

Planning Services

IRF19/4456

Gateway determination report

LGA	Byron
PPA	Byron Shire Council
NAME	Minimum lot size controls for manor houses and multi dwelling housing (terraces)
NUMBER	PP_2019_BYRON_005_00
LEP TO BE AMENDED	Byron LEP 2014
ADDRESS	The proposal will apply to all land in the Byron local government area zone R2 Low Density Residential or R3 Medium Density Residential
DESCRIPTION	Various
RECEIVED	21 June 2019 adequate 24 July 2019
FILE NO.	IRF19/4456 and EF19/20802
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The proposal introduces minimum lot size controls for manor houses and multi dwelling housing (terraces) to the Byron LEP 2014.

1.2 Site description

The proposal applies to all land zoned R2 Low Density Residential or R3 Medium Density Residential in the Byron local government area (LGA).

1.3 Existing planning controls

The proposal has arisen in response to the introduction of the Low Rise Medium Density Housing Code (the Code) in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP). The Code commenced in July 2018 however the commencement of the Code in Byron LGA is deferred until 1 November 2019.

The Code allows one and two storey dual occupancies, manor houses and terraces to be approved as complying development in zones R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential and RU5 Village.

The Code permits manor houses where multi dwelling housing or residential flat buildings are already permitted in that zone by a council's local environmental plan (LEP).

In the Byron LEP 2014:

- there is no R1 General Residential zone;
- the R2 zone permits dual occupancies and multi dwelling housing with consent;
- the R3 zone permits dual occupancies, multi dwelling housing and residential flat buildings with consent; and
- the RU5 zone permits only dual occupancies (attached) with consent. Dual occupancies (detached), multi dwelling housing and residential flat buildings are prohibited in the RU5 zone.

On commencement of the Code in Byron LGA, manor houses will be permissible with consent in the R2 and R3 zones. Terraces, being a form of multi dwelling housing are already permissible with consent in the R2 and R3 zones.

The Code sets minimum lot sizes for when these types of development can be considered as complying development. The MLS set by the Code for this purpose are as follows:

Dual Occupancies	400m ² or the minimum lot area specified for dual occupancies in the environmental planning instrument that applies to the land (whichever is the greater)	CI 3B.8
Manor Houses	600m ²	CI 3B.21
Multi dwelling houses (terraces)	the minimum lot area specified for multi dwelling housing in the environmental planning instrument that applies to the land or 600m ² if no minimum lot size is specified	CI 3B.33

Byron LEP 2014 contains clause 4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings. This clause sets the following MLS for these types of developments

Dual occupancy (attached)	Zone R2 Low Density Residential, Zone R3 Medium Density Residential	800m ²
Dual occupancy (attached)	Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU5 Village, Zone R5 Large Lot Residential	4,000m ²
Dual occupancy (detached)	Zone RU1 Primary Production, Zone RU2 Rural Landscape	4,000m ²
Dual occupancy (detached)	Zone R2 Low Density Residential, Zone R3 Medium Density Residential	800m ²
Multi dwelling housing	Zone R2 Low Density Residential	1,000m ²
Multi dwelling housing	Zone R3 Medium Density Residential	800m ²
Residential flat building	Zone R3 Medium Density Residential	800m ²

The Code also applies to land which is still subject to the Byron LEP 1988 and zoned an equivalent zone to the R1, R2, R3 and RU5 zones.

1.4 Summary of recommendation

It is recommended that the planning proposal should proceed subject to conditions. The proposal will establish clear lot size controls for manor houses and terraces in the Byron LGA consistent with similar lot size controls for other residential flat buildings and multi dwelling housing. The proposed controls will still enable manor houses and terraces to be undertaken as complying development on commencement of the Low Rise Medium Density Housing Code.

2. PROPOSAL

2.1 Objectives or intended outcomes

The proposal contains a clear explanation of the intent of the proposal which is to set minimum lot size development standards for manor houses and multi dwelling housing (terraces).

2.2 Explanation of provisions

The explanation of provisions clearly details the proposed changes to clause 4.1E of the Byron LEP 2014 to achieve the intended outcome. The following is intended to be added to the table in clause 4.1E.

Manor house	Zone R2 Low Density Residential,	1,000m ²
Manor house	Zone R3 Medium Density Residential	800m ²
Multi dwelling housing (terraces)	Zone R2 Low Density Residential	1,000m ²
Multi dwelling housing (terraces)	Zone R3 Medium Density Residential	800m ²

It is noted that the proposed MLS controls for terraces are not strictly necessary as an MLS standard for multi dwelling housing already exists in the clause 4.1E of the Byron LEP 2014 (and operates in relation to terraces in accordance with clause 3B.33 of the Codes SEPP). It is understood that Council has included the terrace controls to help provide clarity for the general community when interpreting the LEP MLS controls for terraces. This approach is considered appropriate for public exhibition purposes to help the community's understanding of the proposal. It is noted that these references may however be omitted by Parliamentary Counsel at the legal drafting stage.

2.3 Mapping

The proposal does not require any changes to maps in the Byron LEP 2014.

3. NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of a local strategic study or report. The proposal seeks to establish minimum lot size controls for manor houses and terraces in Byron LGA in response to the Code making these development types permissible and able to be undertaken as complying development.

The Code includes the following definitions:

manor house means a residential flat building containing 3 or 4 dwellings, where:

- (a) each dwelling is attached to another dwelling by a common wall or floor, and
- (b) at least 1 dwelling is partially or wholly located above another dwelling, and
- (c) the building contains no more than 2 storeys (excluding any basement).

multi dwelling housing (terraces) means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads.

These definitions may need to be added to the Byron LEP 2014 depending on the legal drafting approach to implementing the proposed MLS controls. This can be appropriately resolved with Parliamentary Counsel at the legal drafting stage.

The proposed minimum lot size development standards have been selected based on the existing minimum lot size requirements for similar types of development as specified in clause 4.1E of the Byron LEP 2014.

The proposal notes that manor houses, by definition, are considered to be a type of residential flat building and therefore the MLS nominated for manor houses reflects that required for residential flat buildings in clause 4.1E (800m²).

Similarly, multi dwelling housing (terraces) are a form of multi dwelling housing and therefore the MLS nominated for terraces reflects the MLS for other types of multi dwelling housing.

Consequently, the proposal will not result in any significant change in planning policy for medium density development in the Byron LGA as manor houses are a type of residential flat building and terraces are a type of multi dwelling housing, and clause 4.1E of Byron LEP 2014 already contains minimum lot size controls for these types of development.

The proposal does not contain an analysis of how many lots will be able to be developed for manor houses or terraces as complying development in the R2 or R3 zones of the Byron LGA. Nor does it contain an analysis of the lot size of previously approved multi dwelling housing developments in the LGA. This is however considered to be acceptable since the existing MLS standards contained in clause 4.1E for residential flat buildings and multi dwelling housing were established through investigations for the Byron LEP 2014. The proposed MLSs will therefore ensure consistency in MLS requirements for all forms of these land uses.

Council has also consulted with the community during the preparation of its draft residential strategy in relation to local character. This consultation included a survey in which over 80% of responses considered that two storey manor houses should only occur on lots of 800m² or larger. Community consultation also returned specific concerns with the potential impacts of overshadowing resulting from low rise medium density development on lots of 600m².

Proposed MLS for Manor Houses

The proposal seeks to set an MLS of 1000m² in the R2 Low Density Residential Zone and 800m² in the R3 Medium Density Residential zone for manor houses. The Code however states that manor houses can be complying development on lots of at least 600m².

The proposal will result in a situation where:

- on lots of at least 600m² manor houses can be complying development under the Code;
- on lots of at least 800m² (1,000m² in R2 zone) manor houses can be the subject of a development application under the Byron LEP 2014; and
- on lots between 600m² and 800m² (1,000m² in R2 zone) manor houses can be complying development under the Code. However, if the proposed design cannot satisfy all development standards under the Code to be complying development, the proponent will need to seek a variation to the 800m² MLS (1,000m² in R2 zone) specified in clause 4.1E of the Byron LEP 2014 in order to seek approval for a manor house through the development application process.

This is no different to the existing situation for other complying development where a proponent must ascertain whether a proposal satisfies certain standards to be complying development and submit a development application if these standards cannot be met.

Best Means of Achieving Intent

The proposal to amend the Byron LEP 2014 to introduce controls for manor houses and terraces is considered to be the most appropriate mechanism for achieving the intent of the proposal.

The Department's Policy team has advised that finalisation of the LEP amendment and notification of the amendment on the NSW Legislation website cannot occur until such time as the Code comes into effect in the Byron LGA. Consequently, it is recommended that Council not be authorised as the local plan-making authority at this stage.

The Department's Legal Services Branch has also advised that controls relating to manor houses and terraces would be better located in a local provision in Part 6 of the Byron LEP 2014 where a definition of manor houses and terraces could be included. This matter can be addressed at legal drafting stage, though it is recommended that the Gateway determination include a condition requiring a plain English explanation be added to the planning proposal.

4. STRATEGIC ASSESSMENT

4.1 State

The proposal is consistent with the Premier's Priorities as it does not prohibit the development of manor houses and terraces as complying development in existing urban areas. The proposal seeks only to set a minimum lot size on which these types of development can be undertaken consistent with the provisions of the Code SEPP.

The consistency of the proposal with other aspects of the State planning framework is discussed in section 4.5 of this report.

4.2 Regional / District

The proposal is consistent with action 1.1 of the NCRP to focus future urban development to mapped urban growth areas. All the R2 and R3 zoned land in the Byron LGA is located within urban growth areas. The proposal will still enable manor houses and terraces to be developed as complying development in these zones on lots of a suitable size.

The proposal to set specific minimum lot sizes for manor houses and terraces is also consistent with direction 20 of the NCRP which seeks to retain the region's distinctive built character. While it is important to enable medium density development types to be developed, it is equally important to ensure that such development is sympathetic to the character of the built environment.

The density of dwellings is a factor in the character of the built environment. The proposed minimum lot sizes for manor houses and terraces will result in an appropriate graduated increase in the density of residential land uses which is consistent with the existing character of the Byron LGA and the controls for multi dwelling housing and residential flat buildings under clause 4.1E of the Byron LEP 2014.

The proposal is therefore considered not to be inconsistent with the North Coast Regional Plan 2036 (NCRP).

4.3 Local

The proposal is considered to be consistent with Council's community strategic plan as it supports the provision of diverse housing forms on suitable land across the LGA.

The proposal is considered to be consistent with the draft Byron Residential Strategy. The proposal does not preclude the development of existing residential land for more intensive forms of residential accommodation however seeks to set parameters intended to retain the character of residential areas of the LGA. Council's residential strategy seeks to articulate desirable elements of an area's existing and future residential character. The establishment of minimum lot size development standards for more intensive residential development is appropriate in order to maintain the existing character of an area.

The proposal is also not inconsistent with the settlement strategies for Bangalow (2003), Mullumbimby (2003) Byron Bay and Suffolk Park (2002) and Brunswick Heads (2004) which identify that medium density residential development will be a contributor to housing supply within the urban areas of these villages and encourages the development of this form of housing close to the centre of the urban areas.

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant Section 9.1 directions except the following:

Direction 2.1 Environment Protection Zones

The proposal is inconsistent with this direction as it does not include provisions which facilitate the protection and conservation of environmentally sensitive areas.

The proposal seeks only to apply minimum lot size development standards for certain residential developments in existing residential zones. It is unlikely that the land in these residential zones is environmentally significant and any significant vegetation on a specific site can be addressed at development stage. The inconsistency is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 2.2 Coastal Management

The proposal is inconsistent with this direction as it does not include provisions which give effect to the objectives of the *Coastal Management Act 2016*, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan that applies to the land.

The provisions of the *Coastal Management Act 2016* comprise legislation which does not need to be given effect by an environmental planning instrument. The provisions of the NSW Coastal Management Manual and any coastal management program are given effect by the *Coastal Management Act 2016*. The provisions of the NSW Coastal Design Guidelines 2003 are more appropriately given effect through Council's development control plan. The inclusion of provisions that give effect to these documents is beyond the scope of a planning proposal that seeks only to apply an MLS to existing permissible development types.

The inconsistency is considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 2.3 Heritage Conservation

The proposal is inconsistent with this direction as it does not include provisions which facilitate the conservation of heritage significance. The proposal seeks only to apply minimum lot size development standards for certain residential developments in existing residential zones. The Byron LEP 2014 already contains provisions which require the consideration of potential impacts on matters of heritage significance. Potential impacts on heritage significance on existing residentially zoned land can be addressed at development stage. The inconsistency is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection

Some of the land in the existing R2 and R3 zones in Byron LGA is bushfire prone. This Direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS), and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway determination is issued and before public exhibition. Until this consultation has occurred, the inconsistency of the proposal with this Direction remains unresolved.

The land which will be subject to the provisions of this planning proposal is also subject to acid sulfate soils, is flood prone and is located within the coastal zone. The proposal will not however result in an increase in development potential of this land and therefore the proposal is considered to be consistent with other section 9.1 directions.

4.5 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with all relevant SEPPs other than the following

SEPP (Exempt and Complying Development Codes) 2008

This SEPP is relevant to the proposal. The SEPP enables manor houses and terraces to be complying development. The proposal sets an MLS limit for manor houses (800m² in the R3 zone and 1000m² in the R2 zone) which is different to that set by the Code (600m² regardless of the zone of the land).

The proposal will result in a situation where:

- on lots of at least 600m² manor houses can be complying development under the Code;
- on lots of at least 800m² (1,000m² in R2 zone) manor houses can be the subject of a development application under the Byron LEP 2014; and
- on lots between 600m² and 800m² (1,000m² in R2 zone) manor houses can be complying development under the Code. However, if the proposed design cannot satisfy all development standards under the Code to be complying development, the proponent will need to seek a variation to the 800m² MLS (1,000m² in R2 zone) specified in clause 4.1E of the Byron LEP 2014 in order to seek approval for a manor house through the development application process.

The inconsistency with the Code is considered to be of minor significance as clause 4.6 of the LEP enables the proposed development standards to be varied to any extent to enable the consideration of a development application on a lot greater than 600m² but less than 800m² (1,000m² in R2 zone). The Department's Codes Team has also raised no objection to the proposed provisions.

It is noted that the Code is currently under review and the provisions relating to the lot size requirements for manor houses to be complying development may change.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal is not expected to have any negative social impacts. The proposed LEP controls are intended to facilitate the development of diverse housing types while maintaining the character of existing residential areas. This approach is consistent with the public expectation for infill development.

5.2 Environmental

The proposal is not expected to have any significant adverse environmental impact. The proposed provisions relate to existing residential zoned land which is unlikely to contain significant native vegetation, critical habitat or threatened species, populations or ecological communities or their habitats.

The proposal is intended to minimise the impact of more intensive residential development on the built environment by limiting medium density residential developments to lots of a greater size to ensure that adequate setbacks, landscaping and private open space are able to be provided and that overshadowing, and loss of privacy can be avoided.

5.3 Economic

The proposal is not expected to have any adverse economic impact. The proposal seeks to complement provisions aimed at increasing low rise medium density development to provide greater housing choice at a range of price points. The provisions are intended to ensure that potential impacts of increased residential density are mitigated by directing more intensive development to larger lot sizes.

5.4 Infrastructure

The proposal will not have a direct impact on the demand for infrastructure. The proposal seeks only to direct higher density residential developments to larger lot sizes. The planning proposal notes that a review of infrastructure requirements for new medium density infill development is being undertaken by Council as part of its draft residential strategy.

6. CONSULTATION

6.1 Community

Council has nominated a 28 day public exhibition period. Given that the proposal applies to all land zoned R2 Low Density Residential and R3 Medium Density Residential in the LGA, a 28 day consultation period is considered to be appropriate.

6.2 Agencies

Since the proposal seeks only to establish minimum lot size development standards for residential development types which are already permissible in existing residential zones, it is considered that Council only needs to consult with the NSW Rural Fire Service in relation to the land which is bush fire prone in order to address the inconsistency with section 9.1 direction 4.4 Planning for Bushfire Protection.

7. TIME FRAME

The planning proposal includes a project time frame which estimates completion of the planning proposal in February 2020. Given a review of the Code is being conducted, and to enable Council time to revise the provisions of the proposal if necessary, once the review has been completed, a nine month period of time to complete the LEP amendment is considered to be appropriate.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be provided with an authorisation to be the local plan making authority.

The Code is currently under review and the LEP amendment should not be made until the review has been completed and the Code has commenced in the Byron LGA. Therefore, to ensure the final controls are consistent with the intent of the Code following its review it is recommended that authorisation not be provided to Council in this instance.

9. CONCLUSION

It is recommended that the planning proposal should proceed subject to conditions. The proposal will establish clear lot size controls for manor houses and terraces in the Byron LGA consistent with similar lot size controls for other residential flat buildings and multi dwelling housing. The proposed controls will still enable manor houses and terraces to be undertaken as complying development on

commencement of the Low Rise Medium Density Housing Code. The inconsistencies of the proposal with the strategic planning framework are considered to be minor.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that inconsistencies with section 9.1 Directions 2.1 Environment Protection Zones, 2.2 Coastal Management and 2.3 Heritage Conservation are of minor significance and justified in accordance with the terms of the directions; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification once consultation with the NSW Rural Fire Service has been undertaken.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition the planning proposal is to be amended to include a plain English explanation of provisions to help better inform the community on the intent of the proposal.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service.
4. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



2/8/19

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