

Dwelling Entitlement for Lot 2 DP 537488 Tickles Road, Upper Coopers Creek

Proposal Title : Dwelling Entitlement for Lot 2 DP 537488 Tickles Road, Upper Coopers Creek

Proposal Summary : The planning proposal seeks to provide a dwelling entitlement under Schedule 7 of Byron LEP 1988 for Lot 2 DP 537488, 2 Tickles Road, Upper Coopers Creek.

PP Number : PP_2011_BYRON_008_00 Dop File No : 11/18029

Proposal Details

Date Planning Proposal Received :	05-Oct-2011	LGA covered :	Byron
Region :	Northern	RPA :	Byron Shire Council
State Electorate :	BALLINA	Section of the Act :	55 - Planning Proposal
LEP Type :	Housekeeping		

Location Details

Street :	2 Tickles Road		
Suburb :	Upper Coopers Creek	City :	Bangalow Postcode : 2479
Land Parcel :	Lot 2 DP 537488		

DoP Planning Officer Contact Details

Contact Name : Jenny Johnson
 Contact Number : 0266416614
 Contact Email : Jenny.Johnson@planning.nsw.gov.au

RPA Contact Details

Contact Name : Chris Larkin
 Contact Number : 0266267136
 Contact Email : chris.larkin@byron.nsw.gov.au

DoP Project Manager Contact Details

Contact Name : Jim Clark
 Contact Number : 0266416604
 Contact Email : Jim.Clark@planning.nsw.gov.au

Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	No

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MDP Number :		Date of Release :	
Area of Release (Ha) :	0.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	1	No. of Dwellings (where relevant) :	1
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :	The Department of Planning Code of Practice in relation to communication and meetings with Lobbyists has been complied with to the best of the Region's knowledge.		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	Northern Region has not met any lobbyists in relation to this proposal, nor has Northern Region been advised of any meeting between other departmental officers and lobbyists concerning this proposal.		

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The proposed dwelling entitlement is not considered to be consistent with the Byron Shire Council Local Environmental Study 2008 or the Byron Rural Residential Settlement Strategy 1998.****Adequacy Assessment****Statement of the objectives - s55(2)(a)**Is a statement of the objectives provided? **Yes**Comment : **The objective and intended outcomes of the planning proposal are adequately expressed to enable the land to be included in Schedule 7 of Byron LEP 1988.****Explanation of provisions provided - s55(2)(b)**Is an explanation of provisions provided? **Yes**Comment : **The planning proposal provides a clear explanation of the intended provisions to achieve the objectives and intended outcomes.****Justification - s55 (2)(c)**a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

4.4 Planning for Bushfire Protection

* May need the Director General's agreement

5.1 Implementation of Regional StrategiesIs the Director General's agreement required? **Yes**c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

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e) List any other matters that need to be considered :

The proposed dwelling entitlement is not consistent with the Byron Shire Council Local Environmental Study 2008 or the Byron Rural Residential Settlement Strategy 1998.

However, at the time the current owners were purchasing the property Council provided a copy of the S149 Certificate that clearly states (incorrectly) that the property had a dwelling entitlement.

This incorrect advice is no fault of the owners of the property and it could be argued that they should not be inconvenienced by the denial of a dwelling entitlement in this instance.

Have inconsistencies with items a), b) and d) being adequately justified? Yes

If No, explain :

The inconsistency with the S117 Direction 5.1 Implementation of Regional Strategies has been addressed and is considered to be of minor significance.

S117 Direction 4.4 Planning for Bushfire Protection may require consultation with the NSW Rural Fire Service after Gateway Determination to ensure that the inconsistency can be justified.

Mapping Provided - s55(2)(d)

Is mapping provided? Yes

Comment :

The mapping is suitable for Gateway Determination. Further mapping to clearly identify the land may be required if the plan is to proceed.

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment :

The planning proposal has not indicated a preferred exhibition period for community consultation, however the Gateway will determine the time frame required for exhibition. 7 days is recommended. Community consultation will be in accordance with the DoP&I's 'A Guide to Preparing an LEP'.

Additional Director General's requirements

Are there any additional Director General's requirements? N/A

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : June 2012

Comments in relation to Principal LEP :

A section 65 certificate has been requested. Negotiations on drafting are proceeding. This amendment to the existing LEP is necessary to acknowledge this property as having a dwelling entitlement in accordance with Clause 15 of the Byron LEP 1988.

Assessment Criteria

Need for planning proposal :

The purpose of Schedule 7 and its enabling provision (clause 15(2A)(c) and (d) of Byron LEP) , is to make it clear that dwelling entitlements should apply to certain lots. Schedule 7 was never considered by the Council to be exhaustive.

The proposed addition to Schedule 7 of the Byron LEP is the most appropriate means of achieving the desired outcomes for the proposal.

An error in Council document management systems allowed for an incorrect statement to the present owners that a dwelling entitlement was attached to the property. This incorrect advice is no fault of the owners of the property and it could be argued that they should not be inconvenienced by the subsequent denial of a dwelling entitlement. The amendment will give certainty to the landowners that a dwelling can be lawfully constructed on the subject land.

The land in question has a shed already constructed (authorised by Council), however the shed appears to have been converted into a dwelling and is currently being used as a residence.

The lawful erection of a dwelling on the land would be consistent with the existing pattern of settlement in the locality.

Consistency with strategic planning framework :

There has been no formal planning study or report prepared in relation to this planning proposal. The request for a dwelling entitlement has come about due to a breakdown of Council record systems operating under the 1970s Interim Development Order (IDO).

Council believed the lot to be an "existing holding" (a holding in a single ownership) at the implementation of the IDO and that Lot 2 DP 537488 was entitled to a dwelling entitlement.

It has since been determined that Lot 2 was not an "existing holding" because, while it had been excised from a parent holding before the implementation of the IDO, it was retained in the same ownership. Therefore under Clause 15 it could not have a dwelling entitlement. However this is inconsistent with the advice given to the current owners of Lot 2.

The planning proposal is consistent with all SEPP's.

The planning proposal is inconsistent with S117 Direction 4.4 Planning for Bushfire Protection and 5.1 Implementation of Regional Strategies.

4.4 Planning for Bushfire Protection

The planning proposal is not considered to be consistent with this direction as it is in proximity to land mapped as bushfire prone land. The planning proposal identified that some of the subject land is classed as bushfire prone. The direction requires that Council consult with the Commissioner of the NSW Rural Fire Service. It is not considered that the planning proposal will raise significant issues in regard to this matter. The Gateway can stipulate if consultation is required.

5.1 Implementation of Regional Strategies

The planning proposal is not consistent with this direction as the planning proposal to formalise a dwelling that is currently without a dwelling entitlement is not an approved outcome endorsed by the Far North Coast Regional Strategy (FNCRS).

Inconsistency with Direction 5.1 is considered to be of minor significance as it pertains to an administrative error by Council. It relates to a single dwelling only and the impact of the proposal on the environment and local servicing will not be significant.

Environmental social economic impacts :

The vegetation present on the subject land could be considered to be high conservation level vegetation and/or high habitat potential for threatened species as it contains natural regrowth, as well as tree planting and landscaping. The Council claims that the existing farm shed (or potential dwelling site) does not support high conservation value vegetation and comprises a small orchard with some scaled domestic landscaping maintained as bush garden.

The decommissioned 'Tynside' cattle dip site is in close proximity to the subject land. This decommissioned dip site has a 200m investigation buffer and a portion of the subject site

occurs within this buffer. The planning proposal has stated that the existing shed and/or potential dwelling is outside the 200m investigation buffer area. Therefore it is unlikely to be a health risk impacting the owners who wish to construct a residence on the subject site.

The land in question has a shed already constructed (authorised by Council), however the shed now appears to have been converted into a dwelling and is currently being used as a residence. If a dwelling entitlement is granted for the subject land, Council indicates that it will ensure that works are undertaken either:

- to formalise the use of the approved farm shed for habitable purposes, or
- to convert it back to a farm shed (not suitable for occupation) and the dwelling entitlement utilised to construct a Council approved residence nearby.

Assessment Process

Proposal type : **Consistent** Community Consultation Period : **7 Days**

Timeframe to make LEP : **6 Month** Delegation : **DDG**

Public Authority Consultation - 56(2)(d) : **NSW Rural Fire Service**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **Although the proposal is not consistent with the Byron Rural Residential Settlement Strategy (BRRSS) it does satisfy performance criteria/provisions from the BRRSS for dwelling entitlement to be subsequently included in Schedule 7.**

If the BRRSS was to undergo a revision the property in question would satisfy the criteria and therefore have the potential to be included as suitable for rural residential status and included in Schedule 7 of the Byron LEP 1988.

Allowing the planning proposal to proceed rectifies this administrative ambiguity for the owners of the subject land.

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Bushfire

Other - provide details below

If Other, provide reasons :

The RPA has identified the following studies to be undertaken prior to public exhibition of the planning proposal:

**Site contamination assessment;
Bushfire assessment; and
Details of on site effluent disposal.**

The on site effluent disposal assessment is not necessary prior to exhibition, however the bushfire and site contamination studies are recommended.

Identify any internal consultations, if required :

No internal consultation required

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Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Council Cover Sheet.pdf	Proposal Covering Letter	Yes
Planningproposal-Rose-FINAL.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **4.4 Planning for Bushfire Protection**
 5.1 Implementation of Regional Strategies

Additional Information : **It is recommended that:**

- 1. The planning proposal be supported;**
- 2. The planning proposal be exhibited for a period of 7 days;**
- 3. The planning proposal be completed within 6 months;**
- 4. The Director General (or delegate of the Director General) agree that the inconsistency with S117 Direction 5.1 Implementation of Regional Strategies is of minor significance;**
- 5. The Gateway stipulate Council consult with the Commissioner of the NSW Rural Fire Service to ensure the inconsistency with S117 Direction 4.4 Planning for Bushfire Protection is justified;**
- 6. The proponent complete a Bushfire Assessment and Site Contamination Assessment prior to exhibition. These assessments should be placed on exhibition with the planning proposal.**

Supporting Reasons : **The planning proposal will allow the correction of an administrative anomaly for Lot 2 DP 537488, 2 Tickles Road, Upper Coopers Creek by allowing the land's inclusion in Schedule 7 of the Byron LEP 1988, to provide the owners with the security that a dwelling entitlement is available for their land.**

Signature:



Printed Name:

JIM CLARK

Date:

13 October 2011