

General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Attention: Mr Sam Tarrant

Dear Mr Arnold

RE: Planning Proposal 26.2022.1.1 Amendment of Byron Local Environmental Plan 2014 Multiple Occupancies and Rural Community Title

Thank you for your referral dated 17 June 2022 about the planning proposal to amend the Byron Shire Local Environmental Plan 2014 to enable secondary dwellings and dual occupancies to be permitted with consent on rural Multiple Occupancies (MO) and Community Title (CT) sites seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment and Heritage Group of the Department of Planning and Environment. I appreciate the opportunity to provide input.

We have reviewed the documents supplied and advise that we have no objection to the proposal for the reasons discussed in **Attachment 1** to this letter.

However, we have noted that future CT subdivisions could potentially enable the Rural Boundary Clearing Code entitlement, which could result in the removal of 'red flagged areas' as defined in the Byron Shire Development Control Plan 2014. Therefore, for future CT subdivisions that do enable the Rural Boundary Clearing Code entitlement, we recommend the council:

1. apply a condition of the consent or approval under the *Environmental Planning and Assessment Act 1979* that identifies and requires the retention and management of the 'red flagged area' for conservation purposes, and
2. require an 'ecological setback' as defined in the Byron Shire Development Control Plan 2014 to separate the retained 'red flagged area' from the developable area that incorporates the allowable clearing distance or require an instrument under Section 88B of the *Conveyancing Act 1919* to identify and require the retention and management of the 'red flagged area' for conservation purposes in order that the Rural Boundary Clearing Code is switched off in this instance.

If you have any questions about this advice, please do not hesitate to contact Ms Rachel Lonie, Senior Conservation Planning Officer, at rachel.lonie@environment.nsw.gov.au or 6650 7130.

Yours sincerely



7 July 2022

DON OWNER
A/Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Enclosure: Attachment 1: Detailed BCD Comments – Planning proposal to amend the Byron Shire Local Environmental Plan 2014 - multiple occupancies and rural community

Attachment 1: Detailed BCD Comments – Planning proposal to amend the Byron Shire Local Environmental Plan 2014 - multiple occupancies and rural community

The objective of this planning proposal is to amend the Byron Local Environment Plan (LEP) 2014 to enable secondary dwellings and dual occupancies to be permitted with consent on rural Multiple Occupancies (MO) and Community Title (CT) sites. The proposal aims to enable a small amount of additional housing within rural communities to partly address the current housing crisis in the shire.

The proposal involves:

- amending Clause 4.1B – *Minimum subdivision lot size for multiple occupancy or rural community title developments* to remove the restriction of one dwelling per lot (clause 3a(c)). This would enable a rural CT lot to submit a development application for a dual occupancy or secondary dwelling.
- amending Clause 4.2B - *Maximum number of dwelling houses or dual occupancies on multiple occupancy or rural landsharing community developments* to clarify that only a single dual occupancy or secondary dwelling can be permitted on a MO. It also removes references to rural community title.

The planning proposal report states there are approximately 37 approved rural community titles. The planning proposal report states dual occupancies and secondary dwellings would only be suitable in zones where they are currently permitted with consent.

Our review of the mapped areas identifying MOs in the *Multiple Occupancy and Community Title Map* (as outlined in a thick green line) is that while most of the land is zoned RU2 Rural Landscape or RU1 Primary Production, many of the MO lots contain Deferred Matters (DM) land that are currently excluded from the mapped area. We understand the council has reviewed the zoning of the DM lands and has determined the most appropriate zone in accordance with the *Northern Councils E Zone Review - Final Recommendations Report*.

As the E Zone Review applies, not all high environmental value (HEV) lands will be zoned C2 Environmental Conservation or C3 Environmental Management due to the primary use test. We have been advised that although most of the green outlined polygons currently exclude the DM land that the mapping will be amended in the future to include the entire lots with the new zones.

Council has controls in the *Byron Shire Development Control Plan 2014* (DCP) relating to biodiversity and siting of development envelopes, clustering of house sites and environmental repair in rural communities. Chapter B1 in the DCP includes objectives to identify ecologically significant areas (red flags) at development assessment stage and ensure these areas are retained and protected and/or managed through a management plan.

The proposal will amend clause 4.2B to clarify that only a single dual occupancy or secondary dwelling can be permitted on an MO and we support this amendment.

We note the location of any additional dwellings enabled by this planning proposal can only be determined at the development application stage and will need to be supported by bushfire reports and be consistent with Planning for Bushfire Planning Protection 2019. We also note the advice that it is possible that some existing CT sites are mapped as flood prone and that any resulting development applications will be assessed against the council's existing LEP and DCP flood planning controls, as well as any adopted flood study.

Conversion of an MO to CT through subdivision is already possible under clause 4.1B. However, the conversion could enable clearing entitlements through the Rural Boundary Clearing Code which would allow landholders to clear vegetation on their property within 25 m of their property boundary.

BCD Recommendations

For future CT subdivisions we recommend the council ensure that the Rural Boundary Clearing Code entitlement would not apply if it would result in the removal of 'red flagged areas' as defined in the Byron Shire Development Control Plan 2014 by:

1. applying a condition of the consent or approval under the *Environmental Planning and Assessment Act 1979* that identifies and requires the retention and management of the 'red flagged area' for conservation purposes, and
2. requiring an 'ecological setback' as defined in the Byron Shire Development Control Plan 2014 to separate the retained 'red flagged area' from the developable area that incorporates the allowable clearing distance, **or** requiring an instrument under Section 88B of the *Conveyancing Act 1919* to identify and require the retention and management of the 'red flagged area' for conservation purposes in order that the Rural Boundary Clearing Code is switched off in this instance.

Mr Mark Arnold
General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

starrant@byron.nsw.gov.au

Attention: Mr Sam Tarrant

Planning Proposal 26.2022.1.1 – Amendment to Byron Local Environmental Plan 2014 Multiple Occupancies and Rural Community Title

Dear Mr Arnold

Thank you for your correspondence and the opportunity to provide comment on the planning proposal 26.2022.1.1 to permit secondary dwellings and detached dual occupancies on multiple occupancy and rural community title lots.

The NSW Department of Primary Industries (DPI) Agriculture collaborates and partners with our stakeholders to protect and enhance the productive and sustainable use and resilience of agricultural resources and the environment.

NSW DPI has reviewed the planning proposal and understands that it seeks to amend the Byron Local Environmental Plan 2014 to enable secondary dwellings and detached dual occupancies to be permitted with consent on rural multiple occupancies and community title sites.

It is understood that any proposed secondary dwelling or detached dual occupancy will count towards the maximum dwelling limit on existing multiple occupancy lots and as a result there is not likely to be an increase in the permitted number of dwellings on multiple occupancy sites.

The proposed changes to the LEP will however result in a potential increase in the number of dwellings permitted on a community title lot though these will require development consent and will be subject to the provisions of Chapter B6 of the Byron Development Control Plan (DCP) *Buffers and Minimising Land Use Conflict*.

It is also understood that any new multiple occupancy or community title development will be required to be identified in future reviews of Council's Rural Land Strategy. This approach is supported as it enables such housing options to be considered in a strategic context.


Given the controls and limitations for increased residential development on existing community title developments NSW DPI has no objection to the proposed changes to clauses 4.1B and 4.2B in the Byron LEP 2014.

NSW DPI does however recommend that clause 4.1B(4) be strengthened by the inclusion of provisions which require that proposals for additional dwellings demonstrate that appropriate

measures are in place to mitigate against potential adverse impacts on agricultural production or land use conflict with agricultural operations being undertaken on neighbouring land.

Should you require clarification on any of the information contained in this response, I have arranged for Ms Selina Stillman, Agricultural Land Use Planning Officer to assist you. Selina can be contacted on 0412 424 397 or by email at landuse.ag@dpi.nsw.gov.au.

Sincerely

A handwritten signature in black ink that reads "T Prentice". The signature is written in a cursive style and is positioned above the printed name and title.

Tamara Prentice
Manager, Agricultural Land Use Planning
Agriculture Strategic Policy and Initiatives

18 July 2022