



Our Ref: DOC21/211623
Your Ref: E-mail dated 17/3/2021

General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2482

Attention: Mr Sam Tarrant

Dear Mr Arnold

RE: Byron Shire Local Environmental Plan 2014 - Housekeeping Amendments Planning Proposal

Thank you for your e-mail dated 17 March 2021 about the proposed housekeeping amendments to the Byron Shire Council's Local Environmental Plan 2014 (LEP 2014) seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment, Energy and Science (EES) Group of the Department of Planning, Industry and Environment. I appreciate the opportunity to provide input.

The EES Group has responsibilities relating to biodiversity (including threatened species and ecological communities, or their habitats), National Parks and Wildlife Service estate, climate change, sustainability, flooding, coastal and estuary matters.

We understand the objective of the Planning Proposal (PP) is to amend several maps and provisions contained within LEP 2014, following its most recent periodic review.

We have reviewed all 12 proposed changes contained within the PP. Each item is addressed in detail in **Attachment 1** to this letter.

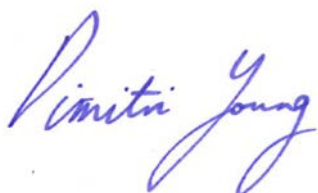
In summary, the BCD recommends that prior to finalising the planning proposal the Byron Shire Council should:

1. Reconsult with the relevant agencies once the wording and/or mapping of the amendments under item 1 of the planning proposal have been prepared that seek to permit secondary dwellings or dual occupancies only where permitted in accordance with the relevant rural community title approval.
2. Consider reducing the lot size (i.e. those specified in Column 3) within which detached (and attached) dual occupancies are permissible with consent under Item 3 of the planning proposal, to 1000 – 2000 m² to enable additional dwellings to be permitted within large lot residential zones, whilst retaining the desired spacious quality of large lot residential areas
3. Include the words 'and certain environmental' into sub clause 1(b) under Item 4 of the planning proposal so that it reads as follows, '*1(b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and certain environmental zones*'.

4. Consider prohibiting the construction of a dwelling within the E2 or E3 portion of a lot created by a subdivision consolidates all land zoned E2 or E3 into that lot under Item 4 of the planning proposal, where no dwelling already exists on that lot.

If you have any questions about this advice, please do not hesitate to contact Ms Nicky Owner, Senior Conservation Planning Officer, at nicky.owner@environment.nsw.gov.au or 6659 8254.

Yours sincerely



4 May 2021

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Enclosure: Attachment 1 - Detailed BCD Comments - Byron Shire Local Environmental Plan 2014 - Housekeeping Amendments Planning Proposal

Attachment 1: Detailed BCD Comments – Byron Shire Local Environmental Plan 2014 - Housekeeping Amendments Planning Proposal

We have reviewed all 12 proposed changes contained within the PP. Each item is addressed in the following sections of this submission.

Item 1 – Controlling secondary dwellings and dual occupancies on multiple occupancy and rural community title developments.

BCD Comment:

We understand the council intends to amend LEP 2014 to permit secondary dwellings or dual occupancies only where permitted in accordance with the relevant rural community title approval.

While the intent of these changes is discussed within the PP, no specific provisions have been put forward. Rather, the council has advised that its staff are working with the Department to determine how best to achieve this outcome within the LEP 2014. As a result, it is difficult for the BCD to comment on the potential implications of any future changes on biodiversity or other matters of statutory interest.

As such, the BCD is of the view that it would be appropriate for the council to reconsult with the relevant agencies once the wording and/or mapping of the amendments under this item have been prepared, prior to finalising this PP.

Item 2 – Remove Clause 4.1F from the Byron LEP 2014.

We understand the council has recently received a development application submitted following the misinterpretation of this clause. Upon subsequent review, the council has determined this clause has not been applied previously and is not providing for any need in the shire.

BCD Comment:

Given clause 4.1F has not been applied for its intended purpose since its commencement, and to remove any risk of further misinterpretation, the BCD supports the proposed removal of this clause from LEP 2014 2014.

Item 3 – Insert a minimum lot size for Attached Dwellings in R2 and R3 zones and Dual Occupancies (detached) in the R5 zone – Clause 4.1E

BCD Comment:

The proposed changes appear appropriate to achieve planned residential densities in low and medium density residential zones.

However, we are of the view that increased densities may be suitable and appropriate in large lot residential areas. As such, consideration should be given to reducing the lot size (i.e. those specified in Column 3) within which detached (and attached) dual occupancies are permissible with consent, to 1000 – 2000 m². This would result in additional dwellings being permitted within large lot residential zones, whilst retaining the desired spacious quality of large lot residential areas.

Item 4 – Include Zone E3 Environmental Management in the application of Clause 4.2A and include E2 Environmental Conservation and E3 Environmental Management in 4.1D

BCD Comment:

For Clause 4.2A, we suggest the inclusion of the words 'and certain environmental' into sub clause 1(b) as per the following:

1(b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and certain environmental zones.

The BCD supports the proposed changes to Clause 4.2A to enable the replacement of lawfully erected dwellings on E3 zoned lands.

In relation to the proposed amendments of Clause 4.1D, we support the proposal for a subdivision that results in the creation of one lot (the resulting lot) that contains all land zoned E2 or E3. Such a scenario has multiple benefits, including the ongoing management of environmentally zoned land in a consistent manner by one landowner and/or land manager.

However, it would be our strong preference that where such a lot is proposed, and where no dwelling already exists, the construction of a dwelling within the E2 or E3 portion of the lot should not be permissible.

Item 5 – Include roadside stall in Schedule 2 Exempt Development

BCD Comment:

The BCD supports the proposed changes.

Item 6 – Introduce Artisan Food and Drink Industry as a permissible use with consent in RU2 Rural Landscape Zone.

BCD Comment: The BCD supports the proposed changes.

Item 7 – Amend clause 4.1A and 4.1AA to ensure a minimum lot size applies to Community Title and Strata subdivision in species purpose and environmental zones.

BCD Comment:

We support the proposed amendments that aim to reduce fragmentation by subdivisions that create additional dwelling entitlements, particularly those that may jeopardise the achievement of the objectives of environmental zoned lands.

Item 8 – Amendment of Byron LEP 2014 2014 Land Zoning Map – LZN_003CC to rezone residual B1 Neighbourhood Centre zoning on a residential property (Lot 0 SP 45048) to R3 Medium Density Residential as contained in Appendix 1. Consequential amendments to the FSR and MLS maps to reflect the residential zoning.

BCD Comment:

We have examined the mapping and aerial photography of the relevant lots and support the proposed changes.

Item 9 – Amendment to Byron LEP 2014 Land Zoning Map – LZN_003A to correct cadastre issues and zone lots entirely RU5 as contained in Appendix 1.

BCD Comment:

We have examined the mapping and aerial photography of the relevant lots and support the proposed changes.

Item 10 – Amendment to Byron LEP 2014 2014 Land Zoning Map – LZN_003CB to remove residual SP2 zoning from a number of lots as contained in Appendix 1.

BCD Comment:

We have examined the mapping and aerial photography of the relevant lots and support the proposed changes.

Item 11 – Amendment to Byron LEP 2014 Land Zoning Map LZN_002BA to correct cadastre issues and zone a residential lot entirely R2 as contained in Appendix 1. Consequential amendments to the FSR and MLS maps to reflect the residential zoning.

BCD Comment:

This amendment relates to proposed changes to a lot already used for residential purposes. We have examined the mapping and aerial photography of the relevant lot and support the proposed changes.

Item 12 - Amendment of Byron LEP 2014 2014 Acid Sulfate Soils Map – ASS_002 to remove acid sulfate soils mapping from Lot 4 DP 810118 as contained in Appendix 1.

BCD Comment:

Given it has been confirmed there are no acid sulfate soils present on this site, it is appropriate to remove acid sulfate soil mapping over Lot 4.

BCD Recommendations

The BCD recommends that prior to finalising the planning proposal the Byron Shire Council should:

1. Reconsult with the relevant agencies once the wording and/or mapping of the amendments under item 1 of the planning proposal have been prepared that seek to permit secondary dwellings or dual occupancies only where permitted in accordance with the relevant rural community title approval.
2. Consider reducing the lot size (i.e. those specified in Column 3) within which detached (and attached) dual occupancies are permissible with consent under Item 3 of the planning proposal, to 1000 – 2000 m² to enable additional dwellings to be permitted within large lot residential zones, whilst retaining the desired spacious quality of large lot residential areas
3. Include the words ‘and certain environmental’ into sub clause 1(b) under Item 4 of the planning proposal so that it reads as follows, ‘*1(b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural and certain environmental zones*’.
4. Consider prohibiting the construction of a dwelling within the E2 or E3 portion of a lot created by a subdivision consolidates all land zoned E2 or E3 into that lot under Item 4 of the planning proposal, where no dwelling already exists on that lot.