



Section 73A EP&A Act submission

Part A. Council to complete

Subject:

Byron LEP 1988

Report requesting the making of amending local environmental plan under section 73A.

Background:

Byron Shire Council resolved on 17/12/09, to amend Byron LEP 1988 and to request that the Minister for Planning make the plan under section 73A of the *Environmental Planning and Assessment Act 1979*.

On 17 December 2009 Byron Council resolved (09-1144):

1. That the proposed amendment to DCP 16 "Exempt and Complying Development", to allow for the use of public road reserves, as shown in page 126 of this report be placed on exhibition for a period of 42 days for public consultation and comment.
2. That any submissions received be reported back to Council prior to adoption of the amended Development Control Plan.
3. That Council seek to amend BLEP 1988 pursuant to section 73A of the EP&A Act 1979 by amending all clause 9 and clause 64 references to the date of adoption of DCP 16 to reflect the relevant date of adoption. The amendment to the BLEP 1988 will involve subclauses 9(4), 9(5)(b), 9(6), 64(3) and 64(6)(n).
4. That Council note that it will be seeking to identify potential locations for on-footpath and off-footpath dining for inclusion in the urban design DCP.

The draft amending plan changes are provided below (refer to clauses 9 and 64 of Byron LEP 1988):

Zone objectives and development control table

9. (1) The objectives of each zone are set out in the table to this clause under the heading "Objectives of Zone" appearing in the matter relating to the zone.
- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in the table to this clause, the purposes (if any) for which-
 - (a) development may be carried out without development consent;
 - (b) development may be carried out only with development consent;
 - (c) development is prohibited,are specified under the headings "Without development consent" "Only with development consent" and "Prohibited", respectively, appearing in the matter relating to the zone.
- (3) Except as otherwise provided by this plan, the council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.
- (4) Development of minimal environmental impact and satisfying the provisions defining exempt development in Byron Development Control Plan No. 16 – Exempt and Complying Development as adopted by the Council on 24 June 2010 is exempt development. **Om/ins Amd.96 22/3/02**
Om/ins Amd.24/6/10



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(5) *Development is complying development if it:*

- (a) *is local development of a kind that can be carried out with consent on the land to which it is proposed; and*
- (b) *satisfies the provisions defining complying development in Byron Development Control Plan No. 16 – Exempt and Complying Development as adopted by the Council on 24 June 2010 is exempt development. Om/ins Amd.96 22/3/02 Om/ins Amd.24/6/10*
- (c) *is not an existing use as defined in the Environmental Planning and Assessment Act 1979.*

(6) *Development is exempt or complying development only if it complies with the development standards and other requirements applied to the development by Byron Development Control Plan No. 16 – Exempt and Complying Development as adopted by the Council on 24 June 2010 is exempt development. Om/ins Amd.96 22/3/02 Om/ins Amd.24/6/10*

(7) *A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in Byron Development Control Plan No. 16 – Exempt and Complying Development as in force when the certificate is issued. ins Amd.70 17/3/00 Om/ins Amd.96 22/3/02*

64 Signage (page 70)

(3) *Any signage listed in Development Control Plan No 16 – Exempt and Complying Development (as adopted by the council on 24 June 2010) is permitted without the consent of the council. Om/ins Amd.24/6/10*

6 (n) *signage (except signs which are exempt development under the provisions of Development Control Plan No 16 – Exempt and Complying Development as adopted by the council on 24 June 2010) on land within Zone No 2(a), 6(a), 7(a), 7(b), 7(c), 7(d), 7(f1), 7(j), 7(k) or 8(a). Om/ins Amd.24/6/10*

The six week public exhibition period for the DCP amendment was conducted between 22 March 2010 and 3 May 2010. No submissions were received. A brief Council report will be prepared for the meeting of 10/6/2010. The report will include a recommendation to adopt DCP 16 on 24 June 2010. This should allow time for the processing of the 73A LEP amendment. It is planned to synchronise the adoption date of the DCP (24/6/2010) with the gazettal date of amending BLEP 1988.

The land to which this amendment applies is to all land within the local government area of Byron.

Why there is a need for the amendment:

At Council's Ordinary Meeting held on 17 December 2009 Byron Council resolved (09-1144) to amend the "Byron Shire Council Development Control Plan No. 16 – Exempt and Complying Development" and place the plan on public exhibition for a period of 42 days for public consultation and comment.

The proposed amendment would allow for the use of public road reserves without the need for development consent through additional provisions within the 'Exempt Development Table' of the DCP.

Elimination of development applications for use of public road reserves for the purposes of footpath dining, goods and chattels, busking, street stalls, entertainment and events will simplify the process required for these uses and reduce time spent by Council on servicing these matters. Council would continue to regulate these activities under the Roads Acts 1993 and various Council policies.

Amendments to Byron Development Control Plan 16 – Exempt and Complying Development can not proceed unless clause 9 and clause 64 of the Byron Local Environmental Plan 1988 is amended, as several references are made to the date of adoption of DCP 16 (20 December 2001).



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What the amendment does:

The amendment will align the date of adoption of *Byron Development Control Plan 16 – Exempt and Complying Development* with any reference to this DCP and the adoption date contained in Byron LEP 1988.

Reference to *Byron Development Control Plan 16 – Exempt and Complying Development* date is made in Byron LEP 1988 subclauses 9(4), 9(5)(b), 9(6), 64(3) and 64(6)(n). These provisions make reference to the date of adoption of DCP 16 as follows:

Zone objectives and development control table

9. (1) The objectives of each zone are set out in the table to this clause under the heading "Objectives of Zone" appearing in the matter relating to the zone.

(2) Except as otherwise provided by this plan, in relation to land within a zone specified in the table to this clause, the purposes (if any) for which-

- (a) development may be carried out without development consent;
- (b) development may be carried out only with development consent;
- (c) development is prohibited,

are specified under the headings "Without development consent" "Only with development consent" and "Prohibited", respectively, appearing in the matter relating to the zone.

(3) Except as otherwise provided by this plan, the council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

(4) Development of minimal environmental impact and satisfying the provisions defining exempt development in *Byron Development Control Plan No. 16 – Exempt and Complying Development* as adopted by the Council on 20 December 2001 is exempt development. **Om/ins Amd.96 22/3/02**

(6) Development is complying development if it:

- (d) is local development of a kind that can be carried out with consent on the land to which it is proposed; and
- (e) satisfies the provisions defining complying development in *Byron Development Control Plan No. 16 – Exempt and Complying Development* as adopted by the Council on 20 December 2001; and **om/ins Amd.96 22/3/02**
- (f) is not an existing use as defined in the *Environmental Planning and Assessment Act 1979*.

(6) Development is exempt or complying development only if it complies with the development standards and other requirements applied to the development by *Byron Development Control Plan No. 16 – Exempt and Complying Development* as adopted by the Council on 20 December 2001. **Om/ins Amd.96 22/3/02**

(7) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Byron Development Control Plan No. 16 – Exempt and Complying Development* as in force when the certificate is issued. **ins Amd.70 17/3/00 om/insAmd.96 22/3/02**

64 Signage

(3) Any signage listed in *Development Control Plan No 16 – Exempt and Complying Development* (as adopted by the council on 20 December 2001) is permitted without the consent of the council.



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6 (n) signage (except signs which are exempt development under the provisions of Development Control Plan No 16 – Exempt and Complying Development as adopted by the council on 20 December 2001) on land within Zone No 2(a), 6(a), 7(a), 7(b), 7(c), 7(d), 7(f1), 7(j), 7(k) or 8(a).

In order to synchronise the adoption date of DCP 16 and gazettal date of amending BLEP 1988 it is proposed that the date of gazettal of 73A amendment BLEP 1988 be 24 June 2010.

Why the amending plan is suitable to be made in accordance with section 73A:

Planning circular PS 06-014 issued by the DoP on 12 July 2006 states that an amendment to an LEP would be permitted providing the amendment will have not any material effect 'on-the-ground' and is of a minor nature.

The proposed Byron LEP 1988 amendment will not result in any new changes in terms of land uses and activities within the Shire. The amendment relates only to the date of reference of *Byron Development Control Plan No. 16 – Exempt and Complying Development*. The DCP 16 amendment simply allows footpath dining, goods and chattels, busking, street stalls, entertainment and events as exempt development within the 'exempt table' of DCP 16 and eliminates the need for development consent for such activities. Council would continue to regulate these activities through the Roads Acts 1993 and various Council policies.

The council requests that the Minister agree to make draft Byron LEP 1988 (Name of amending LEP)

Signed: R. S. Darney Date: 14th May, 2010

Name: Raymond Darney Position: Exec. Manager Planning

On behalf of: Byron Shire Council (Name of council)

Part B. Department of Planning use only

Date of referral to LEP Review Panel: (insert date)

Department position:

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 73A (see advice tagged 'A').

Parliamentary Counsel opinion:

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

Recommendation:

It is recommended that the Minister:



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(a) under sections 70(1)(a) and (8) and section 73A of the *Environmental Planning and Assessment Act 1979* maketagged 'B')
(Name of LEP)

(b) authorise the Department to advise council of the Minister's decision.

Date:

Signed: Name:

Position:
for Director-General