



28 June 2019

Department of Planning & Environment
Locked Bag 9022
GRAFTON NSW 2460
By Email: northcoast@planning.nsw.gov.au
Attention: Paul Garnett

Dear Paul,

PROPOSED 'RU6 TRANSITION ZONE'

At its Ordinary Meeting of 22 March 2018, **18-** Council resolved (18-188) among other things to:

- 4. Endorse the introduction of a new LEP 2014 zone, RU6 Transition, to be applied to land currently zoned 7(d) Scenic Escarpment LEP 1988 that does not meet the criteria for an environmental zoning.**
- 5. Subject to Council's endorsement of the proposed RU6 Transition Zone, prepare and undertake an informal exhibition of the related RU6 provisions for feedback from affected land owners who have not already agreed to this zone, and report the outcomes back to Council.**
- 6. Receive a report on draft Planning Proposal #3: (PP3) for:**
 - i. ...**
 - ii. ...**
 - iii. remaining LEP 1988 7(d) zoned land to be zoned RU6 Transition (subject to Council endorsement). as soon as practical after Council's adoption of Planning Proposal #2.**

Prior to the meeting, Council received feedback (attached) from the Department of Planning and Environment on 20 March 2018 regarding the preparation of a Planning Proposal to introduce a new LEP 2014 zone, *RU6 Transition*, to be applied to land currently zoned 7(d) Scenic Escarpment LEP 1988 and not meeting criteria for an E2/E3 zone. This feedback included suggested that Council consider including additional land uses as permissible with consent in the proposed zone.

Following the above resolution, staff undertook an informal public exhibition to gather feedback from affected land owners on the proposed zone and land use table.



Following consideration of community feedback and advice received from the Department, minor changes have made to the proposed *RU6* land use table. The attached document includes the updated *RU6* land use table and staff response to the Department's previous advice.

Council now requests the Department's consideration of the attached document for the purpose of confirming whether or not it still supports the proposed *RU6* zone. As a report on this matter is scheduled for the 15 August Planning Meeting, could you please provide this advice to Council by 22 July 2019.

Should you have any enquiries please contact Steve Daniels by phone (02) 6626 7315 or email steve.daniels@byron.nsw.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Daniels', with a small 'm' at the end.

Steve Daniels

Planner – Environmental & Economic Planning

Consideration of Land Uses for the Proposed RU6 Transition Zone (by Byron Shire Council staff)

LEP and DCP Controls

Common RU1, RU2 and proposed RU6 objective:

- *To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.*

The primary function of the proposed RU6 Transition zone is to “transition” away from land uses that do not support the above objective, while still allowing for agricultural use of the land. It is intended that the RU6 zone will replace the current 7(d) Scenic Escarpment Zone except where vegetated areas meet the criteria for applying an environmental zone. Land that currently falls under the 7(d) Scenic Escarpment Zone is generally elevated and/or within a line of sight to populated areas of the Shire, making the scenic quality of the locality more sensitive to development than less prominent rural landscapes (ie. other rural zoned land in the Shire).

It may be argued that a wider range of land uses could be permitted with consent in the proposed RU6 Transition Zone, and that the impact of development on “*the scenic quality of the locality*” could be managed via DCP controls. However, the DCP is not a suitable mechanism for planning controls relating to land use. Because the DCP is a guideline document that does not carry statutory weight, it is not possible to ensure a specific land use outcome. Relying on DCP controls over LEP controls also places the objectives of the zone at greater risk of being eroded over time via court challenges and the subsequent implications of precedent.

Permitted Uses in the Proposed RU6 Transition Zone

Consideration of permissible land uses has sought to replicate those in the current 7(d) Scenic Escarpment Zone as closely as possible. Some changes have been proposed due to differences in the Standard Instrument, and to ensure that the objectives of the zone can be achieved.

The DPE provided feedback on the proposed RU6 land use table on 20 March 2018. **Table 1** includes a list of additional land uses that the DPE suggested could be permitted with consent, with comment from Council staff provided.

Table 1: DPE Suggested Additional RU6 Land Uses / BSC Staff Comment

(DPE) Suggested RU6 Permissible Land Use	DPE Comment	BSC Comment	Include/Exclude from RU6
<p>Agricultural produce industry <i>means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.</i></p>	<p>This is considered important where existing farms may be located on land proposed to be zoned RU6 and processing of farm produce may be proposed</p>	<p>Potential bulk and scale of the land uses are inconsistent with the objective of the RU6 transition zone, and would intensify development by comparison to current permissible uses in the 7(d) zone. The has the potential to undermine the integrity of the scenic landscape for land currently zoned 7(d), which is considered to be more sensitive to development than other rural zoned land in the Shire.</p>	<p>Exclude</p>
<p>Farm building <i>means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.</i></p>	<p>This is considered important where existing farms may be located on land proposed to be zoned RU6</p>	<p>The SEPP (Exempt and Complying Development Codes) 2008 provides adequate controls for farm buildings at a bulk and scale that accords with the proposed RU6 zone objectives.</p>	<p>Exclude</p>
<p>Dual occupancy <i>means a dual occupancy (attached) or a dual occupancy (detached).</i></p>	<p>The other rural zones in Byron LEP 2014 permit dual occupancies with consent and it is considered that the impacts of dual occupancies can be managed in a manner similar to dwelling houses. At the very least dual occupancies (attached) should be permitted with consent</p>	<p>Only dual occupancies (attached) are currently permitted with consent in the 7(d) zone. However, the take-up rate of attached dual occupancies has been low.</p> <p>The visual impact of dual occupancies (attached) is potentially greater (due to bulk and scale) than two detached dwellings that can be sited so to minimise the impact.</p> <p>However, allowing for dual occupancies (detached) would likely result in significant cumulative impacts over time as demand is expected to be much greater than that for dual occupancies (attached). This was reflected in community consultation for the proposed RU6 zone which indicated that the demand for dual occupancies (detached) is significant.</p> <p>Rather than allowing dual occupancies as permitted with</p>	<p>Exclude</p>

(DPE) Suggested RU6 Permissible Land Use	DPE Comment	BSC Comment	Include/Exclude from RU6
		consent, it is considered that only allowing for secondary dwellings (ie. a size-limited dual occupancy) represents a more reasonable approach and one that will achieve a more manageable outcome in terms of visual impact.	
<p>Secondary dwelling means a self-contained dwelling that:</p> <ul style="list-style-type: none"> 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. 	For the reasons given for dual occupancies	<p>Secondary dwellings have a smaller footprint and therefore impacts are more easily managed than dual occupancies (attached & detached).</p> <p>As stated above, allowing for secondary dwellings (ie. instead of dual occupancies) represents a more reasonable approach and one that will achieve a more manageable outcome in terms of visual impact.</p>	Include
<p>Rural workers dwelling means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.</p>	Where a farm may exist on land proposed to be zoned RU6	The integrity of the scenic landscape for land currently zoned 7(d) is considered to be more sensitive to development than other rural zoned land in the Shire. Rural workers dwellings are not currently permissible in the 7(d) zone. Inclusion of rural workers dwellings as permitted with consent may result in an intensification of development at a scale more comparable to dual occupancies.	Exclude
<p>Plant nursery means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items.</p>		Potential bulk and scale of built structures associated with these land uses are inconsistent with the objective of the RU6 transition zone, and would intensify development by comparison to current permissible uses in the 7(d) zone. The has the potential to undermine the integrity of the scenic landscape for land currently zoned 7(d), which is considered to be more sensitive to development than other rural zoned land in the Shire.	Exclude
<p>Recreation area means a place used for outdoor recreation that is normally open to the public, and includes:</p> <ul style="list-style-type: none"> a) a children's playground, or b) an area used for community sporting activities, 		Recreation areas are more suitable on public land that is generally on flatter terrain.	Exclude

(DPE) Suggested RU6 Permissible Land Use	DPE Comment	BSC Comment	Include/Exclude from RU6
<p>or</p> <p>c) a public park, reserve or garden or the like, and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).</p>			
<p>Rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:</p> <p>(a) agricultural produce industries, (b) livestock processing industries, (c) composting facilities and works (including the production of mushroom substrate), (d) sawmill or log processing works, (e) stock and sale yards, (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.</p>		<p>Potential bulk and scale of the land uses are inconsistent with the objective of the RU6 transition zone and would intensify development by comparison to current permissible uses in the 7(d) zone. The has the potential to undermine the integrity of the scenic landscape for land currently zoned 7(d), which is considered to be more sensitive to development than other rural zoned land in the Shire.</p>	<p>Exclude</p>
<p>Respite day care centre means a building or place that is used for the care of seniors or people who have a disability and that does not provide overnight accommodation for people other than those related to the owner or operator of the centre.</p>		<p>Respite day care centres are better suited to areas where urban services are available or in proximity to more densely populated areas in the Shire. Land located in the existing 7(d) zone is generally isolated from urban areas. Furthermore, this land use is already permitted in nearly all other zones in the LEP 2014.</p>	<p>Exclude</p>
<p>Information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.</p>		<p>Potential bulk and scale of the land uses are inconsistent with the objective of the RU6 transition zone and would intensify development by comparison to current permissible uses in the 7(d) zone. The has the potential to undermine the integrity of the scenic landscape for land currently zoned 7(d), which is considered to be more sensitive to development than other rural zoned land in the Shire.</p>	<p>Exclude</p>

Although one of the objectives in the current RU1 Primary Production Zone and RU2 Rural Landscape Zone is *'To protect significant scenic Landscapes and to minimise impacts on the scenic quality of the locality'*, the range of permissible land uses in both zones is much greater than that of the 7(d) zone. This is shown in Table 1 below.

Initial discussions with the Department of Planning and Environment indicated that the use of the RU6 Transition Zone in this context would appear to be consistent with the intended application of this zone. **Formal confirmation of the Department's position is now required.**

Table 2 – Comparison of permissible land uses in the '7(d)', 'RU1' and 'RU2' zones

ZONE →	7(d) Scenic Escarpment (BLEP 1988)	RU1 Primary Production (BLEP 2014)	RU2 Rural Landscape (BLEP 2014)
2. Permitted without consent	Nil.	Environmental protection works; Extensive agriculture; Home-based child care; Home occupations	Environmental protection works; Extensive agriculture; Home-based child care; Home occupations
3. Permitted with consent	Agriculture; bed and breakfast establishments; bushfire hazard reduction; car parks; clearing of land; drainage; dwelling-houses; environmental facilities; home industries; primitive camping grounds; restaurants; roads; utility installations.	Agriculture; Airstrips; Animal boarding or training establishments; Business identification signs; Camping grounds; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Helipads; Home businesses; Home industries; Industrial retail outlets; Industrial training facilities; Intensive livestock agriculture; Intensive plant agriculture; Landscaping material supplies; Open cut mining; Places of public worship; Plant nurseries; Recreation areas; Restaurants or cafes;	Agricultural produce industries; Agriculture; Airstrips; Animal boarding or training establishments; Business identification signs; Camping grounds; Cemeteries; Centre-based child care facilities; Community facilities; Crematoria; Depots; Dual occupancies; Dwelling houses; Eco-tourist facilities; Environmental facilities; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Funeral homes; Garden centres; Health consulting rooms; Helipads; Home businesses; Home industries; Hostels; Industrial retail outlets; Industrial

ZONE →	7(d) Scenic Escarpment (BLEP 1988)	RU1 Primary Production (BLEP 2014)	RU2 Rural Landscape (BLEP 2014)
		Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Secondary dwellings; Tourist and visitor accommodation; Veterinary hospitals	training facilities; Information and education facilities; Landscaping material supplies; Livestock processing industries; Neighbourhood shops; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Roads; Roadside stalls; Rural supplies; Rural workers' dwellings; Secondary dwellings; Stock and sale yards; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Veterinary hospitals; Warehouse or distribution centres
4. Prohibited	Any purpose other than a purpose specified in item 2 or 3.	Aquaculture; Backpackers' accommodation; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3	Aquaculture; Backpackers' accommodation; Hotel or motel accommodation; Serviced apartments; Any other development not specified in item 2 or 3

To maintain consistency with the current 7(d) zone provisions and ensure visually prominent areas are not eroded by inappropriate land uses that are otherwise permitted in the RU1/RU2 zones. The new *RU6 Transition Zone* proposed below has been modified from what was originally exhibited to ensure that the objective of the zone relating to scenic landscapes is consistent with other rural zones, and to include secondary dwellings as permitted with consent. The proposed zone is as follows:

ZONE RU6 TRANSITION ('grey shading' = compulsory in SI LEP / 'blue' font = additional local provisions proposed)

1 Objectives of zone

- To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.

2 Permitted without consent

environmental protection works; home occupations.

3 Permitted with consent

Agriculture; bed and breakfast accommodation; camping grounds; community facilities; dwelling houses; Eco-tourist facilities; Environmental facilities; home businesses; Home industries; restaurants; roads; road side stalls; secondary dwellings.

Comparison with 7d Scenic Escarpment Zone (LEP 1988):

3 Only with development consent

Agriculture; bed and breakfast establishments; bushfire hazard reduction; car parks; clearing of land; drainage; dwelling-houses; environmental facilities; home industries; primitive camping grounds; restaurants; roads; utility installations.

4 Prohibited

Any other development not specified in item 2 or 3

The proposed RU6 zone recognises that the scenic escarpment is a sensitive landscape experiencing, and likely to continue to experience, increased development pressure. Inappropriate development has the potential to erode the scenic values of these areas and conflict with community values and Council's policy framework in this regard. The proposed *RU6* zone will maintain the existing development framework around suitable land uses in these visually prominent areas and highly valued landscapes (by both residents and visitors).