
Demand per person converted to 1 SDU		42.65	@	1	=	42.65
Less Site Credits =		5	@	-1	=	-5
Total SDU					=	37.65
Schedule valid until	26-April-2023			After this date contact Council for CPI update.		
Local Open Space & Recreation	(OS-BB)	37.65	SDU @	\$ 4,744.42	=	\$ 178,627.41
LGA Wide Open Space & Recreation	(OS-SW)	37.65	SDU @	\$ 853.95	=	\$ 32,151.22
LGA wide Community Facilities	(CF-SW)	37.65	SDU @	\$ 1,250.70	=	\$ 47,088.86
Local Community Facilities	(CF-BB)	37.65	SDU @	\$ 1,409.33	=	\$ 53,061.27
Bikeways & Footpaths	(CW-BB)	37.65	SDU @	\$ 1,562.40	=	\$ 58,824.36
Shire Wide Bikeways & Footpaths	(CW-SW)	37.65	SDU @	\$ 91.74	=	\$ 3,454.01
Urban Roads	(R-BB)	37.65	SDU @	\$ 3,417.07	=	\$ 128,652.69
LGA Wide Roads	(R-SW)	37.65	SDU @	\$ 258.40	=	\$ 9,728.76
Rural Roads	#N/A	37.65	SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	37.65	SDU @	\$ 1,291.67	=	\$ 48,631.38
Total						\$ 560,219.96

Water payments under the Water Management Act 2000

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT
(ET Policy 2018)

Water	33.00 ET
Bulk Water	33.00 ET
Sewer	51.25 ET

Proposed: Section 7.11 contributions Schedule

Section 7.11 contributions Schedule									
Byron Bay Suffolk Park									
Catchment									
This schedule was calculated in spreadsheet #E2021/99005									
1 bedroom units =		0	@	0.55 SDU	=			0	
2 bedroom units =		0	@	0.75 SDU	=			0	
3 bedroom units/dwellings =		0	@	1 SDU	=			0	
Demand per person converted to 1 SDU		42.65	@	1	=			42.65	
Less Site Credits =		5	@	-1 -11	=			-5 -11	
Total SDU					=			37.65 31.65	
Schedule valid until				26-April-2023	After this date contact Council for CPI update.				
Local Open Space & Recreation	(OS-BB)	37.65 31.65	SDU @	\$ 4,744.42	=			\$ 178,627.41 \$ 150,160.89	
LGA Wide Open Space & Recreation	(OS-SW)	37.65 31.65	SDU @	\$ 853.95	=			\$ 32,151.22 \$ 27,027.52	
LGA wide Community Facilities	(CF-SW)	37.65 31.65	SDU @	\$ 1,250.70	=			\$ 47,088.86 \$ 39,584.66	
Local Community Facilities	(CF-BB)	37.65 31.65	SDU @	\$ 1,409.33	=			\$ 53,061.27 \$ 44,605.29	
Bikeways & Footpaths	(CW-BB)	37.65 31.65	SDU @	\$ 1,562.40	=			\$ 58,824.36 \$ 49,449.96	
Shire Wide Bikeways & Footpaths	(CW-SW)	37.65 31.65	SDU @	\$ 91.74	=			\$ 3,454.01 \$ 2,903.57	
Urban Roads	(R-BB)	37.65 31.65	SDU @	\$ 3,417.07	=			\$ 128,652.69 \$ 108,150.27	
LGA Wide Roads	(R-SW)	37.65 31.65	SDU @	\$ 258.40	=			\$ 9,728.76	
Rural Roads	#N/A	37.65 31.65	SDU @	\$ -	=			\$ -	
Administration Levy	(OF-SW)	37.65 31.65	SDU @	\$ 1,291.67	=			\$ 48,631.38 \$ 40,881.36	
Total								\$ 560,219.96 \$ 462,763.52	

Water payments under the Water Management Act 2000

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT
(ET Policy 2018)

Water	33.00 26.05 ET
Bulk Water	33.00 26.05 ET
Sewer	51.25 41.25 ET

Comment:

As previously discussed with Council officers, the approved 2007 consent and associated Voluntary Planning Agreement and conditions acknowledged a credit entitlement of 11ET for the subject development site. The proposed amendment seeks to update the schedule of contributions to reflect the correct credits applicable to the subject site.

3. ASSESSMENT OF ENVIRONMENTAL PLANNING INSTRUMENTS

The proposal encompasses the modification of a development consent notice pursuant to Section 4.55 of the Environmental Planning & Assessment (EP&A) Act. The assessment of the proposed amendment is undertaken in accordance with the relevant provisions of the EP&A Act which in this instance is:

- Modification Applications generally;
- Section 4.15(1) Matters for consideration; and
- Regulations.

3.1 THE REASONS FOR THE IMPOSITION OF CONDITIONS

Development Consent 10.2020.651.1 specified the following reasons for granting approval and conditioning:

- 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 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 proposed development is unlikely to prejudice or compromise the public interest.

3.2 SECTION 4.55(1A) ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act, the following assessment is provided with respect to the proposed modification to Development Consent Notice DA 10.2020.651.1.

(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 amendments will result in no adverse environmental impact. As discussed above, the modifications sought seek to ensure the proposal complies with the NCC by incorporating the required laundries and to reflect the correct credits applicable to the site in relation to water and sewer and Section 7.11 developer contributions.

- (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 consent as modified is essentially the same development with only minor alterations to the buildings to incorporate laundries.

- (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:

Pursuant to Council's DCP a Modification Application of this type does not require advertising.

- (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.

Comment:

This proposal does not require advertising.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 as are of relevance to the development the subject of the application.

Comment:

Refer to Section 3.3 for Section 4.15 Evaluation.

- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

Comment:

This provision is noted.

3.3 SECTION 4.15 EVALUATION

- (1) Matters for consideration—general
In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and

Comment:

The proposed modification raises no issues in relation to consistency and compliance with any environmental planning instrument.

- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

Comment:

No draft environmental planning instrument is applicable to the proposed modification.

- (iii) any development control plan, and

Comment:

The proposed amendments do not raise any issues in relation to Byron Development Control Plan 2014.

- (iiia) any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4, and

Comment:

The approved development application does not incorporate a Voluntary Planning Agreement.

- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

Comment:

No prescribed matters are applicable.

- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,

Comment:

No Coastal Zone Management Plan applies to the locality.

- (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 proposed minor amendments will not result in any adverse impact on the existing natural or built environment.

- (c) the suitability of the site for the development,

Comment:

The site remains suitable for the provision of affordable rental accommodation within close proximity to Byron Bay Town Centre.

- (d) any submissions made in accordance with this Act or the regulations,

Comment:

No submissions are likely given that this application does not require exhibition.

- (e) the public interest.

Comment:

It is submitted that the proposed development remains consistent with the public interest providing affordable rental accommodation within close proximity to services and facilities.

3.4 MODIFICATIONS OF APPROVAL GENERALLY

Section 4.50 of the Act sets out particulars in relation to the granting and modification of approval by an Approval Body. Those provisions are as follows.

4.50 Granting and modification of approval by approval body

- (1) Despite any other Act or law, an approval body must, in respect of integrated development for which development consent has been granted following the provision by the approval body of the general terms of the approval proposed to be granted by the approval body in relation to the development, grant approval to any application for approval that is made within 3 years after the date on which the development consent is granted if, within that 3-year period, the development consent has not lapsed or been revoked.

Note. Under section 380A of the Mining Act 1992 and section 24A of the Petroleum (Onshore) Act 1991, a mining lease or production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.

- (2) The approval may be granted subject to conditions that are not inconsistent with the development consent. Neither the provisions of section 4.17 (6)–(10) nor the imposition of conditions as to security by the consent authority prevent an approval body from imposing conditions, or additional conditions, as to security.
- (3) Subsection (1) does not apply to or limit the granting of approval to an application for renewal of an approval.
- (4) An approval body cannot vary the terms of an approval granted for integrated development for which development consent has been granted before the expiration, lapsing or first renewal of the approval, whichever first occurs, other than to make variations that are not inconsistent with the development consent.
- (5) Subsection (4) does not prevent:
 - (a) the modification, in accordance with section 4.55 or 4.57, of the development consent at any time, or
 - (b) if a development consent is modified as referred to in paragraph (a) before the expiration, lapsing or first renewal, whichever first occurs, of the approval, the modification in accordance with law of the approval to any necessary consequential extent, or
 - (c) the exercise by the approval body of any of its other functions, such as the issuing of orders, the suspension or cancellation of an approval or the prosecution of offences.

Comment:

The development consent as originally issued includes an Integrated development approval under Sections 4.46 and 4.47 of the Environmental Planning and Assessment Act 1979, being an authorisation under section 100B of the *Rural Fires Act 1997* in respect of bush fire safety of subdivision of land that could lawfully be used for residential purposes and is subject to the General Terms of Approval from NSW Rural Fire Service. The proposed modifications do not impact on the General Terms of Approval issued.

3.5 REGULATIONS

Pursuant to the Regulations, the following considerations are applicable to this particular modification.

Comment:

No particular provisions of the Regulation are applicable to the subject modification.

4. CONCLUSIONS

This report, when read in conjunction with the accompanying engineering comments provided by Lucena Civil and Structural Engineers, addresses the issues relevant to Council's assessment of this application for the proposed amendment to Development Consent Notice 10.2020.651.1.

The grounds for this approval are summarised below:

- The proposed amendment is substantially the same development as that originally approved;
- The modification sought maintains the outcomes of the assessment process pertaining to the application of the Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014;
- The proposed modification is deemed to be responsive to site characteristics and the existing use upon adjoining land; and
- The proposal maintains the sought environmental objectives for the development.



Kate Singleton RPIA

PARTNERSHIP PRINCIPAL

PLANNERS NORTH