

BYRON SHIRE COUNCIL

ORDINARY MEETING

10 FEBRUARY 2011

(77)

Report No. 12.12. **PLANNING – Biannual planning proposal for amendment to the Byron LEP 1988 to permit seniors housing, aged care facilities, retail premises and medical facilities at Ewingsdale**

Executive Manager: Environment and Planning
File No: PLN560000 x 240779 x 240809 #1029308

Principal Activity: Land and Natural Environment

Summary: Council has previously resolved to receive reports on planning proposals for LEP amendments biannually in June and December. Consequently, the planning proposal included in this report has been submitted to Council for its consideration.

The purpose of this report is to seek Council's position on whether or not to proceed with a planning proposal for amendments to the Byron LEP 1988 to permit the provision of seniors housing, aged care facilities, retail premises and medical facilities on land neighbouring the proposed hospital site at Ewingsdale Road, Ewingsdale.

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NOTE TO COUNCILLORS:

10 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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RECOMMENDATION:

20 That Council not proceed with the planning proposal to amend the Byron LEP 1988 to permit the provision of seniors housing, aged care facilities, retail premises and medical facilities at Lot 101 DP 1140936, Ewingsdale Road, Ewingsdale, and that Council consider the matters in the planning proposal in the Local Growth Management Strategy.

Attachments:

- 25
- Planning Proposal – #1027400 [145 pages] **Annexure 5(a)**
 - Location and Zoning Map #1029950 [1 page]..... **Annexure 5(b)**

Report

On 12 August 2010 Council considered the report *Biannual LEP Amendments Review of Process* (#973447). Council resolved:

10-617 (relevant extract only):

1. That Council adopt the revised Process to initiate a Local Environmental Plan as presented in Annexure 13(b)#973633.

The process adopted specifies that Council will consider a report on proposed LEP amendments biannually in June and December. Consequently, the planning proposal included in this report (Annexure 5(a)) has been submitted for the consideration of Council.

The purpose of this report is to seek Council's position on whether or not to proceed with a planning proposal for amendments to the Byron LEP 1988 to permit the provision of seniors housing, aged care facilities, retail premises and medical facilities on land neighbouring the proposed hospital site at Ewingsdale Road, Ewingsdale.

The Planning Proposal

The land subject to this planning proposal is described as Lot 101 DP 1140936, Ewingsdale Road, Ewingsdale and comprises two parcels located to the immediate west and east of Lot 100 DP 1140936, on which the proposed hospital is to be located. The two parcels are linked by a right-of-carriageway through Lot 100.

The applicant, Jewelbond Pty Ltd, has submitted a planning proposal (Annexure 5(a)) seeking to rezone part of, or permit additional uses on part of, or the entirety of, Lot 101 in order to permit the provision of:

- The western parcel – seniors housing in townhouse style development, aged care facilities to the north-east with retail facilities including a supermarket and specialty stores and medical facilities to the north-west; and
- The eastern parcel – seniors housing in townhouse style development.

The applicant has provided indicative concept plans for the proposed development that have taken into consideration the physical and topographical characteristics of the site as well as the presence of a heritage item on the eastern parcel. Several studies have been provided as supporting documentation with the proposal. These include:

- Retail Floorspace Analysis;
- Study of Seniors Housing Development and Medical Centre; and
- Traffic Impact Assessment.

The applicant advises that the inclusion of the medical centre and retail land uses and the associated services will assist in providing the appropriate services to address the needs of future residents in the proposed seniors housing and aged care facility.

Current and Proposed Zonings

The subject land has two zonings under the Byron LEP 1988. The greater part of both sites are zoned Rural 1D (Investigation Zone), with the remaining areas being zoned Rural 1(c2) (Small Holdings Zone). The western parcel has an area of 7.72ha (77254m²) and the eastern parcel has an area of 6.68ha (66832m²). Please refer to Annexure 5(b) for the Location and Zoning Plan.

Under the draft Shire-wide LEP the subject land is affected by three zonings. It is proposed that the western parcel be predominantly zoned RU2 Rural Landscape, with the remainder of the parcel zoned R5 Large Lot Residential and SP2 Special Purpose – Infrastructure. The eastern parcel is proposed to be zoned RU2 Rural Landscape and R5 Large Lot Residential.

Strategic Planning Context

Far North Coast Regional Strategy 2006-31

The Far North Coast Regional Strategy (FNCRS) is the overriding strategic planning document for the Region, providing policies and actions to address future growth. The Strategy was prepared to complement and inform other relevant State and local planning instruments and:

“Local environmental plans, local growth management strategies and other statutory planning controls will align with the Regional Strategy’s settlement network as shown on the Housing Map to contain the spread of urban development, efficiently utilise existing services and infrastructure, and protect areas of high conservation value.”

The subject land is identified in the FNCRS as follows:

- *Regional Strategy Map* identifies the greater part of both parcels as “Environmental Assets and Rural Land”. This identifies areas with environmental, landscape, natural resource and agricultural production values. The strategy states that these areas will be protected from further urban settlement. The remainder of both parcels is identified as “Existing Rural Residential Area”.
- The subject site is also identified as being within the “Coastal Area” within which future land release is limited to land identified within the Town and Village Growth Boundaries. Sheet 2 for Byron Shire (located at the rear of the FNCRS) indicates that the subject land is not located within a Town and Village Growth Boundary.
- The *Housing Map* indicates that the subject land is partially included within an existing “Rural Residential Area” but not within a “Proposed Future Urban Release Area”.
- The *Natural Resources Map* of the Strategy and the Northern Rivers Farmland Protection Project 2005 mapping identifies the greater part of both parcels as being “Regionally Significant Farmland”. The Northern Rivers Farmland Protection Project 2005 recommends that regionally significant farmland cannot be considered for rural residential rezoning.
- The *Employment Land Map* does not identify the subject land for employment purposes.

As demonstrated above, the proposal is not consistent with many of the outcomes sought by the strategy. Significantly, the subject land is not within an identified area for urban development. However, the proposal has merit in terms of achieving some aims of the FNCRS as it would contribute to the supply and variety of housing and employment opportunities required to meet the needs of a rapidly ageing population.

Byron Rural Settlement Strategy 1998

The Byron Rural Settlement Strategy 1998 (BRSS) identifies opportunities for, and addresses the problems of, rural settlement in Byron Shire. The key outcomes of the BRSS are a ten year Rural Land Release Program, best practice guidelines and performance standards. The BRSS is relevant as the subject land is zoned for rural purposes.

The subject land is not identified for rural settlement in the *Rural Land Release Program* map of the BRSS that indicates land for this purpose. Nor is the subject land identified as long term potential rural settlement lands (10+ years). However, the site is identified in the *Deferred Lands* map as “LES Investigation Lands” (Map 3, BRSS) pending the outcome of the Small Towns and Villages Settlement Strategy. It is also identified as “Potential Lands for Rural Tourist Cabins” in Map 9, BRSS.

As a result of this, the subject site was examined in the Byron Bay, Suffolk Park and Ewingsdale Settlement Strategy (the Strategy) which was reported to Council in February 2002, but never adopted. The Strategy states that the land "...has physical capability for urban or village development but current community views, both in the locality and in the wider community, strongly oppose either of these. The community places value on the rural landscape of the area. There are major road infrastructure constraints to development, particularly the capacity of Ewingsdale Road and other road systems in Byron Bay."

The following outcome was recommended for the subject land:

"Rezone unsubdivided 1(c2)(Small Holdings Zone) and 1(D)(Investigation Zone) land to an appropriate rural zone, pending a structural review of the Byron Rural Settlement Strategy. Environmental protection zoning of remnant significant vegetation." (Outcome 41)

This work was to have been included in the review of the BRSS which has subsequently been deferred in favour of the development of the Local Growth Management Strategy. It is noted that although the BRSS is now 12 years old it remains Council's guiding document for rural settlement.

Byron Shire Local Environmental Study (LES) 2008

The LES is an assessment of the environmental, social and economic issues relevant to the review of land use controls in the Byron Shire area and provides essential information used in the preparation of the draft LEP 2008. It provides useful background information to the proposed zonings on the subject land.

The two parcels were examined in the LES together with the hospital site. The LES recommended that the subject land be zoned part R5 Large Lot Residential, part RU2 Rural Landscape and part SP2 Infrastructure. The reasons are stated as:

"The existing heritage item on the residual lot can be adequately protected by the proposed RU2 zoning. Further, it is not desirable to reduce or remove land currently zoned as 1(c2), particularly in light of the shortage of developable land in the Shire."

"Given the proposed hospital is being built to meet existing need, there is also likely a future demand/need for increased number of beds. It is therefore considered logical to extend the SP2 zone west to meet the boundary of the concrete batching plant to allow for expansion of the hospital in the future."

Byron Shire Council Affordable Housing Options Paper

This paper was prepared with the purpose of informing and assisting Council in addressing affordable housing and, in particular, in the preparation of the draft LEP 2008 and the Affordable Housing Development Control Plan. It provides analysis of existing and future affordable housing needs in the Byron Shire and recommends a number of strategies to address the identified shortfall in supply. The following key issue is identified which has particular significance in terms of the consideration of the planning proposal:

"The need to significantly diversify housing opportunities and stock in order to meet changing demographic needs, including a strong increase in demand for smaller, more manageable dwellings for older households."

The paper recognises that the median age is projected to increase and there will be an increasing demand for various forms of age-appropriate and age-restricted housing. It identifies a need for a mix of 203 high care nursing home places, 176 low care hostel places, 1,800 small manageable dwellings well located and walkable to transport, shops and services, and 460 self care units/independent living units in age-restricted developments.

It is noted that although LEP provisions can assist in providing housing stock to meet the needs of an ageing population it does not necessarily ensure that the housing will be affordable.

Statutory Requirements

State Environmental Planning Policies (SEPPs)

The following SEPPs are relevant to the planning proposal:

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SEPP	Is the planning proposal consistent?
SEPP 55 Remediation of Land	Substantial areas of both land parcels are affected by dip buffer areas. The preparation of a preliminary site contamination investigation under SEPP 55 will be required to be undertaken by the applicant and remediation work implemented if necessary.
SEPP (Housing for Seniors or People with a Disability) 2004	The planning proposal is consistent in that it increases the supply and diversity of senior housing, but inconsistent as the subject land and the adjoining land is not zoned primarily for urban purposes.
SEPP (Rural Lands) 2008	The planning proposal is inconsistent with SEPP (Rural Lands) 2008 as it is not in keeping with applicable regional and local strategies.
SEPP North Coast Regional Environmental Plan	The planning proposal is inconsistent as it is not in keeping with applicable regional and local growth strategies.

Section 117(2) Ministerial Directions

The following Ministerial Directions are relevant to the planning proposal:

Direction	Provisions	Consistent: Yes/No	Comment
No.1.1 Business & Industrial Zones	Seeks to encourage employment growth, protect employment land and support viability of identified strategic centres.	No	The proposal is not in accordance with an approved strategy.
No. 1.2 Rural Zones	Seeks to protect the agricultural production value of land.	No	Proposal will contain provisions that will increase the permissible density of land within a rural zone.
No. 1.5 Rural Lands	Seeks to protect the agricultural production value of land and facilitate development for rural purposes.	No	Proposal is not consistent with the Rural Planning Principles contained within SEPP (Rural Lands) 2008.
No.2.3 Heritage Conservation	Seeks to conserve items, areas, objects and places of environmental heritage significance.	Further information needed.	Item of heritage significance, being "building and surrounds" The applicant proposes to incorporate the building into the proposal. Further detailed assessment of the impact of the proposal on the dwelling and its surrounds will be required.
No 3.1 Residential	Seeks to encourage a variety and choice of housing types, make efficient use of existing infrastructure and services and minimise impact of	No	Proposal would impact on regionally significant farmland and would likely require upgrading of existing infrastructure.

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Direction	Provisions	Consistent: Yes/No	Comment
	residential development on the environment and resource lands.		
No.4.4 Planning for Bushfire Protection	Seeks to protect life, property and the environment from bush fire hazards.	Yes	Requirements of this direction are able to be addressed.
No.5.1 Implementation of Regional Strategies	Gives legal effect to regional strategies.	No	The proposal is not consistent with the Far North Coast Regional Strategy.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast.	Seeks to protect the best agricultural land, provide certainty on status of best agricultural land, and reduce land use conflict caused by urban encroachment.	No	The proposal seeks to rezone land identified as regionally significant farmland for urban purposes.
No. 5.4 Commercial & Retail Development along the Pacific Highway, North Coast.	Seeks to protect the Pacific Highway's function, safety and efficiency and to reinforce the role of retail development in town centres.	Further information required.	The applicant has undertaken a traffic impact assessment which recommends upgrading the Ewingsdale Road/William Flick Lane intersection to improve future traffic flows in the vicinity. Further traffic impact assessment that includes consideration of impact generated by proposed Byron Hospital.

Comment

As demonstrated above, the proposal is inconsistent with the relevant regional and local strategic plans as it is promoting urban development on land not identified for such purposes. In principle the consideration of individual properties for urban development not identified for such purposes in a current strategic plan is not sound strategic planning.

Nevertheless, the proposal does provide social and economic benefits for the community in a region with a rapidly ageing population. Benefits to the community include:

- Increased supply and range of housing types for seniors.
- Increased supply of aged care facilities.
- Provision of ancillary medical facilities.
- Provision of retail facilities.
- Sustainable employment opportunities.

There are also benefits to the community from the establishment of the proposed housing and facilities on land directly adjoining the new Byron Hospital. This includes convenient access to a variety of related facilities and services to meet the needs of both residents as well as the wider community.

Integration with Proposed Hospital Site

The planning proposal provides the opportunity to ensure appropriate design standards are applied which will result in a high quality development that achieves integration with the proposed hospital development on the adjoining site.

In this respect it is noted that the processing of the planning proposal for Byron Hospital is in its early stages having recently received a 'gateway' determination from the Department of Planning to proceed to public exhibition. The hospital planning proposal will be on public exhibition from 20 January to 16 February. To best achieve the benefits outlined above it is recommended that this planning proposal not proceed until planning for development of the hospital site is further advanced. This will enable the application of appropriate design standards to achieve good integration of the proposed development with the hospital.

Local Growth Management Strategy

Council is currently undertaking a review of settlement patterns and town centre development throughout the Shire in preparation of its draft Local Growth Management Strategy. It is recommended that the planning proposal be included in this review thereby allowing the proposal to be considered in the context of urban growth and centres development throughout the Shire, and in the context of the Ewingsdale locality.

The Site

In addition to the matters discussed above the subject land has the following characteristics that merit it being considered for the land uses proposed. Alternatively, these site characteristics indicate that the land be included for consideration in the Local Growth Management Strategy.

These characteristics are:

- Substantial areas of both parcels are clear of vegetation.
- The subject land is generally flat and contains no HCV Vegetation.
- Habitat value is limited to a watercourse in the eastern parcel.
- The subject land is located immediately adjacent to the Ewingsdale settlement and is in close proximity to the Pacific Highway.

Further Information Requirements

While the information provided with the planning proposal is adequate for this stage of Council's consideration, further detailed site assessments still need to be undertaken to ascertain the suitability of the site for the proposed development. Additionally, Council needs to be satisfied as to the infrastructural consequences of the proposal.

Should Council resolve to progress the planning proposal as an amending LEP, the applicant will be required to provide further information including the following matters:

- Land Contamination – Substantial areas of both sites are affected by dip site buffers. The preparation of a suitable site contamination investigation under SEPP 55 will be required.
- An assessment of any impacts such as noise and dust nuisance resulting from the concrete batching plant located on an adjoining property.
- Noise impact assessment due to proximity of the Pacific Highway.
- Water and wastewater assessment.
- Traffic impact assessment that includes consideration of impact generated by proposed Byron Hospital.
- Heritage assessment. "Buildings and surrounds" known as the Higgins Homestead, located on the eastern parcel, are listed as an item of environmental heritage in the Byron LEP 1988. The building is also listed in Schedule 5 of the draft LEP 2008 as a heritage item. Further detailed assessment of the impact of the proposal on the dwelling and its surrounds will be required.

It is noted that the applicant has sought amendments to the draft Shire-wide LEP to enable the proposed development. This is incorrect as the planning proposal should be seeking amendments to the current Byron LEP 1988. Should Council resolve to proceed with the planning proposal the applicant will need to correct the LEP amendments sought prior to the proposal being submitted to the Department of Planning for a 'gateway' determination.

Options for Responding to the Planning Proposal

Following from the above discussion, Council has the following options for responding to the planning proposal:

1. That Council resolve not to proceed with the planning proposal to amend the Byron LEP 1988 to permit the provision of seniors housing, aged care facilities, retail premises and medical facilities at Lot 101 DP 1140936, Ewingsdale Road, Ewingsdale, and that Council consider the matter of the planning proposal within the Local Growth Management Strategy.
2. That Council resolve to proceed with a planning proposal to permit seniors housing, aged care facilities, retail premises and medical facilities at Lot 101 DP 1140936, Ewingsdale Road, Ewingsdale, and that a commencement fee of \$2000 and further information and technical studies as necessary be sought from the applicant, and that the planning proposal be submitted to the Department of Planning for a Gateway Determination.

Financial Implications

Council is able to recover the costs of processing an applicant initiated LEP amendment. New Council fees and charges for the processing of LEP amendments came into effect on 1 October 2010.

Statutory and Policy Compliance Implications

The relevant policy considerations are addressed above.