



PGF000804

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Your ref:

Contact: Sean Cochran

10 March 2011

Mr Jim Clark
Department of Planning
Locked Bag 9022
GRAFTON NSW 2460

Received

10 MAR 2011

North Coast

Dear Jim

Planning Proposal to Amend Subclauses 9(4), 9(5)(b), 9(6), 9(7), Signage 64(3) and Signage 64(6)(n) in the Byron Local Environmental Plan

Council resolved (06-21) to amalgamate all existing Development Control Plans into one document. Under the amalgamation process the *Byron Development Control Plan No. 16 Exempt and Complying Development* has now become *Chapter 16: Exempt and Complying Development* of the 'Byron Shire DCP 2010'. The latter was recently adopted by Council on 3 March 2011.

Council had also resolved (10-696) to amend all clause 9 and clause 64 references to *Byron Development Control Plan No. 16 – Exempt and Complying Development* (DCP No. 16) within its Byron Local Environmental Plan 1988 (BLEP), primarily to reflect the newly adopted 'Byron Shire Development Control Plan 2010'.

Although the proposed amendments do not alter the original provisions of these clauses, the wording of the new DCP reference aims to minimise the potential number of additional BLEP amendments resulting from subsequent amendments to Byron Shire Development Control Plan 2010. In this regard, the BLEP will no longer refer to DCP No. 16, but instead will make reference to "Chapter 16 of the Byron Shire DCP 2010".

In accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*, Council submits the enclosed planning proposal for the Department's Gateway determination.

Should you have any enquiries please contact Sean Cochran, Council's Strategic Planner in the Land and Natural Environment Department on 02 6626 7119.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. E. Darney'.

Ray Darney
Executive manager Environment and Planning

ALL COMMUNICATIONS TO BE ADDRESSED TO THE GENERAL MANAGER

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PLANNING PROPOSAL

Proposed amendment to Byron Local Environmental Plan 1988:

Amendment to Subclauses 9(4), 9(5)(b), 9(6), 9(7), Signage 64(3) and Signage 64(6)(n).

8 March 2011

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Introduction

Council resolved (10-696) to amend all clause 9 and clause 64 references to *Byron Development Control Plan No. 16 – Exempt and Complying Development* (DCP No. 16) within its Byron Local Environmental Plan 1988 (BLEP), primarily to reflect the newly adopted 'Byron Shire Development Control Plan 2010'. The proposed amendments will make reference to Chapter 16 of Byron DCP 2010 instead of DCP No. 16 and will affect subclauses 9(4), 9(5)(b), 9(6), 9(7), Signage 64(3) and Signage 64(6)(n) of BLEP.

Part 1 Objectives or Intended Outcomes

Through this amendment Council aims to provide a updated DCP reference that serves the same function as the previous DCP reference, whilst also limiting the potential number of additional BLEP amendments resulting from subsequent amendments to Byron Shire Development Control Plan 2010. In doing so, the BLEP will no longer refer to DCP No.16, but instead will make reference to "Chapter 16 of the Byron Shire DCP 2010". The intent of this amendment is not to alter the original provisions of these clauses, but rather to ensure the recently adopted Chapter 16 of DCP 2010 is accurately referenced throughout the BLEP. To this end, the proposed amendment will replace the existing reference to '*Byron Development Control Plan No. 16 – Exempt and Complying Development*' within subclauses 9(4), 9(5)(b), 9(6), 9(7), Signage 64(3) and Signage 64(6)(n) of the BLEP with a new reference to '*Chapter 16: Exempt and Complying Development (adopted by the Council on 3 March 2011) of the Byron Shire Development Control Plan 2010*'.

Part 2 Explanation of Provisions

Background

Pursuant to the Environmental Planning and Assessment Act 1979, Council resolved (06-21) to amalgamate all existing Development Control Plans into one document. The *Byron Development Control Plan No.16 Exempt and Complying Development* under the amalgamation process has now become *Chapter 16: Exempt and Complying Development of the Byron Shire DCP 2010*, following Council's adoption. However the provisions within *Chapter 16: Exempt and Complying Development of the Byron Shire DCP 2010* remain unchanged from provisions of the *Byron Development Control Plan No.16 Exempt and Complying Development*.

The BLEP amendments within this proposal, in part, specifically refer to the date of adoption of **Chapter 16: Exempt and Complying Development of the Byron Shire DCP 2010** only, rather than the entire '*Byron Shire DCP*'

2010'. The reasoning for this approach is to reduce the incidence of further LEP amendments resulting from future *Byron Shire DCP 2010* amendments. By referring to the date of adoption (3 March 2011) of Chapter 16 of *Byron Shire DCP 2010* within the LEP Council are able to:

- 1) Maintain clarity and accuracy of the intent of the original DCP reference; and
- 2) Minimise further LEP amendments that do not directly relate to the intended provisions of the amended clauses i.e. do not relate to exempt and complying provisions in Chapter 16 of the DCP.

To this end, the proposal seeks to amend **existing Subclauses 9(4), 9(5)(b), 9(6) and 64(6)(n) of the** Byron Local Environmental Plan 1988 (written instrument) as follows:

Subclauses 9(4), 9(5)(b), 9(6) and 64(6)(n) currently state:

9(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 10 June 2010 is exempt development. **om/ins Amd.96 22/3/02; om/ins Amd.138 10/9/10**

9(5) Development is complying development if it:
(b) satisfies the provisions defining complying development in *Byron Development Control Plan No. 16 – Exempt and Complying Development* as adopted by the Council on 10 June 2010; and **om/ins Amd.96 22/3/02; om/ins Amd.138 10/9/10**

9(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 10 June 2010. **om/ins Amd.96 22/3/02; om/ins Amd.138 10/9/10**

64(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 10 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. 138 10/9/10**

PROPOSED AMENDMENT:

Omit "Byron Development Control Plan No. 16 – Exempt and Complying Development as adopted by the Council on 10 June 2010" and **insert** "Chapter 16: Exempt and Complying Development (adopted by the Council on 3 March 2011) of the Byron Shire Development Control Plan 2010"

Subclause 9(7) currently states:

9(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**

PROPOSED AMENDMENT:

Omit "Byron Development Control Plan No. 16 – Exempt and Complying Development" and **insert** "Chapter 16: Exempt and Complying Development of the Byron Shire Development Control Plan 2010"

Subclause Signage 64(3) currently states:

64(3) Any signage listed in *Development Control Plan No 16 – Exempt and Complying Development* (as adopted by the council on 10 June 2010) is permitted without the consent of the council. **om/ins Amd. 138 10/9/10**

PROPOSED AMENDMENT:

Omit "Development Control Plan No 16 – Exempt and Complying Development as adopted by the Council on 10 June 2010" and **insert** "Chapter 16: Exempt and Complying Development (adopted by the Council on 3 March 2011) of the Byron Shire Development Control Plan 2010"

Part 3 Justification

Section A – Need for Planning Proposal

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

This proposal arises from the endorsement of the following Motion Pursuant to Notice at Byron Shire Council's 9 September 2010 Ordinary Council Meeting:

10-696 Resolved:

1. That Council as per Resolution 06-21, prepare a Development Control Plan (DCP) pursuant to the Environmental Planning and

Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000 to amalgamate all existing DCPs by making each existing DCP a chapter in the amalgamated 'Byron Shire Development Control Plan 2010' without amending the existing provisions.

2. *That Council adopt the brief additional section for the existing Part D – Commercial Development DCP 2002 for the southern end of Jonson Street Byron Bay covering landscaped setback, street trees, on-site car parking and footpath construction as provided in Annexure 4(g)(#999768), in accordance with part 2 Resolution 10-576.*
3. *That Council note that more detailed controls will be prepared for the southern end of Jonson Street as part of the Byron Bay Town Centre Urban Design Study and associated Byron Town Centre DCP in accordance with Resolution 10-576.*
4. *That Council exhibit the draft 'Byron Shire Development Control Plan 2010' for at least 28 days in accordance with the Environmental Planning and Assessment Act 1979 and section 18 of the Environmental Planning and Assessment Regulation 2000.*
5. *That the draft 'Byron Shire Development Control Plan 2010' be reported back to Council after the completion of the public exhibition period for adoption.*
6. ***That Council seek to amend the Byron Local Environmental Plan 1988 (BLEP) pursuant to section 73A of the Environmental Planning and Assessment Act 1979 by amending all clause 9 and clause 64 references to the date of adoption and numbering of DCP 16 to reflect the relevant date of adoption and name change. The amendment to the BLEP 1988 will include subclauses 9(4), 9(5)(b), 9(6), 9(7), Signage 64(1)(i), Signage 64(3) and Signage 64(6)(n).***

Part 6 of resolution **10-696** states that the LEP amendment will proceed pursuant to section 73A of the Environmental Planning and Assessment Act 1979, however the Department of Planning has since indicated via phone conversations that a Planning Proposal is required for such an amendment.

There has been no formal planning study or report prepared in relation to this Planning Proposal.

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

As the reference to DCP No. 16 is contained within the BLEP, an amendment to clauses 9(4), 9(5)(b), 9(6), 9(7), Signage 64(3) and Signage 64(6)(n) in the current BLEP is the only option available to achieve the objectives outlined above and to maintain the original intent of the BLEP provisions.

A specific reference to the date of adoption of Chapter 16 (only) of Byron Shire DCP 2010 is the best means of making the necessary amendments as this approach will minimise the occurrence of future LEP amendments that could arise from subsequent Byron Shire DCP 2010 amendments.

3. *Is there a net community benefit?*

This proposal does not involve a rezoning or an amendment with a net impact on community welfare. Subsequently, the Net Community Benefit Test is not applicable to this Planning Proposal.

Section B – Relationship to Strategic Planning Framework

1. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?*

The planning proposal is generally consistent with the vision, land use strategies, policies and objectives of the Far North Coast Regional Strategy (FNCRS) 2006-2031. The FNCRS consolidates and builds on previous planning work, including the Northern Rivers Regional Strategy and local council settlement strategies.

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

There are a number of local strategic plans which have been adopted since 1998. These have been taken forward into the Byron Shire Local Environment Study (LES) 2008 which combines information from all the local strategic plans along with further studies for the entire Shire. The LES 2008 is an assessment of the environmental, social and economic issues relevant to the review of land use controls in the Byron Shire area. The LES was also prepared to document relevant statutory and strategic publications and act as a key matter for Council to consider in preparing a new Shire-wide LEP.

This planning proposal is consistent with the future strategic direction of the Byron Shire LES 2008 and the draft Shire-wide LEP.

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

As the primary aim of this Planning Proposal is to update referencing in the BLEP to reflect to a change of name to the current DCP No. 16, it will not affect any applicable state environmental planning policies (refer to Appendix 1).

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

Due to the nature of this Planning Proposal, it will not affect any applicable s.117 directions which apply to the Shire (refer to Appendix 2).

Section C – Environmental, social and economic impact

1. *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?*

There will be no impact on ecological communities or their habitats as part of this proposed amendment to the LEP.

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

There are no other environmental impacts associated with the proposed LEP amendment.

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

As the proposed amendment updates LEP referencing to reflect to a change of name of the DCP, there will be no social or economic impacts on the community.

Section D – State and Commonwealth Interests

1. *Is there adequate public infrastructure for the planning proposal?*

The proposal has no impact on public infrastructure.

2. *What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?*

Given the very minor nature of this planning proposal, it is not considered necessary to consult with any other State or Commonwealth agencies under the Gateway LEP process.

Part 4 – Community Consultation

Council proposes that the Planning Proposal will be exhibited in accordance with the requirements of section 57 of the Environmental Planning and Assessment Act 1979 (EP & A Act) and/or any other requirements as determined by the Gateway process.

This is considered a 'low impact planning proposal' requiring an exhibition period of 14 days. Public notification of the exhibition will include a notice in the local newspaper and a notice on Council's website.

Given the minor nature of the planning proposal, it is not intended to directly notify any business, land owner or other State or Commonwealth agencies. During the exhibition period, the planning proposal, gateway determination

and other relevant documentation will be available on Council's website and hard copies will be available at Council's Administration Building.

APPENDIX 1:**State Environmental Planning Policies (at 13 March 2010)**

Policy	Comment
SEPP (Affordable Rental Housing) 2009	N/A
SEPP (Exempt and Complying Development Codes) 2008	N/A
SEPP (Rural Lands) 2008	N/A
SEPP (Infrastructure) 2007	N/A
SEPP (Temporary Structures) 2007	N/A
SEPP (Major Development) 2005	N/A
SEPP (Building Sustainability Index: BASIX) 2004	N/A
SEPP (Housing for Seniors or People with a Disability) 2004	N/A
SEPP No. 71 - Coastal Protection	N/A
SEPP No. 65 - Design Quality of Residential Flat Development	N/A
SEPP No. 64 - Advertising and Signage	N/A
SEPP No. 55 - Remediation of Land	N/A
SEPP No. 15 - Rural Land-Sharing Communities	N/A
SEPP No. 44 - Koala Habitat Protection	N/A
SEPP No. 32 - Urban Consolidation (Redevelopment of Urban Land)	N/A
SEPP No. 26 - Littoral Rainforests	N/A
SEPP No. 14 - Coastal Wetlands	N/A
SEPP No. 19 - Bushland in Urban Areas	N/A
SEPP No. 33 - Hazardous and Offensive Development	N/A
SEPP No. 4 - Development Without Consent and Miscellaneous Complying Development	N/A
SEPP No. 1 - Development Standards	N/A

APPENDIX 2:**Section 117 (2) Directions (at 13 March 2010)**

Direction	Comment
1. Employment and Resources	
1.1 Business and Industrial Zones	N/A
1.2 Rural Zones	N/A
1.3 Mining, Petroleum Production and Extractive Industries	N/A
1.4 Oyster Aquaculture	N/A
1.5 Rural Lands	N/A
2. Environment and Heritage	
2.1 Environment Protection Zones	N/A
2.2 Coastal Protection	N/A
2.3 Heritage Conservation	N/A
2.4 Recreation Vehicle Areas	N/A
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	N/A
3.2 Caravan Parks and Manufactured Home Estates	N/A
3.3 Home Occupations	N/A
3.4 Integrating Land Use and Transport	N/A
3.5 Development Near Licensed Aerodromes	N/A
4. Hazard and Risk	
4.1 Acid Sulfate Soils	N/A
4.2 Mine Subsidence and Unstable Land	N/A
4.3 Flood Prone Land	N/A
4.4 Planning for Bushfire Protection	N/A
5. Regional Planning	
5.1 Implementation of Regional Strategies	N/A
5.2 Sydney Drinking Water Catchments	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	N/A
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	N/A
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	N/A
5.8 Second Sydney Airport: Badgerys Creek	N/A

Direction	Comment
6. Local Plan Making	
6.1 Approval and Referral Requirements	N/A
6.2 Reserving Land for Public Purposes	N/A
6.3 Site Specific Provisions	N/A
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	N/A