



67 BOUGAINVILLEA DRIVE FEDERAL

**STATEMENT OF ENVIRONMENTAL EFFECTS FOR
SECTION 4.55(2) MODIFICATION TO VARY
DEVELOPMENT CONSENT 2021/647**



Report prepared for
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June 2024

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1.0 Introduction

- 1.1 This statement has been prepared to provide a planning assessment in relation to an application under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979, to modify development consent 2021/647.
- 1.2 DA 2021/647 was granted consent by Byron Shire Council by Notice dated 16 December 2021, for *Alterations and additions to existing dwelling house, new swimming pool, studio and basketball court*, at 67 Bougainvillea Drive, Federal.
- 1.3 This modification application seeks to revise the location of the approved studio and basketball court, including minor alterations and additions, in the form of additional planter boxes and landscaping.
- 1.4 It is proposed that the consent conditions be altered in accordance with the modified plans, 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
MOD00	Cover	Action Plans	18 April 2024
MOD01	Notation	Action Plans	18 April 2024
MOD02	Safety Notes		18 April 2024
MOD03	Location Plan	Action Plans	18 April 2024
MOD04	Site Analysis	Action Plans	18 April 2024
MOD05	Site/Roof/Sediment Erosion/Waste Management/Stormwater Concept Plan	Action Plans	18 April 2024
MOD06	Existing Ground Floor Plan	Action Plans	18 April 2024
MOD07	Existing First Floor Plan	Action Plans	18 April 2024
MOD08	Proposed Gym Floor Plan		
MOD09	Proposed Gym Elevations	Action Plans	18 April 2024
MOD10	Area Calculations	Action Plans	18 April 2024
MOD11	Winter Solstice 9am	Action Plans	18 April 2024
MOD12	Winter Solstice 12pm	Action Plans	18 April 2024
MOD13	Winter Solstice 3pm	Action Plans	18 April 2024
MOD 14	BASIX Commitments	Action Plans	18 April 2024

1.5 In preparation of this submission, consideration has been given to the following documents:

- Section 4.55 of the Environmental Planning and Assessment Act 1979,
- The Byron Local Environmental Plan 2014,
- The Byron Development Control Plan 2014,
- The heads of consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended).

1.6 This report has been prepared with reference to the following:

- Site visit,
- Review of the original development consent,
- Review of original development assessment report,
- Review of approved and proposed plans.

1.7 The proposed modification will allow for a revised location for the approved studio and basketball court, to better meet the needs of the residents.

2.0 The site and its locality

- 2.1 The subject site is located at 67 Bougainvillea Drive Federal, on the western side of the Bougainvillea Drive, approx. 465 metres west of its intersection with Callistemon Drive. It is legally described as Lot 1 DP 1220595.
- 2.2 It is an irregular shaped lot, with a frontage of 10.42 metres (east - to Bougainvillea Drive); 360.44 (irregular northern boundary); 368.53 metres (irregular southern boundary) and 175.73 metres (west). It has an area of 2.638 ha.
- 2.3 The site is currently occupied by a two-storey timber clad dwelling house with a metal roof, a detached carport, water tank, decking, in-ground swimming pool and shed. It slopes from the east to the west (towards the rear of the lot).
- 2.4 The property is surrounded by detached, large-lot residential dwellings to the north and east and rural land uses to the south and west. The site is located in close proximity to shops and services in Bangalow to the south-east and Byron Bay to the east.



Figure 1. The site and its immediate surrounds

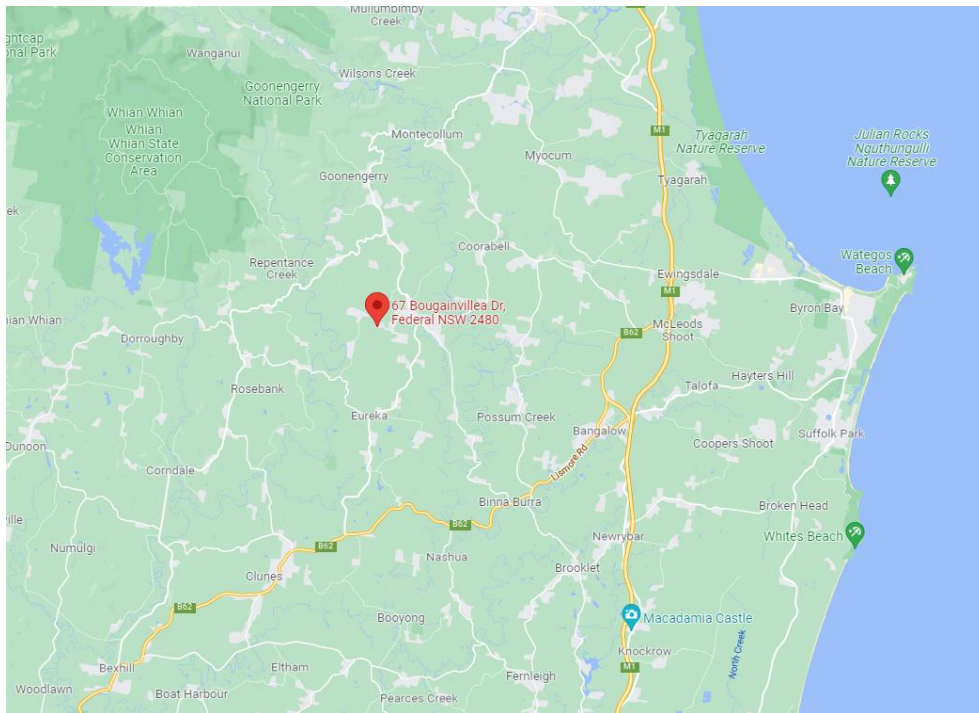


Figure 2. The site within the locality

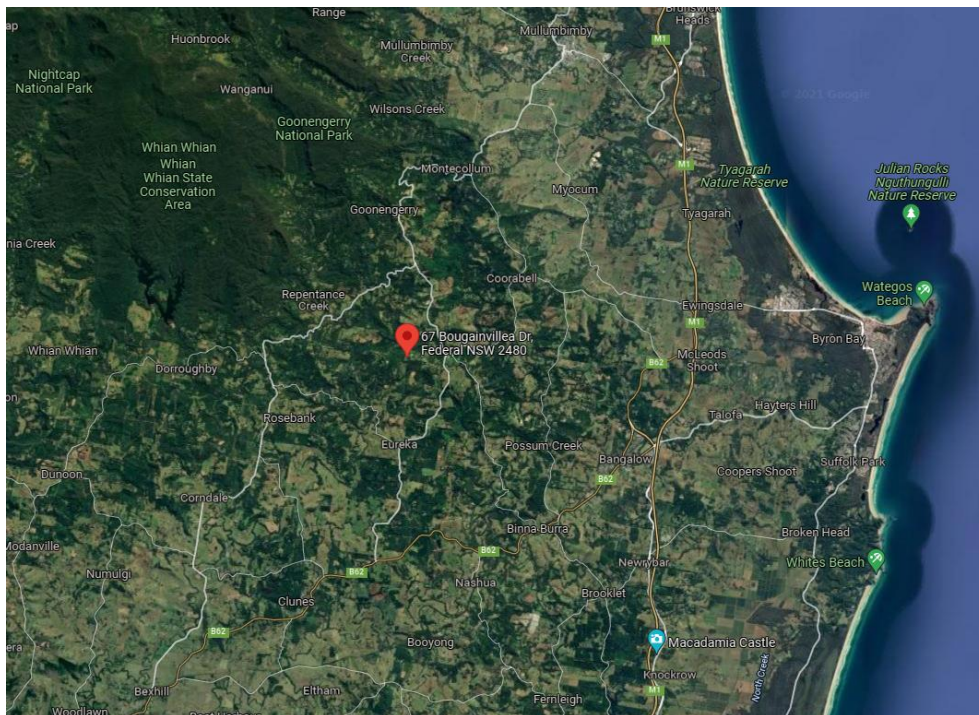


Figure 3. Aerial image of the site within the locality

3. Site Photos



Figure 4. The entry and driveway, looking west from Bougainvillea Drive.



Figure 5. The driveway and dwelling, looking west.



Figure 6. The rear of the original dwelling, looking south-east.



Figure 7. The original dwelling, looking south.



Figure 8: The dwelling and carport, looking north.



Figure 9: The dwelling and swimming pool, looking south.



Figure 10: The original dwelling, looking east.



Figure 11: The deck and swimming pool, looking south-east.

4. Proposed Development

4.1 It is proposed to modify the location of the approved studio and basketball court, relocating it slightly to the south-west, including minor additions in the form of additional planter boxes and landscaping.

4.2 The modified proposal will be made up as follows:

Dwelling

- No changes are proposed to the approved dwelling.

Studio

- Relocate the studio and basketball court slightly to the south-west,

Retain the approved studio layout of:

- Basketball court,
- Gym
- Bathroom,
- Bar / shelf,

Modify the studio as follows:

- Extend the external walls to the deck,
- New external staircase and planter boxes on the south-west side of the studio.

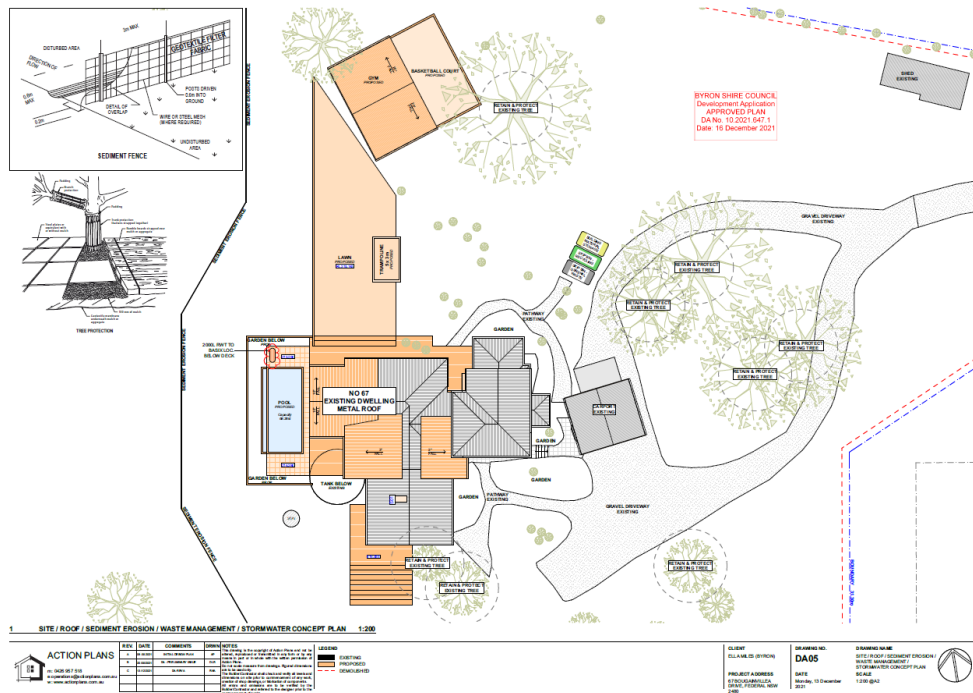


Figure 12: Plan Extract: Approved Site Plan

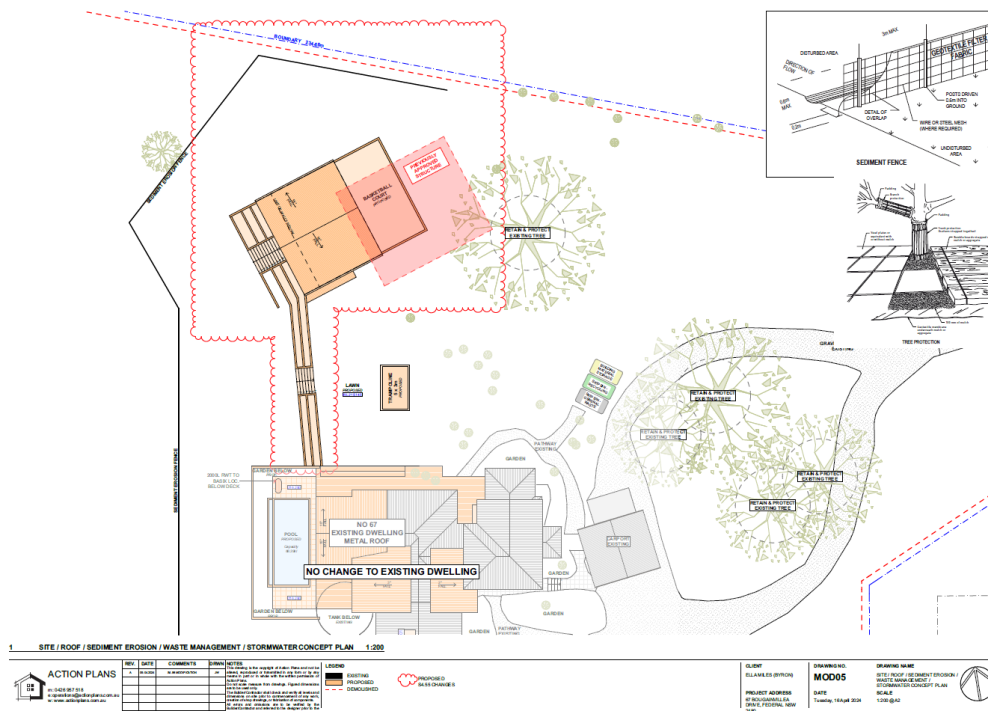


Figure 13: Plan Extract: Modified Site Plan

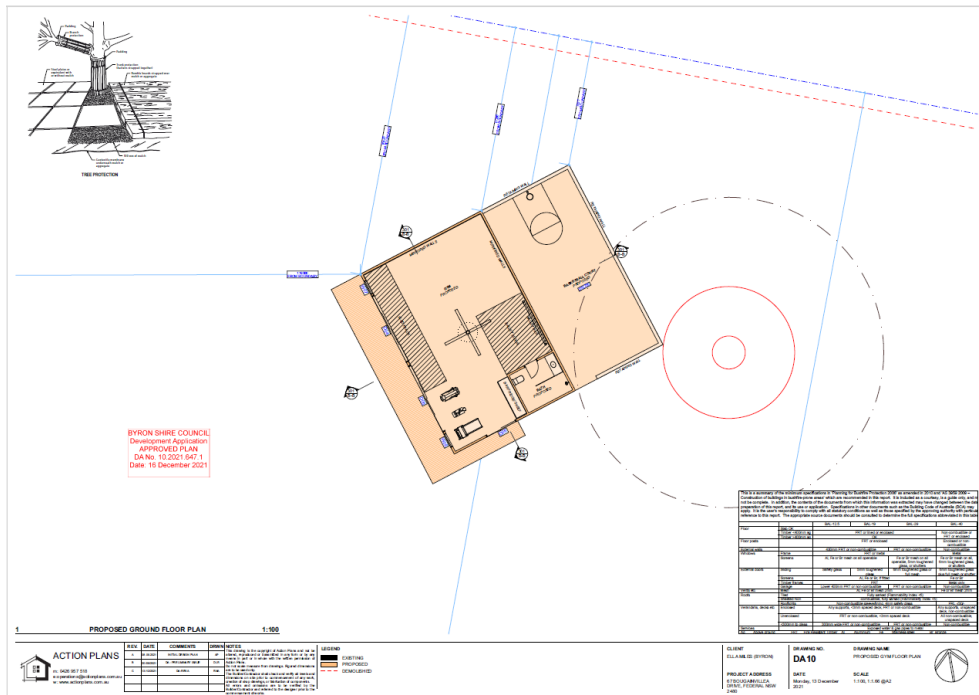


Figure 14. Plan Extract: Approved Studio Floor Plan

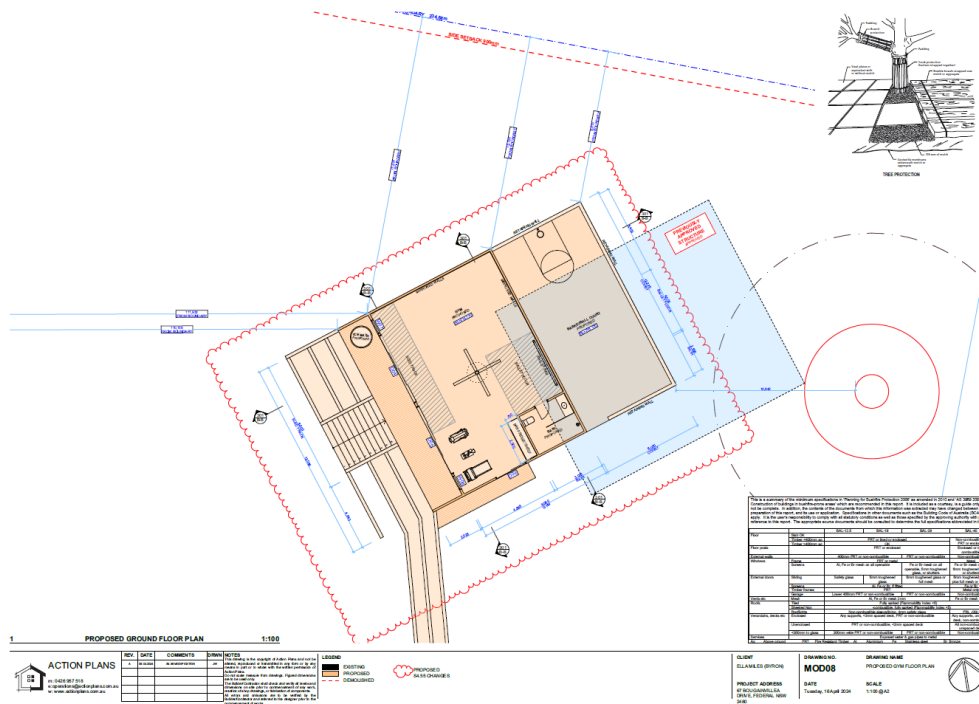


Figure 15. Plan Extract: Proposed Studio Floor Plan

5. Statutory Framework

5.1 Section 4.55 of Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (as amended) (the Act) provides that a consent authority may modify the consent if:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

The development to which the consent, as modified, is substantially the same development as that approved by DA2021/647, as it remains for *alterations and additions to existing dwelling house, new swimming pool, studio and basketball court*, notwithstanding the proposed modifications.

The modifications do not require any specific consultation and the consent authority can notify and consider any submissions in relation to the application as required.

S4.55(3) of the Act requires Council to consider those matters referred to in Section 4.15(1) of the Act that are of relevance to the development which is the subject of the application.

It is not considered that the minor modifications proposed, will alter the previously favourable assessment from the original Development Consent. In particular, the site and surrounding built and natural environments will remain essentially the same and the amenity for the local residents will be maintained.

5.2 Rural Fires Act 1997

An updated bushfire assessment has been undertaken by Matthew Willis dated 16/04/2024, as such consent condition will be required to be updated to reference this updated report.

5.3 State Environmental Planning Policies

State Environmental Planning Policy (Koala Habitat Protection) 2021

State Environmental Planning Policy (Koala Habitat Protection) 2021 applies to any development where the site has an area in excess of one hectare. The SEPP applies to the subject site as it has an area of 2.638 ha.

The modified development will not alter the previously favourable assessment, as no additional tree removal is required.

State Environmental Planning Policy (Sustainable Buildings) 2022

Schedule 1 of SEPP (Sustainable Buildings) 2022 sets out the standards for thermal performance and energy requirements for *BASIX development* in NSW.

The proposal is *BASIX development* (as defined by the EPA Regulation 2021), and a revised and compliant BASIX certificate is provided with this application.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

Chapter 2 – Vegetation in non-rural areas

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 aims to protect biodiversity values and preserve the amenity of non-rural areas, through the preservation of trees and other vegetation.

The modified development will not alter the previously favourable assessment, as no additional tree removal is required.

State Environmental Planning Policy No.55 – Remediation of Land

The subject site has historically been used for residential purposes and no change of use is proposed. There is no known reason to suspect the site may be contaminated and the consent authority can be satisfied that the land is suitable for the continued rural residential use.

5.4 Byron Local Environmental Plan 2014

Zoning

The site is zoned R5 – Large Lot Residential, pursuant to the provisions of the Byron Local Environment Plan 2014.

The proposed development is for alterations and additions to an existing dwelling and dwelling houses are permitted with consent in the R5 zone.



Figure 16. Extract from Byron LEP zoning map

Minimum Subdivision Lot Size

The site is mapped with a minimum subdivision lot size of 2.5 ha. The subject site comprises a compliant area of 2.638 ha. and no change is proposed.

Height of Buildings

The LEP restricts the height of any development on the subject site to 9 metres.

DA 2021/647 approved a building height of 6.198 metres (dwelling) and no change is proposed. The relocated studio proposes a compliant maximum height of 6 metres.

Heritage Conservation

The site is not a heritage item, located in proximity to a heritage item and is not located within a heritage conservation area.

Earthworks

Minimal earthworks are proposed to prepare the site for construction and standard erosion and sediment control measures will be implemented to ensure best practice procedures are followed.

Drinking Water Catchments

The subject site is located within the drinking water catchment. The proposed modification will not alter the previously favourable assessment as there will be no impact on water quality or flows on the property.

Essential Services

The subject site has existing tank water supply, electricity connection and vehicular access from Bougainvillea Drive, which will be retained.

The new bathroom in the gym will be connected to the existing onsite wastewater system.

Stormwater from the alterations and additions will be connected to the existing drainage infrastructure on the site.

5.5 Byron Development Control Plan 2014

The relevant sections of the Byron DCP 2014 are addressed below.

Purpose and Objectives

The modified development remains consistent with the aims and guiding principles of the DCP, Council planning policies and strategies and the principles of sustainable development, as specified in the DCP. The proposal is appropriate to the site and the locality and has been designed with fulfilment of these objectives as essential criteria.

Part B: Controls Applying Generally to Development Applications

B1 Biodiversity and B2 Tree and Vegetation Management

As described above the modified development will not alter the previously favourable assessment, as no additional tree removal is required.

B3 Services

The subject site has existing tank water supply, electricity connection, telecommunications and vehicular access from Bougainvillea Drive, which will be retained.

The new bathroom in the gym will be connected to the existing onsite wastewater system.

Stormwater from the alterations and additions will be connected to the existing drainage infrastructure on the site.

B4 Traffic Planning, Vehicle Parking, Circulation and Access

The DCP has an onsite carparking requirement of 2 spaces per dwelling house.

No change is proposed to the existing vehicular access from Bougainvillea Drive, gravel driveway or compliant double carport on the property.

B6 Buffers and Minimising Land Use Conflict

As the subject site is a rural residential property, it is not connected to reticulated sewer. The existing onsite wastewater management system will be retained which is located in a suitable, approved location on the site.

B8 Waste Minimisation and Management

Appropriate waste management will be undertaken during the demolition and construction process and all demolished materials will be recycled where possible.

The existing dwelling has appropriate waste storage areas which will be retained with the modifications proposed.

Part C: Further Controls Applying to Land with Specific Constraints and Environmental Characteristics

C4 Development in a Drinking Water Catchment

As described above the subject site is located within the drinking water catchment. The proposed modification will not alter the previously favourable assessment as there will be no impact on water quality or flows on the property.

Part D: Further Controls Applying to Specific Land Uses

D1 Residential Accommodation in Urban, Village & Special Purpose Zones

D1.2 General Provisions

Building Height Plane and Setbacks to Boundaries

The DCP requires minimum front setback of 4.5 metres and side and rear setbacks of 0.9 metres.

The subject site is a large, rural residential lot, with substantial setbacks to all boundaries.

The modified development retains the approved front setback of approx. 200 metres and proposes a compliant minimum side setback of 12.785 metres (north) and a compliant rear setback of 110.158 metres (west).

Character and Visual Impact

The proposed modification retained the character and design of the existing dwelling, ensuring it remains consistent with development in the locality.

Privacy is easily retained for the subject site and neighbours with setbacks far exceeding the minimum requirements.

The resulting development incorporates articulation to provide visual relief and proposed building materials include non-reflective metal roofing and metal wall sheeting.

Energy Efficiency

The development has achieved a compliant modified BASIX Certificate which accompanies this application.

D1.3 Dwelling Houses

Landscaping

The DCP requires a deep soil area of 25% of the site area which equates to 6595m² for the site area of 2.638 hectares. The modified development proposes a compliant deep soil area of 91% or 24,197.14m².

6. Section 4.15 considerations

The amendment to the approved development has been considered with reference to Section 4.15 of the Environmental Planning and Assessment Act 1979.

This assessment has found the proposed modification will not alter the impacts of the proposed development from that which was originally deemed to be acceptable and worthy of approval in the original development.

There will be no impacts as a result of the proposed modification, which simply seeks to relocate the approved studio and basketball court, including minor alterations and additions.

7. Development substantially the same

It is considered the modified development is substantially the same as that approved by DA2021/647, as it remains for *alterations and additions to existing dwelling house, new swimming pool, studio and basketball court*, notwithstanding the proposed modifications.

In a comparison to the previously approved development, the proposal will remain essentially and materially the same, as such, the development will be substantially the same notwithstanding the modifications that are sought.

8. Conclusion

The development, as modified, represents substantially the same development as that which was approved by Council in Development Consent 2021/647.

The proposed modifications do not raise any additional issues relating to the relevant provisions of:

1. The Rural Fires Act,
2. State Environmental Planning Policies,
3. The Byron Local Environmental Plan 2014,
4. The Byron Development Control Plan 2014,
5. The heads of consideration contained in Section 4.15 of the Environmental Planning and Assessment Act 1979.

When assessed under the relevant heads of consideration of s4.15 of the Environmental Planning and Assessment Act, the proposed development is meritorious and should be granted consent.

Planner Declaration

Document Control Table

Document Purpose:	Section 4.55(2) Modification Report	
Date	Prepared by	Approved by
12/06/2024	Naomi Lyons Senior Planner	Sarah McNeilly Director

Disclaimer

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