



Contact: Luke Blandford
Phone: (02) 6641 6600
Fax: (02) 6641 6601
Email: Luke.Blandford@planning.nsw.gov.au
Postal: Locked Bag 9022, Grafton NSW 2460

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

Our ref: PP_2013_BYRON_002_00 (13/11477)
Your ref: 26.2013.2.1 F377 #2013/67363

Dear Mr Gainger,

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

I am writing in response to Council's letter dated 16 October 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 permit seniors housing, business premises, restaurants and cafes, shops and medical centres and cap floor area of commercial uses to 3000sqm, as an additional permitted use on Lot 101 DP 1140936 at Ewingsdale Road, Ewingsdale.

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.

It is noted that the subject land is identified as regionally significant farmland under the Northern Rivers Farmland Protection Project and the planning proposal is therefore inconsistent with S117 Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast. Further, the planning proposal has not justified the inconsistency of the planning proposal with S117 Direction 5.1 Implementation of Regional Strategies as the proposed use of rural land for urban purposes is not supported by a local or regional growth strategy. Council is to include its response to these inconsistencies as part of the public exhibition material, outlining justification for the proposal.

I have also agreed the planning proposal's inconsistencies with S117 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.5 Rural Lands, and 6.3 Site Specific Provisions are of minor significance or justified by the Retail Floorspace Analysis. No further approval is required in relation to these Directions.

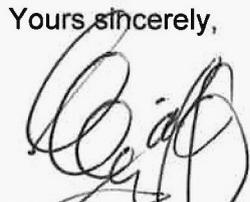
The Minister delegated his plan making powers to councils in October 2012. It is noted that Council has asked not to be issued with delegation for the making of this plan because of the scale and significance of the proposal. I have considered the nature of Council's planning proposal and have decided to support Council's position and not issue an authorisation for Council to exercise delegation to make this plan.

The amending LEP is to be finalised within 12 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 for the department to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

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 section 54(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 Luke Blandford of the regional office of the department on 6641 6600.

Yours sincerely,



Neil McGaffin 20.11.13
A/Deputy Director General
Planning Operations & Regional Delivery

Encl: Gateway determination

Gateway Determination

Planning proposal (Department Ref: PP_2013_BYRON_002_00): to permit seniors housing, medical centres and certain commercial uses on land at Ewingsdale.

I, the Acting Deputy Director General, Planning Operations and Regional Delivery at the 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 draft Byron Local Environmental Plan (LEP) 2012 or Byron LEP 1988 to permit seniors housing, business premises, restaurants and cafes, shops and medical centres and cap floor area of commercial uses to 3000sqm, as additional permitted uses on Lot 101 DP 1140936 at Ewingsdale Road, Ewingsdale should proceed subject to the following conditions:

1. Prior to undertaking public exhibition, Council is to update the planning proposal to include all relevant sections identified within *A Guide to Preparing Planning Proposals*, including a project timeline and relevant mapping, which is at an appropriate scale and clearly identifies the subject land.
2. Additional information regarding the matters below is to be placed on public exhibition with the planning proposal:
 - significance of flora, fauna and watercourses
 - bushfire hazards
 - noise impact
 - local and Aboriginal cultural heritage
 - assessment of existing residential zoned land or potential future expansion areas in Ewingsdale and Byron Bay, to determine if there is an alternative location to better accommodate seniors housing.
3. Council is to update the planning proposal to include sufficient additional information to adequately demonstrate consistency or justify any inconsistency with the below S117 Directions:
 - 2.3 Heritage Conservation
 - 4.4 Planning for Bushfire Protection
 - 5.1 Implementation of Regional Strategies
 - 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
 - 5.4 Commercial and Retail Development along the Pacific Highway, North Coast
4. 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 a minimum of **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 2013)*.

5. Consultation is required with the following public authorities under sections 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant S117 Directions:
- NSW Health
 - Roads and Maritime Services
 - Department of Primary Industries – Agriculture
 - NSW Rural Fire Service (S117 Direction 4.4 Planning for Bushfire Protection)

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

6. 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).
7. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated *21st* day of *November* 2013.



Neil McGaffin
A/Deputy Director General
Planning Operations & Regional Delivery
Department of Planning & Infrastructure

Delegate of the Minister for Planning & Infrastructure