

15 December 2023

File No: NTH23/00563/01

Your Ref: PP-2023-1858; REF-2586

General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 248

**Attention: Kristie Hughes**

**Planning Proposal: PP-2023-1858 – Housekeeping Amendments to Byron Bay LEP 2014**

I refer to the abovementioned Planning Proposal referred to Transport for NSW (TfNSW) on 1 December 2023 for agency consultation in accordance with Condition 2 of the Gateway determination (PP-2023-1858) under Section 3.34(2)(d) of the *Environmental Planning and Assessment Act 1979*.

TfNSW key interests are the safety and efficiency of the transport network, the needs of our customers and the integration of land use and transport in accordance with the *Future Transport Strategy*.

TfNSW has reviewed the information provided and raises no objection to or requirements for the subject Planning Proposal.

It would be greatly appreciated if Council could notify TfNSW of the outcome of the LEP amendment. Should you require further information please contact Shelby Wells, Development Services Case Officer, on 1300 207 783 or 0429 155 086 or by emailing [development.north@transport.nsw.gov.au](mailto:development.north@transport.nsw.gov.au).

Yours faithfully

**Court Walsh**

Team Leader Development Services  
North Region | Community & Place  
Regional & Outer Metropolitan

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OFFICIAL

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

[khughes@byron.nsw.gov.au](mailto:khughes@byron.nsw.gov.au)

Attention: Kristie Hughes

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## Planning Proposal PP-2023-1858 – Byron Housekeeping Amendments

Dear Ms Hughes

Thank you for your correspondence of 4 December 2023 and the opportunity to provide comment on planning proposal PP-2023-1858 for amendments to Byron Local Environmental Plan (LEP) 2014.

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 Agriculture has reviewed the planning proposal. The proposed amendment to Clause 4.2D of Byron LEP 2014 to remove the requirement for detached dual occupancies in a rural zone to be located within 100m of each other has the potential to impact agricultural activities in rural areas.

The existing requirement for a maximum 100 meter separation distance between dwellings in a detached dual occupancy development benefits agriculture by requiring clustering of dwellings in rural areas. Clustering reduces the dispersal of sensitive receptors which cripples the ability of adjoining farmers to intensify production systems.

It also ensures that these types of developments would only occur where the landowner is comfortable having the second dwelling in close proximity to the existing dwelling, promoting use by family and farm workers. It also reduces the pressure on Council to then enable subdivision of the land.

Clustering dwellings on a site also minimises the potential for dwellings to be spread along neighbouring property boundaries which can lead to land use conflict with neighbouring agricultural land uses.

It is noted clause 4.6 of the Byron LEP already enables the variation of the 100m separation distance where there are sufficient planning grounds to justify the contravention, and the standard is unreasonable or unnecessary in the circumstances.

If Council finds this clause too restrictive an alternative may be to vary clause 4.2D(2)(c) such that

*(c) ...dwellings will be situated within 100 metres of each other, unless another siting produces a superior planning outcome.*

or wording to that effect.

While not supported by NSW DPI, if a decision is made to proceed with the amendment to remove clause 4.2D(2)(c) entirely, it is strongly recommended that Council consider strengthening the provisions in Byron LEP 2014 which require consideration of the impact of residential development on agriculture.

While clause 4.2D requires that a proposed dual occupancy development does not impair the agricultural use of the land on which the development is proposed, it does not require consideration of the potential impacts on neighbouring agricultural land in the vicinity.

It is recommended that Council include an additional provision that dual occupancies (detached) in the RU1 and RU2 zones do not have an adverse impact on agricultural production on neighbouring land and do not increase the potential for land use conflict with neighbouring agricultural land uses. An example of such a provision is currently included in the Ballina LEP 2012 clause 4.2A(4A)(a) and Lismore LEP 2012 4.2C(2)(a):

*(a) the development will not impair the use of the land or adjoining land for agriculture or rural industries, and*

Council should also ensure that the provisions of clause 5.16 of the Byron LEP 2014 are being effectively applied to development proposals for dwellings in rural zones.

Should you require clarification on any of the information contained in this response, I have arranged for Paul Garnett, Agricultural Land Use Planning Officer to assist you. Paul can be contacted on or by email at [landuse.ag@dpi.nsw.gov.au](mailto:landuse.ag@dpi.nsw.gov.au)

Sincerely

Tamara Prentice  
Manager, Agricultural Land Use Planning

15 January 2024



General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Attention: Ms Kristie Hughes

Dear Mr Arnold

**RE: Planning Proposal 26.2022.11.1 – Housekeeping Amendments to Byron LEP 2014 (PP-2023-1858)**

Thank you for your letter dated 1 December 2023 about the proposed housekeeping amendments to the Byron LEP 2014 seeking comments from the Biodiversity, Conservation and Science Group (BCS) of the Department of Climate Change, Energy, the Environment and Water. I appreciate the opportunity to provide input and apologise for the delayed response.

BCS has responsibilities relating to biodiversity (including threatened species and ecological communities, or their habitats), flooding, and coastal processes and associated hazards, and provides comment on issues affecting National Parks and Wildlife Service (NPWS) estate.

We have reviewed the Planning Proposal, Gateway Determination and the Planning Proposal Maps and provide the following comments.

Rezoning of Deferred Matter within the Mount Jerusalem National Park

We support incorporating the deferred matter into the Mount Jerusalem National Park. The rezoning of the subject land to C1 National Parks and Nature Reserves aligns with the NSW Government's position on this matter.

Rezoning of various Deferred Matters within the Billinudgel Nature Reserve

We support incorporating the numerous deferred matters lands into the Billinudgel Nature Reserve. The rezoning of the subject lands to C1 National Parks and Nature Reserves aligns with the NSW Government's position on this matter.

Additional Permitted Uses – Broken Head Lot 3, DP599728

We note, this issue has arisen by not transferring the "Additional Permitted Uses" (APU) from the Byron LEP 1988 to the Byron LEP 2014 and that the portion of Lot 3 in question is currently zoned C3 - Environmental Management under the 2014 LEP.

The C3 zoned land on Lot 3 contains littoral rainforest which is listed as an endangered ecological community under the *Biodiversity Conservation Act 2016* and as a critically endangered ecological

community under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*. The vegetation is also mapped as High Environmental Value (HEV) land by the Byron Shire Council.

As set out in Strategy 3.1 of the North Coast Regional Plan 2041, strategic planning and local plans must consider the protection of biodiversity values, including by focusing land use intensification away from HEV land and using planning mechanisms to protect that land. We also note, existing dwellings are located within the C3 zoned land adjacent to Seven Mile Beach Road.

Given the conservation value of the vegetation found on this portion of Lot 3, BCS would not ordinarily support amending the 2014 LEP to allow for further dwellings to be constructed on Lot 3. However, we recognise the planning proposal seeks to ensure fairness and equity by adding the previous additional permitted use into the Byron LEP 2014 that enabled four dwellings to be constructed on the site within a fixed building envelope adjacent to Seven Mile Beach Road subject to development consent for multiple occupancy. Limiting future dwellings to this small building envelope will ensure development does not occur in the littoral rainforest on the remainder of the site.

If you have any further questions about this issue, please contact Mr Ian Gaskell, Senior Conservation Planning Officer North East, Biodiversity, Conservation and Science Group, on 8289 6323 or at [ian.gaskell@environment.nsw.gov.au](mailto:ian.gaskell@environment.nsw.gov.au).

Yours sincerely

**GABRIELLE PIETRINI**  
**Director North East**  
**Biodiversity, Conservation and Science**

12 January 2024



Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Your reference: (REF-2587) PP-2023-1858  
Our reference: SPI20231204000157

**ATTENTION:** Kristie Hughes

Date: Monday 12 February 2024

Dear Sir/Madam,

**Strategic Planning Instrument  
LEP Amendment**  
Housekeeping Amendments - Byron Local Environmental Plans

I refer to your correspondence dated 04/12/2023 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Timothy Carroll  
**Manager Planning & Environment Services  
Built & Natural Environment**

**Postal address**

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Locked Bag 17  
GRANVILLE NSW 2142

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