



BSC File No: 268136D x 10.2021.647.2/#A2024/38432
Contact: Nick Horan

NOTICE OF DETERMINATION FOR MODIFICATION OF DEVELOPMENT CONSENT

Application No.	10.2021.647.2 PAN-443776
Applicant	Mr P Hrobat
Property	67 Bougainvillea Drive FEDERAL LOT: 1 DP: 1220595
Development	4.55(2) Modification to change the location of approved studio and basketball court
Determination	Approved Consent Authority - Council
Date of determination	30 July 2024

Under of the EP&A Act, notice is given that the above application to modify original 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

Nick Horan
Planner

Schedule 1 – Modification Summary

MODIFIED CONDITIONS OF CONSENT:

A. Modify condition 1 of the notice of Determination to read as follows:

1. Approved plans and supporting documentation.

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Description	Prepared by	Dated:
MOD03	Location Plan	Action Plans	16/04/2024
MOD04	Site Analysis	Action Plans	16/04/2024
MOD05	Site Plans	Action Plans	16/04/2024
MOD06	Existing ground floor plan	Action Plans	16/04/2024
MOD07	Existing first floor plan	Action Plans	16/04/2024
MOD08	Proposed studio floor plan	Action Plans	16/04/2024
MOD09	Studio Elevations	Action Plans	16/04/2024
MOD10	Area Calculations	Action Plans	16/04/2024
MOD11	Winter Solstice Shadow Diagrams 9am	Action Plans	16/04/2024
MOD12	Winter Solstice Shadow Diagrams 12Pm	Action Plans	16/04/2024
MOD13	Winter Solstice 3pm	Action Plans	16/04/2024

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.

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

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

The application did not require public exhibition in accordance with the Community Participation Plan.



**BYRON
SHIRE
COUNCIL**

PO Box 219 (70 Station Street)
Mullumbimby NSW 2482
☎ 02 6626 7000
✉ council@byron.nsw.gov.au
🌐 www.byron.nsw.gov.au

Schedule 2 - Conditions of Consent

BSC File No: 268136D x 10.2021.647.1/#A2021/47258
Contact: Mr S S Tarrant

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION
issued under the
Environmental Planning and Assessment Act, 1979 Section 4.18(1)(a)

Development Application No. 10.2021.647.1

Ms E Miles
28 TASMAN STREET
DEE WHY 2099

Email: ellamiles@gmail.com

Property description	LOT: 1 DP: 1220595 67 Bougainvillea Drive FEDERAL
Development	Alterations and Additions to Existing Dwelling House, New Swimming Pool, Studio and Basketball Court
Determination	Consent granted <i>Subject to the attached schedule of conditions</i>
Date determined	16 December 2021
Consent to operate from	16 December 2021
Consent to lapse on	16 December 2026

SCHEDULE 1. CONDITIONS OF CONSENT

Parameters of consent

1. **Approved plans and supporting documentation.**

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Description	Prepared by	Dated:
MOD03	Location Plan	Action Plans	16/04/2024
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MOD12	Winter Solstice Shadow Diagrams 12Pm	Action Plans	16/04/2024
MOD13	Winter Solstice 3pm	Action Plans	16/04/2024

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. **Support for neighbouring buildings**

If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made or builder must:

- Inform the neighbouring property owner immediately.
- Engage a structural engineer to determine any remedial works that may need to be undertaken.
- Preserve and protect the adjoining building from damage.
- If necessary, underpin and support the building in an approved manner.

3. **Conditions prescribed by the Regulation**

This development consent is subject to the conditions prescribed by the regulations in accordance with subsection 4.17(11) of the Environmental Planning and Assessment Act 1979. Conditions are provided in **Schedule 2** of this consent.

4. **Bush fire safety measures**

This land is identified as being designated bush fire prone land and under section 4.14 of the Environmental Planning and Assessment Act 1979, 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 2019".

The development is approved subject to the development complying with the requirements of report by Matthew Willis dated 18/10/2021.

The following conditions are to be complied with prior to issue of a Construction Certificate for building works

5. Compliance with BASIX Certificate requirements

The development is to comply with Basix Certificate No. A432379, dated 20 September 2021.

The commitments indicated in the Certificate are to be indicated on the plans submitted for approval of the Construction Certificate.

The plans submitted must clearly indicate all windows numbered or identified in a manner that is consistent with the identification on the Basix Certificate.

Minor changes to the measures may be undertaken without the issue of any amendment under Section 4.55 of the Act, provided that the changes do not affect the form, shape or size of the building.

Such plans and specifications must be approved as part of the Construction Certificate.

6. Long Service Levy to be paid

In accordance with Section 6.8 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable).

These payments can be made online at www.longservice.nsw.gov.au. Proof of payment is required to be submitted with the Construction Certificate application.

For further information regarding the Long Service Payment please refer to the website above.

7. Onsite Effluent Waste Water systems (Rural Swimming Pools)

The owner is responsible to ensure works do not conflict with the Onsite Waste Water System (Sewage Management Facility).

Details to be submitted with the Construction Certificate to demonstrate there is no conflict with both the disposal areas, plumbing and treatment/ storage/ septic tanks.

Where required, a S68 Application is to be submitted to Council to relocate any system prior to the issue of the Construction Certificate.

8. Details of pool fence required

The application for a Construction Certificate is to include plans and specifications that indicate the details of the fence around the swimming pool in accordance with the Swimming Pools Act 1992 and AS1926.1.

Such plans and specifications must be approved as part of the Construction Certificate.

9. Site Waste Minimisation and Management

All works must comply with the objectives of waste minimisation and waste management of Part B8.1.2 of DCP 2014.

10. Tree Removal

No trees or vegetation to be cleared or removed until a Construction Certificate has been issued.

11. Insect screening required

The application for a Construction Certificate is to include plans and specifications that provide effective insect screening to all windows, doors and other openings to all parts of the development used for habitable purposes.

Such plans are to be approved as part of the Construction Certificate.

The following conditions are to be complied with prior to any building or construction works commencing

12. Erosion and sediment measures

Where erosion of soils or runoff of any substance is likely to occur, erosion and sedimentation controls are to be in place in accordance with the Guidelines for Erosion & Sediment Control on Building Sites. This may include stockpiled materials such as sand, etc.

Any such measures that are deemed to be necessary because of the local conditions must be maintained at all times until the site is made stable (i.e. by permanent vegetation cover or hard surface).

The following conditions are to be complied with during any building or construction works

13. Construction times

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a. Monday to Friday, from 7 am to 6 pm.
- b. Saturday, from 8 am to 1 pm.

No construction work to take place on Sundays or public holidays.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

14. Construction Noise

Construction noise is to be limited as follows:

- a. For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b. For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)

Note: Council may impose on-the-spot fines for non-compliance with this condition.

15. Signs to be erected on building and demolition sites

A sign must be erected in a prominent position on the work site:

- a. stating that unauthorised entry to the work site is prohibited, and
- b. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

16. Builders rubbish to be contained on site

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

17. Fill to be retained on the subject land

Fill material must not encroach onto any adjoining land.

18. Prevention of water pollution

Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

19. Removal of asbestos

All asbestos wastes associated with removal of the existing building to be disposed of in accordance with the requirements of the Workcover Authority. The applicant/owner is to produce documentary evidence that this condition has been met.

Please note the Byron Resource Recovery Centre can not accept asbestos. You will need to arrange disposal at an alternate landfill site.

20. Maintenance of sediment and erosion control measures

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

21. Demolition

Any required demolition works must be undertaken in accordance with the relevant requirements of Australian Standard AS 2601–1991: The Demolition of Structures published by Standards Australia, and the WorkCover Authority of NSW.

22. Removal of demolition and other wastes

All wastes, including asbestos and lead-contaminated wastes, associated with these works are to be handled and disposed of in accordance with the requirements of the Work Cover Authority. The applicant/owner is to produce documentary evidence that this condition has been met. Wastes must be disposed of at a Licenced Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with the [NSW DECC Waste Classification Guidelines \(2008\)](#)

23. Muted bushland tones external finishes

To ensure the development is compatible with the surrounding environment, colours and finishes are to be muted bushland tones. In this regard white, light or bright colours are not permissible.

24. Aboriginal Relics

If any Aboriginal archaeological relics or items are exposed during construction works, the Applicant shall:

- a. immediately cease works;
- b. notify the NSW National Parks and Wildlife Service (NPWS);
- c. obtain any necessary permits and/or approvals to continue the work under the National Parks and Wildlife Act 1974.

The Applicant shall comply with any further request made by the NPWS to cease work for the purposes of archaeological assessment and recording.

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

25. 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 including approvals issued under the Local Government Act 1993 and the Roads Act 1993, 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.

26. Plumbing Works

All works in relation to any associated Section 68 Water and Sewerage approval must be fully complied with and have a Final Plumbing Certificate issued prior to the issue of an Interim or Final Occupation Certificate.

27. 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.

28. Swimming pool fencing

Swimming pool fencing is to comply with the requirements of the Swimming Pools Act 1992 and Regulations.

29. 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.

The following conditions are to be complied with at all times

30. Pool Safety Sign

The occupier of the premises must ensure that there is at all times a sign in the immediate vicinity of the swimming pool bearing the words 'Young children must be supervised when using this swimming pool'. The sign is to be a prominent position and be otherwise in accordance with clause 9 of the Swimming Pools Regulation.

A pool resuscitation sign is to be installed in a conspicuous location within the pool area to the satisfaction of the Principle Certifying Authority.

31. Pool backwash in rural areas

Pool water disposal and backwash is to be directed to a soakage trench located in such a location as to not cause any nuisance to adjoining properties or damage to any structures.

32. Swimming pool pump location

The filter pump is to be located such that noise from its operations does not cause a nuisance to adjoining residents. If necessary an acoustic enclosure must be provided around the pump to achieve the required noise attenuation.

33. Swimming Pool Fencing

Swimming pool fencing is to comply with the requirements of the Swimming Pool Act 1992 and Regulations at all times.

34. Use of Studio/Gym

The studio building is not to be used as a separate dwelling and use must not interfere with amenity. The studio building must not contain any lounge room, dining room, rumpus room, kitchen, bedroom or other habitable room and must not be used as a separate dwelling. The studio must only be used as a non-habitable workspace including activities that cannot be carried out by their nature within the residential house. The use of the studio building must not be conducted in such a manner as would interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or otherwise.

35. Use of Basketball Court

The basketball court to be used only between the hours of 8am and 6pm.

SCHEDULE 2. PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Part 6 Division 8A of the Environmental Planning and Assessment Regulation as at the date of this development consent as are of relevance to this development must be complied with:

Clause [98](#) [Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989](#)

Clause [98A](#) [Erection of signs](#)

Clause [98B](#) [Notification of Home Building Act 1989 requirements](#)

Clause [98C](#) [Conditions relating to entertainment venues](#)

Clause [98D](#) [Condition relating to maximum capacity signage](#)

Clause [98E](#) [Condition relating to shoring and adequacy of adjoining property](#)

Refer to the NSW State legislation for full text of the clauses under Part 6 Division 8A of the [Environmental Planning and Assessment Regulation 2000](#). This can be accessed at <http://www.legislation.nsw.gov.au>.

SCHEDULE 3. NOTES

Construction Certificate required:

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing. Application forms are available from the customer services counter or Council's website www.byron.nsw.gov.au

Principal Certifying Authority:

Work must not commence until the applicant has:-

- a. appointed a Principal Certifying Authority (if the Council is not the PCA); and
- b. given Council at least two days notice of the intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- c. 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 being issued pursuant to section 4.2(1) of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 9.50 of the Environmental Planning & Assessment Act 1979.

Plumbing Standards and requirements.

All Plumbing, Water Supply, Sewerage and Stormwater Works shall be installed in accordance with the Local Government Act 1993, Plumbers Code of Australia and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications. Any plumbing inspections required under a Section 68 Approval are to occur in accordance with that approval.

Relics Provisions- Advice

Attention is directed to the NSW Heritage Act 1977 and the provisions of the Act in relation to the exposure of relics. The Act requires that if:

- a) a relic is suspected, or there are reasonable grounds to suspect a relic in ground, that is likely to be disturbed damaged or destroyed by excavation; and/or
- b) any relic is discovered in the course of excavation that will be disturbed, damaged or destroyed by further excavation;

Those responsible for the discovery must notify nominated management personnel who will in turn notify the Heritage Council of New South Wales or its delegate, the Office of Environment and Heritage, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss139, 146).

Reason for conditions

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.

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 4.55 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 4.55 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 8.2 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.

Right of Appeal

If you are dissatisfied with this decision, Section 8.7 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



Nick Horan
Planner

Dated: 31 July 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.