



#E2019/838
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Dear Lynne

Extension of time on the Low Rise Medium Density Code implementation

I acknowledge the Department's deferment of the Low Rise Medium Density Housing Code (the 'Code') until 31 October 2019 to allow for an independent review, and appreciate the opportunity to provide early input into your review process.

In our analysis of the Code implications for Byron Shire, Council considers that a number of refinements are needed to ensure there is strong alignment with Council's existing and emerging housing policy framework. These are set out below:

1. **Treating minimum lot size requirements for manor houses and terraces the same as other types of low rise medium density (LRMD) housing.** Council has prepared a planning proposal to amend LEP 2014 to include a minimum lot size for manor houses and terraces and forwarded to the NSW Department of Planning and Environment's Grafton Office on Friday 21 June 2019 for a Gateway determination.
2. Allowing Council to **limit the Code's application to specific precincts that meet location, infrastructure and hazard based criteria.** Such areas could be identified in the Residential Strategy and implemented by up zoning to the R3 Medium Density Zone. This could be activated using State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 *Schedule 3 Complying development codes—variations*. The added bonus of using this approach is that Council could link the up zoning with the implementation of SEPP 70 Affordable Housing. As previously advised to the Department of Planning, Council is preparing an affordable housing contribution scheme under State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes). This would be especially beneficial for localities with potential or existing infrastructure capacity issues such as Mullumbimby and the Sun Rise – Byron Bay – Suffolk Park urban areas. Details are provided in Annexure 1.

3. **Allowing Council to retain the existing regulatory framework for all other R2 Low Density Residential zoned areas**, with such development subject to merit assessment under the normal development assessment process.
4. **Ensuring key density provisions in the Code, such as lot size and gross floor area, are consistent with the Byron LEP provisions for LRMD development.** That is, ensuring LRMD density outcomes are consistent with community expectations and Council's infrastructure planning and servicing. Annexure 1 - Table 1 provides an example of the current anomalies.
5. **Including a requirement for the local character and context statement component of the 'design verification statement' to be completed by a qualified urban designer or architect.** This enables a more consistent and evidence based determination on a subjective description of intangible and tangible values and characteristics of a place. It is also in keeping with the advisory documents on the creation of better places produced by the Government Architect NSW and Department of Planning and Environment such as:
 - Movement and Place
 - Local Character and Place
 - Good Urban Design
 - Urban Design for Regional NSW.

In summary, the introduction of the Code (as currently drafted) to Byron Shire will not only hasten the pace of development but also the density of development. The implications are yet to be factored into its Council's long-term community and infrastructure planning and funding. If the above measures were endorsed and implemented as part of the Department's review, then within **nine (9) months** Council would **be in a strong position to commence introduction** of the Code in Byron Shire. The inclusion of these measures would also send a clear message that the State government supports Byron Shire Council being able to deliver well located, cost effective low rise medium density development that is consistent with community expectations.

Council looks forward to your favourable response to this request.

Yours sincerely



Sharyn French

Acting Director Sustainable Environment and Economy

Annexure 1

Infrastructure Planning Impacts

The potential impacts on infrastructure are exemplified in the case of Mullumbimby and Byron Bay:

- **Mullumbimby- impact on water supply security:** Under current development assessment pathway, the town has some 240 lots of 800m² or greater, considered to have potential for low rise medium density development over the next 20 years, some of 175 lots (72%) potentially suitable for fast track assessment under the Code. Council is also undertaking investigations to confirm Mullumbimby's water supply capacity. It would be premature to apply the Code to Mullumbimby until this work is completed.
- **Impacts on the operational capacity of the Pacific Highway interchange and Ewingsdale Road at Byron Bay:** Under the current development assessment pathway, the town has some 330 lots considered to have potential for low rise medium density development over the next 20 years. With the Code, this would jump to some 730 lots, over a two-fold increase for the town. This is equivalent to accommodating another West Byron residential precinct. It would be premature to apply the Code to Byron Bay area until the necessary upgrades are in place. To do so otherwise will exacerbate the frequent grid locked traffic within the town and at the Pacific Highway interchange.

Council's recent correspondence from the Department of Transport Roads and Maritime Services (Jan 2018) in planning for future growth and the operational implications for the Pacific Highway (HW10) confirmed its position that:

'support for any release area (as is the impact of this Code) would be contingent upon Council identifying the scope of infrastructure works and proposed funding sources required to support any proposed release areas.'

... Council and Roads and Maritime are working towards medium to long term infrastructure improvements for Ewingsdale Road and the interchange with the Pacific Highway due to current traffic and safety issues being experienced during peak times. It is reasonable to assume that additional land releases that directly impact this interchange are unlikely to be supported until these medium to longer term improvements are realised.'

Given Council will be excluded from the assessment process under the Code, the only way to properly align infrastructure capacity/delivery with this type of housing is through the refinements recommended in this letter.

Density impacts

The following is an example of the noticeable inconsistencies between the Code and the LEP.

Table 1 - Gross floor areas yield comparison

Code	LEP 2014
<p>SEPP 3B.35 - Maximum gross floor area of all buildings – terraces</p> <p>The maximum gross floor area of all buildings on a lot is</p> <p><i>Zone RU5, Zone R1 or Zone R2: 60% of lot area</i></p> <p><i>Example of lot 800m² in R2 would yield a potential gfa of 480m²</i></p> <p><i>Zone R3: 80% of lot area</i></p> <p><i>Example lot of 800m² in R3 would yield a potential gfa of 640m²</i></p>	<p>Byron Shire LEP 2014 FSR maps generally set a maximum FSR of:</p> <p>Zone R2: 0.5.1</p> <p><i>Example lot of 800m² in R2 would yield a potential gfa of 400m²</i></p> <p>Zone R3: 0.6.1</p> <p><i>Example lot of 800m² in R3 would yield a potential gfa of 480m²</i></p>

In summary a lot of 800m², developed under the Code has capacity for an additional 80m² to 160m² of gross floor area or equivalent to an additional 1 – 2 dwellings per lot. This higher density could further compound the infrastructure delivery.