



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

Our ref: 17/04059
Your ref: 26.2015.6.1.

Attention: Chris Larkin

Dear Mr Gainger

Byron Local Environmental Plan 1988 (Amendment No 155)

I refer to Council's submission under the *Environmental Planning and Assessment Act 1979* (the Act), requesting the Minister make Byron Local Environmental Plan (LEP) 1988 (Amendment No 155).

I, the Deputy Secretary as delegate of the Minister for Planning, have made the LEP under section 59(2) of the Act, and under section 34(5) it will take effect when published on the NSW Legislation website.

In considering the Planning Proposal, I have made the following variations:

1. addition of Clause 98A to permit stormwater management systems and water reticulation systems on any land subject to a heads of consideration clause; and
2. addition of Clause 98B to ensure earthworks will not have a detrimental impacts on a number of environmental, social and heritage considerations.

I have made these amendments to enable the efficient and effective development of this important housing release area. I note that both clauses require the consent authority to consider and address environmental outcomes associated with any development proposal to protect any threatened flora or fauna, significant vegetation and water quality.

Should you have any questions regarding this matter, I have arranged for Ms Tamara Prentice of the Department's Grafton Office to assist you. Ms Prentice can be contacted on (02) 6641 6610.

Yours sincerely

Marcus Ray
Deputy Secretary
Planning Services

04/05/2017



New South Wales

Byron Local Environmental Plan 1988 (Amendment No 155)

under the

Environmental Planning and Assessment Act 1979

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

Minister for Planning


Delegate of the Minister for
Planning

Byron Local Environmental Plan 1988 (Amendment No 155)

under the

Environmental Planning and Assessment Act 1979

1 Name of Plan

This Plan is *Byron Local Environmental Plan 1988 (Amendment No 155)*.

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 land within the West Byron Bay site under *Byron Local Environmental Plan 1988*.

Schedule 1 Amendment of Byron Local Environmental Plan 1988

[1] Clause 82 Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

Omit the table from clause 82 (2). Insert instead:

Column 1	Column 2	Column 3
Dual occupancy (attached)	Zone R2 Low Density Residential	600m ²
	Zone R3 Medium Density Residential	300m ²
Dual occupancy (detached)	Zone R2 Low Density Residential	700m ²
	Zone R3 Medium Density Residential	400m ²
Multi dwelling housing	Zone R2 Low Density Residential	1,000m ²
	Zone R3 Medium Density Residential	450m ²
Residential flat building	Zone R3 Medium Density Residential	1,000m ²

[2] Clause 83 Exceptions to minimum subdivision lot sizes for certain residential development

Omit clause 83 (3) (b) (i)–(iii). Insert instead:

- (i) for the erection of a dwelling house—300 square metres for land in Zone R2 Low Density Residential and 200 square metres for land in Zone R3 Medium Density Residential, or
- (ii) for the erection of an attached dwelling—250 square metres for land in Zone R2 Low Density Residential and 150 square metres for land in Zone R3 Medium Density Residential, or
- (iii) for the erection of a semi-detached dwelling—250 square metres for land in Zone R2 Low Density Residential and 150 square metres for land in Zone R3 Medium Density Residential.

[3] Clauses 83A and 83B

Insert after clause 83:

83A Boundary adjustments between lots in Zones E2 and E3

- (1) The objective of this clause is to facilitate boundary adjustments between adjoining lots where one or more resulting lots do not meet the minimum lot size but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones:
 - (a) Zone E2 Environmental Conservation,
 - (b) Zone E3 Environmental Management.
- (3) Despite clause 81, development consent may be granted to subdivide land to which this clause applies by way of a boundary adjustment between adjoining

lots where one or more resulting lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that:

- (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
- (b) the potential for land use conflict will not be increased as a result of the subdivision, and
- (c) the subdivision will result in the continued protection and long-term maintenance of the land.

83B Exceptions to minimum lot size for split zone lots

- (1) The objectives of this clause are as follows:
 - (a) to permit the creation of lots that support urban development in planned urban growth areas,
 - (b) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 81,
 - (c) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.
- (2) This clause applies to each lot (an *original lot*) that contains:
 - (a) land in a residential, business or industrial zone, and
 - (b) land in Zone E2 Environmental Conservation or Zone E3 Environmental Management, or both.
- (3) Despite clause 81, development consent may be granted to subdivide an original lot to create other lots (the *resulting lots*) if:
 - (a) one of the resulting lots will contain all of the land in Zone E2 Environmental Conservation or Zone E3 Environmental Management that was in the original lot, and
 - (b) each of the other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

[4] Clauses 98A and 98B

Insert after clause 98:

98A Development for the purpose of stormwater management systems and water reticulation systems

- (1) The objective of this clause is to ensure that any person can carry out development for the purpose of stormwater management systems or water reticulation systems with development consent on any land if the consent authority has considered the environmental impacts of the development and opportunities to avoid, minimise or mitigate those impacts.
- (2) Development consent may be granted to development for the purpose of a stormwater management system or a water reticulation system that is not ancillary to any other development (even if the development is associated with existing development or development on adjoining land) on any land.
- (3) Despite subclause (2), development consent must not be granted under that subclause for development on land in Zone E2 Environmental Conservation or Zone E3 Environmental Management, or on any land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential or Zone IN2 Light

Industrial that is adjacent to that land, unless the consent authority has taken into consideration:

- (a) the likely impact of the development on threatened species, native aquatic and terrestrial fauna and flora and their habitat, the ecological role of the land and any waterways, riparian land and wetland, and
- (b) whether the design and siting of the development is located so as to avoid, or minimise the impacts on, significant native vegetation and habitats, and
- (c) if the impacts cannot be avoided, whether the impacts can be mitigated by restoring any existing disturbed or modified areas on the site or on adjacent land.

- (4) In this clause:

stormwater management system has the same meaning as in clause 110 of *State Environmental Planning Policy (Infrastructure) 2007*.

water reticulation system has the same meaning as in clause 124 of *State Environmental Planning Policy (Infrastructure) 2007*.

Note. Development for the purpose of stormwater management systems and water reticulation systems may be carried out by or on behalf of a public authority without consent on any land under clauses 111 and 125, respectively, of *State Environmental Planning Policy (Infrastructure) 2007*.

98B Earthworks

- (1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions or processes (including waterways, riparian land and groundwater), neighbouring uses, cultural or heritage items or features of the surrounding land.
- (2) Development consent is required for earthworks unless:
 - (a) the earthworks are exempt development under this Part or another applicable environmental planning instrument, or
 - (b) the earthworks are ancillary to development that is permitted without consent under this Part or to development for which development consent has been given.
- (3) In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:
 - (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
 - (b) the effect of the development on the likely future use or redevelopment of the land,
 - (c) the quality of the fill or the soil to be excavated, or both,
 - (d) whether the development minimises cut and fill and the use and location of cut and fill on the site,
 - (e) the effect of the development on the existing and likely amenity of adjoining properties,
 - (f) the source of any fill material and the destination of any excavated material,
 - (g) the likelihood of disturbing relics,

- (h) whether the location of the earthworks is appropriate, taking into account land that has previously been cleared in response to site characteristics,
- (i) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive land and measures to prevent sediment, building materials, waste or other pollutants from leaving the site and entering adjoining land, street gutters, drains or watercourses,
- (j) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Note. The *National Parks and Wildlife Act 1974*, particularly section 86, deals with harming Aboriginal objects.

