

SECTION 59 PLANNING REPORT

Planning proposal details:

Department Ref: PP_2013_BYRON_001_00

Planning proposal summary:

Planning Proposal to rezone land at 95 Old Bangalow Road, Byron Bay from 1(a) General Rural Zone to 2(t) Tourist Area Zone and 7(b) Coastal Habitat Zone under Byron Local Environmental Plan (LEP) 1988 or SP3 Tourist Zone and for environmental purposes under draft Bryon LEP 2012.

Date of Gateway determination:

28 February 2013

1.0 SUMMARY

The Planning Proposal seeks to amend the *Byron LEP 1988* by rezoning the subject land from 1(a) General Rural Zone to 2(t) Tourist Area Zone and 7(b) Coastal Habitat Zone to more appropriately reflect the tourist land uses currently operating on site. Rezoning of this land is supported by additional flora and fauna and traffic studies.

key issues associated with the planning proposal::

- *Court proceedings between the Council and the applicant were discontinued and a planning proposal was encouraged by the Council to rectify the situation*
- *The current 1(a) General Rural zone is no longer relevant to the site as it is not prime agricultural land*
- *Proposal exhibited from April 16 – May 14 2013 (28 days) in accordance with gateway determination, no submissions received*

2.0 GATEWAY DETERMINATION

- *date Determination issued: 28 February 2013*
- *timeframe for completion of proposal: 9 months*
- *Conditions in determination have all been completed, response from Transport NSW received stating they have no comments to make on the proposal.*
- *Copy of Gateway included as attachment 1.*

3.0 COMMUNITY CONSULTATION

- *dates of exhibition: 16 April to 14 May 2013*
- *number of submissions received: nil*
- *issued raised during exhibition: n/a*
- *responses to issues: n/a*
- *whether the consultation requirements included in the Gateway determination were complied with: yes*

4.0 VIEWS OF PUBLIC AUTHORITIES

- *which agencies were consulted: Transport NSW and OEH*
- *which agencies provided a response: Both agencies responded stating they have either no comments to make or that they supported the proposal*
- *did agency consultation occur in accordance with the requirements of the Gateway determination: yes*

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

See planning proposal

6.0 PARLIAMENTARY COUNSEL OPINION

An Opinion was sought from PCO on 14 August 2013, PCO opinion received 16 August and then confirmed by Council on the same date. PCO provided the Opinion on the 19th August 2013 (Attachment 2).

7.0 OTHER RELEVANT MATTERS

No additional matters

8.0 MAPPING

Mapping to be adopted by this Amendment (Copy at Attachment 3):
Amendment 153: <ftp://203.3.194.247/Byron/>

9.0 RECOMMENDATION

It is recommended that:

Byron Local Environmental Plan 1988 (Amendment No 153) be made a Plan.

Byron Shire Council as authorised by Ministerial delegation dated 28 February 2013.

Upon making this Plan, Byron Shire Council formally requests the Department of Planning and Infrastructure to notify the Plan at its earliest convenience.

NOTES:
Attachment 1:



Contact: Jenny Johnson
Phone: (02) 6641 6600
Email: Jenny.Johnson@planning.nsw.gov.au
Our ref: PP_2013_BYRON_001_00 (13/01672)
Your ref: F377#2013/2067

Office of the Director General

Mr Ken Gainger
General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

BYRON SHIRE COUNCIL
DOC NO:
RECD: - 7 MAR 2013
FILE NO:
ASSIGNEE:

Dear Mr Gainger,

Planning proposal to amend Byron Local Environmental Plan (LEP) 1988 or draft Byron LEP 2012

I am writing in response to your Council's letter dated 11 January 2013 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to rezone land at 95 Old Bangalow Road, Byron Bay from 1(a) General Rural Zone to 2(t) Tourist Area Zone and 7(b) Coastal Habitat Zone under Byron Local Environmental Plan (LEP) 1988 or SP3 Tourist Zone and for environmental purposes under draft Byron LEP 2012.

As delegate of the Minister for Planning and Infrastructure, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed the planning proposal's inconsistencies with S117 Directions 1.2 Rural Zones and 1.5 Rural Lands are of minor significance. No further approval is required in relation to these Directions.

The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending LEP is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the department for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Jenny Johnson of the regional office of the department on 02 6641 6600

Yours sincerely,


Richard Pearson
Acting Director General



Gateway Determination

Planning proposal (Department Ref: PP_2013_BYRON_001_00): to rezone land at 95 Old Bangalow Road, Byron Bay for tourism and environmental purposes.

I, the Director General, Department of Planning and Infrastructure as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Byron Local Environmental Plan (LEP) 1988 to rezone land at 95 Old Bangalow Road, Byron Bay from 1(a) General Rural Zone to 2(t) Tourist Area Zone and 7(b) Coastal Habitat Zone or amend the draft Byron LEP 2012 to rezone the land to SP3 Tourist Zone and for environmental purposes should proceed subject to the following conditions:

1. Prior to undertaking public exhibition, Council is to prepare and exhibit a land zoning map showing the proposed zoning of the subject land under draft Byron LEP 2012.
2. It is noted that a flora and fauna survey, soil contamination report and a traffic impact assessment has been prepared to accompany the development application for the subject site. Council is to place this additional information on public exhibition with the planning proposal.
3. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for **28 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning & Infrastructure 2012)*.
4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Transport for NSW

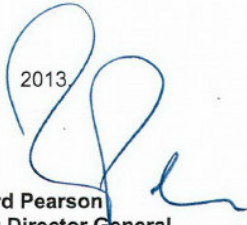
Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).



**Planning &
Infrastructure**

6. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated 28 day of February 2013


Richard Pearson
Acting Director General
Delegate of the Minister for Planning and
Infrastructure



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Byron Shire Council is authorised to exercise the functions of the Minister for Planning and Infrastructure under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2013_BYRON_001_00	Planning Proposal to rezone land at 95 Old Bangalow Road, Byron Bay from 1(a) General Rural Zone to 2(t) Tourist Area Zone and 7(b) Coastal Habitat Zone under Byron Local Environmental Plan (LEP) 1988 or SP3 Tourist and for environmental purposes under draft Byron LEP 2012.

In exercising the Minister's functions under section 59, the Council must comply with the Department's "A guideline for the preparation of local environmental plans" and "A guide to preparing planning proposals".

Dated 28 February 2013

Richard Pearson
ACTING DIRECTOR GENERAL
Department of Planning and Infrastructure

E2013/67975

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the department following receipt of the planning proposal
- The department will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the department's publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the department with the RPA's request to have the LEP notified

Table 1 – To be completed by the department

Stage	Date/Details
Planning Proposal Number	PP_2013_BYRON_001_00
Date Sent to Department under s56	11/01/2013
Date considered at LEP Review Panel	24/01/2013
Gateway determination date	28/02/2013

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited	16/04/13 to 14/05/13	
Date of public hearing (if held)	n/a	
Date sent to PCO seeking Opinion	14/08/13	
Date Opinion received	16/08/13	
Date Council Resolved to Adopt LEP	n/a	
Date LEP made by GM (or other) under delegation	18/10/13	
Date sent to DP&I requesting notification	18/10/13	

Table 3 – To be completed by the department

Stage	Date/Details
Notification Date and details	

Additional relevant information: n/a__

Attachment 2:



New South Wales

PARLIAMENTARY COUNSEL

Opinion

Environmental Planning and Assessment Act 1979
Proposed Byron Local Environmental Plan 1988 (Amendment No 153)

Your ref: Matt Walker F377 #E2013/49198
Our ref: FHG e2013-224-d03

In my opinion the attached draft environmental planning instrument may legally be made.

A handwritten signature in black ink, appearing to read 'D Colagiuri'.

(D COLAGIURI)
Parliamentary Counsel

19 August 2013



New South Wales

Byron Local Environmental Plan 1988 (Amendment No 153)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Infrastructure, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Infrastructure

Byron Local Environmental Plan 1988 (Amendment No 153)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Byron Local Environmental Plan 1988 (Amendment No 153)*.

2 Commencement

This Plan commences on the day on which it is published on the NSW legislation website.

3 Land to which Plan applies

This Plan applies to Lot 1, DP 857013, 95 Old Bangalow Road, Byron Bay, as shown distinctively coloured, edged heavy black and lettered "2 (t)" and "7 (b)" on the map marked "Byron Local Environmental Plan 1988 (Amendment No 153)" deposited in the office of Byron Shire Council.

4 Amendment of Byron Local Environmental Plan 1988

Dictionary

Insert in appropriate order in the definition of *the map*:

Byron Local Environmental Plan 1988 (Amendment No 153)

Attachment 3:

