



4.55(1A) Modification Application

**DA 2021/425**

Bayside Way BRUNSWICK HEADS

**PLANNERS NORTH** May, 2023

## 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: S J Connelly  
Company: PLANNERS NORTH  
Address: P.O. Box 538, Lennox Head, Bundjalung Country, NSW 2478  
In respect of: A Modification Application under S.4.55(1A) of the Act

### Application

Proponent: Mr and Mrs J Mills  
Office: C/ - PLANNERS NORTH  
6 Porter Street, Byron Bay 2481  
Land to be developed: Land in the former LOTS: 1-6 DP: 1261870  
24-34 Bayside Way BRUNSWICK HEADS  
Proposed development: Minor Modification to consent DA 2021/425  
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

The plans to this document were prepared for the exclusive use of the proponent and are not to be used for any other purpose or by any other person or corporation. PLANNERS NORTH 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 purposes other than the proposed development.

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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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S J Connelly RPIA (Fellow)  
PARTNERSHIP PRINCIPAL



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6 Porter Street,  
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Ref: 1241.4367

**Date: May 2023**

**TABLE OF CONTENTS**

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|       |   |   |
|-------|---|---|
| 1.    | INTRODUCTION.....   | 1 |
| 1.1   | Background .....  | 1 |
| 1.2   | Structure of Report and its Scope.....                              | 1 |
| 1.3   | The History of Development Application No. 2021.425.....            | 1 |
| 1.4   | The power to Modify .....   | 1 |
| 1.5   | Further Information.....  | 2 |
| 2.    | PROPOSED AMENDMENTS .....   | 3 |
| 2.1   | Type of Application .....   | 3 |
| 2.2   | Modifications Sought .....  | 3 |
| 2.2.1 | Condition 41(b) .....   | 3 |
| 3.    | ASSESSMENT OF ENVIRONMENTAL PLANNING INSTRUMENTS.....               | 6 |
| 3.1   | Section 4.55(1A) Environmental Planning & Assessment Act 1979 ..... | 6 |
| 3.2   | Section 4.15 Evaluation .....                                       | 7 |
| 3.3   | Regulations .....   | 8 |
| 4.    | CONCLUSIONS.....  | 9 |

## 1. INTRODUCTION

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*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 Mr and Mrs J Mills to provide Town Planning advice with respect to the preparation and lodgement of a Modification Application to DA 2021.425 relating to land described as former Lots 1-6 DP 1261870, 24 -34 Bayside Way, Brunswick Heads.

### 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 THE HISTORY OF DEVELOPMENT APPLICATION NO. 2021.425

Development Application No. 2021.425 was approved on 10<sup>th</sup> November 2022. The application is described in the consent as *“Community Title Subdivision Twenty (20) Lots, Multi-Dwelling Housing comprising of Twenty (20) Dwelling Houses and Tree Removal One (1) Tree”*.

Since the issue of Development Consent the proponents engineer, Mr Peter Williams, has been liaising with Council engineering personnel concerning the preservation of the existing footpath whilst providing for suitable on street car parking. This modification has been prepared as a consequence of those discussions.

### 1.4 THE POWER TO MODIFY

In *Agricultural Equity Investments Ty 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;

## Modification to DA 2021/425

2

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”.

### **1.5 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 **Steve Connelly** prior to determination of this application.

## 2. PROPOSED AMENDMENTS

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*This section details the proposed amendments to Development Application No. 10.2015.795 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 Condition 1 as follows:

#### 2.2.1 CONDITION 41(B)

**Existing:**

#### **41. Engineering construction plans**

Engineering construction plans and specifications must accompany the Subdivision Works Certificate application demonstrating compliance with Council's standards for the required engineering works.

Each set of drawings must be accompanied by a Certification Report which must be signed by a suitably qualified Civil Engineer or Registered Surveyor. The Certification Report will comprise the certificate and check lists set out in Annexure DQS-A of the Northern Rivers Local Government Development & Design Manuals.

The information shown on the drawings must be logically collected on discrete sheets generally in accordance with Annexure DQS-B and the Sample Drawings of the Northern Rivers Local Government Development & Designs. The drawings are to provide for the following works :

- a. Channelised Right (CHR) Treatment opposite the southern driveway

## Modification to DA 2021/425

4

Kerb and gutter, road pavement, line-marking, streetlighting (AS 1158) and associated drainage construction, including any necessary relocation of services in accordance with SDS Civil Enterprises drawing 2061-C1 Rev B.

b. On-street parking and relocation of footpath

A fully detailed design of five (5) on-street parallel parking including line-marking and any necessary relocation of services in accordance with AS 2890.5 and IPWEA drawing R-0031 (see Note). The following must be adopted: -

- Carriageway of 3.5m.
- Parking lane of 2.1m
- Safety barrier line between the parking lane and carriageway of 0.5m.
- The parking lane be sheltered by way of full indentation of the parking lane. It is necessary to replace the existing kerb and gutter with a concrete invert or dish gutter in accordance with NRLG drawing R-03 and install a mountable kerb at a new alignment in accordance with IPWEA drawing R-0031 – Verge with Parking Bays and Pathways.
- Relocate the existing 1.5m wide footpath, measured 1.5m from the invert of the mountable kerb. Refer to IPWEA drawing

.....

### **Proposed:**

#### **41. Engineering construction plans**

Engineering construction plans and specifications must accompany the Subdivision Works Certificate application demonstrating compliance with Council's standards for the required engineering works.

Each set of drawings must be accompanied by a Certification Report which must be signed by a suitably qualified Civil Engineer or Registered Surveyor. The Certification Report will comprise the certificate and check lists set out in Annexure DQS-A of the Northern Rivers Local Government Development & Design Manuals.

The information shown on the drawings must be logically collected on discrete sheets generally in accordance with Annexure DQS-B and the Sample Drawings of the Northern Rivers Local Government Development & Designs. The drawings are to provide for the following works :

a. Channelised Right (CHR) Treatment opposite the southern driveway

Kerb and gutter, road pavement, line-marking, streetlighting (AS 1158) and associated drainage construction, including any necessary relocation of services in accordance with SDS Civil Enterprises drawing 2061-C1 Rev B.

b. On-street parking and relocation of footpath

A fully detailed design of five (5) on-street parallel parking including line-marking and any necessary relocation of services in accordance with AS 2890.5 and IPWEA drawing R-0031 (see Note). The following must be adopted:-

- Carriageway of 3.5m.
- Parking lane of 2.1m
- Safety barrier line between the parking lane and carriageway of 0.5m.
- The parking lane be sheltered by way of full indentation of the parking lane. It is necessary to replace the existing kerb and gutter with a concrete invert or dish gutter

## Modification to DA 2021/425

5

~~in accordance with NRLG drawing R-03 and install a mountable kerb at a new alignment in accordance with IPWEA drawing R-0031 – Verge with Parking Bays and Pathways.~~

- ~~Relocate the existing 1.5m wide footpath, measured 1.5m from the invert of the mountable kerb. Refer to IPWEA drawing~~
- Five (5) on street parallel car parking spaces shall be provided generally in accordance with the drawing entitled "Signage and Line Marking Plan COV-C13" by SDS Civil Enterprises dated May 2022.

### **Comment:**

SDS Civil Enterprises has prepared a revised drawing for five on street parking spaces. The bays proposed adopt the same configuration as has successfully been implemented in Bayshore Drive. This design is thought to be beneficial as it provides for the on street parking but does not require the wasteful removal of the existing concrete footpath. In discussions held with Council's officers, about this approach, Council identified the need for line marking. Accordingly, the concept designs set out at **Appendix A** include line marking which is typically a 1m wide chevron style marking.

### 3. ASSESSMENT OF ENVIRONMENTAL PLANNING INSTRUMENTS

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*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 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 10.2015.795.

(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 modification proposed has a positive environmental impact in that the adoption of the design as proposed will not involve the wasteful destruction of an existing concrete footpath in the road system.

- (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 modification proposed is substantially the same development as the layout of the actual community title subdivision multi dwelling housing proposal is unaltered as a consequence of this minor amendment to off street car parking provision.

- (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.

**3.2 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 land is zoned R3-Medium Density Residential pursuant to Byron Local Environmental Plan 2014. The alterations proposed are of no consequence in terms of any of the development standards or requirements of the LEP.

- (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 planning proposal has been mooted for the subject land or locality.

- (iii) any development control plan, and

**Comment:**

Byron DCP2014 applies to the land. Nothing in this application raises any consideration specified in that Development Control Plan.

- (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:**

No Planning Agreements apply to the subject development.

- (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 environmental impacts of the most recent development approval were considered by Council in its assessment of that application.

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

**Comment:**

The suitability of the site was considered by Council in its assessment of that application.

- (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:**

The subject application is merely an administrative requirement of the most recent development approval for the land and no matters of public interest are raised by this application.

### **3.3 REGULATIONS**

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


#### 4. CONCLUSIONS

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*This report addresses the issues relevant to Council's assessment of this application for the proposed amendment to Development Consent Notice DA 2021/425.*

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; and
- The modification proposed is minor in its nature having no impact in terms of the community title subdivision and the multi dwelling housing proposed but providing for the orderly and economic use of the existing concrete footpath in the locality.



**Stephen Connelly RPIA (Fellow)**

PARTNERSHIP PRINCIPAL  
PLANNERS NORTH

APPENDICES

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**APPENDIX A**

Updated Engineering Drawings

# SDS Civil Enterprises

A.B.N. 56 656 467 255

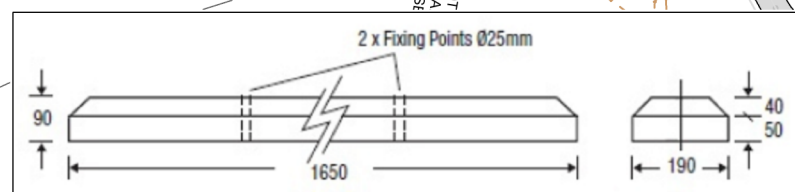
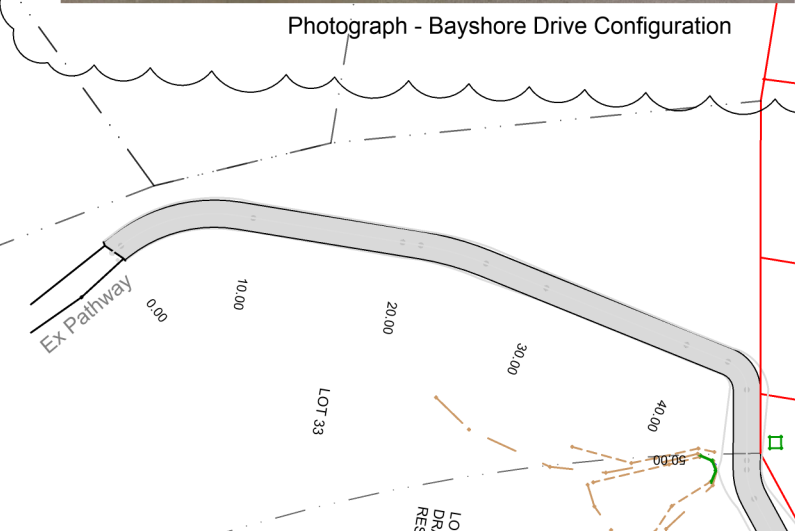
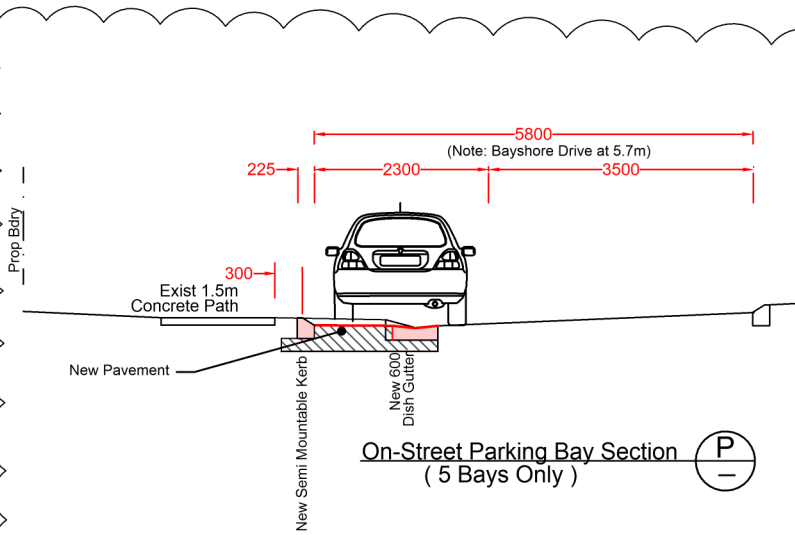
461 Hinterland Way, Knockrow NSW

m 0438 725 414 e peterw@sdscivil.com.au

**IMPORTANT NOTES**  
 1. Verify and locate all dimensions and levels PRIOR to performing any works.  
 2. Ensure DBYD enquiries are made to locate current service information.  
 3. Pothole or service locator of any underground services before performing works.  
 4. Drawing may not be modified or used by others without approval of SDS Civil Enterprises.  
 © Copyright SDS Civil Enterprises

## Site Specific Notes

- All signage to comply with AS1742 Part 2: Manual of Uniform Traffic Control Devices.
- Contractor to ensure DBYD and service locations are undertaken and any conflicts resolved PRIOR to any excavation.
- All visitor parking bays to have smooth concrete wheel stops as per detail dimensions as shown this drawing unless otherwise approved by site engineer.
- All signage posts to be installed with concrete footings minimum 600 deep x 300 dia as per NRLG Std Drg R-12. (ie not plastic).
- Linemarking ARROWS and CONTINUITY LINE to be in accordance with RMS Linemarking specifications.



| Rev | Date     | Amendment  |
|-----|----------|--|
| A   | May 2023 | Parking Bays As per Bayshore Drive Configuration |
| B   |          |  |
| C   |          |  |
| D   |          |  |

| SCALE                       |  |
|-----------------------------|--|
| 0 5 10 15                   |  |
| 1:500 at A3 UNO             |  |
| APPROVED                    |  |
| Mr P Williams B.Eng (Civil) |  |

| PROJECT         | Heathgrove                   | ADDRESS | 35 Bayside Way Brunswick Heads | DATE            | May 2022          | REV |
|-----------------|------------------------------|---------|--------------------------------|-----------------|-------------------|-----|
| CLIENT          | J & G Mills                  | LAND    | Lot 1 - 6 DP 1261870           | DRAWING PURPOSE | Subdivision Works |     |
| DRAWING DETAILS | Signage and Linemarking Plan |         |                                | DRAWING NUMBER  | Civ - C13         | A   |

# SDS Civil Enterprises

---

461 Hinterland Way, Knockrow NSW 2479

5 May 2023

PLANNERS North  
PO Box 538  
LENNOX HEAD NSW 2478

Delivered via email: [steve@plannersnorth.com.au](mailto:steve@plannersnorth.com.au)  
Cc: [GloriaMills@outlook.com](mailto:GloriaMills@outlook.com)

**RE: Request for Re-consideration of Onstreet Parking Configuration  
Community Title Subdivision and Multi-Dwelling Housing (DA10.2021.425.1)  
24 – 34 Bayside Way, Brunswick Heads**

SDS Civil Enterprises have been requested to prepare a revised drawing of a proposal for 5 onstreet car parking bays in the same configuration as per Bayshore Drive. Refer to attached Drg No: Civ-C13 Rev A. Previous discussions with Council as to the retention of the existing concrete footpath fronting the site had not been supported.

It is noted Council had raised at a site meeting that should they support a proposal similar to Bayshore Drive, Council would be requiring linemarking. Accordingly my concept designs include such linemarking which is typically a 1m wide chevron type.

Should you have any questions as to the attached, please don't hesitate to contact me on mobile 0438 725 414 for clarifications.

Yours sincerely



Mr Peter Williams  
Civil Engineer  
m. 0438 725 414  
e. [peterw@sdscivil.com.au](mailto:peterw@sdscivil.com.au)

Enc – Drg No Civ-C13 Rev A (1 x A3)