

Date: 1st June 2024

The General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2482

Dear Sir,

RE. S4.55 Modification to DA 10.2022.509.1 (PAN-284139)
18 Alidenes Road, Wilsons Creek
LOT: 14 DP: 755722

1. INTRODUCTION

This cover letter constitutes a S4.55 Modification and Statement of Environmental Effects (SEE) for the approved Rural Tourist Accommodation Comprising Four (4) Cabins plus Driveway and Associated Works under DA 10.2022.509.1 located at 18 Alidenes Road, Wilsons Creek (Attachment A). The submission includes the following attachments:

Attachment A: Approved DA consent
Attachment B: Revised Architectural Plan Set
Attachment C: Updated BASIX Certificate
Attachment D: Civil Design Drawings
Attachment E: Geotechnical Assessment Report
Attachment F: Bushfire Letter
Attachment G: Onsite Wastewater Management Report
Attachment H: S138 Completion of Works

The attached Bushfire Letter by Sustainable Home Solutions confirms that the proposal can retain the existing Bushfire Safety Authority already issued by the NSW RFS under DA 10.2022.509.1, and therefore the modification is not being submitted as integrated development (Attachment F).

The original DA 10.2022.509.1 included an onsite wastewater management report, however a S68 application was not submitted with the development application, and is required under Condition 13 prior to issue of a Construction Certificate. This application provides an updated Onsite Wastewater Management Report along with a S68 application to Council.

The project is a staged approval, that includes the following stages:

Stage 1: Completion of Driveway Access
Stage 2: Construction of Four (4) Rural Tourist Cabins, Earthworks and Associated Works

It is proposed to retain project staging in the modification application.

The driveway component in stage 1 has been reduced in scope to not include the overall property driveway design, as depicted within Attachment D – Civil Design Drawings.

The following sections of the report provide details of the proposed modifications and associated environmental assessment.

2. THE SITE AND LOCALITY

The subject site is located at 18 Alidenes Road, Wilsons Creek, lawfully recognised as Lot 14 DP 755722 and Lot 23 DP 115913, with a total area of 18.5877 hectares.

Allotment	Area
Lot 14 DP 755722	16.1874 ha
Lot 23 DP 115913	2.403 ha



Subject Site (Source: NSW SIX Maps)

3. THE PROPOSED MODIFICATION

The proposed modification to DA 10.2022.509.1 is considered under Section 4.55 of the NSW EPA ACT, that includes the following items:

- Proposed earthworks cut-to-fill pad with finished level of RL 41.182m AHD.
- Cabin building design changed from post-and-beam design to concrete slab-on-ground.
- Cabin building's location shifted eastwards by 4-metres and separation distance increased by 1.5-metres.
- Minor changes to cabin doors and windows layout.
- Revised internal driveway access design.
- Relocated car parking area.
- Relocated bushfire turn-around and bushfire water supply.
- Updated BASIX Certificate.

The proposed cabin buildings are essentially the same design and orientation and are in a very similar location with only minor changes.

4. STATUTORY PLANNING ASSESSMENT

4.1 State Environmental Planning Policies

The proposal does not constitute any of the NSW SEPPs to be readdressed compared to the original DA, however the proposal does include a revised BASIX Certificate as required under State Environmental Planning Policy (Sustainable Buildings) 2022.

4.2 Byron Local Environmental Plan 2014

The subject property is primarily mapped as containing **Zone RU2 – Rural Landscape** with an area of **RU1 – Primary Production** in the south of the site and a small area of **C2 – Environmental Conservation** zoned land along the site's northern boundary.

Zone RU2 - Rural Landscape

Objectives of zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

The proposal does not raise any significant issues regarding the viability of sustainable primary industries on the site. The proposal utilises a relatively small footprint on the site and leaves ample space for small-scale agricultural activities suitable for the size of the property. The proposal aligns with the owner's intent to enhance the natural resource base of the property.

- *To maintain the rural landscape character of the land.*

The proposal is located in a suitable portion of the rural property and has considered potential impacts on rural character and existing amenity values. One of the main objectives of the proposal is to maintain the rural landscape and preserve the scenic amenity of the site by locating the cabins in a location that is not easily visible from any nearby public viewing areas. The proposed modification involves earthworks on the site to generate a level pad for the footprint of the cabins and access, to generate better outcomes for pedestrian movements on the site and overall improved useability of the facility.

- *To provide for a range of compatible land uses, including extensive agriculture.*

The property is well positioned to accommodate the proposed tourist accommodation, ecological enhancement and small-scale agricultural activities.

- *To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.*

The proposal directly addresses this objective of the zone. The proposal will enable the owners to allocate additional resources to environmental protection & enhancement and promote environmental conservation to guests and the local community while carrying out their overall vision for the property.

- *To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.*

The proposed buildings have been well designed and located in a clustered format to reduce any adverse impacts on the rural scenic amenity of the locality. Additional landscaping will also improve the visual aspect of the proposal.

Clause 4.3 - Height of buildings

The objectives of this clause are as follows:

(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,

(b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,

(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

The BLEP 2014 height of buildings map depicts the site as having a 9-metre height limit for buildings above the natural ground level. The modified plan set shows the proposed cabins on the earthworks pad of which all of the proposed cabins will be constructed within the 9-metre height above the natural ground level.

Clause 6.2 – Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal modification includes changes to the original on-site earthworks including;

- Earthworks cut-to-fill pad
- Internal driveway and car parking construction; and
- Building foundations including concrete slab-on-ground and other services installation.

The proposed earthworks details are shown within Attachment D – Civil Design Drawings, which depict the footprint of the nominated cut-to-fill pad, that includes the implementation of earth batters at a suitable gradient, to result in a pad area for the construction of part of the internal driveway access, car parking areas and the cabin buildings. The Civil Design Drawings (Attachment D) provide details on the area of the earthworks and the levels involved to an accurate design standard. There will be no requirement for any earthworks material to leave the site.

Soil sedimentation and erosion control management measures will be implemented to prevent any significant detrimental impacts on the environment, which is shown within Attachment D. The proposed cut-to-fill earthworks are not located within or nearby to any mapped watercourses, with the proposal is located on an elevated area of the site. The proposal is not located within a recognised drinking water catchment.

A geotechnical report is included within Attachment E, that report that provides recommendations for earthworks conducted on the site, that will be adhered to.

Clause 6.6 - Essential Services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

- Water supply will be achieved by means of roof water harvesting and water tank storage as depicted on the plan set.
- Stormwater management will occur in accordance with Council requirements for stormwater management. An overflow drainage pit will be installed for the on-site water tanks.
- Electricity and telecommunications services are currently available to the property with services to be connected to the cabins to be undertaken by qualified professionals.
- Attachment G provides the details of the wastewater management system proposed which will be undertaken in accordance with Council design standards.
- Suitable vehicle access complying with Council requirements and NSW RFS requirements will be provided including bushfire turn-around.

4.3 Byron Development Control Plan 2014

Applicable sections of the Byron DCP 2014 are listed in the following table.

Control	Comment	Complies
Chapter B1 Biodiversity	<p>The cabin buildings are not located in a location that triggers any ecological red flags, as demonstrated within the attached Site Plan and approved VMP plan.</p> <ul style="list-style-type: none"> - There is HEV vegetation to the west of the proposed cabins while this area that includes some large native rainforest trees that will be protected during construction stage, with the nearest trees including four (4) rough-leaved elm and one (1) small-leaved tuckeroo, while there is also a large hoop pine upslope to the west. All of these important native trees will be protected under AS 4970-2009 during the earthwork's construction stage. <p>The proposal includes a Vegetation Management Plan for significant ecological protection and enhancement works on the subject site, as part of the rural tourist cabins project, within the designated Mullumbimby Creek Riparian Zone.</p>	Yes
Chapter B3: Services	<p>The site contains all the necessary services to supply the proposed cabins, as detailed within Section 4.2 of this report.</p>	Yes
Chapter B6: Buffers and Minimising Land Use Conflict	<p>The proposal does not raise any significant concerns in regards to buffers from any nearby land uses in the surrounding locality any different than the original development application.</p>	Yes
Chapter B9: Landscaping	<p>A concept landscaping plan has been approved with the original DA. A more detailed landscaping plan can be provided at the Construction Certificate stage.</p> <p>It is anticipated that the landscape plantings will utilise endemic plant species to provide for screening and privacy for the rural tourist cabins as well as providing for additional privacy for visitors.</p> <p>Landscape plantings will also comply with PFBP 2019.</p>	Yes
Chapter B13: Access and Mobility	<p>The proposal dedicates one of the cabins as the disabled access cabin, and is provided with:</p> <ul style="list-style-type: none"> - Disabled access car parking adjacent to the cabin; - All access pathway and ramp into the cabin - Internal fixtures and design layout to comply with all access design standards. 	Yes

Control	Comment	Complies
<p>Chapter B14: Excavation and Fill</p>	<p>The proposed modification includes a substantial increase in propose cut-to-fill earthworks on the site to establish a level pad for the proposed cabins, car parking area and internal driveway access, as depicted within Attachment B and D.</p> <p>The proposal results in a low-rise, single storey, level-set cluster of rural tourist cabin buildings that does not result in any overshadowing of adjoining land. The proposed new flat pad area will be gradually tied into the natural slopes of the site to generate a more natural landform appearance than the use of engineered retaining walls.</p> <p>The site is not easily viewable from public viewing areas due to topography and vegetation, while the propose landscaping plan will also contribute to improved landscape outcomes.</p> <p>A geotechnical assessment has been undertaken that provides recommendations for the safe undertaking of the cut-to-fill earthworks on the site to avoid hazards such as land slip.</p> <p>Earthen batters have been provided as a design solution to reduce the need of engineered retaining walls.</p> <p>All earthworks will be subject to and approved management of soil and drainage. Sedimentation management will be implemented during construction works.</p> <p>The proposal requires a variation to Prescriptive Measures under B14.2 with the proposed cut-to-fill earthworks exceeding the recommended 1-metre maximum height of excavation and fill, this is due to the existing natural slope of the land and the intended outcome to achieve a level pad for all cabin buildings.</p> <p>An earthworks plan showing the footprint of the proposed works has been provided within Attachment D, demonstrating the extent of the proposed earthworks on the site.</p>	<p>Variation sought.</p>
<p>Chapter C3: Visually Prominent Sites, Visually Prominent Development and View Sharing</p>	<p>The site of the proposed cabins is will buffered from public viewing areas by topography. Additional landscaping will also provide for additional screening and privacy. The cabins are sited below the top of the ridgeline, with a northerly aspect, there are limited viewpoints of the cabins in this direction.</p>	<p>Yes</p>

4.4 S4.15 Evaluation

- Natural ecosystems

The proposal has been well-considered in terms of the location of the access driveway and the rural tourist cabins, in terms of existing ecological values on the site. There are minimal to nil adverse impacts on the native ecosystems on the site, with significant benefits sought as part of carrying out the vegetation management plan.

- Rural character and scenic amenity

As demonstrated in the plan set, the proposal utilises a high-quality building design and has been located to avoid significant impacts on the rural character of the locality. The cabins are located not on the very top of the ridge and will be supplemented with native landscape plantings.

- Design, scale and density

The proposed development retains the positive elements of the character of the locality as shown in the attached plan set. The design elements and sustainable building materials and methods are highly appropriate for the site and the Byron Shire. The cabins are suitably clustered on the subject site and landscape plantings will enhance their visual appearance.

- Bushfire management

The proposed rural tourist cabins are located to benefit from a reasonably low fire risk and suitable bushfire management provisions can be implemented on the subject site.

- Wastewater management

All wastewater generated by the development will be treated and disposed of in an approved manner as described within the specialist report in Attachment D.

- Agricultural capability

The proposal does not diminish the agricultural values of the site, with sustainable farming remaining as one of the core land uses on the property

- Earthworks

The proposed modification includes the proposed cut-to-fill earthworks pad, that requires a variation to the Council's DCP prescriptive measures for excavation and fill heights, however the proposal can be implemented on the site in accordance with recommendations made by the geotechnical assessment and with suitable management plans in place; to prevent and significant and long-term adverse environment impacts on watercourses, slope stability, native vegetation and landscape values.

4.5 Environmental Planning and Assessment Regulation 2021

s100 Content of modification application

(1) A modification application must contain the following information—

(a) the name and address of the applicant,

Ricky Singh c/o Balanced Systems Planning Consultants

(b) a description of the development that will be carried out under the development consent,

Rural Tourist Accommodation Comprising Four (4) Cabins Plus Driveway and Associated Works

(c) the address and folio identifier of the land on which the development will be carried out,

18 Alidenes Road, Wilsons Creek

(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,

See above description of the proposed modification (Section 3).

(e) whether the modification is intended to—

(i) merely correct a minor error, misdescription or miscalculation, or

(ii) have another effect specified in the modification application,

The proposal is considered to be a modification under S4.55 subclause (2).

(f) a description of the expected impacts of the modification,

See above description in Section 4 of this report.

(g) an undertaking that the modified development will remain substantially the same as the development originally approved,

The proposal remains as substantially the same development as was originally approved.

(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,

A BDAR is not required.

(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,

Owners Consent is attached to the modification application.

(j) whether the modification application is being made to—

(i) the Court under the Act, section 4.55, or

(ii) the consent authority under the Act, section 4.56.

The proposed modification is submitted to Byron Shire Council.

(2) Subsection (1)(i) does not apply if the consent of the owner is not required under section 98.

Not applicable.

(3) If a modification application under the Act, section 4.55(1A) or (2) relates to BASIX development, or BASIX optional development if the development application was accompanied by a BASIX certificate, the application must be accompanied by—

(a) the BASIX certificate, or

(b) a new BASIX certificate if the current BASIX certificate is no longer consistent with the development.

The proposal does contain an updated BASIX Certificate.

5. CONCLUSION

The proposed S4.55 Modification application is made to Byron Shire Council on behalf of Mr Ricky Singh.

The proposed submission contains relevant attachments as referred to in the SEE report, if any additional information is required to assist with the application assessment, please contact our office to request any additional information.

Yours sincerely,

Balanced Systems Planning Consultants

