

Byron LEP 2014 - Secondary Dwellings in the RU5 Village zone

Proposal Title : **Byron LEP 2014 - Secondary Dwellings in the RU5 Village zone**

Proposal Summary : **The proposal seeks to amend the Byron Local Environmental Plan (LEP) 2014 to permit 'secondary dwellings' with consent in the RU5 Village zone.**

PP Number : **PP_2015_BYRON_007_00** Dop File No : **15/13261**

Proposal Details

Date Planning Proposal Received : **03-Sep-2015** LGA covered : **Byron**

Region : **Northern** RPA : **Byron Shire Council**

State Electorate : **BALLINA** Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb : **Billinudgel** City : Postcode : **2483**

Land Parcel : **All land zoned RU5 Village**

Street :

Suburb : **Federal** City : Postcode : **2480**

Land Parcel : **All land zoned RU5 Village**

Street :

Suburb : **Main Arm** City : Postcode : **2482**

Land Parcel : **All land zoned RU5 Village**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of
Conduct has been
complied with : **Yes**

If No, comment : **The Department of Planning and Environment Code of Practice in relation to
communication and meetings with Lobbyists has been complied with to the best of the
Region's knowledge.**

Have there been
meetings or
communications with
registered lobbyists? : **No**

If Yes, comment : **Northern Region has not met any lobbyists in relation to this proposal, nor has Northern
Region been advised of any meeting between other departmental officers and lobbyists
concerning this proposal.**

Supporting notes

Internal Supporting
Notes :

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The objective and intended outcome of the proposal is provided and adequately expressed. The proposal seeks to amend the LEP to allow secondary dwellings in the village zone.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The planning proposal provides a clear explanation of the provision to achieve the objectives and intended outcome. The proposal will provide for additional forms of village housing that should limit land use conflict in the village zone. The proposed amendment to the LEP is summaries as:**

- Remove secondary dwellings from Part 4 - Prohibited in the Land Use Table of the RU5 - Village zone. This omission will allow for secondary dwellings to be 'permitted with consent' in the RU5 zone.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

2.2 Coastal Protection

3.1 Residential Zones

* May need the Director General's agreement

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain : **An assessment of the applicable SEPP's and S117 Directions is provided within the Assessment section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **The proposed amendment does not require modification of any map under Byron LEP 2014.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has indicated a 28 day community consultation period. This level of consultation is appropriate in this instance.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

The planning proposal satisfies the adequacy criteria by:

- 1) Providing appropriate objectives and intended outcomes;**
- 2) Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes;**
- 3) Providing an adequate justification for the proposal;**
- 4) Outlining a community consultation period;**
- 5) Completing an evaluation for the issuing of an authorisation to exercise delegation. The proposal is considered a minor local matter. Delegation is recommended in this instance;**
- 6) Providing a project timeline for the proposal. As the proposal is for a minor amendment to the Land Use Table, the time frame of six (6) months is considered appropriate.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Byron Local Environmental Plan (LEP) commenced on the 21 July 2014. This planning proposal seeks to amend Byron LEP 2014.

Assessment Criteria

Need for planning
proposal :

Since the certification of Byron LEP 2014, the Department has reconsidered its position in respect to alternate forms of dwellings and is now of the view that it is a local matter for the Council to determine whether or not additional dwellings should be provided for in rural village areas through its LEP.

The permissibility of secondary dwellings in RU5 Village areas was raised during the submission process for the Standard Instrument (SI) Byron LEP 2014, as it was not in the exhibited draft. As Council considered the LEP process to be a transition from Byron 1988 planning controls into the SI LEP format, secondary dwellings were not permitted in the RU5 zone. As Council aimed to reduce the need to re-exhibit the draft LEP, the permissibility of secondary dwellings was considered best dealt with through the planning proposal/Gateway process after the LEP was made.

Council has indicated that there is a need to provide alternative affordable housing options in village areas. Secondary dwellings will assist landowners looking at farm succession planning by allowing retiring landowners and/or families to continue to reside on the land, but with a level of separation.

Secondary dwellings are currently prohibited in the RU5 Village zone under the Byron LEP 2014. Council is therefore seeking to amend the LEP to permit this land use in the RU5 zone with development consent.

A secondary dwelling is defined under the SI LEP as a self-contained dwelling that is established in conjunction with a principal dwelling. Clause 5.4 of the LEP requires that secondary dwelling must be 35% of the total floor area of the principal dwelling. Permitting this option in the three RU5 Village areas (Billinudgel, Federal and Main Arm) will promote greater flexible development and home ownership outcomes in these rural village areas.

Consistency with strategic planning framework :

Far North Coast Regional Strategy (FNCRS)

The FNCRS was released in 2007 and identifies the Government's key strategic directions for the Far North Coast.

The proposal is considered to be consistent with the actions outlined under the strategy given that it will promote housing choice, densities, location and affordability.

The addition of secondary dwellings to the village zone is considered a local matter not inconsistent with Council's approved local strategy.

Consistency with SEPP's and s117 Directions

Council has nominated various SEPP's and s117 Directions for consideration with respect to this planning proposal.

SEPP No 55 - Remediation of Land

The planning proposal is considered to be consistent with SEPP 55 as secondary dwellings are (as defined) to be established in conjunction with another dwelling (principal dwelling) and on the same lot of land as the principal dwelling. Therefore it is unlikely that secondary dwellings would be built on land that is contaminated, as development consent would not have been granted in the first instance for the principal dwelling, if the land was determined to be inconsistent with SEPP 55.

S117 Directions

The following s117 Directions are applicable to this planning proposal, 2.2 Coastal Protection, 3.1 Residential Zones, 3.4 Integrated Land Use and Transport, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.1 Implementation of Regional Strategies. Of the above s117 Directions the proposal is inconsistent with the following:

2.2 Coastal Protection

Council has indicated that certain land affected by this proposal is located within the coastal zone. The planning proposal affects land at Billinudgel, Federal and Main Arm which are all situated west of the Pacific Highway (outside of the coastal zone). The proposal only involves an additional use of the land, not rezoning of the land. Therefore the proposal has been assessed as not inconsistent with the direction and needs no further justification.

4.1 Acid Sulfate Soils

The proposal will enable additional development on land which may contain acid sulfate soils. The proposal is inconsistent with this direction as it proposes an intensification of a land use on land identified as containing acid sulfate soils and is not supported by a study assessing the appropriateness of the land. Any development would be subject to Council's acid sulfate provisions under the LEP and any potential impact would be addressed at development application stage. Development of a secondary dwelling is unlikely to have any significant impact on acid sulfate soils. The proposal's inconsistency with this direction can be justified as of minor significance.

4.3 Flood Prone Land

The proposal will enable additional development on land which may be classed as flood prone. The proposal is inconsistent with this direction as it proposes an intensification of land uses on land identified as flood prone land and is not supported by a study assessing the appropriateness of the land. Development of a secondary dwelling is unlikely to have any significant impact on flood prone land. Any development would be subject to Council's flood provisions under the LEP and any potential impact would be addressed at development application stage. The proposal's inconsistency with this direction can be justified as of minor significance.

4.4 Planning for Bushfire Protection

The Direction requires that Council consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation occurs the consistency of the proposal with this direction remains unresolved. Council has indicated

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that it will consult with the NSW Rural Fire Service following Gateway determination.

The planning proposal is otherwise consistent with the s117 Directions.

Environmental social
economic impacts :

It is a local matter for the Council to determine what forms of dwellings should be permitted in the village areas through its LEP and Council is of the view that permitting secondary dwellings in village area will provide for a variety of housing opportunities creating obvious benefits for its residents.

The proposal will have a net community benefit through increased housing opportunity and affordability, particularly for rural workers, their families and the aging population.

Any potential direct impacts on the natural and built environment will be considered through the development application process. The provisions under the Byron LEP will guide development outcomes to minimise potential impacts.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **6 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Byron Shire Council_03-09-2015_LEP 2014 amendment to permit secondary dwellings in RU5 Village zone - s56_.pdf	Proposal Covering Letter	Yes
2015-09-03 Planning proposal.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **2.2 Coastal Protection**
 3.1 Residential Zones
 3.4 Integrating Land Use and Transport
 4.1 Acid Sulfate Soils
 4.3 Flood Prone Land
 4.4 Planning for Bushfire Protection
 5.1 Implementation of Regional Strategies

Additional Information : **It is recommended that:**

- 1) The planning proposal should proceed as a "routine" planning proposal;**
- 2) The Secretary's (or an officer nominated by the Secretary) agree that inconsistency with s117 Directions 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are of minor significance;**
- 3) The Secretary (or an officer nominated by the Secretary) note that the inconsistency with s117 Direction 4.4 Planning for Bushfire Protection is outstanding and needs to be resolved prior to the making of the plan;**
- 4) Council is required under section 56(2)(d) of the EP&A Act and to comply with the relevant s117 Direction, to consult with the NSW Rural Fire Service prior to community consultation;**
- 5) The planning proposal have a community consultation period of 28 days;**
- 6) The planning proposal be completed in six (6) months;**
- 7) An authorisation to exercise delegation should be issued to Byron Shire Council.**

Supporting Reasons : **The reasons for the above recommendations for the planning proposal are as follows:**

- 1. Permitting secondary dwellings in the RU5 Village areas is a matter of local significance.**
- 2. The proposal is otherwise consistent with all the relevant local and regional planning strategies, contributing to housing choice and affordability throughout the Byron LGA.**
- 3. The recommended conditions to the Gateway are required to provide adequate consultation, accountability and progression.**

As the matter is of local significance delegation for Council to finalise the planning proposal is recommended in this instance.

Signature: _____

Printed Name: _____


JIM CLARK

Date: _____

15 September 2015

Team Leader Local Planning