

Feedback for rural Community Title development controls



Submission date: 8 December 2022, 12:27PM
Receipt number: RCTDCP3
Related form version: 1

Name David Hauserman

Email

Provide your feedback here I support this amendment and believe it should be extended to Community Title lots within residential precincts

Upload your feedback

Date: 19th December 2022

The General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2482

Submission for Proposed Byron DCP 2014 changes - E2022/107843

Byron Shire Development Control Plan 2014 Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones

Dear Sir,

In response to the proposed Byron DCP 2014 amendments, we support the proposed development controls to allow dual occupancy and secondary dwellings on Community Title Subdivision properties, and include the following key points:

- The objectives of section D2.8.1 are endorsed.
- The prescriptive measures of Section D2.8.1 are endorsed, with following comments:
 - 3. Secondary dwellings and dual occupancies are to be sited to ~~not require removal of established native vegetation~~ **reduce impacts on established native vegetation and comply with Chapter B1 Biodiversity.**

Reason: In some cases, approval of a dual occupancy or secondary dwelling may require small-scale, low-impact tree removal of planted native vegetation to comply with bushfire requirements and this can be assessed on merit and offset in accordance with Chapter B1, which contains strong controls to protect ecological values.
 - 4. Vacant CT sites should identify the **indicative** envelope for both dwellings, **if seeking no restriction on dual occupancy or secondary dwellings.**

Reason: Clarification of the Community Title Subdivision development application stage requirements.
- Updated VMP requirements are endorsed in a staged format as suggested in the prescriptive measures.

In addition to the proposed Byron DCP 2014 amendments, we request that a clear and concise planning approval pathway for modifying an existing community title subdivision DA consent, to remove restrictions on the CT consent and within the associated Neighbourhood Management Statement, be clearly outlined within a Council factsheet.

Please contact our office if you require any further information on this submission.

Yours sincerely,

Balanced Systems Planning Consultants

Attn: General Manager
Byron Shire Council
70 Station St Mullumbimby



A Submission on changes to rural Community Title development controls

Dear Councillors and Council staff,

Northern Rivers Intentional Communities support Council's proposal for changes to the Byron Development Control Plan 2014 that allow secondary dwellings and dual occupancies on rural community title sites.

Our support is conditioned on Council facilitating a fast-track process that will then allow individual DAs to be submitted for proper assessment. NRIC prepared a proposal to assist Council in delivering its housing initiative (see below). Our plan had as its main objective an efficient, time and resources saving delivery process. As stated in the **Settlement discussion paper – Findings report**, now before Council:

Principle 1.4: Outcomes are everything - Council's staff need to use their skills to focus on outcomes from a people perspective rather than a process perspective.

In a meeting with senior planning staff on 13 Dec we presented our suggestions for discussion. We acknowledge that three actions need to take place to enable the submission of individual DAs:

- Modification of existing consent conditions,
- Modification of Neighbourhood Management Statements and
- New Vegetation Management Plans.

Staff's preference is to group these three actions in a separate DA for each Community Title.

This plan came with staff's commitment to fast track this preliminary DA and keep it simple. We support this process as long as this commitment is followed through.



DELIVERING COUNCIL'S HOUSING INITIATIVE

Secondary dwellings and dual occupancies on CTs

The following provides NRIC's suggestions to assist Council in delivering its housing initiative that allows for secondary dwellings and dual occupancies on Community Titles.

1. Amending existing CT consents that contain clauses limiting this initiative

At present, community title consents may contain conditions to expressly prohibit more than one dwelling house or a dwelling on each neighbourhood lot. These consents will need modifying. The *Environmental Planning and Assessment Act 1979 (Act)* provides two mechanisms to modify a development consent:

1. Cl.4.55 modification application – being an express application to modify a consent; and
2. Cl.4.17(5) – being the power for a consent authority to impose a condition in a consent that has the effect of modifying (or surrendering) the previous consent.

Use of EPA Act Cl. 4.17 (5) is preferred rather than initiating a separate Cl.4.55 process as it saves time, money, Council staff resources and is a simpler process.

More precisely Cl.4.17(5) states that:

4.17 Imposition of conditions

(5) Modification or surrender of consents or existing use rights *If a consent authority imposes (as referred to in subsection (1)(b)) a condition requiring the modification or surrender of a consent granted under this Act or a right*

conferred by Division 4.11, the consent or right may be modified or surrendered subject to and in accordance with the regulations.

This means that an applicant, in lodging the DA for a secondary dwelling or a dual occupancy, requests a consent condition that a 'Notice to Modify' the original consent is to be lodged.

Importantly, this approach gives Council an opportunity to assess the proposed development, before agreeing to a modification of the original consent in substance. Clause 4.17 has already been used by Council to modify a previous consent condition in a case of approval of a CT.

Below is an example of how this clause could be applied in practice:

A new dwelling DA for a secondary dwelling or dual occupancy, would include a draft notice of modification under Cl. 4.17 to modify the CT DA consent to remove any conditions that prohibit the new dwelling.

Once the dwelling DA is approved, Council would put a condition on that DA approval, requiring a formal notice of modification to be submitted to Council prior to issuing of a Construction Certificate. Council would then issue a letter of acknowledgement, that acts as a notice of modification, which includes the date when it takes effect.

As outlined above, Council can use one of two process options that it uses to modify consents, below is a comparison of the costs/benefits of using Cl.4.17 versus Cl.4.55:

	Cl. 4.17(5)	Cl. 4.55 c
Steps	Single step process	Two step process
Time	Single step saves 6 to 12 months	Additional step adds additional 6 to 12 months
Cost to Council	Saves staff time	Two step process takes up additional staff time

Cost to applicant	Saves costs, residents only exposed to costs once the outcome of the application is known	Additional step adds further costs to residents in fees and consultants Residents are required to pay for the cost of amending their Neighbourhood Management Statement without knowing the forthcoming application for a dual occupancy or secondary dwelling will be approved.
Other Advantages/Disadvantages	Importantly, this approach gives Council an opportunity to assess the proposed development, before agreeing to a modification of the original consent in substance.	The two-step process requires Council to consider changing the original consent prior to it being aware of the details of the yet to be lodged application for a dual occupancy or secondary dwelling.

2. Communities to amend Neighbourhood Management Statements (NMS) that contain a by-law required by public authority (Part 5) limiting this initiative

The NMS for many communities contains a provision limiting a lot to one dwelling by means of a Part 5 directive. Each impacted community will need to amend their NMS and Council will need to sign off on this amendment under Part 5 of the NMS.

NRIC requests that Council adopt a process that is simple and clear for this signing-off step.

3. Communities to add prohibition on Short Term Rental Accommodation (STRA) in Neighbourhood Management Statements (NMS)

Separately, since each community will go through an NMS amendment process (see proposal 2 above), NRIC suggests adding, at the same time, a by-law prohibiting STRA on second dwellings and dual occupancies to each NMS. This by-law, if inserted in Part 5 of the NMS, can't be revoked by members as it must be signed off by Council to be re-registered.

Such a by-law can be augmented by a DCP clause as well as a consent condition in every DA approval.

The well-established 'strata type' self-governing mechanisms with the NMS of communities can implement this restriction effectively, thus ensuring that potential housing stock created would be available only for residents.

The intention of NRIC has always been to provide safe and accessible housing opportunities for family, friends and residents of the Shire. We trust our proposals are useful and look forward to discussing these proposals with Council planning staff in December.