

Report No. Planning – Biannual Planning Proposal for Amendment to Clause 17B(4) of the Byron LEP 1988 to enable a multiple occupancy to community title conversion.

Executive Manager: Environment and Planning
File No: PLN560000 x 25170 #1024354

Principal Activity: Land and Natural Environment

Summary: Council has previously resolved to receive reports on planning proposals for LEP amendments biannually in June and December. Consequently, the planning proposal included in this report has been submitted to Council for its consideration.

The purpose of this report is to seek Council's position on whether or not to proceed with a planning proposal to amend the sunset clause in 17B(4) of the Byron LEP 1988 to enable the conversion of 112 Fowlers Lane (Lot 2 DP 630987), Bangalow, from a multiple occupancy development to a community title subdivision.

NOTE TO COUNCILLORS:

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

1. That Council resolve to proceed with the planning proposal to amend clause 17B(4) of the Byron LEP 1988, as indicated below, to enable the conversion of 112 Fowlers Lane (Lot 2 DP 630987), Bangalow, from a multiple occupancy development to a community title subdivision:
(4)Consent must not be granted to a development application for community title subdivision under this clause if the application was lodged more than five years after the date of gazettal of the plan that inserted the relevant item into Schedule 13.
2. That Council resolve that a commencement fee of \$2000 be sought from the applicant of the planning proposal to commence the amendment of clause 17B(4) of the Byron LEP 1988.

Attachments:

- Site Plan – 112 Fowlers Lane Bangalow #1026956 [1 page] **Annexure 12(a)**
- Planning Proposal – 112 Fowlers Lane Bangalow #1011663 [3 pages] **Annexure 12(b)**

Report

On 12 August 2010 Council considered the report *Biannual LEP Amendments Review of Process* (#973447). Council resolved:

10-617 (relevant extract only):

1. *That Council adopt the revised Process to initiate a Local Environmental Plan as presented in Annexure 13(b) #973633.*

The process adopted specifies that Council will consider a report on proposed LEP amendments biannually in June and December. Consequently, the planning proposal included in this report has been submitted to Council for its consideration.

The purpose of this report is to seek Council's position on whether or not to proceed with a planning proposal to amend sunset clause 17B(4) of the Byron LEP 1988 to enable the conversion of 112 Fowlers Lane (Lot 2 DP 630987), Bangalow, from a multiple occupancy development to a community title subdivision.

Background

Multiple occupancy (MO) to Community Title (CT) conversion is the community title subdivision of existing multiple occupancy development. The conversion of MO to CT was enabled through an amendment to the Byron LEP 1988 to override Clause 17A(5) of the LEP that prohibits subdivision of MO's. The LEP amendment included a new clause (17B) to make the conversion process permissible with development consent, but only on properties identified in a new Schedule (13) to the LEP.

Council received nineteen (19) proposals for MO to CT conversion during a 2 and a half year time period which finished on 1 May 2004. Eighteen (18) of these properties were added to Schedule 13 through separate LEP amendments that were gazetted between July 2006 and February 2009.

Clause 17B includes the following sunset clause for MO to CT conversion:

- (4) Consent must not be granted to a development application for community title subdivision under this clause if the application was lodged more than two years after the date of gazettal of the plan that inserted the relevant item into Schedule 13.*

The subject site, 112 Fowlers Lane (Lot 2 DP 630987), was included in Schedule 13 through LEP Amendment No.127 that was gazetted on 9 March 2007. The description of development for the property as it appears in the LEP is:

Neighbourhood scheme creating 4 neighbourhood lots ranging in size from 0.8 to 3.6 hectares, with no more than one dwelling to be erected on each lot, and one lot of neighbourhood property.

A development application for the MO to CT conversion on 112 Fowlers Lane was not lodged with Council within the 2 year period specified in clause 17B(4), in this case being 9 March 2009. As a result the opportunity for the conversion to occur on this site has lapsed.

The Planning Proposal

The applicant has submitted a planning proposal seeking an amendment of clause 17B(4) of the Byron LEP 1988 to extend the time by which a development application must be lodged for MO to CT conversion. The applicant proposes that the clause be amended as follows:

- (4) Consent must not be granted to a development application for community title subdivision under this clause if the application was lodged after two years after the date of gazettal of the final batch of plans that were inserted into Schedule 13. Namely, 2 years after 20th February 2009.*

Please refer to Annexure 12(a) for a site plan and to Annexure 12(b) to view the submitted planning proposal. Sufficient information has been provided with the planning proposal for this stage of Council's consideration

Strategic Planning Context

The subject site is zoned 1A General Rural in the Byron LEP 1988 and has an approximate area of 15.89ha. The planning proposal relates to an extension of a time limit and will not result in an increased density of development on the site beyond that already indicated in Schedule 13 of the LEP. The proposal is therefore not inconsistent with the Far North Coast Regional Strategy or the Byron Rural Settlement Strategy. Nor is the proposal inconsistent with any relevant Ministerial Direction or State Environmental Planning Policy applying to rural land.

Comment

The two year time limit in clause 17B(4) for development applications (DA's) to be lodged came about from Council Resolution 03-918 on 30 September 2003. Up until this point Council had required MO to CT applications to be submitted as joint LEP amendment and development applications. This was so that Council and the public would be able to *"fully gauge the impacts and effects of the proposal."*

The 30 September 2003 Council report provides discussion as to why the two processes were separated and why a time limit was imposed. A concern was that if too much time elapsed the DA may differ markedly from the LEP amendment as it was publicly exhibited. The following relevant extract from the report states:

"There have also been concerns expressed about ensuring applications are lodged for the conversion in a timely manner and that they are consistent with the rezoning submission. One option would be to require a development application to be lodged within a certain period of time after the LEP amendment was gazetted. This would assist in finalising the proposal as the LEP amendment intended."

In respect to concerns raised above, it is noted that the DA must be consistent with the development as it is described in Schedule 13 of the LEP. Further, should Council resolve to proceed with this planning proposal it will be publicly exhibited and neighbouring property owners will be informed and have an opportunity to lodge a submission.

All other properties identified on Schedule 13 have submitted DA's within the specified timeframe. All applications, excluding one which is yet to be determined, have been approved.

The implications of the planning proposal therefore relate to equity and fairness rather than involving consideration of strategic planning and environmental impact issues. In this respect it is noted that all other applicants have submitted their applications within the specified timeframe. Nevertheless, in terms of strategic planning analysis there is no reason why the planning proposal should not proceed onto the Department of Planning for a 'gateway' determination.

Options for Responding to the Planning Proposal

Over three years have elapsed since gazettal of the LEP amendment which included 112 Fowlers Lane in Schedule 13. The applicant has sought an extension of the sunset clause that will expire on 20 February 2011. Should Council resolve to proceed with the planning proposal it will take in excess of six months to reach gazettal and for the new clause to become effective. Therefore the proposed extension of the sunset clause to 20 February 2011 will provide insufficient time for the planning proposal process to be completed and for the DA to be lodged. It is noted that the applicant has prepared the DA and has provided a copy for information with the planning proposal.

It is therefore recommended that should Council resolve to proceed with the planning proposal that clause 17B(4) be amended to allow five years after the date of gazettal for the DA to be lodged. This will provide until 9 March 2012 for the planning proposal to be processed and the DA lodged with Council.

Following from the above discussion Council has the following options for responding to the planning proposal.

- That Council resolve to proceed with the planning proposal to amend clause 17B(4) of the Byron LEP, as indicated below, 1988 to enable the conversion of 112 Fowlers

Lane (Lot 2 DP 630987), Bangalow, from a multiple occupancy development to a community title subdivision, and that a commencement fee of \$2000 be sought from the applicant:

- (4) *Consent must not be granted to a development application for community title subdivision under this clause if the application was lodged more than ~~two~~ five years after the date of gazettal of the plan that inserted the relevant item into Schedule 13.*
- That Council resolve not to proceed with the planning proposal to amend clause 17B(4) of the Byron LEP 1988 to enable the conversion of 112 Fowlers Lane (Lot 2 DP 630987), Bangalow, from a multiple occupancy development to a community title subdivision.

Financial Implications

Council is able to recover the costs of processing an applicant initiated LEP amendment. New Council fees and charges for the processing of LEP amendments came into effect on 1 October 2010.

Statutory and Policy Compliance Implications

The relevant policy considerations are addressed in the above report.