

Statement of Environmental Effects

Section 4.55 (1A) modification to 10.2023.404.1
to make changes to the Staging and delete
conditions relating to holiday letting.

27 Tyagarah Road TYAGARAH
LOT: 50 DP: 1291928

Introduction

This Statement of Environmental Effects was prepared by Matt Walker for and on behalf of the owners of the subject land. The purpose of this Section 4.55 report is to outline the minor modifications made to the staging of the development and to delete the conditions prohibiting use of the dwellings for short term holiday letting.

DA 10.2023.404.1 for 'Dwelling House, Secondary Dwelling and Swimming Pool' was approved by Council on 16 April 2024 however Council included staging of the development which was not applied for in the DA. Due to the imposition of certain conditions relating to the staging we now have to lodge this modification to enable the smaller dwelling (Secondary Dwelling) to be constructed first with the principal dwelling to be constructed in Stage 2.

Council also imposed conditions prohibiting either of the dwellings to be used as holiday letting or short term accommodation. Under the SEPP - Short Term Rental Accommodation, it is permissible to holiday let within approved Dwellings subject to certain requirements under the SEPP. It is also understood that from 23 September 2024, non-hosted STRA in the Byron Shire will be restricted to a maximum of 60 days a year. Subsequently this modification seeks to delete the conditions to enable the dwellings to be let under this policy for up to 60 days if the land owner goes away on holidays.

1. Section 4.55 (1A) under the EP&A Act

This application is lodged under Section 4.55(1)(a) of the EP & A Act 1979 as it pertains to modifications involving minimal environmental impact. In accordance with Clause 115 of the Environmental Planning and Assessment Regulation 2000, the following information is provided to meet the 'requirements for an application for modification of a development consent':

(1) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:

1. (a) the name and address of the applicant,

Matt Walker
59 Montwood Drive,
Lennox Head NSW 2478

(b) a description of the development to be carried out under the consent (as previously modified),

The original development consent described the proposal as:

'Dwelling House, Secondary Dwelling and Swimming Pool

(c) the address, and formal particulars of title, of the land on which the development is to be carried out,

27 Tyagarah Road TYAGARAH

LOT: 50 DP: 1291928

(d) a description of the proposed modification to the development consent,

It is proposed to make the following modifications:

A. Modification to the Staging of the development to enable construction of the Secondary Dwelling (smaller prefabricated dwelling) first and then construction of the Principal dwelling and Swimming pool as stage 2. Subsequently, modifications to conditions 5, 24, 26 and 46 will need to be applied.

B. Delete conditions 57 and 58 relating to use of the Dwellings:

57. Use of the dwelling house

The principal dwelling and secondary dwelling must not be holiday let or used as tourist and visitor accommodation or as short-term rental accommodation.

58. Use of Secondary dwelling

The Secondary dwelling is not to be holiday let or used as tourist and visitor accommodation or as short-term rental accommodation.

(e) a statement that indicates either:

(i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or

(ii) that the modification is intended to have some other effect, as specified in the statement,

The proposed modifications involves minor amendments to the staging of the construction, no changes proposed to the plans.

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

It is not anticipated that the modifications will result in any adverse impacts on the natural or built environments as only minor changes are proposed to the staging of the construction and deleting conditions to enable short term holiday letting of the dwellings. Short term letting of an approved dwelling is permitted without consent under the NSW

State legislation for up to 60 days from Sept 2024 which will enable the land owner to rent out the dwellings if she goes away on holidays.

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

The development that was assessed under the original Development Application remains predominantly unchanged. It is only proposed to alter staging of the construction to enable the movable dwelling to be constructed first (which will in effect be the principal dwelling under Stage 1) with the main dwelling to be constructed in Stage 2 (at which point it will become the principal dwelling). The other modification deletes the conditions prohibiting the short term rental of the dwellings which is permitted without consent under State legislation. The development remains substantially the same as that already approved under Development Consent No. 10.2023.404.1.

(g1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the Biodiversity Conservation Act 2016,

Not applicable.

(h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),

The land owner has provided consent to the lodgement of the Section 4.55 Application in this regard.

See attachment to application form.

(i) a statement as to whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56), and, if the consent authority so requires, must be in the form approved by that authority.

The application is not being made to the Court (under section 4.55) or to the consent authority (under section 4.56).

(2) The notification requirements of clause 49 apply in respect of an application if the consent of the owner of the land would not be required were

the application an application for development consent rather than an application for the modification of such consent.

Noted.

(3) In addition, if an application for the modification of a development consent under section 4.55 (2) or section 4.56 (1) of the Act relates to residential apartment development and the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), the application must be accompanied by a statement by a qualified designer.

Not applicable.

(3A) The statement by the qualified designer must:

(a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and

(b) provide an explanation of how:

(i) the design quality principles are addressed in the development, and

(ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and

(c) verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.

Not applicable.

(3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.

Not applicable.

(4) If an application referred to in subclause (3) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:

(a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or

(b) to improve the thermal performance of the building.

Not applicable.

(5) The consent authority may refer the proposed modification to the relevant design review panel but not if the application is for modification of a development consent for State significant development.

Not applicable.

(6) An application for the modification of a development consent under section 4.55 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by a BASIX certificate or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied), must also be accompanied by the appropriate BASIX certificate or BASIX certificates.

A new BASIX Certificate is not required as the proposed works do no effect the original BASIX.

(7) The appropriate BASIX certificate for the purposes of subclause (6) is:
(a) if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and
(b) if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.

No other modifications are required to the original BASIX Certificate.

(8) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.

Not applicable.

(9) The application must be accompanied by the relevant fee prescribed under Part 15.

The relevant fee is to be paid at the time of lodgement.

(10) A development consent may not be modified by the Land and Environment Court under section 4.55 of the Act if an application for modification of the consent has been made to the consent authority under section 4.56 of the Act and has not been withdrawn.

Not applicable.

2. Proposed modifications to development consent

The proposal seeks to make minor modifications to the staging of the development and to delete the conditions prohibiting use of the dwellings for short term holiday letting. Due to the imposition of certain conditions relating to the staging and requirement that the principal dwelling be constructed first, this modification seeks to enable the smaller dwelling (Secondary Dwelling) to be constructed first with the principal dwelling and swimming pool to be constructed in Stage 2.

Council also imposed conditions prohibiting the dwellings from being used as holiday letting or short term accommodation. Under the SEPP - Short Term Rental Accommodation, it is permissible to holiday let within approved Dwellings subject to certain requirements under the SEPP. It is also understood that from 23 September 2024, non-hosted STRA in the Byron Shire will be restricted to a maximum of 60 days a year. Subsequently this modification seeks to delete the conditions to enable either of the dwellings to be let under this policy for up to 60 days if the land owner goes away on holidays.

There are no other modifications to the approved consent and therefore it is argued that the proposed changes are minor and will not have an impact on amenity of the neighbourhood nor on adjoining neighbours.

3. Conclusion

This Statement of Environmental Effects is believed to adequately address all the issues relevant to Council's assessment of this application for modification to the staging of the development and deletion of the conditions prohibiting short term holiday letting. The proposal is consistent with the planning controls of Byron Shire Council and will not impact on privacy or amenity for adjoining land owners as there are no changes to the approved plans.

In consideration of the issues and information provided, approval of the Section 4.55 Application is requested in the manner prepared. It is understood that the deletion and modification of necessary conditions will be applied to the modified consent in accordance with this report.