



# Planning Amendments for Agriculture

## Council Submission



### ***Acknowledgement to Country***

*Byron Shire Council recognises the traditional owners of this land, the Bundjalung of Byron Bay, Arakwal people, the Widjabal people, the Minjungbul people and the wider Bundjalung Nation.*

*We recognise that the most enduring and relevant legacy Indigenous people offer is their understanding of the significance of land and their local, deep commitment to place.*

## Overview

While Byron Shire Council acknowledges the Department's intention to facilitate emerging industries that are supplementary to, or based on, agriculture, we have significant concerns regarding the proposals as outlined in the current Expression of Intended Effects.

The proposal misses the key point – if the intent is to support farmers, measures need to provide for increased productivity of rural land; ideally facilitating innovative ways of farming that keep farmers on the land.

In the Byron context, and we suspect for many other coastal Councils, the measures as proposed will have a direct result of increasing rural land values, making land more expensive and less accessible for farming.

Increasing tourism does not address productivity. As an example, allowing cabins for tourist use may provide some income for a farmer. If, however, those same cabins were for start-up farmers or farm workers, there is still an income stream for the farmer, but the occupants directly assist in the productivity of the farm.

Council cannot support the proposed amendments in their current form and request significant revision of the proposed changes. Should the legalisation amendments proceed as proposed, Council will seek to 'opt out' of their application.

Byron Shire Council, as with our neighbouring local government areas, is well advanced in land use planning measures to protect important farmland and ways to support our important agricultural sector.

Our good quality agricultural land (regionally- and state-significant) is protected under a RU1 Primary Production Zoning and generally a 40ha minimum subdivision lot size.

Our historic settlement pattern, however, does not reflect a traditional farming pattern.

Of a total of approx. 2,750 lots within rural zones:

- only 8% are 40ha or larger;
- 70% are less than 10ha; and
- 61% are less than 6ha.

This presents significant challenges for real primary production, particularly when considering the more recent (and apparently ongoing) significant increase in land values in the local area.

'One size fits all' planning provisions may well support farming on larger properties in central and western parts of NSW, but farming issues in Byron Shire, and in many of our adjoining and nearby Council areas, require far more nuanced local solutions.

Providing opportunities for supplementary farm income is positive, but the changes proposed must ensure that such activities are genuinely supplementary and that they provide the potential to increase farm productivity. Our primary concern with the current proposals is that what is intended as support for farmers will only incentivise non-farming pursuits in our rural lands.

The ability from farmers to diversify income must be strongly linked to maintaining primary production on the land as the principal use. The provisions as currently suggested are not strong enough in that respect.

We strongly believe that any planning changes must be based on a clear and workable definition of what constitutes a 'working farm' and must be developed locally to suit and address local circumstances.

There also needs greater definition of what lands might be suitable for agritourism uses, in respect to the potential for land use conflict and environmental impacts associated with access, wastewater and transport.

The scope of the changes proposed, particularly relating to exempt and complying development, will result in a wide range of uses and activities for which there will be no, or extremely little, environmental assessment.

Exempt development, in particular, should only be used for activities that will clearly be of low to no environmental impacts.

From a reading of the document, we are concerned that there are a number of proposed uses and activities that have strong potential for environment and social impact, and we would suggest a serious review of this part of the proposal.

## Comments

### Farm stay accommodation

#### Definition

The current farm stay definition is quite clear and unambiguous:

*a building or place that provides temporary or short-term accommodation to paying guests **on a working farm as a secondary business to primary production** (my emphasis)*

The suggested replacement for this definition unnecessarily complicates the use, by replacing *working farm* with *the existing principal use of the land must be the production of agricultural/ primary production goods for commercial purposes*.

It would be more beneficial to provide a description of what is a working farm; e.g. linking to primary production status through either rating or taxation systems.

Over 60% of rural properties in the Shire are less than 5ha in area, with very few ‘farmland rated’. The changes as proposed would provide for farm stay on these ‘hobby farms’, which does not appear to be the intent.

The proposed definition change to allow camping as farm stay and allowing this to be exempt development raises issues associated with biodiversity impacts, land use conflict and effluent disposal. The development standards currently proposed do not adequately address these issues.

## Permissibility

### Exempt & complying development

The proposed development standards raise issues of compliance. Exempt development relies on ‘self-assessment’, which works well when operators maintain compliance.

In the Byron context, with a relatively densely populated rural area, we anticipate ongoing requests from neighbours around compliance with ‘numbers’, of people, setbacks, etc.

Council’s role, therefore, will be reactive only, as there will be no opportunity for review of potential impacts before they occur.

There are also no opportunities for Council to collect application fees or the like which could offset compliance costs.

There is also potential for water quality impacts associated with camping and/ or cabins located close to local waterways. In the Byron Shire context, our rural areas contain numerous smaller catchments, many with steep slopes, which are more densely populated than other rural areas throughout the State. Adding additional people to the catchments on a regular basis will require close consideration of waste water management and disposal, which cannot be assessed for exempt development.

Unregulated camping is also likely to include dogs, raising the potential for local biodiversity impacts.

In terms of specifics, the proposal to allow boundary setbacks equal to the setback of an existing dwelling has potential for land use conflict where there is no consideration of the proximity of adjoining dwellings.

Issues around land use conflict are best managed locally.

In relation to a change of use of an existing dwelling, there should be a development standard to ensure that human waste is appropriately managed, in the absence of reticulated sewerage service, by an existing on-site system operating in accordance with a current approval.

### Development application – optional clause

Council currently allows up to 12 bedrooms for farm stay accommodation depending on lot size (cl. 5.4 & Byron DCP). The optional clause would allow three times that number.

Council would not be interested in adopting the optional clause unless that component could be removed.

## Consultation questions

1. *Are the proposed setbacks to pig farms, other intensive livestock, forestry and mines for exempt and complying development appropriate?*

The setbacks to the land uses listed above are unlikely to be relevant to the Byron context, where none of those uses currently occur or are very unlikely to occur in the future.

The setback to adjoining properties is much more relevant, particularly where an existing dwelling has a setback less than the 250m suggested [*Note. In the Byron case, there will be very few existing dwellings in the rural area with a setback to boundary anywhere near 250m*]. As suggested above, a local approach to potential land use conflict would be more productive.

2. *Where a development application is required, should farm stay accommodation be permitted only on land that benefits from a dwelling entitlement?*

Definitely yes. To do otherwise would create a significant increase in ad hoc rural tourist accommodation that bears no relationship to farming activities on the land (including no host residing on the property).

3. *For complying development, should there be a requirement that a new building or manufactured home for farm stay accommodation be within 300m (or some other distance) from the existing dwelling house to enable clustering together of sensitive land uses?*

Yes. Council's DCP currently requires that accommodation is to be arranged in a 'cluster' pattern and located on average no further than 80 metres apart.

4. *Should there be different development standards for farm stay accommodation based on land size or location?*

Council's current standards are based on land size, with the permitted number of bedrooms linked to lot area, up to a maximum of 12 bedrooms.

However, rather than only linking to land area, provisions are required that enable a determination of the suitability of the site; which is much more than just lot size.

Our experience is that there is significant complexity and difference across the shire in terms of suitability, which goes to one of our key points that a 'one size fits all' approach has no possibility of achieving positive results for all Shires.

Councils must be allowed to create a more nuanced approach, based on local circumstances.

## Farm gate activities

### Definition

The introduction of this new definition will cause confusion. Existing definitions, like industrial retail outlet (associated with rural industry), artisan food and drink industry, are available to allow the activities discussed.

A significant issue with the definition as proposed is that it allows the activities if associated with agricultural produce grown on the farm **or predominantly grown in the surrounding area** (my emphasis).

This is another example where, in the local circumstances of smaller rural lots, this change will significantly incentivise non-farming pursuits in our rural lands.

At the very least, any change to allow these activities must be directly linked to real farming on the lot.

### Permissibility

The changes as proposed would allow a significant increase in the scale of rural use with no Council input or assessment.

For example, it would be possible to change the use of an existing lawful dwelling to a restaurant/ café (part of new definition) as Complying Development, which could then be used for farm gate activities as an exempt activity, with up to 50 guests at any one time, 7am to 7pm six days per week and 9am to 6pm on Sundays.

The limit of 50 guests is only ‘at one time’, so could allow for multiple restaurant ‘sittings’ during the weekends – a regular occurrence in Byron restaurants.

In the Byron context, this example is real – we have history of such activities undertaken with no consent.

Such activities would generate a range of environmental and social issues; but under the changes proposed, Council would have no role in assessing impacts.

Additionally, none of the proposed development standards deal with wastewater, traffic or amenity issues, all of which have significant potential for amenity impacts.

If the proposed use only needs to link to agricultural produce **predominantly grown in the surrounding area**, this will absolutely provide a direct incentive for non-farming pursuits for individual sites, all without any Council overview, assessment or control.

Again, in a densely populated rural area, such as exists in Byron Shire and many neighbouring coastal Shires, this will generate significant compliance/ enforcement demands, with no ability for Council to recoup costs for such work.

It will also incentivize commercial uses over farming uses, particularly for smaller rural lots.

## Consultation questions

5. *How far do you think a roadside stall should be setback from the road?*

Once more, a ‘one size fits all’ solution will not work for this question. Traffic safety is critical, and road types, alignments and standards vary markedly across the Shire, let alone across the State.

6. *What additional standards should be included for the exempt and complying development pathways for farm gate activities, if any?*

As highlighted above, the exempt and complying provisions as proposed allow a scale of development that has potential for significant environment and social impacts, with no opportunity for the local Council to assess.

Additional development standards will not address this problem.

## Farm events

We have worked over the last two years to address rural events, resulting in a recent change to the Byron LEP to provide an approval pathway for rural function centres.

The key lesson from this work is that it is quite difficult to find the correct balance between allowing flexibility for farmers and rural land holders and protecting the rural amenity for residents.

Again, the Byron context, and that of many neighbouring coastal councils, is characterized by relatively densely populated rural areas with predominantly smaller holdings.

Our work highlighted that two key important factors are the suitability of proposed sites and the management of events.

In terms of suitability, we started with the idea of identifying appropriate development standards, such as setback etc, which could address noise and disturbance. What became abundantly clear was the variability of the local landscape, where topography and vegetation are key determinants of how far noise might travel.

It was simply not possible to determine a single setback/ buffer standard that would ‘work’ across all parts of the Shire.

If a ‘one size fits all’ will clearly not work at our Shire level, how can it be expected to work across the State.

The other key component relates to management of events, and we see nothing in the proposed provisions that will address this.

Similar to our comment on farm gate activities, the provisions as proposed will allow a significant scale of activity over which Council will have no oversight, let alone control, with no opportunity to assess environmental / social impacts before they occur.

We strongly oppose the proposed changes relating to farm events, and would request that we be allowed to continue with the controls recently adopted in the Byron LEP, which were the result of detailed local community engagement and input.

## Byron Shire Council – **Response to Expression of Intended Effects**

In terms of specifics, the hours allowed for operating rural events as exempt development will result in amenity impacts – up to 11pm through the week and midnight on Fridays and Saturdays is too late.

### **Additional proposed changes**

Council has no position on the remaining proposals.

A handwritten signature in black ink, appearing to read 'S Burt', is positioned above the name Shannon Burt.

**Shannon Burt**

Director, Sustainable Environment & Economy.