

Planning Proposal

For the Amendment of

Byron Local Environmental Plan

Amendment to Clause 17B (4) of the Byron Local
Environment Plan 1988

Prepared By:
Tricend
P.O. Box 14
Suffolk Park NSW 2481

23rd September 2010
Revised 7th February 2011

Contents

Part 1 - Objectives or Intended Outcomes

Part 2 - Explanation of Provisions

Part 3 – Justification

Part 4 – Community Consultation

Part 1 - Objectives or Intended Outcomes

To extend the time by which a development application for conversion of a Multiple Occupancy development to Community Title subdivision must be lodged with Council from two years to five years.

This will enable the conversion of Lot 2 DP 630987 No. 112 Fowlers Lane, Bangalow from a Multiple Occupancy comprising of four dwellings and community building to a 5 lot Community Title subdivision containing the same number of proposed dwellings.

Part 2 - Explanation of Provisions

Clause 17B (4) *Community title subdivision of multiple occupancy development* of the Byron Local Environmental Plan (LEP) 1988 will be modified to the following:

- (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.*

Part 3 – Justification

The intent of Clause 17B is to achieve a planned settlement pattern for the area. In this case the Byron Rural Settlement Strategy 1988 and Clause 17B and Schedule 13 of the LEP clearly indicate that the small allotments proposed were site specifically anticipated for this site.

On this basis without this amendment to Clause 17B of the Byron LEP, the proper future planning of the Fowlers Lane area will not be achieved.

The deadline of two years was an arbitrary timeframe. There was no social, cultural, environmental or economic benefit related to the choice of this timeframe.

Reestablishing the deadline from two years to the proposed timeframe of five years will permit this proposed Community Title Subdivision to be approved and therefore continue the proper future planning of this Fowlers Lane area and the Byron Shire, where 2 other MO to CT approvals have occurred recently (Jindabah & Richmond).

Section A - Need for the planning proposal.

1. Is the planning proposal a result of any strategic study or report?

No.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

This is the best means and there are no other apparent ways.

3. Is there a net community benefit?

Reestablishing the deadline from two years to five years will permit the proposed Community Title Subdivision at 112 Fowlers Lane, Bangalow to be approved and therefore continue the proper future planning of this Fowlers Lane area and the Byron Shire.

As this is not a rezoning planning proposal, the Net Community Benefit Test is irrelevant.

Section B - Relationship to strategic planning framework.

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The planning proposal is related 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 the Byron Local Environmental Plan. The proposal is therefore not inconsistent with the Far North Coast Regional Strategy.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The planning proposal is related 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 Byron Local Environmental Plan. The proposal is therefore not inconsistent with Byron Rural Settlement Strategy.

6. Is the planning proposal consistent with applicable state environmental planning policies?

The planning proposal is related 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 Byron Local Environmental Plan. The proposal is therefore not inconsistent with any relevant State Environmental Planning Policy applying to rural land.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The planning proposal is related 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 Byron Local Environmental Plan. The proposal is therefore not inconsistent with any relevant Ministerial Direction applying to rural land.

Section C - Environmental, social and economic impact.

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

As the planning proposal is related to an extension of a time limit and there will not be any adverse effects to critical habitat or threatened species, populations or ecological communities, or their habitats, as a result of the proposal.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

As the planning proposal is related to an extension of a time limit and will not result in any environmental effects such as natural hazards such as flooding, land slip, bushfire hazard and the like.

10. How has the planning proposal adequately addressed any social and economic effects?

The conversion of Multiple Occupancy (MO) of Community Title (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 two 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 to MO to ST 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.

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.

This planning proposal is related to the extension of Clause 17B(4) two year time limit to a five year time limit.

The two year time limit in clause 17B(4) for development applications (DA's) to be lodged came about from Council Resolution 02-918 on 30 September 2003. 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. 112 Fowlers Lane future DA will not differ markedly from the LEP amendment.

Most of the other properties identified on Schedule 13 have submitted DA's within the specified timeframe. These 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, environmental and other social and economic impact issues.

Conversely, the impact is minimal as the Planning Proposal will only affect one DA as all other relevant applications have been submitted.

Section D - State and Commonwealth interests.

11. Is there adequate public infrastructure for the planning proposal?

Not applicable.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Not applicable.

Part 4 – Community Consultation

An exhibition period of 14 days is proposed for this Planning Proposal due to its low impact nature.

Community consultation is commenced by giving notice of the public exhibition of the planning proposal:

- in a newspaper that circulates in the area affected by the planning proposal;
- on the Byron Shire Council website; and
- in writing to adjoining landowners, unless the planning authority is of the opinion that the number of landowners makes it impractical to notify them.

The written notice must:

- Give a brief description of the objectives or intended outcomes of the planning proposal;
- Indicate the land affected by the planning proposal;
- State where and when the planning proposal can be inspected;
- Give the name and address of the Byron Shire Council for the receipt of submissions; and
- Indicate the last date for submissions.