

From: [REDACTED]
Sent: Friday, 14 June 2019 7:48 PM
To: submissions
Subject: Submission in relation to "Housekeeping" Amendments to Byron Development Control Plan 2014

To whom it may concern,

Today I have reviewed the proposed amendments to Byron Development Control Plan 2014. Thank you for the opportunity to make a submission. Please accept the comments below in considering the proposed modification further:

Notification – I note that Council's website identifies the proposed modifications as 'housekeeping', which suggests that the proposed changes are all of a minor nature. I disagree that all proposed modifications are regarded as minor / housekeeping. I believe the notification is somewhat misleading in this regard. The comments below hi-light how some of the proposed amendments have implications that are well beyond minor.

B4.2.3 2) – For decades Byron Shire Council has allowed dwellings to have parking areas that do not require vehicles to enter and exit the street in a forward direction. DCP 2014 has also allowed dual occupancies to be exempt from this requirement. Providing turning bays within a residential lot significantly reduces site area that would otherwise be available for private open space, landscaping or building footprint. The proposed change unnecessarily reduces the scope for dwellings and dual occupancies to provide driveway designs to be provided without entering and exiting in a forward direction. It seems an illogical step backwards to amend this control when the current wording is sufficient.

B4.2.3 6) – A driveway width of 4 metres is genuinely excessive for a dual occupancy development. This amendment will have major impacts on future dual occupancy proposals across the Shire, particularly in Ocean Shores where dwellings have been traditionally constructed with 3.0 metre side boundary setbacks. It is my understanding the AS2890 does allow 3.0m driveway widths for access driveways. On this basis, the justification for the amendment seems flawed. Council should consider retaining a 3.0 metre driveway width, maybe not for the entire length of the driveway, but at least for some of the driveway (eg. where a driveway passes a building).

D1.2.2 – I am of the opinion that the proposed increased setback to 1.5 metres is unnecessary when Council has a building height plane control to protect neighbours views/privacy/overshadowing.

D1.2.8 – I support this amendment in relation to providing alternate parking. It is good that the DCP provides direction on this for property owners.

D1.2.9 – I do not support this addition to the Development Control Plan for two reasons. Firstly, the NSW Government has BASIX Certificate requirements that provide a state wide approach to energy efficient house design (why does Byron Shire Council need their own additional controls?). Secondly, the additional costs required to retrofit existing buildings with insulation, tapware, hot water system and a water tank is completely unreasonable for small scale projects that do not trigger a BASIX Certificate (ie. proposals that have a cost of less than \$50,000). Byron Shire Council should promote other means of reducing greenhouse emissions such as providing cycleways and footpaths in residential areas. This is particularly relevant in areas like Ocean Shores where there is a lack of footpaths, but a large number of older homes with residents that do not necessarily have the flexibility in their budget to retrofit their properties in line with this DCP provision. If Council was to impose a condition on a development consent to fulfil the requirements of this DCP control, I would strongly argue that it would not meet the Newbury Test outlined by the NSW Land & Environment Court. This alone hi-lights the unreasonableness of this proposed control.

D1.4.3 – I support the amendment in relation to secondary dwellings being prohibited on strata lots as it

aligns with SEPP (Affordable Rental Housing) 2009.

Item 13 – I do not think the proposed amendment to add a requirement to plant 900 trees per holiday cabin within rural tourist facility proposals has been well thought through. The Council justification acknowledges that this requirement is carried over from a 20 year old document (that should in fact be repealed). Chapter D3 of DCP 2014 currently allows rural tourist accommodation comprising 3 holiday cabins within a property that is between 0 - 3 hectares in area. It is completely unrealistic to expect 1800 trees to be planted on a small property such as this. With a large percentage of rural properties affected by bush fire constraints, the proposed tree planting control will create a major conflict in managing development. Even on larger lots, 900 trees per holiday cabin is a most over ambitious control. This DCP provision is essentially setting development proposals up to fail. Byron Shire Council has a responsibility to create reasonable development controls. This requirement may have been applicable when Clause 34 of Byron Local Environmental Plan 1988 prescribed a minimum lot size of 20 hectares for holiday cabin development. But is certainly is not applicable for holiday cabin proposals on smaller lots. If Council does impose a planting requirement, careful consideration should be given to whether all plantings comprise 'trees' or in fact understorey shrubs and plants are included in the planting count. Further, whether this control is applicable for Multiple Occupancy and Community Title development is appropriate, particularly on bush fire affected properties, should also be carefully considered. I suggest that this control be properly considered and significantly refined should Council wish to impose a planting requirement on rural development.

Item 13 (continued) – Council's proposed requirement for a Vegetation Management Plan to be prepared and submitted with a Development Application provides for an extreme level of detail for rural development proposals. My experience is that VMP's are a very expensive exercise (costing several thousands of dollars), and can be assessed very subjectively. I believe that the proposed controls to add detailed VMP requirements at Development Application stage will create an unnecessarily drawn out DA assessment process where a project remains in the balance while minute details on plantings are resolved by Council and consultant ecologists. This will really side-track the key planning issues that should be focussed on in a Development Application assessment. Whilst environmental repair and enhancement is important, I think this requirement goes unfairly beyond the detail of information that is required to be submitted as part of a Development Application as prescribed within Schedule 1 of the Environmental Planning and Assessment Regulation 2000.

D2.7.2 – I support the amendment to provide clarity on dwelling to shed conversions. However, I do not believe prescriptive controls for fencing design is a relevant DCP control for 'Farm Buildings, Sheds and Other Structures'.

D3.3.2 – I support the increase in bedroom numbers and guest numbers within a bed and breakfast establishment.

D6.4.1 – I support the deletion of Table D6.1 as some of the requirements don't make any sense. A requirement for a hatchet shaped lot to have a 6 metre frontage is completely excessive and is a poor use of land. This requirement creates an inefficient subdivision layout and should be amended for hatchet shaped lots. I also believe this control should be amended to reduce the lot size required for hatchet shaped lots as I believe the proposed control is too restrictive. Hatchet shaped lots do not require large boundary setbacks as the building envelope is well away from a street frontage. Therefore I believe it would be appropriate to allow the lot size (excluding that access handle) to be a percentage of that prescribed within the minimum lot size map (eg. 85%). I have seen a number of hatchet shaped lots approved that have a lot size (excluding the access handle) that is well beyond that needed for a dwelling construction. These comments are made in recognition of efficient use of land.

Can you please acknowledge receipt of this submission and advise me on Council's consideration of the above comments.

Feel free to call with any questions.

From: [REDACTED]
Sent: Thursday, 13 June 2019 10:36 PM
To: submissions
Subject: Re: Submission on Public Exhibition for Minor amendments to DCP 2014

Additionally, no Guidelines for Vegetation Management Plan (VMP) / Biodiversity Conservation Management Plan (BCMP) / Environmental Enhancement Management Plan (EEMPs) are available on the Council web site despite the new clauses saying they are.

On 13/06/2019 8:07 pm, [REDACTED]

My submission is in relation to the proposed changes to DCP 2014 and in particular Item 13.

Item 13 D2.6; D2.8; D3.3.4, D3.3.5

Reason for Proposed Amendment

To create clearer guidelines for environmental reparations for Rural Tourist facilities, Eco Tourist Facilities and other rural development, including Multiple Occupancy and Community Titled Development. Currently, the primary document for this is the Rural Settlement Strategy 1998. As this document is now 20 years old, Council staff have suggested that some more specific guidelines be built into the DCP to ensure consistency.

Description of Proposed Amendment

Require a vegetation management plan and the planting of 900 trees per cabin (or equivalent determined action) to be included in any development application for rural tourist facilities. In addition, clarify the requirements for environmental reparations for multiple occupancies and community titled properties. Please refer to the attachment for specific details relating to Vegetation Management Plan requirements.

I have five main issues that I wish to see addressed.

ISSUE ONE

The housing keeping amendments do not go far enough to fully replace the Byron Rural Settlement Strategy 1998. In particular the following additional prescriptive measures are specifically designed to minimise the environmental impacts of Rural Tourist facilities, Eco Tourist Facilities and other rural development, including Multiple Occupancy and Community Titled Development.

These prescriptive guidelines are included in the BRSS 1998 but have not been included in the DCP 2014.

- No more than six (6) holiday cabins may be constructed within the site area.
- All weather 'centralised' car-parking must be provided on-site at the rate of at least 1 car space per bedroom. The paving of car-parking areas is not encouraged (except where roads need to be on more steeply sloping lands), rather these areas should be either grass-covered or topped with gravel to an all weather standard to ameliorate stormwater runoff.

- The siting of rural tourist accommodation and farm stay accommodation must be such that:

- a) no cabin is less than 50 metres from the flood line of a natural waterbody or wetland;
- b) adequate separation distances are incorporated to minimise the potential for land use conflict between the proposed rural tourist facility and existing or potential conflicting land uses such as intensive agriculture, quarries, animal establishments, on adjoining or adjacent land;
- c) all accommodation is located on land having either a North, Northwest/Northeast or East aspect or a slope of less than or equal to two degrees (2°) unless It can be demonstrated that other compensating arrangements will maximise solar energy collection and minimise energy use;
- d) all accommodation to be arranged in a 'cluster' pattern unless a dispersed arrangement can be clearly demonstrated to be an ecologically superior solution. In the context of rural tourist accommodation, a 'cluster' is defined as a group of three (3) or more buildings located an average of 80 m and not more than 160 m apart from each other with adequate vegetation screening between the buildings (ie. to ensure privacy) and with the layout of developments in the cluster having regard to the physical site characteristics of the land and the need to provide access to the buildings for the provision of accident or fire emergency and other services such as sewerage disposal system, water supply and electricity;
- e) the release of sewage effluent associated with the development must not occur:

- i) within 100 metres (horizontal distance) from a wetland or natural waterbody such as a permanently flowing creek or river;
- ii) in an area of high watertable;
- iii) in an area of highly permeable soils; or
- iv) in an area of acid sulfate, sodic or saline soils.

f) vehicle access to accommodation is for loading and collecting baggage only, while guest car parking instead must be confined to a single centralised area on the site. This requirement does not apply to accessways set aside for disabled persons, emergency purposes (including accident or fire emergency) and other services such as sewerage disposal system, water supply and electricity.

- Holiday cabins should also be guided by:

1. Purpose-Built Rural Tourist Accommodation -Guidelines on Government Approvals for Farm Holiday Resorts, Rural Retreats, Guesthouses, Gablins and Other Purpose-Built, Rural Tourist Accommodation, Walsh, P &A Consulting Pty. Ltd. 1997. A joint industry/government initiative.
2. NSW Far North Coast Nature Based and Ecotourism Plan
3. Tourism Development near Natural Areas Guidelines for the North Coast. Department Planning.
4. Keeping Byron Unique -A Tourism Strategy. Byron Shire Council.
5. Byron Shire Tourism Plan. Byron Shire Council.
6. Coastal Tourism -A Manual for Sustainable Development.

Commonwealth Coastal Action Program.

- a 90% survival rate of planted trees after 24 months,
- payment of an environmental repair bond of \$4500 per bedroom,
- The vegetation management plan (VMP) prepared in accordance with the *Guidelines for VMP/Biodiversity Conservation Management Plan (BCMP)/ Environmental Enhancement Management Plan (EEMPs)* should include all the requirements of a an environmental enhancement and management plan as stipulated under the BRSS requirements,
- The preparation of an energy efficiency site analysis report as per the BRSS requirements,
- No erection of accommodation or buildings near ridgelines,
- The preparation of a water management plan as per the BRSS requirements (this is different than a stormwater management plan),
- The preparation of an assessment report on the impact of groundwater and surface water as per the BRSS requirements,
- The installation of an independent water supply (tanks or dams) of 10,000L per cabin for use during fires,
- The preparation of a fire management plan as per the BRSS requirements (this is different than a bushfire risk assessment),
- The preparation of a detailed assessment (LUCRA) as per the BRSS requirements outlining required buffers.

All of these environmental protection and enhancement guidelines/measures should be embedded in the DCP 2014 independent of the BRSS 1998.

ISSUE TWO

There is also ambiguity in D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation

The ambiguity arises due to the differentiation between Rural Tourist Accommodation and Farm Stay Accommodation.

Farm Stay Accommodation is defined in the LEP but Rural Tourist Accommodation is not defined in the LEP and is defined differently to Farm Stay Accommodation in the DCP.

As a consequence under a strict reading of the DCP Chapter D3.3.4 Performance Criteria 4. and 7. and Prescriptive Measures 1. , 2. and 3. would not apply to Farm Stay Accommodation but only to Rural Tourist Accommodation.

I recommend that this ambiguity be avoided by in every case where Rural Tourism Accommodation is written it be replaced with Rural Tourist Accommodation and Farm Stay Accommodation. This would mean that all the same criteria and measures apply to both.

ISSUE THREE

The BRSS applied Environmental reparations and protection measures to Bed and Breakfast Developments in Rural Zones as well as cabin developments.

Consequently the same VMP and tree planting requirements should also be applied to Bed and Breakfast Developments in Rural Zones.

I recommend that in the DCP at D3.3.2 Bed and Breakfast Accommodation and additional Prescriptive Measure be included:

(h) The following additional measures apply to bed and breakfast accommodation in Zones RU1 and RU2:

- A vegetation management plan (VMP) to be submitted with each Rural Bed and Breakfast Development Application detailing where 900 local native trees per tourist bedroom are to be planted as environmental repair and enhancement for development. VMP's must be prepared by a qualified and experienced bush regenerator (Certificate 4 in Natural Area Restoration / Conservation and Land Management) or ecologist with specific knowledge and experience in Restoration Ecology and in accordance with the Guidelines for VMP/Biodiversity Conservation Management Plan (BCMP)/ Environmental Enhancement Management Plan (EEMPs), available on Council's website. Baseline monitoring and permanent monitoring points must be included with the VMP and restored or planted areas will have conditions imposed that the VMP area must be retained in perpetuity. Equivalent ecological restoration may be provided where existing native vegetation occurs on site. It is preferred that remnant vegetation on site is restored to a local native plant community type before additional planting is undertaken. Weed control should prioritise invasive species and weeds of national significance (WONS). The area of restoration to be completed in place of planting is to be calculated as follows:
 - a. Calculate the area required to plant 900 trees per cabin or rural tourist residence using the appropriate plant spacings for the vegetation community to be established. For example, rainforest species are generally planted 2 to 3m apart, thus 900 trees would occupy an area of some 0.56ha at spacings of 2.5m (using the table below); while koala habitat restoration or eucalypt/sclerophyll plant

communities naturally have spacings between 4m and 6m apart
so that 900 trees
would occupy an area of 1.44 ha.

Table D3.2 - Tree Spacing Numbers / Hectare (Ha)

No of Trees per

Ha

Spacing

10,000 @ 1.0metre spacing

4,444 @ 1.5metre spacing

2,500 @ 2.0metre spacing

1,600 @ 2.5metre spacing

1,111 @ 3.0metre spacing

816 @ 3.5metre spacing

625 @ 4.0metre spacing

400 5 metre spacings

25 20 metre spacings

16 25 metre spacings

11 30 metre spacings

4 50 metre spacings

b. For areas that are clearly dominated by weed species (greater than 50% cover

over all stratus), the total restoration area is double that calculated in point a)

above. For areas that are weedy, but not weed-dominated (less than 50% cover

over all stratus), the restoration area worked is four times that calculated above.

These calculations ensure that equivalent effort is expended whether planting or

restoring existing plant communities.

ISSUE FOUR

The BRSS applied Environmental reparations and protection measures to Camping Ground Developments in Rural Zones as well as cabin developments.

Consequently the same VMP and tree planting requirements should also be applied to Camping Ground Developments in Rural Zones.

I recommend that in the D3.3.3 Caravan Parks and Camping Grounds a Prescriptive Measure be included:

(1) The following measures applies to Camping Grounds in Zones RU1 and RU2:

- A vegetation management plan (VMP) to be submitted with each Rural Camping Ground Development Application detailing where 900 local native trees per camping site are to be planted as environmental repair and enhancement for development. VMP's must be prepared by a qualified and experienced bush regenerator (Certificate 4 in Natural Area

Restoration / Conservation and Land Management) or ecologist with specific knowledge and experience in Restoration Ecology and in accordance with the Guidelines for VMP/Biodiversity Conservation Management Plan (BCMP)/ Environmental Enhancement Management Plan (EEMPs), available on Council's website. Baseline monitoring and permanent monitoring points must be included with the VMP and restored or planted areas will have conditions imposed that the VMP area must be retained in perpetuity. Equivalent ecological restoration may be provided where existing native vegetation occurs on site. It is preferred that remnant vegetation on site is restored to a local native plant community type before additional planting is undertaken. Weed control should prioritise invasive species and weeds of national significance (WONS). The area of restoration to be completed in place of planting is to be calculated as follows:

- a. Calculate the area required to plant 900 trees per cabin or rural tourist residence using the appropriate plant spacings for the vegetation community to be established. For example, rainforest species are generally planted 2 to 3m apart, thus 900 trees would occupy an area of some 0.56ha at spacings of 2.5m (using the table below); while koala habitat restoration or eucalypt/sclerophyll plant communities naturally have spacings between 4m and 6m apart so that 900 trees would occupy an area of 1.44 ha.

Table D3.2 - Tree Spacing Numbers / Hectare (Ha)

| No of Trees per Ha Spacing |
|----------------------------------|
| 10,000 @ 1.0metre spacing |
| 4,444 @ 1.5metre spacing |
| 2,500 @ 2.0metre spacing |
| 1,600 @ 2.5metre spacing |
| 1,111 @ 3.0metre spacing |
| 816 @ 3.5metre spacing |
| 625 @ 4.0metre spacing |
| 400 5 metre spacings |
| 25 20 metre spacings |
| 16 25 metre spacings |
| 11 30 metre spacings |
| 4 50 metre spacings |

- b. For areas that are clearly dominated by weed species (greater

than 50% cover
over all stratus), the total restoration area is double that
calculated in point a)
above. For areas that are weedy, but not weed-dominated (less
than 50% cover
over all stratus), the restoration area worked is four times that
calculated above.
These calculations ensure that equivalent effort is expended
whether planting or
restoring existing plant communities.

ISSUE FIVE

Where the new Environmental reparation criteria and measures apply to Rural Tourist Accommodation, Farm Stay Accommodation, Ecotourism Facilities and Camping Grounds they should apply per bedroom rather than per cabin or tourist residence and in the case of camping grounds they should apply per site.



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