

Report No. 6.2 26.2016.4.1 - Rural Event Sites Planning Proposal - Submissions Report and Next Steps

Directorate: Sustainable Environment and Economy

Report Author: Rob Van Iersel, Major Projects Planner

Isabelle Hawton, Planner

File No: I2018/2399

Theme: Sustainable Environment and Economy
Planning Policy and Natural Environment

Summary:

At the ordinary meeting of 21 June 2018, Council considered a report summarising the results of preliminary community engagement regarding a potential approval mechanism for weddings and events in the rural parts of the shire. The report noted division within the community as to the best ways to deal with issues associated with rural events.

At the meeting, Council resolved **(18-404)** to proceed with a Planning Proposal to introduce a new local provision within BLEP 2014 relating to land zoned RU2 Rural Landscape and forward the planning proposal to the Department of Planning and Environment for a Gateway Determination.

The aim of the proposal is to find a balance with events and weddings occurring in the rural areas of the shire, whereby they can be approved on suitable sites with a range of controls to limit the scale and intensity of individual events.

Gateway was subsequently received and a six week engagement/ exhibition exercise was undertaken in November/ December 2018.

There was significant community interest in the engagement activities, resulting in good attendance numbers at workshops held across the Shire and numerous submissions and phone contact. In particular, community members directly involved in the wedding/ events industry were well represented.

Workshop summaries and submissions received are attached to this report.

Overall, it is apparent that people involved in this industry are supportive of a regulated approach that provides an approval mechanism for events in the rural area.

It is also clear that divided opinions remain; some respondents being of the view that the wedding industry is an important part of the Shire that can be managed to avoid disturbance to neighbours; while others are strongly opposed to such activities in the rural hinterland, concerned that the approval mechanism will lead to a proliferation of event sites and that it will not be possible to ensure that disturbance is avoided or minimised.

Submissions in support included suggestions that:

- there is definite merit in restricting events to sites that are demonstrably suitable for such use;
- applications should, however, be assessed on their individual merits, rather than be controlled by arbitrary numerical standards; and
- management of events, and event attendees, is the key to avoiding disturbance, requiring profession oversight.

In response to the suggested 8:00pm 'curfew', industry representatives were united in their response that this would not work and would decimate the industry or result in a continuation of the status quo whereby wedding venues operate outside to the law.

Opposition submissions generally raised a lack of trust in the ability of the Council and the industry to adequately manage disturbance. Other issues raised included:

- objection to ‘commercialisation’ of the rural hinterland;
- concern that an approval mechanism would lead to a proliferation of events in the hinterland beyond Council’s ability to oversee and enforce;
- the quietness of rural areas makes it virtually impossible to manage noise such that it does not disturb neighbours.

Other feedback included:

- concerns that the use of the standard definition of *function centre* is inappropriate as it includes a wide range of uses that have the potential to be more intensive than weddings and low scale events;
- suggestions that a DA process is not appropriate and that prospective sites should be considered by way of individual Planning Proposals for site-specific LEP amendments; and
- the approval mechanism should not be restricted to land zoned RU2 Rural Landscape, and should also be considered for land zoned RU1 Primary Production and R5 Large Lot Residential.

Based on the engagement results, changes are proposed to the draft clause as exhibited.

The primary recommendation is to proceed with a new land use definition, avoiding the standard definition of *function centre*.

It is recommended that the term **Rural Event Site** be used and that it be defined specifically for and within the proposed new LEP clause to mean:

the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.

Key aspects of this recommended definition include:

- limiting the use to the RU2 Rural Landscape zone;
- clearly establishing that the LEP provision is targeting a temporary use, with both a maximum number of annual events and a restricted 3-year approval; and
- specifying a maximum number of event attendees.

This report recommends that the proposed approval mechanism not be extended to the RU1 Primary Industry or R5 Large Lot Residential zones, for reasons outlined in this report.

Establishing the approval mechanism by way of a limited three-year approval provides Council and the community an opportunity to ensure that event use at an approved site continues in a manner that does not disturb neighbours.

Approved sites would be able to apply toward the end of the three year approval period, for another three years, thereby providing an element of certainty for the industry.

This “rolling approval” system provides a balanced approach, addressing the issues and concerns raised through the engagement process and can provide a “win-win” situation that provides for continuation of the industry, but within strict parameters and controls that ensure minimal local disturbance.

Staff have obtained external legal advice regarding the proposed new local LEP provision, which concludes that it is a reasonable approach to the issue and is set out in a form that can be legally made and enforced.

- 5 Given the changes recommended to the proposed LEP amendment as exhibited, it is anticipated that an amended Gateway Determination will be required, including a requirement for another round of community consultation.

- 10 Implementing a strict approval mechanism for rural event sites could result in an unintentional consequence of increasing applications for restaurants in the RU2 zone. Restaurants are permissible with consent in the zone, and there are currently few controls/ provisions relating to that use.

- 15 Consent is not required to use a legally approved restaurant for the purposes of an event such as a wedding (as long as the primary use remains a restaurant as opposed to a function centre).

- 20 Given this, it is also recommended that staff undertake a review of existing planning controls (LEP & DCP) relating to restaurants in the rural zones, with a view to ensuring that these controls adequately protect rural amenity and prevent disturbance to neighbours.

RECOMMENDATION:

1. **That Council forward the amended Planning Proposal (Attachment 1 E2019/23021) to NSW Department of Planning, Industry and Environment for an amended Gateway Determination, to provide an approval mechanism for rural event sites in the RU2 Rural Landscape Zone.**
2. **That, following Gateway, if required, the Planning Proposal be publicly exhibited for a period of 28 day and; following this time a further report be put to Council.**
3. **That Council review existing planning provisions relating to restaurants in the rural zones, to ensure that the controls adequately protect rural amenity and prevent disturbance to neighbours.**

Attachments:

- 25
- 1 26.2016.4.1 Planning Proposal v 6 - New Definition Temporary Approval and Alteration to Planning Proposal Post Public Exhibition, E2019/31936
 - 2 Community Workshop Notes - Rural Function Centre, E2019/4423
 - 3 Combined Submissions - Rural weddings and events Planning Proposal - 26.2016.4.1, E2019/4100
 - 30 4 Form of Special Disclosure of Pecuniary Interest, E2012/2815

REPORT***Background***

At the ordinary meeting of 21 June 2018, Council considered a report summarising the results of preliminary community engagement regarding weddings and events in the rural parts of the shire. The report noted division within the community as to the best way to deal with issues associated with rural events and recommended that Byron Local Environmental Plan 2014 (LEP 2014) be amended by inserting a new local clause establishing an approval mechanism for function centres on land zoned RU2 Rural Landscape.

The recommended local clause contained draft controls aimed at defining characteristics that would determine the suitability of sites for rural events and other controls relating to the management of events.

At the meeting, Council resolved **(18-404)** to proceed with the Planning Proposal to implement the approval mechanism forward it to the Department of Planning and Environment for a Gateway Determination.

Gateway was subsequently received and a six week engagement/ exhibition exercise was undertaken in November/ December 2018.

Engagement

The Planning Proposal was on exhibition for a 6 week period from November 7 until December 21. Advertisements went out in the Echo, via the E-news, media release, in school newsletters of the rural primary schools, on social media and via email to all those who expressed interest in the project earlier in the year (approximately 200 people).

During the exhibition period, four community workshops were held across the Shire to give opportunity for people to have their say regarding the suggested LEP amendment and allow staff to obtain community feedback in testing the draft controls.

Approximately 20-40 people attended each of the workshops, with each one having a majority of industry related personnel in attendance – i.e. caterers, sound technicians, wedding planners, celebrants etc.

Attachment 2 contains notes taken at the workshops.

Council staff also attended a Community Alliance Byron Shire meeting to raise awareness of the exhibition and held one-on-one meetings with individuals who could not attend workshops.

Submissions

56 written submissions were received in total (see Attachment 3).

29 of the submissions clearly indicated a direct link with the wedding and event industry.

Nine submissions were completely against the LEP being amended to allow weddings and events in the RU2 zone. The remaining 47 were either in favour of the amendment or at least gave productive feedback towards the contents of the draft clause.

The following table summarises some of the key themes and comments:

<i>Theme</i>	<i>Varying opinions</i>
Distance – from wedding venue to the nearest neighbour	The distance should be flexible based on site conditions, such as topography, vegetation and building structure.

Theme	Varying opinions
	<p>If a venue were to build a soundproof building, the distance could potentially be reduced.</p> <p>Basing controls on an arbitrary separation distance has no scientific basis and therefore is not an ideal solution.</p> <p><i>13 of the written submissions would like more flexibility around separation distance.</i></p>
	<p>The separation distance needs to be at least 500m if not more and the option for 250m needs to be removed.</p> <p><i>4 of the written submissions agree with this</i></p>
	<p>The distance should be a minimum of 1km.</p> <p><i>3 of the written submissions agree with this.</i></p>
Curfew – the time the music ceases, and the time the guests and staff leave the venue	<p>8pm is far too early. The industry will collapse because couples do not want to finish a wedding this early and many months of the year it is too hot for a day wedding.</p> <p><i>28 of the written submissions agree with this</i></p>
	<p>8pm is fine and is respectful of the rural residents.</p> <p><i>5 of the written submissions agree with this.</i></p>
	<p>Given that approval would depend on an independent site-specific acoustic assessment, a 10pm curfew is more suitable.</p> <p><i>15 of the written submissions agree with this. A majority of workshop participants also support a 10pm curfew.</i></p>
Employment	<p>The industry brings great benefit to the region and this should be considered and supported.</p> <p><i>13 of the written submissions agree with this.</i></p>
Event Management	<p>Having a planner on site and a plan of management is critical.</p> <p><i>6 of the written submissions agree with this. A majority of the workshop participants also agree with this.</i></p>
Capped Number of Events	<p>The number of events at an approved site should be restricted to minimise disturbance on neighbours.</p> <p><i>4 written submissions agree with this. Some workshop participants also agree with this.</i></p>
	<p>The number of events at an approved site should not be restricted. Only sites deemed suitable by the acoustic assessor will gain approvals so therefore the neighbours shouldn't be disturbed in the first place.</p> <p><i>1 written submission agrees with this. Some workshop participants also agree with this.</i></p>
Capped Number of Guests	<p>The number of guests attending an approved site should be restricted. This could be done by the Council planner</p>

Theme	Varying opinions
	based on studies the development application, including acoustic assessment, traffic study etc. <i>4 written submissions agree with this. A majority of workshop participants also agree with this</i>
Three Strikes for Consent Withdrawal – three substantiated complaints would result in the development consent being withdrawn.	This suggestion within the draft clause was strongly supported by a majority of participants.

Key Issues

A. Function Centre Definition

- 5 Within Byron LEP 2014, a *Function Centre* means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

This is a Standard Template definition, therefore included in all LEPs across the State.

- 10 Concerns were raised that the nature and scale of uses permissible under this definition, particularly *conferences*, *convention centres*, are too broad and incompatible with the intentions of the Planning Proposal.

Options:

	Pros	Cons
1. Continue with the Standard Template definition of <i>function centre</i>	Consistency of terminology	Potential to allow a range of uses that are of a larger scale than the rural weddings we are addressing with the draft Planning Proposal.
2. Incorporate a stand-alone definition of <i>Rural Event Site</i>	Allows for a more specific land use definition tailored for the particular circumstances of the rural weddings/ events industry. Can specify within the definition that the use is temporary, with a limited number of annual events, a limited number of guest and a three-year approval	The Department of Planning & Industry generally require LEP provisions that deal with the standard suite of land use definitions

Recommendation:

The use of a definition that is specific to the recommended LEP provision will aid clarity and avoid unanticipated consequences that could arise from the broad nature of the *function centre* definition.

- 20 There is precedent for the use of a specific land use definition that is relevant for a specific purpose and it is recommended in the current circumstances.

It is recommended therefore, that, rather than listing *function centres* as a permissible use on the RU2 Rural Landscape zone, the draft clause be amended to include a new land use special-purpose definition of ***Rural Event Site***, to mean:

the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.

Key aspects of this recommended definition include:

- limiting the use to the RU2 Rural Landscape zone;
- clearly establishing that the LEP provision is targeting a temporary use, with both a maximum number of annual events and a restricted 3-year approval; and
- specifying a maximum number of event attendees.

Establishing the approval mechanism by way of a limited three-year approval provides Council and the community an opportunity to ensure that event use at an approved site continues in a manner that does not disturb neighbours.

Approved sites would be able to apply toward the end of the three year approval period, for another three years, thereby providing an element of certainty for the industry.

This “rolling approval” system provides a balanced approach, addressing the issues and concerns raised through the engagement process.

B. Minimising Disturbance

A primary objective of the proposed LEP amendment has been to allow approval for event sites only where it can be demonstrated that the approved use will not result in disturbance to neighbours; with noise and traffic being the main risks in this regard.

As exhibited, the main recommended controls included:

- separation distance – the suggested exhibited control was that Council could not consent to an application unless:
events will occur in a location that is a minimum of 500m from an existing dwelling house on an adjoining property. Council will consider a variation to the minimum separation distance, but not less than 250m, only where:
 - *existing topography and vegetation on the land is such that there is not a clear line of sight between the event site and adjacent dwellings; and*
 - *an acoustic assessment conclusively demonstrates that event use will not result in unacceptable noise impacts at the neighbouring dwelling;*
- acoustic assessment – a requirement for a site-specific assessment, prepared by an appropriately qualified person, to accompany every application;
- buses – use of buses to transport patrons to and from sites for each event; and
- curfew – all amplified music to cease by 8:00pm with all attendees off site by 8:30pm.

Separation:

Many people attending the engagement workshops expressed concern about the arbitrary nature of the 500m separation distance.

Industry supporters were concerned that the distance would be, in many cases, too great. Most expressed the opinion that if the acoustic assessment demonstrates that the site-specific circumstances are such that neighbours will not be disturbed by noise, a separation distance need not be arbitrarily set in the LEP.

Others suggested that 500m may not be enough separation, citing the quiet nature of the rural hinterland.

- 5 The distance that noise can be/ will be carried is dependant on a range of factors, including topography, weather, existing background noise and the like. There is no 'science' to establish 500m as 'the best' distance. While it may be adequate in some locations, it could also be insufficient in different circumstances.

Options:

	Pros	Cons
1. Rely solely on acoustic assessment, with no specified separation distance	Provides maximum flexibility to account for site conditions	Potentially invites proposals on sites where neighbours are too close
2. Specify a minimum separation distance of 500m with no opportunity to reduce or vary	Establishes a 'bench-mark' that can prevent applications on sites that are clearly unsuitable	Does not account for variability across the hinterland, where topography and site circumstances play a role in the 'travel' of noise. Allows for almost no sites to gain approval.
3. Specify a minimum separation distance of 500m with clearly described opportunity to reduce or vary	Allows the potential for some approved activities that are suitable to the individual circumstances of a property.	Allowing a separation distance below 500m may not be acceptable to some in the community. There is no 'science' to the numbers and sites that are suitable may be ruled out as a consequence of arbitrary numbers.

Recommendation:

- 10 Feedback from the community workshops, and deliberation and research by Council staff, have led to the conclusion that any specified distance would be an arbitrary number that does not serve to accurately predict the impacts of noise from Rural Event Sites on neighbours.

- 15 Therefore, it is recommended that Council proceed without a specified distance, but instead rely on the acoustic assessment and the introduction of a possible "trial period" that would allow the retraction of the consent in the event that noise and traffic impacts exceeded acceptable levels. This is also reinforced by the provision that the consent will be for a time limited period of a maximum of three years.

- 20 In addition, it is recommended that approvals be conditioned to require annual compliance/ monitoring reports to be submitted to Council, which would allow collation of event data about events and their local impacts.

- 25 It is strongly recommended that a site-specific acoustic assessment be required in all cases, and that approval would only be granted where the findings of that assessment demonstrate conclusively that holding events at the site in the manner proposed will not result in offensive noise, as defined in the *Protection of the Environment Operations Act 1997*.

- 30 In that Act, *offensive noise* means:
noise:

- (a) *that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:*
- (i) *is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or*
- (ii) *interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or*
- (b) *that is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.*

10 The draft LEP amendment has been modified to make it clear that approval will only be possible where it can be demonstrated that event use will not result in *offensive noise*.

Curfew:

15 Responses from representatives of the wedding industry were unanimous that the 8:00pm curfew would not be workable. Some industry representatives suggested that an 8pm curfew would result in a continuance of the status quo, whereby wedding venues are operating outside of approval, as the regulation would be too prohibitive and would put venues off seeking a legitimate pathway for approval. Industry representatives indicated that they supported the previously suggested curfew of 10:00pm for amplified music and 11:00pm for attendees to leave the site.

20 There were submissions from rural residents supporting the 8:00pm curfew. There were also submissions from residents indicating acceptance of a 10:00pm curfew, including a submission from a neighbour of an authorised wedding venue indicating that the 10.30pm curfew established for that venue works well for him.

25 Options:

	Pros	Cons
1. Continue with a clause that requires amplified music to cease at 8:00pm, with attendees off site by 8:30pm	Minimises the potential disturbance to neighbours associated with noise and traffic	Industry representatives are adamant that the curfew is too early and will effectively end demand for rural events or that the approval mechanism will be too prohibitive and operators will not seek approval but continue to operate illegally thus making the process of seeking an approval mechanism null and void.
2. Establish the curfew of 10:00pm for amplified music, with attendees off site by 11pm	10:00pm is considered by many in the community to be 'reasonable'	A curfew of 10:00pm will not be acceptable to all residents

Recommendation:

30 Given that any application for event sites will need to be supported by a site-specific acoustic assessment that demonstrates that neighbours will not be affected by unacceptable noise impacts, and the ability to limit the number of events and/ or the number of attendees, it is considered that a curfew of 10:00pm will be acceptable.

Acoustic assessment & buses:

There was general agreement with the requirement to have a site-specific acoustic assessment for each rural event site application and to require buses to transport guests to minimise the number of cars.

- 5 It is recommended, therefore, that these requirements remain in the draft LEP provision.

C. Compliance/ Enforcement

- 10 The ability to enforce planning controls and/ or conditions of approval is an issue of concern for the community. Many of the submissions and comments opposing the proposed LEP amendment were from rural residents who had previously experienced negative impacts from neighbouring unauthorised events.

- 15 In addition to outlining the nature and severity of disturbance from those experiences, many of the objectors indicated frustration that Council had been unable to take immediate, or in some case any, action to stop events.

- 20 Enforcement actions and infringements are governed by the provisions of the *Environmental Planning and Assessment Act 1979*. Under this Act, Council does not have the authority to 'shut down' a venue. Council can, however, issue orders to stop unauthorised use of a venue or in respect to compliance with conditions.

- 25 For 'development without consent' Council has authority to issue fines of up to \$3,000 for individuals or \$6,000 for companies, if sufficient evidence is collected. For continuing offences or serious issues, Council can issue Court Attendance Notices.

- The current situation, where there is continued strong demand for rural weddings and events, but a significantly limited ability to approve such land uses, has led to the proposal to provide a controlled approval mechanism.

- 30 There has been, and continues to be, regular community complaints arising from weddings and events on rural properties.

- 35 In order for Council to take enforcement action regarding these complaints, evidence needs to demonstrate a breach of the LEP. For example, evidence needs to demonstrate that the event was commercial in nature rather than a family event. This can be difficult to prove.

- Anecdotal, it has also been suggested that some venues have been "building in" the potential for a \$3,000 fine into their site fees, to address the risk of infringement action.

- 40 A number of the engagement attendees, both residents and industry, expressed the views that fines could be increased. This, however, is not possible as the amount of the fines is set in State legislation.

Recommendation:

- 45 Establishing the approval mechanism as a "rolling approval" system provides that approved sites would need to apply, toward the end of the three year approval period, for a further three year approval. In doing so, they would need to demonstrate that events at the site have operated without creating unacceptable neighbourhood impacts.

- 50 This "rolling approval" system provides a balanced approach, addressing the issues and concerns raised through the engagement process. It also avoids the potential whereby Council is required to continually act against an operator with a "permanent" approval who does not comply with conditions of that approval.

- 55 Requiring annual compliance reporting will also allow Council to collate data regarding events.

D. Restricting approval pathway to RU2 zone

Submissions were received strongly suggesting that the scope of the proposed clause should be widened to include land zoned RU1 Primary Production and/or R5 Large Lot Residential.

R5 Zone:

A key objective of this zone is to provide residential housing in a rural setting, while minimising environmental and scenic impacts and land use conflicts.

At the commencement of this project, a cursory review of R5 zoned land suggested that the density of existing (and likely future) dwellings is such that adequate separation distances would be very unlikely to be achieved.

Following the recent community engagement, further assessment of recent (2015) aerial photography has been undertaken to review the assumption above.

Across the Shire, there are a number of separate areas of R5 zoned land, with a total of approximately 1,000 individual lots. Of those lots, aerial photo review indicates that there are only around 12 lots which have an existing separation of 250m (or more) to neighbouring dwellings.

While this separation distance alone does not conclusively indicate that sites in the R5 land are unsuitable, it is clear that, with neighbouring houses this close, it would be difficult for acoustic assessments to be able to demonstrate that offensive noise would not result from events.

Given that, rather than establishing an approval mechanism on R5 land that has criteria that are unlikely to met, it is recommended that the LEP continue to apply only to the RU2 zone.

RU1 Zone:

The primary objective of the RU1 zone is to encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

A number of participants at the community engagement workshops expressed a view that the proposed approval mechanism should be extended across all of the rural hinterland, particularly including land zoned RU1 Primary Production.

Reasons included:

- the ability to hold rural events could allow farmers to diversify and value add to their agricultural business through a secondary income;
- not all properties within the RU1 zone are actually suitable for agricultural production;
- land zoning is not as relevant as the suitability of the site and the management of events.

Council's *Rural Land Use Strategy* (adopted July 2018) establishes the following policy directions relating to rural economy:

1. *Future rural development will avoid identified state or regionally significant farmland*
2. *Future rural development will be located to ensure the protection of existing agricultural land uses and to protect viability of high quality agricultural land.*
3. *The planning framework will encourage a viable and diverse agricultural industry through appropriate zoning provisions, allotment size and buffers.*
4. *The planning framework will provide flexibility for our farmers to diversify their income sources where ancillary to farming operations.*

5. *Future rural tourist development will build on and complement our agricultural industry, reinforcing the predominant use of the rural area for agricultural production while maintaining the rural character and take into consideration increased road traffic impacts.*
6. *Future rural tourist development will be located and designed to avoid adverse visual or noise impacts.*
7. *The planning framework will encourage rural based tourism that is committed to the use of ecologically sustainable management practices.*

While the directions provide for rural tourism, it is clearly Council's preference that farming be protected, facilitated and enhanced, with other land uses being secondary to that aim.

In responding to the exhibited draft Planning Proposal, the NSW Department of Primary Industries has advised of a preference to *avoid these types of development in RU1 Primary Production and RU2 Rural Landscape zones*. They acknowledge, however, the demand for events in the rural hinterland and Council's intention to provide a controlled approval pathway. In that context, the Department does not object to the proposal to allow an approval mechanism for events within the RU2 zone, but supports the *continued prohibition of function centres in RU1 zone*.

The basis of this position reflects both the State Government and Council's support for the right to farm and ongoing concerns regarding rural land use conflicts.

It was also suggested during the engagement that, if there remains a reluctance to extend the approval mechanism to the RU1 or R5 zones, it could be applied to individual properties within those zones which have existing approvals in place for tourist and visitor accommodation.

This submission raises an issue as to whether event use at an existing lawful tourist and visitor accommodation property would be either ancillary to that approved use or an intensification of the accommodation use.

In the case where an event use approval would be sought as an additional use or an intensification of an existing accommodation use, the issues raised in this report regarding potential conflicts and impacts on farming are the same as if this were a 'new' proposed use.

Small-scale, irregular events could be considered as ancillary to the approved tourist accommodation, for example where people who have booked the accommodation hold a wedding or gathering with a small number of guests.

There are, however, no clear guidelines to clarify the circumstances under which such an activity could legitimately be considered as ancillary to another approved land use. It is not based solely on the number of people, number and frequency of events, or scale of events, although those matters are relevant in considering the question.

Guidelines issued by the Department of Planning describe ancillary use as *a use that is subordinate or subservient to the dominant purpose*. In other words, if a use serves the dominant purpose, it is ancillary to that purpose. If it serves its own purpose, it is not ancillary, but a separate use requiring its own approval.

In relation to an approved tourist accommodation site, therefore, the dominate purpose would need to remain accommodation, with very limited ability to host events. Certainly, if the approved premises are advertised as a wedding or event venue, such use could not be considered as ancillary to the accommodation.

In that case, event use would require its own approval.

It is not possible to be more prescriptive regarding ancillary development, as each site/ circumstance will differ. Each, therefore, should be looked at on its merits, based on the activities ordinarily undertaken on the property.

- 5 There is also the issue of restaurants in rural zones. Restaurants are permissible with consent in the zone, and there are currently few controls/ provisions relating to that use.

Consent is not required to use a legally approved restaurant for the purposes of an event such as a wedding (as long as the primary use remains a restaurant as opposed to a function centre).

- 10 Given this, it is also recommended that staff undertake a review of existing planning controls (LEP & DCP) relating to restaurants in the rural zones, with a view to ensuring that these controls adequately protect rural amenity and prevent disturbance to neighbours.

- 15 Options:

	Pros	Cons
1. Continue with the proposal as advertised – i.e. applying only to land zoned RU2 Rural Landscape	Avoids land identified as the best land for farming. Allows areas within the rural hinterland where event use will not occur.	Potentially inequitable, in that sites within zones other than RU2, which may be suitable for events based on the circumstances of the land, are prevented from obtaining development consent.
2. Extend the provision allowing applications for event sites to the RU1 and R5 zones, in addition to the RU2 zone	Provides a consistent approach across the rural hinterland	In respect to the RU1 zone, potentially weakens Council's stated direction to protection, facilitate and enhance farming as a critically important rural land use. Creates potential for impacts on farming. In respect to the R5 zone, it is unlikely that any more than a small handful of sites could meet the recommended planning criteria that would allow approval for an event site.

Recommendation:

It is recommended that the Planning Proposal continue only in relation to land zoned RU2.

- 20 Based on the review of R5 zoned land in the shire, extending the approval opportunity to this zone will create a situation where only a very small number of properties have the potential to be favourably considered. It is not reasonable to raise expectations in this way.

- 25 For the small number of sites that may have potential, it could be possible for them to seek approval by way of a site-specific LEP amendment, establishing events as an additional permitted use on the property, subject to demonstrating that such use will not result in unacceptable disturbance to the rural amenity.

- 30 In the context of the R5 zone, this is considered to be a more reasonable process.

It is recommended that the approval mechanism not be extended to the RU1 Primary Production zone. The strong message contained in the Rural Land Use Strategy is to protect and enhance farming in the Shire and this should remain an important focus of Council.

- 5 It is also noted that the State Government, through Department of Primary Industries is of the same view and have indicated that they would not support a Planning Proposal to extend the events site approval mechanism to the RU1 zone.

Other issues raised

10 A. Fees/ Contributions/ Registration

Many submissions suggested that Council should implement a fee/ contribution, payable per event, that could be used to maintain upgrade rural infrastructure (mainly roads).

- 15 Under current developer contribution arrangements, any approval for the establishment of an event site would be subject to a Developer Contribution, in the form of a fixed levy in accordance with Section 7.12 of the Act.

The levy is a sliding scale, based on the estimated cost of development, based on the following table:

Estimated cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001–\$200,000	0.5 percent
More than \$200,000	1.0 percent

- 20 For most event site applications, the cost of set up would be minimal. The levy, therefore, is unlikely to yield significant contributions.

- 25 Apart from the developer contributions, Council has only limited ability to charge or levy a fee or payment, primarily restricted to requiring a fee for the provision of a service. Under current legislation, therefore, Council could not impose an event fee or levy.

- 30 Some respondents suggested that Council introduce a registration 'service', requiring approved rural event sites to register each event, with a fee charged for this 'service'. Research into registration undertaken in relation to short-term holiday let indicates that there are legislative impediments to introducing such a scheme, given limitations of the Local Government Act. In any case, any fee charged for a registration service would need to be 'reasonable', demonstrated to be appropriate to the services provided.

- 35 It would be more appropriate for Council to require, as a condition of approval, the submission of annual compliance/ monitoring reports for each approved site, which would provide a record of events held at approved properties and data relating to events, to assist with understanding complaints. An administration fee could be paid for the submission of each annual report, although it would need to be reasonable based on the service provided.

40 B. Impacts on local roads:

Community input confirmed support for controls intended to minimise impact on local rural roads including:

- 45
- requirement for applicants to confirm that the site is accessed by way of a sealed road with sufficient capacity for the traffic volumes and types generated by the function centre, and that buses are able to access and exit the property in a forward direction; and
 - requiring that the majority of event attendees will be transported to and from each event by bus as deemed appropriate to the applicable road network.

C. Limit on numbers:

A number of inputs suggested a need to limit the number of events allowable and/ or the number of attendees permissible at any event, as a way to ensure that event use remains small scale.

This has been incorporated into the proposed provisions in the following manner:

- including a limit of 150 people per event in the recommended definition of Rural Event Site; and
- specifying a limit to the number of events held in a calendar year (maximum 20).

D. Code of conduct:

The Byron Event Industry Association (BEIA) has been established to represent the various professionals who work in the industry. BEIA advise that they are working on the development of a Code of Conduct, which shares Council's primary objective of managing events to ensure that rural neighbours are not disturbed by events.

Some attendees at the engagement events suggested that Council's LEP amendment could 'call up' the industry's code of conduct, mandating compliance with it.

This approach is not recommended at this time.

E. Potential for large number of approved venues

Concern was expressed that allowing event sites in the RU2 zone will 'open the gates' and allow the rural hinterland to 'be swamped' with commercial venues. This is not the intention of the Planning Proposal, and, as explained above, the controls have been drafted in a way to give multiple layers of protection to the rural amenity and to ensure that only a limited number of venues would gain approval.

Council is aware of approximately 25 venues that have previously operated as event sites in the rural zones (without approval).

A number of these sites and others could be eligible to apply for consent to operate as a rural event site, based on the recommended approach, with the likelihood of success dependant primarily on the outcomes of site-specific acoustic assessment. It is unknown how many other sites within the RU2 zone, that aren't currently operating as event sites, or that are unknown to Council, might be suitable.

Given the controls recommended, it is unlikely that there will be a significant number of properties in the rural hinterland that could satisfactorily address the requirements. It would therefore not be expected that the LEP amendments would lead to a high number of applications/ approvals.

Recommended Updates to Exhibited Draft

Based on the discussion above, the recommended LEP amendment is outlined in full below:

6.11 Temporary Use - Rural Event Site in RU2 Rural Landscape Zone

(1) *Despite any other provision of this Plan, development consent may be granted for development on land within Zone RU2 Rural Landscape for a Rural Event Site, up to a maximum of 20 events per calendar year over a period of three (3) years.*

(2) *Development consent must not be granted for a Rural Event Site unless the consent authority is satisfied that:*

- (a) *the proposal is supported by a site specific acoustic assessment, prepared by a suitably qualified person, quantifying existing background noise levels and noise levels*

- predicted for events in relation to all nearby dwellings, and demonstrating that the use of the property for events will not result in the generation of offensive noise, as defined in the Protection of the Environment Operations Act 1997;*
- 5 (b) *the use of the site for a Rural Event Site will not result in unacceptable adverse impacts on any adjoining land or the amenity of the neighbourhood, particularly in relation to noise and traffic;*
- (c) *the use of the site for a Rural Event Site will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities;*
- (d) *no clearing of native vegetation is required for the Rural Event Site;*
- 10 (e) *the Rural Event Site is not located in or immediately adjacent to areas of high Aboriginal cultural heritage significance.*
- (3) *Applications for development consent for a temporary Rural Event Site must include an Events Management Plan, which contains (as a minimum) provisions that:*
- 15 (a) *provide for all event guests (excluding bridal party) to be transported to and from each event by bus, suitable to the road network to be utilised for transportation to the event; and*
- (b) *ensure that all amplified music will cease no later than 10:00pm; and*
- (c) *ensure that all event attendees (other than those residing on site) will be off-site no later than 11:00pm, other than those staying overnight on the premises; and*
- 20 (d) *outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and*
- (e) *provide for the monitoring of noise generated at events and annual compliance reporting to Council; and*
- 25 (f) *provide for the notification of nearby residents, including contact details for an appropriate management person who must be on-site and contactable during each event and provision of a sign, located so that it can be viewed from a public space outside of the property notifying the name and contact phone number of the management person; and*
- 30 (g) *ensure that adequate arrangements are in place to manage wastewater and general waste for each event; and*
- (h) *manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function; and*
- (i) *prohibit the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities.*
- 35 (4) *In deciding whether to grant consent for a temporary Rural Event Site, the consent authority must consider:*
- (a) *the maximum number of events permitted in any calendar year; and*
- (b) *the potential loss of farming on the property, particularly where part or all of the site is mapped as Regionally Significant Farmland; and*
- 40 (c) *the potential impact on areas of environmental value, whether on the property the subject of the Rural Event Site or on adjacent and nearby land, including koala habitat; and*
- (d) *whether a trial period is appropriate; and*

(e) *the need to impose a condition specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period; and*

(f) *the need for a biosecurity management plan.*

5 (5) *In this clause:*

Rural Event Site means the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.

The table below provides a comparison of the draft controls as exhibited with the provisions now recommended, and provides commentary to clarify the recommended changes:

15 **Proposed LEP provisions:**

Provisions as exhibited	Proposed Changes	Comments
Add <i>function centre</i> to the list of land uses that are permissible with development consent in the RU2 zone.	No longer proposed. New definition of <i>rural event site</i> to be included in proposed LEP clause (see below)	<i>New definition is tailored to the circumstances of the rural events happening in Byron Shire.</i> <i>Function centre definition too broad; potentially allowing more intense land uses.</i>
6.10 Function Centres in RU2 Rural Landscape Zone	6.11 Temporary Use - Rural Event Sites in RU2 Rural Landscape Zone	<i>Rural event sites as opposed to function centres. New clause number because new 6.10 will be inserted by imminent completion of LEP amendment relating to activation of rail corridor in Byron Town Centre.</i>
	1. Despite any other provision of this Plan, development consent may be granted for development on land within Zone RU2 Rural Landscape for a Rural Event Site, up to a maximum of 20 events per calendar year over a period of three (3) years.	<i>Temporary approval description added – not included in exhibition version.</i>
1. Development consent must not be granted for a function centre on land zoned RU2 Rural Landscape unless the consent authority is satisfied that:	2. Development consent must not be granted for a Rural Event Site on land zoned RU2 Rural Landscape unless the consent authority is satisfied that:	<i>Rural Event Sites as opposed to function centres.</i>
a. events will occur in a location that is a minimum of 500m from		<i>Provision removed.</i>

Provisions as exhibited	Proposed Changes	Comments
<p>an existing dwelling house on an adjoining property. Council will consider a variation to the minimum separation distance, but not less than 250m, only where:</p> <ul style="list-style-type: none"> existing topography and vegetation on the land is such that there is not a clear line of sight between the event site and adjacent dwellings; and an acoustic assessment conclusively demonstrates that event use will not result in unacceptable noise impacts at the neighbouring dwelling; 		
<p>b. the proposal is supported by a site specific acoustic assessment, prepared by a suitably qualified person, quantifying existing background noise levels and noise levels predicted for events in relation to all nearby dwellings;</p>	<p>a. the proposal is supported by a site specific acoustic assessment, prepared by a suitably qualified person, quantifying existing background noise levels and noise levels predicted for events in relation to all nearby dwellings, and demonstrating that the use of the property for events will not result in the generation of offensive noise, as defined in the Protection of the Environment Operations Act 1997;</p>	<p><i>Additional text added to ensure that applications demonstrate that events will not result in offensive noise.</i></p>
<p>c. the subject site is accessed by way of a sealed road with sufficient capacity for the traffic volume and type generated by the function centre, and that buses are able to access and exit the property in a forward direction;</p>		<p><i>Provision removed – traffic assessment would be a standard consideration in the assessment of any application.</i></p>
<p>d. the use of the site for events will not result in</p>	<p>b. the use of the site for events will not result in</p>	<p><i>No change</i></p>

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

6.2

<i>Provisions as exhibited</i>	<i>Proposed Changes</i>	<i>Comments</i>
unacceptable adverse impacts on any adjoining land or the amenity of the neighbourhood, particularly in relation to noise and traffic;	unacceptable adverse impacts on any adjoining land or the amenity of the neighbourhood, particularly in relation to noise and traffic;	
e. the use of the site for events will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities; and	c. the use of the site for events will not result in any land use conflict in relation to adjoining or nearby farming activities or preclude future farming activities; and	<i>No change</i>
f. no tree clearing is required for the function centre.	d. no clearing of native vegetation is required for the function centre;	<i>Native vegetation as opposed to trees. Recommended by OEH.</i>
	e. the Rural Event Site will not be located in or immediately adjacent to areas of high Aboriginal cultural heritage significance.	<i>New provision as suggested by OEH</i>
2. Applications for development consent for a function centre must include an Events Management Plan, which contains (as a minimum) provisions that:		<i>No change</i>
a. ensure that the majority of event attendees will be transported to and from each event by bus as deemed appropriate to the applicable road network; and	a. provide for all event guests (other than the bridal party) to be transported to and from each event by bus, suitable to the road network to be utilised for transportation to and from the event; and	<i>Change ensure to provide. Change "majority of event attendees" to "all event guests (other than the bridal party)"</i>
b. ensure that all amplified music will cease no later than 8:00pm; and	b. ensure that all amplified music will cease no later than 10:00pm; and	<i>8:00pm changed to 10:00pm</i>
c. ensure that all event attendees will be off-site no later than 8.30pm;	c. ensure that all event attendees (other than those residing on site) will be off-site no later than 11:00pm, other than those staying overnight on the premises;	<i>8:30pm changed to 11:00pm. Insertion of "(other than those residing on site)" for clarity.</i>
d. outline measures that will be in place to ensure predicted noise levels are not exceeded at nearby dwellings; and		<i>No change</i>
e. provide for the	d. provide for the monitoring of	<i>Minor change – requiring</i>

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

6.2

Provisions as exhibited	Proposed Changes	Comments
monitoring of noise generated at events and six-monthly reporting of results to Council; and	noise generated at events and annual compliance reporting to Council;	<i>annual compliance reporting</i>
f. provide for the notification of nearby residents prior to each event, including contact details for an appropriate management person who must be on-site and contactable during each event; and	f. provide for the notification of nearby residents, including contact details for an appropriate management person who must be on-site and contactable during each event and provision of a sign, located so that it can be viewed from a public space outside of the property notifying the name and contact phone number of the management person;	<i>Add requirement for visible sign providing contact details of management person.</i>
g. ensure that adequate arrangements are in place to manage wastewater and general waste for each event; and		<i>No change</i>
h. manage the potential noise/ amenity impacts associated with any persons staying overnight at the site at the conclusion of the function; and		<i>No change</i>
i. the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities will be prohibited.	i. prohibit the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities.	<i>Minor wording change</i>
3. In deciding whether to grant consent for a function centre on land zoned RU2 Rural landscape, the consent authority must consider:	4. In deciding whether to grant consent for a Rural Event Site on land zoned RU2 Rural landscape, the consent authority must consider:	<i>Rural event sites as opposed to function centres.</i>
a. the need for a development consent to be limited to a particular period and/or number of events;	a. the maximum number of events permitted in any calendar year	<i>Allows consideration of the need to further limit event numbers</i>
b. the potential loss of farming on the property, where part or all of the site is mapped as	b. the potential loss of farming on the property, particularly where part or all of the site is mapped	<i>Addition of word particularly, suggested by Dept Primary Industry</i>

Provisions as exhibited	Proposed Changes	Comments
Regionally Significant Farmland;	as Regionally Significant Farmland;	
c. the potential impact on areas of environmental value, whether on the function centre site or on adjacent and nearby land, including koala habitat; and	c. the potential impact on areas of environmental value, whether on the Rural Event Site or on adjacent and nearby land, including koala habitat; and	<i>Rural Event Sites as opposed to function centres.</i>
	d. whether a trial period is appropriate	<i>Addition of need to consider whether a trial period is appropriate to give further security to surrounding residents.</i>
d. the need to impose a condition specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period.	e. the need to impose a condition specifying that development consent would cease if three substantiated complaints were received in relation to functions at the site within a twelve-month period.	<i>No change</i>
	f. the need for a biosecurity management plan	<i>Additional provision suggested by farmers</i>
	2. In this clause: Rural Event Site means the temporary use of a building or defined area within a property zoned RU2 Rural Landscape, where weddings and other similar gatherings/ events are held for commercial purposes for a maximum number of events in a three (3) year period, with a maximum of 150 attendees per event, but does not include convention centres or exhibition centres or music festivals.	<i>New provision outlining the definition recommended for the clause.</i>

Conclusion:

From the outset, the intention of this project has been to provide an approval mechanism that balances allowing the industry to continue with rural events with the protection of rural amenity.

5

The current proposal establishes a mechanism for a 'rolling approval' of the temporary use of rural land for up to 20 events per annum over a three-year period, with an ability to re-apply at the end of the three years.

This will allow the behaviour of event operators to be assessed on a regular basis, which is desirable given that the potential for amenity impacts is high and largely dependent on the individual operator.

- 5 It is considered that the amended proposal provides the intended balance, and it is recommended that Council proceed with the process of amending the LEP in this way.

External legal advice confirms that the proposed LEP amendment provides an effective approach to the rural events issue in a manner that can be implemented legally.

10 STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

Objective: 3:	We protect and enhance our natural environment
Strategy 3.4:	Support and secure our farming future
Action	Develop and implement strategies to support agriculture, agri-business and farmers
Activity:	Implement priority actions of the Rural Land Use Strategy

Objective: 4:	We manage growth and change responsibly
Strategy 4.5	Work to improve community resilience in our changing environment
Action 4.5a)	Develop and implement strategies for our community's needs
Activity:	Prepare planning controls to facilitate Rural Events

This Planning Proposal also supports Objective 4 – We Manage Growth and Change Responsibly, Strategy 4.3 – Promote and support local business development, education and employment opportunities and action 4.3 – Facilitate and support sustainable development of our business community.

Legal / Statutory / Policy Considerations

This Planning Proposal has already received Gateway from the NSW DPE. Given the changes recommended in this report, it is likely that an amended Gateway Determination will be required.

Financial issues

Relevant financial considerations have been discussed above.

Environmental Considerations

Relevant environmental controls have been included in the proposed provisions.

Community Consultation

Relevant community consultation has been discussed above.