



BSC File No: 270840D x 10.2016.757.3/#A2024/15586
Contact: Benjamin Grant

NOTICE OF DETERMINATION FOR MODIFICATION OF DEVELOPMENT CONSENT

Application No.	10.2016.757.3 PAN-412826
Applicant	Ardill Payne and Partners
Property	659 Left Bank Road MULLUMBIMBY CREEK LOT: 1 DP: 1274722
Development	Modify terms and conditions relating to the use of an existing building as a Secondary Dwelling
Determination	Approved Consent Authority - Council
Date of determination	27 March 2024

Under of the EP&A Act, notice is given that the above application to modify previous has been approved, subject to the conditions specified in this notice and as described in the Modification Summary

Reason for approval

The conditions imposed have been included in response to development considerations and to ensure a high standard of development having regard to the effect upon the environment and the amenity of the neighborhood.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 28 days from the date that you received this notice provided that an appeal under section 8.9 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.9 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

Signed on behalf of the Consent Authority

Benjamin Grant
Planner

Schedule 1 – Modification Summary

MODIFIED CONDITIONS OF CONSENT:

A. Delete the following description of the “Development” on the first page of the Notice of Determination

“Use of an Existing Building as a Secondary Dwelling”

B. Insert instead the following description of the “Development” on the first page of the Notice of Determination

“Use of an Existing Building as a Dwelling”

C. Delete conditions 8, 9, 16, 17, 18 and 19 of the Notice of Determination.

D. Insert the following conditions into the Notice of Determination in appropriate order:

7(A) Surrender of Development Consent 10.2016.758.1

Prior to the issue of any Occupation Certificate, Development Consent No. 10.2016.758.1 for a Dwelling House granted on 29 March 2017 is to be surrendered. This must be in the form of a written memorandum to Council from the owner of the subject property in accordance with Clause 67 of the Environmental Planning and Assessment Regulation 2021.

15A) Use of dwelling

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

STATEMENT OF REASONS

Council is required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.

Statement of Reasons	
S.4.55	The modifications are minor and the development as modified is substantially the same as the originally approved development, with no significantly detrimental environmental impacts.

How community views were addressed	
2	The application was publicly exhibited in accordance with the Community Participation Plan. No submissions were received.



Schedule 2 - Conditions of Consent

BSC File No:aby43370D x 10.2016.757.1/#A2017/7853
Contact: Benjamin Grant

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION
issued under the
Environmental Planning and Assessment Act, 1979 Section 81(1)(a)

Development Application No. 10.2016.757.1

Mr J R Olivier
ATTN: Rob Doolan
PO Box 36
BANGALOW NSW 2479

Email: rob@balancedsystems.com.au

Property description:	LOT: 1 DP: 301742 659 Left Bank Road MULLUMBIMBY CREEK
Development	Use of an Existing Building as a Dwelling
Determination	Consent granted subject to the attached schedule of conditions
Date determined:	30 March 2017
Consent to operate from:	3 April 2017
Consent to lapse on:	3 April 2022
Concurrent approvals:	Not issued with this consent

IMPORTANT INFORMATION

It is the responsibility of the applicant, landowner, builder, and any other contractors or agents involved with the development to read and understand all conditions of consent prior to commencing work.

The Environmental Planning and Assessment Act 1979 requires you to:

1. Obtain a **Construction Certificate** prior to the commencement of any **building works** as required by conditions of this consent. An application may be lodged with Council, or you may apply to a private accredited certifier for a Construction Certificate. An accredited certifier **must obtain Council's approval** to certain conditions of this development consent, where indicated before issuing the Construction Certificate. Additional fees are payable for this application.
2. Nominate a **Principal Certifying Authority (PCA)** which may be either Council or an accredited certifier and notify Council of that appointment. You **cannot lawfully** commence works without complying with this requirement.
3. Give Council at least two days notice of your intention to commence the erection of a building **before** commencing construction works. You cannot lawfully commence works without complying with this requirement.
4. Obtain an **Occupation Certificate** before commencing occupation or commencing to use the building or on the completion of other works including the erection of a sign. You cannot lawfully commence occupation or the use of a building without complying with this requirement. Additional fees are payable for this application.

S c h e d u l e o f C o n d i t i o n s

Schedule A - Deferred Condition/s pursuant to Section 80(3).

The following condition/s concern matters as to which the Council must be satisfied before the consent can be issued:

1) Deferred Commencement Consent

This consent does not operate until Council is satisfied that:

Building certificate

- a) A Building Certificate must be obtained from Byron Shire Council for the existing building approved for use as a secondary dwelling and shown on the plans in Schedule B, Condition 1 of this consent.

Evidence of compliance with the above condition must be provided to satisfy the Council as to those matters. If satisfactory evidence is produced in accordance with this requirement, Council will give notice to the applicant of the date from which the consent operates.

If Council has not notified the applicant within a period of 28 days after the applicant's evidence is produced to it, the Council is, for the purposes only of Section 97 of the Environmental Planning and Assessment Act 1979, taken to have notified the applicant that Council is not satisfied as to those matters on the date on which that 28 day period expires.

Schedule B - Conditions pursuant to Section 80(1)

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

Parameters of this Consent

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:
Lot 1 DP 301742 Illustration 1	Aerial Photo	GeoView	07/07/2016
100 Issue 4	Site Plan	Marc & Co	9.11.21
110 Issue 4	Ground Floor Plan	Marc & Co	9.11.21
111 Issue 4	First Floor Plan	Marc & Co	9.11.21
200 Issue 4	Elevations: North, West	Marc & Co	9.11.21
201 Issue 4	Elevations: South, East	Marc & Co	9.11.21

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

2) Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

- (1) For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:
 - (a) that the work must be carried out in accordance with the requirements of the Building Code of Australia ,
 - (b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- (2) This clause does not apply:
 - (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
 - (b) to the erection of a temporary building.
- (3) In this clause, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

3) Erection of signs

- (1) For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note: Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

4) **Notification of Home Building Act 1989 requirements**

- (1) For the purposes of section 80A (11) of the Act, the requirements of this clause are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989 .
- (2) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 109R of the Act, to comply with the technical provisions of the State's building laws.

5) **Bush fire safety measures**

This land is identified as being designated bush fire prone land and under section 79BA of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with "Planning for Bush Fire Protection 2006".

The development is approved subject to the following requirements applying:

1. The development proposal is to comply with the drawing titled 'Lot 1 DP 301742, Illustration 1' prepared by Balanced Systems Planning Consultants dated 7th July, 2016 as referred by Byron Shire Council on 7th February, 2017.

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the commencement of building works and in perpetuity the property around the building shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for Asset Protection Zones' as follows:
 - north for a distance of 100 metres as an IPA;
 - south for a distance of 31 metres as an IPA;
 - south east for a distance of 31 metres as an IPA; and
 - south west for a distance of 31 metres as an IPA.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. In recognition that no reticulated water supply is available to the development, a total of 20,000 litres fire fighting water supply shall be provided for fire fighting purposes. The NSW Rural Fire Service (RFS) acknowledges a dam will be utilised.
 - A hardened ground surface for fire fighting truck access is to be constructed up to and within 4 metres of the fire fighting water supply (dam).
 - A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply along with a 19 mm (internal diameter) fire hose and reel. The length of hose shall be sufficient to reach all external elevations of the building.
 - Pumps are to be shielded from the direct impacts of bush fire.
 - A Static Water Supply (SWS) sign shall be obtained from the local RFS and positioned for ease of identification by RFS personnel and other users of the SWS. In this regard:
 - i. Markers must be fixed in a suitable location so as to be highly visible; and
 - ii. Markers should be positioned adjacent to the most appropriate access for the water supply.
3. Any new electricity and gas supply shall comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

5. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006', except:
 - an alternative property access road is not required; and
 - a reversing bay may be provided in lieu of a loop road around the dwelling or a turning circle. Where a reversing bay is provided it shall be not less than 6 metres wide and 8 metres deep with an inner minimum turning radius of 6 metres and outer minimum radius of 12 metres.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

6. New construction shall comply with Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
7. The existing building is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2 mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

Landscaping

8. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

6) Rainwater tanks

Where rainwater tanks are provided, they must be installed in accordance with the "NSW Code of Practice, Plumbing & Drainage, 1 July 2006" and AS/NZS 3500 Parts 0-5.

The following conditions are to be complied with prior to occupation of the building

7) Compliance with bushfire conditions

Documentary evidence from a suitably qualified professional is to be submitted demonstrating that the bush fire conditions of this Notice of Determination have been complied with.

7(A) Surrender of Development Consent 10.2016.758.1

Prior to the issue of any Occupation Certificate, Development Consent No. 10.2016.758.1 for a Dwelling House granted on 29 March 2017 is to be surrendered. This must be in the form of a written memorandum to Council from the owner of the subject property in accordance with Clause 67 of the Environmental Planning and Assessment Regulation 2021.

8) Condition deleted by 10.2016.757.3 dated 27 March 2024

9) Condition deleted by 10.2016.757.3 dated 27 March 2024

10) Provide evidence of the following matters to demonstrate compliance with the Building Code of Australia for use of an existing building as a dwelling

Prior to the issue of any occupation certificate, the consent holder is to provide evidence to the Principal Certifying Authority of the following matters to demonstrate compliance with the Building Code of Australia for the use of an existing building as a dwelling.

- i) Vapour barrier under the slab on ground (Part 3.2.2.6 of BCA);
- ii) Termite barrier to AS3660.1;
- iii) Surface water drainage for slab on ground (Part 3.1.2.3 of BCA);
- iv) Structural engineer's certificate that the existing structure meets AS1170;
- v) Weatherproofing to external walls (BCA Part 3.5.3.3 for wall cladding boards and AS3700 for masonry);
- vi) Wet area waterproofing certificate for bathroom to AS3740 and Table 3.8.1.1 of BCA;
- vii) Glazing certificate for shower screen to AS1288;
- viii) Sewer service diagram and certificate of compliance for plumbing work in bathroom to AS3500 and evidence of an approval to operate OSMS;
- ix) Smoke alarms certificate to AS3786 and replace battery to ensure adequate operation;
- x) Cease the use of the loft area as a bedroom. The loft can only be used for storage. Should an access ladder be provided then a balustrade and gate should be installed at the top. Reduce gaps in windows to less than 125mm in the loft.

11) Approval to Operate required

In accordance with the Local Government Act, an Approval to Operate the onsite sewage management system must be obtained from Council prior to the issue of any occupation certificate. Forms may be downloaded from Council's website with '<http://www.byron.nsw.gov.au/on-site-sewage>'.

12) Compliance with Basix Certificate requirements

The development is to comply with Basix Certificate No. **751847S**, dated 21 September 2016. The Principal Certifying Authority must not issue an occupation certificate unless the commitments indicated in the BASIX Certificate have been installed in the building.

Minor changes to the energy efficiency measures may be undertaken without the issue of an amendment under Section 96 of the Act, provided that the changes do not affect the form, shape or size of the building.

13) Stormwater disposal

Stormwater must be collected and disposed of in a controlled manner such that stormwater flows are:

- a) Clear of buildings and infrastructure,
- b) Clear of effluent disposal areas,
- c) Not concentrated so as to cause soil erosion,
- d) Not directly to a watercourse, and
- e) Not onto adjoining land.

14) Works to be completed prior to issue of a Final Occupation Certificate

All of the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development, are to be completed and approved by the relevant consent authority/s prior to the issue of a Final Occupation Certificate.

Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Councils road/footpath reserve.

The following conditions are to be complied with at all times

15) Use of loft

The loft is not to be used as a bedroom, or for any other habitable purpose. The loft is only to be used for storage purposes.

15A) Use of dwelling

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

16) Condition deleted by 10.2016.757.3 dated 27 March 2024

17) Condition deleted by 10.2016.757.3 dated 27 March 2024

18) Condition deleted by 10.2016.757.3 dated 27 March 2024

19) Condition deleted by 10.2016.757.3 dated 27 March 2024

Notes

Bushfire Survival Plan

The proposed dwelling is considered to be isolated rural development. The RFS recommends a Bush Fire Survival Plan is prepared by the resident/s and is available at <http://www.rfs.nsw.gov.au> or the nearest Fire Control Centre.

Upgrades to existing building

Upgrades to the existing building may be required to meet the Building Code of Australia, bushfire conditions and other relevant Australian Standards. If any such work falls outside the scope of what can be undertaken as exempt development, a separate approval and construction certificate for such work may be required.

Work on neighbouring land to upgrade internal driveway

If any upgrades to the internal driveway which traverses Lot 4 DP 568386 are required to comply with conditions of this consent, this may require a separate approval from Council, depending on the nature of the work to be undertaken. Land owners consent must be obtained for any works undertaken on neighbouring land.

Principal Certifying Authority:

Work must not commence until the applicant has:-

- 1) appointed a Principal Certifying Authority (if the Council is not the PCA); and
- 2) given the Council at least two days notice of their intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- 3) notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

Occupation Certificate required:

The building must not be occupied until the Principal Certifying Authority has issued an Occupation Certificate.

Protection of the Environment Operations Act 1997:

It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution.

Penalties apply for failure to comply with development consents

Failure to comply with conditions of development consent may lead to an on the spot fine (generally \$600) being issued pursuant to section 127A of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 125 of the Environmental Planning & Assessment Act 1979.

Reasons

- To comply with the provisions of *Byron Local Environmental Plan 2014*.
- To ensure the development is completed in accordance with conditions of consent and approved plans.
- To preserve the environment and existing or likely future amenity of the neighbourhood.
- To ensure that the land or adjoining land is not damaged by the uncontrolled discharge of runoff from any buildings and paved areas that may be constructed on the land.
- To ensure adequacy of services to the development.
- To ensure public health and safety.
- To ensure compliance with Section 68 of the *Local Government Act 1993*.
- To ensure the building meets the Building Code of Australia and relevant Australian Standards.
- To protect the environment.
- To minimise the possible adverse effects from bushfires.
- To prevent future dealing in separately titled lands which are the subject of one development consent.

Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth) Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution.

Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

Are you dissatisfied with conditions of consent

If you are unhappy with conditions of consent discuss your concerns with the officer who dealt with your application. You may submit an application to Council to modify the consent under Section 96 of the Environmental Planning & Assessment Act, 1979.

You will need to provide reasons why the conditions should be changed or deleted. You may lodge a Section 96 application at any time after the notice of determination. If you are not happy with Council's decision on your request for modification, then you may appeal to the Land & Environment Court within six (6) months of the notification by Council.

Right of Review

You may request Council to review its decision under Section 82A of the Environmental Planning and Assessment Act, 1979. Such a request must be made within six (6) months of the date of the determination, or if there is an appeal to the Land and Environment Court, up to the time when the court hands down its decision. In reviewing its decision Council is able to consider alterations to the above plans, provided that the Development Application remains substantially the same as the one for which the consent was originally sought, and the changes are publicly notified.

NOTE: This clause does not relate to Integrated Development Applications, applications determined by the Joint Regional Planning Panel or applications previously considered under Section 82A of the Environmental Planning and Assessment Act 1979.

Right of Appeal

If you are dissatisfied with this decision, Section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.

Signed on behalf of the Consent Authority

Yours faithfully



Mr B J Grant
Planner

Dated: 27 March 2024

General Advisory Notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the Conditions of development consent: advisory notes. The consent should be read together with the Conditions of development consent: advisory notes to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.