

DA10.2019.396.1

# Modification Report

Dwelling House and Secondary Dwelling at 11 Gardenia Court Mullumbimby Lot 16 DP 875616

## 1 Development consent to be modified.

This application is to modify development consent **10.2019.396.1** for a Dwelling house and secondary dwelling at **11 Gardenia Court, Mullumbimby** (Lot 16 DP 875616) issued on **5 March 2020**.

## 2 Reason for modification application.

On 9 January 2024 an application for a construction certificate (**CFT-462713**) for the dwelling house was lodged on the NSW Planning Portal.

On 18 January 2024 a request for additional information for CFT-462713 was made by Byron Shire Council. The first point of this additional information request stated:

*Construction Certificate plans are inconsistent with stamped approved D.A plans. Please modify the Construction Certificate plans to reflect the stamped approved D.A plans or modify The Development Consent to reflect the Construction Certificate plans.*

## 3 Reason for change in dwelling house design

The design of the dwelling house has had to be changed from that approved by DA10.2019.396.1 (as reference in condition 1) for the following reasons:

- The dramatic increase in the cost of construction that occurred since 2019 has meant that the design of the dwelling house needed to be changed to enable it to be built within the budget of the applicant.

The changes are minor in nature given that the footprint, height, bulk and scale of the building and its location on the lot remain unchanged. The extent of changes are detailed in the next section of this report but in summary involve:

1. Omission of the ground floor studio.
2. Simplification of the garage construction.
3. Realignment of the driveway.

## 4 Extent of changes

The proposed changes to the dwelling design are detailed Table 1.

**Table 1 Proposed changes to design of Primary Dwelling House**

<b>Component changed</b>	<b>Reason</b>
Omission of Studio from ground floor.	To reduce construction costs and since the dwelling is likely to be rented out initially the omission of the studio prevents potential illegal occupation as a separate dwelling.
Realignment of garage door and driveway	To reduce construction costs and provide a more user-friendly vehicular access for tenants.
Omission of ground floor deck	To reduce construction costs
Reduced glazing on northern elevation of first floor	To improve thermal performance and meet structural requirements.
Change to stair configuration	To accommodate change to garage configuration.

Note: There are NO proposed changes to the secondary dwelling.

## 5 Modification of Consent for DA 10.2019.396.1

As a result of the changes to the primary dwelling house detailed in Table 1 the following amendments to the conditions of development consent 10.2019.396.1 issued on 5 March 2020 are requested.

### Condition 1

Condition 1 lists the plans approved by development consent DA10.2019.396.1. The plans for the primary dwelling house have needed to be changed as detailed in section 3 of this report.

It is therefore proposed to amend condition 1 to reference a new set of plans for the primary dwelling house. The proposed changes are detailed in Table 2 of this report.

The new set of plans will be consistent with those submitted for construction certificate CFT-462713.

There are no changes proposed to the plans for the secondary dwelling.

**Table 2 Proposed Changes to Condition 1 of Development Consent for DA10.2019.396.1**

Existing condition				Proposed change																																																								
<p><b>1 Development is to be in accordance with approved plans</b>                      The development is to be in accordance with plans listed below:</p> <table border="1"> <thead> <tr> <th>Plan No.</th> <th>Description</th> <th>Prepared by</th> <th>Dated:</th> </tr> </thead> <tbody> <tr> <td>17-2652/01</td> <td>Site Plan</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>8/12/2019</td> </tr> <tr> <td>17-2652/02</td> <td>Secondary Dwelling – Floor Plan</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>8/12/2019</td> </tr> <tr> <td>17-2652/03</td> <td>Secondary Dwelling – Elevations</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>8/12/2019</td> </tr> <tr> <td>17-2652/04</td> <td>Secondary Dwelling – Sections</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>8/12/2019</td> </tr> <tr> <td>17-2652/06</td> <td>Primary Dwelling – Ground Floor Plan</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>18/7/2019</td> </tr> <tr> <td>17-2652/07</td> <td>Primary Dwelling – Main Floor Plan</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>18/7/2019</td> </tr> <tr> <td>17-2652/08</td> <td>Primary Dwelling – Elevations 1</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>18/7/2019</td> </tr> <tr> <td>17-2652/09</td> <td>Primary Dwelling – Elevation 2</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>18/7/2019</td> </tr> <tr> <td>17-2652/10</td> <td>Primary Dwelling Sections</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>18/7/2019</td> </tr> <tr> <td>17-2652/15</td> <td>Landscaping Plan</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>18/7/2019</td> </tr> <tr> <td>17-2652/56</td> <td>Sight Distance Plan</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>23/2/20</td> </tr> <tr> <td>17-2652/60</td> <td>Stormwater Catchment Plan</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>7/12/19</td> </tr> <tr> <td>17-2652/61</td> <td>Stormwater Calculations &amp; Details</td> <td>Michael Samms &amp; Associates Pty Ltd</td> <td>7/12/19</td> </tr> </tbody> </table> <p>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.</p>				Plan No.	Description	Prepared by	Dated:	17-2652/01	Site Plan	Michael Samms & Associates Pty Ltd	8/12/2019	17-2652/02	Secondary Dwelling – Floor Plan	Michael Samms & Associates Pty Ltd	8/12/2019	17-2652/03	Secondary Dwelling – Elevations	Michael Samms & Associates Pty Ltd	8/12/2019	17-2652/04	Secondary Dwelling – Sections	Michael Samms & Associates Pty Ltd	8/12/2019	17-2652/06	Primary Dwelling – Ground Floor Plan	Michael Samms & Associates Pty Ltd	18/7/2019	17-2652/07	Primary Dwelling – Main Floor Plan	Michael Samms & Associates Pty Ltd	18/7/2019	17-2652/08	Primary Dwelling – Elevations 1	Michael Samms & Associates Pty Ltd	18/7/2019	17-2652/09	Primary Dwelling – Elevation 2	Michael Samms & Associates Pty Ltd	18/7/2019	17-2652/10	Primary Dwelling Sections	Michael Samms & Associates Pty Ltd	18/7/2019	17-2652/15	Landscaping Plan	Michael Samms & Associates Pty Ltd	18/7/2019	17-2652/56	Sight Distance Plan	Michael Samms & Associates Pty Ltd	23/2/20	17-2652/60	Stormwater Catchment Plan	Michael Samms & Associates Pty Ltd	7/12/19	17-2652/61	Stormwater Calculations & Details	Michael Samms & Associates Pty Ltd	7/12/19	<p>Amend the description of plan number 17-2652-01 from “Site Plan” to “Site Plan for Secondary Dwelling”.</p> <p>Delete the rows in the table that relate to plan numbers:</p> <ul style="list-style-type: none"> <li>• 17-2652/06 prepared by Michael Samms and Associated Pty Ltd</li> <li>• 17-2652/07 prepared by Michael Samms and Associated Pty Ltd</li> <li>• 17-2652/08 prepared by Michael Samms and Associated Pty Ltd</li> <li>• 17-2652/09 prepared by Michael Samms and Associated Pty Ltd</li> <li>• 17-2652/10 prepared by Michael Samms and Associated Pty Ltd</li> </ul> <p>Insert rows for the modified plans for the Primary Dwelling:</p> <ul style="list-style-type: none"> <li>• 17-2652-301</li> <li>• 17-2652-302</li> <li>• 17-2652-303</li> <li>• 17-2652-305</li> <li>• 17-2652-306</li> <li>• 17-2652-307</li> <li>• 17-2652-308</li> <li>• 17-2652-340</li> </ul> <p>Amend the description of plan number 17-2652-56 from “Sight Distance Plan” to “Sight Distance Plan for Secondary Dwelling”.</p>
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The proposed new condition 1 is as follows (the proposed inclusions are in green text and the proposed deletions are in red text):

**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
17-2652/01	Site Plan for secondary dwelling	Michael Samms and Associates Pty Ltd	8/12/2019
17-2652/02	Secondary Dwelling – Floor Plan	Michael Samms and Associates Pty Ltd	8/12/2019
17-2652/03	Secondary Dwelling - Elevations	Michael Samms and Associates Pty Ltd	8/12/2019
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<del>17-2652/10</del>	<del>Primary Dwelling – Sections</del>	<del>Michael Samms and Associates Pty Ltd</del>	<del>18/7/2019</del>
17-2652-301	Site Plan for Primary Dwelling	Michael Samms and Associates Pty Ltd	17/5/21
17-2652-302	Primary Dwelling - Ground Floor Plan	Michael Samms and Associates Pty Ltd	17/5/21
17-2652-303	Primary Dwelling – First Floor Plan	Michael Samms and Associates Pty Ltd	17/5/21
17-2652-305	Primary Dwelling -Elevations 1	Michael Samms and Associates Pty Ltd	17/5/21
17-2652-306	Primary Dwelling – Elevations 2	Michael Samms and Associates Pty Ltd	17/5/21
17-2652-307	Primary Dwelling - Sections 1	Michael Samms and Associates Pty Ltd	17/5/21
17-2652-308	Primary Dwelling – Sections 2	Michael Samms and Associates Pty Ltd	17/5/21
17-2652-340	Primary Dwelling – BASIX commitments	Michael Samms and Associates Pty Ltd	17/5/21
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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.*

### **Condition 7 (new BASIX)**

Condition 7 references the BASIX certificate for the proposed development. The changes to the design of the primary dwelling house have been supported by a new BASIX certificate.

It is intended that BASIX Certificate No. 1014537M dated 24/7/2019 will continue to apply to the secondary dwelling when it is built at some time in the future.

It is proposed to amend condition 7 to reference the new BASIX certificate for the modified design of the primary dwelling house.

<b>Existing condition</b>	<b>Proposed change</b>
<p><b>7 Compliance with BASIX Certificate requirements</b></p> <p>The development is to comply with BASIX Certificate No. 1014537M, dated 24/7/2019.</p> <p>The commitments indicated in the Certificate are to be indicated on the plans submitted for approval of the Construction Certificate.</p> <p>The plans submitted must clearly indicate all windows numbered or identified in a manner that is consistent with the identification on the BASIX Certificate.</p> <p>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.</p> <p>Such plans and specifications must be approved as part of the Construction Certificate.</p>	<p>Insert a reference to the new BASIX certificate (No. 1733666S dated 28 January 2024) for the modified primary dwelling house.</p>

The proposed new condition 7 is as follows (the proposed inclusions are in **green text**):

#### **7 Compliance with BASIX Certificate requirements**

*The development is to comply with BASIX Certificate No. 1014537M, dated 24/7/2019 for the secondary dwelling and BASIX Certificate No.1733666S dated 28 January 2024 for the primary Dwelling House.*

*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.*

The commitments in the new BASIX certificate (No. 1733666S) generally reflect the commitments in the original BASIX Certificate No. 1014537M dated 24/7/2019 but it should be noted that the modified design of the primary dwelling house complies with the current more stringent BASIX requirements which came into effect on 1 October 2023.

Consequently, the modified design of the primary dwelling house demonstrates improved water and energy usage and thermal performance. The commitments in the new BASIX certificate which improve on the original design are as follows:

- All fixtures (shower heads, toilets, kitchen taps and bathroom taps) are 4 star or better (original design and BASIX certificate nominated 3 star shower heads and toilets).
- The size of the rainwater tank has been increased from 2000L to 3000L minimum and connected to the toilets.
- External wall insulation R value has increased from R25 to R2.7.
- Low solar gain Low E aluminium glazed windows.
- Electric stove top and oven replacing gas fixtures which will reduce the amount of carbon dioxide produced.
- A 6.6kW photovoltaic alternative energy system to power the electrical appliances and reduce CO2 production from grid sourced electricity.

## 6 Statutory considerations

[Section 4.55 \(1A\) of the Environmental Planning and Assessment Act 1979](#)

The application is being made under Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979.

The modification will have no additional environmental impact for the following reasons:

- The footprint of the primary dwelling house is largely unchanged with a minor reduction in the ground floor footprint as a result of the deletion of the deck.
- The location on the building on the lot remains the same.

- The height of the primary dwelling house remains the same. The changes have been made to the ground floor, while the upper floor design has remained largely unchanged except for a change of the materials used for construction of the southern wall from concrete block to clad timber frame.
- The bulk and scale of the primary dwelling house is largely unchanged with the ground floor being reduced in size.

The dwelling is substantially the same as the approved dwelling with the exception of the reduced ground floor components. The dwelling house remains a two storey single dwelling.

No changes are proposed to the secondary dwelling.

## 7 Byron LEP 2014

The proposed modification does not result in any inconsistencies with the Byron Local Environmental Plan 2014.

### Clause 4.3 Maximum Building Height

The building still complies the maximum 9m maximum building height limit in clause 4.3.

### Clause 4.4 Floor Space Ratio

The slight reduction in floor area of the ground floor as a result of the omission of the studio will mean that the entire development (primary dwelling and secondary dwelling) still complies with the maximum floor space ratio of 0.5 :1.

Note other provisions of the Byron LEP 2014 which related to the original entire development were addressed in development application 10.2019.396.1 which was approved on 4 March 2020.

## 8 Byron DCP 2014

The proposed changes to the design of the primary dwelling house will not result in inconsistencies with the Byron DCP 2014. The provisions of Byron DCP 2014 which are relevant to the proposed modification of the primary dwelling design are addressed in this section.

### Chapter B4 Traffic Planning, Vehicle parking, Circulation and Access

The proposed development complies with the requirements of this chapter. The principal dwelling will still provide two (2) car parking spaces, as required by the DCP, in the ground floor garage/carport. This garage will be accessed by a driveway from the western boundary of the site. The driveway has been positioned in this location to take advantage of the natural levels of the land and the adjoining road and minimise the extent of cut and fill needed.

## Chapter B14 Excavation and Fill

Due to the sloping nature of the site, excavation will still be necessary to construct the primary dwelling house. The ground floor area has been redesigned to minimise the extent of excavation required in the southeast corner of the building. In accordance with B14.2 excavation within the building footprints will be approximately 2m in depth. This is depicted on the section plans.

The modified dwelling plan retains the car parking below the living areas as originally to minimise the building footprint and take maximum advantage of the slope of the site.

## Chapter D1 Residential Accommodation in Urban Village and Special Purpose Zones

### *D1.2.1 Building Height Plane*

Since there were no changes to the upper storey of the primary dwelling there are no changes to the approved relationship between the approved dwelling design and the building height plane.

### *D1.2.2 Setbacks from Boundaries*

The proposed modification does not alter the approved footprint of the original dwelling design which complied with the DCP setback requirements.

### *D1.2.3 Screening the Underfloor Space of Buildings*

The subfloor area of the primary dwelling will not be seen from the street or neighbouring properties. The subfloor area will however be lined to cover the structural timbers and partially enclosed by the concrete block walls. Native plants will be planted along the western property boundary to further screen the subfloor from the street and give the impression that the building is hovering over the site.

### *D1.2.4 Character and Visual Impact*

The proposed modified primary dwelling design achieves the performance criteria for this DCP requirement for the following reasons:

- The design of the proposal addresses the climate. The dwelling house is north facing, has large eaves, and covered outdoor areas and decks. The windows are placed to maximise summer breezes from the northeast and minimise winter winds from the south.
- The building facade includes articulation, transparent structures such as decks and a mix of materials. The proposed landscaping will complement the buildings and contribute to the attractiveness of the streetscape.
- The building is oriented to the north and screening to the east and west maintains the privacy of both the occupants and the neighbouring properties.
- The proposed building is consistent with the bulk and scale of the surrounding built environment and has been designed to minimise cut and fill and take advantage of the slope of the lot.

- The principal dwelling achieves articulation and fenestration through changes in building materials, and steps in the wall planes.
- A deck is to provide open space and protection from weather. Large eaves are provided to the north and south. The folded roof on the principal dwelling is designed to achieve privacy both for occupants and neighbours as well as protecting the building from the western summer sun; and
- The building materials will be compatible with surrounding buildings. The subfloor and lower storey will be constructed in masonry while upper storeys will be light weight timber frame with various cladding. Colorbond roofing in a medium colour will be used to minimise glare and reflection to residences located higher on the hill while also minimising absorption of heat.

#### *D1.2.6 Balconies*

The proposed balcony is consistent with the character of the building and surrounding development in terms of the dimensions, proportion and materials.

The balcony for the principal dwelling is located in the middle of the site to take maximum advantage of views and solar access. It is designed with a folded roof screen at both the eastern and western ends to ensure privacy both for the occupants and the neighbours.

### **D1.3 Dwelling Houses**

#### *D1.3.1 On-Site Car Parking*

In accordance with the requirements of Chapter B4, two (2) car spaces will still be provided within the garage of the primary dwelling. The location of the garage has been chosen to take advantage of the natural contours of the land.

#### *D1.3.2 Landscaping*

Landscaping will be generally in accordance with the landscaping plan. The proposed changes to the design of the primary dwelling will not significantly change the intended landscaping.

### **D1.4 Secondary Dwellings**

This modification application does not propose any changes to the approved secondary dwelling.

## **Chapter E3 – Mullumbimby**

The site is located within Precinct 5 of the Mullumbimby Urban Area as shown on map E3.1 in Chapter 3. The relevant provisions of Chapter 3 – Mullumbimby of the Byron DCP 2014 are as follows:

### **E3.3 Character Bulk and Scale of development.**

The design of the primary dwelling on the site reflects the bulk and scale of the surrounding low density residential development.

The proposed primary dwelling remains a two storey structure comprising a garage on the lower floor and living areas on the upper floor. Again, the configuration of the building is designed to minimise building footprint and take maximum advantage of the sloping site and the northern aspect of the lot.

#### E3.4 Urban Design and Infill Development

There are no character statements in Appendix 3.1 of chapter 3 which apply to precinct 5 and hence the subject land.

## 9. State Environmental Planning Policies

Many state environmental planning policies (SEPPs) apply to the site. The SEPPs which are relevant to the modification of the design of the primary dwelling are discussed below.

#### SEPP (Sustainable Buildings)2022

A new BASIX certificate for the revised design of the Primary dwelling is included with this modification application.

The relevant BASIX commitments have been included on the plans as required.

## 10. Assessment of Impact

In accordance with section 4.15 of the *Environmental Planning and Assessment Act 1979* the consent authority is to consider the following matters.

#### 4.15(1)(a)(i) The provisions of any environmental planning instrument

The provisions of State Environmental Planning Policies and the Byron LEP 2014 have been addressed previously in this report.

#### 4.15(1)(a)(ii) The provisions of any proposed environmental planning instrument

There are no proposed or draft environmental planning instruments that are relevant to the proposed development or the land at the time of submission of this development application.

#### 4.15(1)(a)(iii) The provisions of any development control plan

The provisions of the Byron Development Control Plan 2014 which are relevant to the revised design of the primary dwelling have been addressed previously in this report.

#### 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements or draft planning agreements that have been entered into in relation to the proposed development or the site.

#### 4.15(1)(a)(iv) The provisions of the regulations

There are no matters prescribed by the regulations that relate to the proposed development or the site.

#### 4.15(1)(b) The likely impacts of the development on the natural and built environments, and social and economic impacts in the locality.

##### *Natural and built environments*

The proposed changes to the design of the primary dwelling will have no significant adverse impact on the natural or built environments compared with the primary dwelling design approved with development consent 10.2019.396.1 determined 4 March 2020.

##### *Social and economic impacts*

The proposed changes to the design of the primary dwelling will have no adverse social or economic impacts compared with the primary dwelling design approved with development consent 10.2019.396.1 determined 4 March 2020. In fact the changed design will make the construction of the dwelling house affordable and therefore possible thereby increasing the housing supply in the existing urban area of Mullumbimby.

#### 4.15(1)(c) The suitability of the site

The site is suitable for the proposed development as evidenced in the approval of the original development application 10.2019.396.1 and the proposed changes to the design of the primary dwelling do not change this fact.

#### 4.15(1)(d) and (e) Submissions and public interest

It is understood there were no submissions received to the original development application. The proposed changes to the design of the primary dwelling will not significantly change the relationship of the building to surrounding properties.