



10 March, 2022

Northern Rivers Intentional Communities

Attention Uri Haishkarem

Emailed northernrivers.ic@gmail.com

Dear Uri

Thank you for the email prompt, as I had thought I replied earlier to the group. Apologies for not.

In response to the email sent to Councillors about the MO CT resolutions, the following staff response was provided to them prior to the Meeting 24 February 2022. This is relevant to context the current position of Council in relation to this matter. I note that Avital Sheffer presented same to public access 24 February 2022.

Council at the Ordinary Meeting of 24 June 2021 considered a Notice of Motion No. 9.2 Multiple Occupancies and Rural Workers Cottages Agenda of Ordinary Meeting - Thursday, 24 June 2021 (infocouncil.biz) and resolved as follows:

21-221 Resolved that Council:

- 1. Prepares a report exploring the possibilities, hurdles, and opportunities for continuing Multiple Occupancies and Community Title as a pathway to providing more options for accessible and affordable housing in the Byron Shire.**
- 2. Prepares a report on pathways to encourage the use of rural workers' cottages to provide accommodation for farmers wanting to live and work on the land.**
- 3. Progress points 1 and 2 as part of the review of the RLUS to commence FY21/22. Noting this review will enable a fresh dialogue with relevant state government agencies on the current needs of our rural community five years on from the original RLUS adoption.**

Separate and subsequently, Council at the Ordinary (Planning) meeting of 5 August 2021 considered Notice of Motion No. 9.5 MOs and CTs – pathway for secondary dwellings and dual occupancies Agenda of Ordinary (Planning) Meeting - Thursday, 5 August 2021 (infocouncil.biz) and resolved as follows:

21-275 Resolved that Council investigates how to enable a workable pathway to facilitate secondary dwellings on Multiple Occupancies and to facilitate secondary dwellings and/or dual occupancies on Community Titles.
Multiple Occupancies (MO) and rural Community Title (CT) developments have had various approval pathways in the past.



TRADITIONAL HOME OF
THE BUNDJALUNG PEOPLE

ALL COMMUNICATIONS TO BE
ADDRESSED TO THE GENERAL MANAGER
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Both resolutions requested a further report on the current pathways to enable new MO or CT development and to facilitate secondary dwellings on existing MOs and to facilitate secondary dwellings and/or dual occupancies on existing CTs.

Report No 13.11 - Resolution 21-221 Multiple Occupancies and Rural Workers Cottages & Resolution 21-275 MOs and CTs - pathway for secondary dwellings and dual occupancies was presented to Council [Agenda of Ordinary \(Planning\) Meeting - Thursday, 4 November 2021 \(infocouncil.biz\)](#), where Council resolved

21-498 Resolved that Council:

- 1. Notes the staff update on Resolution 21-221 Multiple Occupancies and Rural Workers Cottages & Resolution 21-275 MOs and CTs - pathway for secondary dwellings and dual occupancies.**
- 2. Requests staff to prepare and submit a planning proposal to the Department of Planning Industry and Environment for Gateway Determination to amend clauses 4.1B and 4.2B Byron Local Environmental Plan 2014 to:**
 - i. remove the restriction of one dwelling per neighbourhood lot and make any other necessary changes to permit dual occupancy and secondary dwellings on existing Multiple Occupancy and rural Community Title development; and**
 - ii. update where relevant the assessment criteria for Multiple Occupancy and rural Community Title development. (Lyon/Ndiaye)**

The author of the email Avital Sheffer presented to that meeting at public access.

Further, the author of the email and other representatives met with staff and the Mayor subsequent to this meeting about the same issue. Advice given was consistent with the reports to Council and resolutions by Council as current and being those under action by staff.

In relation to Resolution 21-498 (1) the report was noted given that the details and pathways provided in the report being DA and or LEP amendment (see 2) and otherwise consideration of MO/CTs in the RLUS review in the coming year.

In relation to Resolution 21-498 (2) staff have prepared a planning proposal, submitted to the DPE and are awaiting a gateway determination to enable public exhibition, which I understand is imminent.

As I recall, the only matter outstanding from our November meeting was for staff to seek further advice in response to your advice presented to the meeting from Solicitor Jonathan Marquet.

To this end, the following commentary is provided without prejudice, as staff position in relation to this advice.

For the purposes of Byron LEP2014 is a Secondary Dwelling a Dwelling House?

Secondary dwellings are only defined under the BLEP 2014. There is reference to "secondary dwelling" in the BLEP 1988, which has been amended extensively since the making of the

instrument when the concept of a “secondary dwelling” was unknown. Secondary dwelling is now a well understood term. A secondary dwelling is defined under the BLEP 2014 as:

secondary dwelling means a self-contained dwelling that—
(a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the **same lot of land** as the principal dwelling, and
(c) is located within, or is attached to, or is separate from, the principal dwelling.

A matter that is not identified in the NRIC Report or in the McCartney Young letter dated 2 November 2011 (**Advice**) is that under the definition of secondary dwelling, the secondary dwelling must be contained **on the same lot** of land as the **principal dwelling**.

As a consequence of this definition, there would only ever be **one** secondary dwelling permitted on a MO lot because a MO must be on a **single lot**. The secondary dwelling must also be able to be described as secondary to a single principal dwelling, so there must be some relationship that is “principal” and “secondary” in nature as between the dwellings. Whilst we agree with the NRIC report that clause 4.2A does not control secondary dwellings, the definition of secondary dwellings means there can only ever be one secondary dwelling on a single lot.

Councils can amend Community Title Consents to remove dwelling limits.

Secondary dwellings may be able to be achieved on neighbourhood lots in CT schemes only. In a MO, only one secondary dwelling (linked with one of the primary dwellings) could be achieved across the entire MO, because it is a single allotment.

In some CT schemes, it may be necessary to amend management statements / original conditions of consent to permit a secondary dwelling on one lot, associated with a principal dwelling (noting there is a restriction on the number of dwellings presently that can be approved).

Further, it might be possible to achieve dual occupancies (where the zoning permits it) on some land under the BLEP 1988 which is a CT scheme.

The Johnathan Marquet advice states ‘a community title consent is not a barrier to issuing consent to a development application if the application on its merits warrants consent. Of course, there may be other provisions of the relevant local environmental plan that need to be considered’.

Staff position agrees with this. It will be a matter of the individual circumstances of the MO/CT that will dictate.

I trust this clarifies further the staff position in relation to the matters you have raised.

Should you or any member of your group seek specific advice on development of a MO/CT for additional dwellings they can do so by the Development Advisory Service Team Fees apply.

[Development advice services - Byron Shire Council \(nsw.gov.au\)](http://nsw.gov.au)

Yours sincerely



Shannon Burt
Director Sustainable Environment & Economy