

Planning Services

Gateway Determination Report

LGA	Byron
PPA	Byron Shire Council
NAME	Function centres on land zoned RU2 Rural Landscape
NUMBER	PP_2018_BYRON_004_00
LEP TO BE AMENDED	Byron LEP 2014
ADDRESS	The proposal applies to all land in the RU2 Rural Landscape Zone in Byron Local Government Area (LGA)
DESCRIPTION	Various
RECEIVED	10 July 2018
FILE NO.	EF18/23980 IRF18/4152
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal seeks to make function centres a land use permissible with consent in the RU2 Rural Landscape Zone in the Byron LEP 2014.

Site description

The proposal applies to all land zoned RU2 Rural Landscape in the Byron LGA. The RU2 zone applies extensively throughout the LGA. Substantial areas of the RU2 zone are mapped as farmland of State or regional significance.

Various individual land parcels may have physical constraints such as severe slopes, erodible soils, acid sulfate soils, flood and bushfire prone areas, or contain significant native vegetation including core koala habitat.

Existing planning controls

Function centres are currently prohibited on all land zoned RU1 Primary Production and RU2 Rural Landscape in the Byron LEP 2014, and are permissible with consent in land zoned RU5 Village.

Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions for the following reasons:

1. The proposal will facilitate additional land uses in the RU2 zone which will provide opportunities for employment generation and tourist facilities which are expected to have positive impact on the local economy;
2. The proposal is generally consistent with the broader strategic planning framework with any inconsistencies being justified; and
3. Potential inconsistencies with the Rural SEPP and North Coast Regional Plan can be addressed through development controls.

PROPOSAL

Objectives or intended outcomes

The objective of the planning proposal is to enable function centres, particularly wedding venues, to be a permissible land use in the RU2 Rural Landscape zone.

Explanation of provisions

The explanation of provisions adequately describes the proposed amendments to the Byron LEP 2014. It is noted that these provisions will apply to permanent function centres. Proponents may choose to put in a development application for either a permanent function centre, or a temporary function centre pursuant to Clause 2.8 Temporary Use of Land. The proposal applies to commercial function centres, not to 'one-off' private functions.

The planning proposal will amend the Byron LEP 2014 as follows:

1. Insert 'function centres' in Item 3 (Permitted with consent) of the land use table for Zone RU2 Rural Landscape; and
2. Insert the following clause or a similar clause in Part 6 of the Byron LEP 2014:

6.10 Function Centres in RU2 Rural Landscape Zone

- (1) *Development consent must not be granted for a function centre on land zoned RU2 Rural Landscape unless the consent authority is satisfied that:*
 - (a) *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:*
 - i. *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*
 - ii. *an acoustic assessment conclusively demonstrates that event use will not result in unacceptable noise impacts at the neighbouring dwelling;*
 - (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;*
 - (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;*

- (d) *the use of the site for events will not result in 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*
 - (f) *no tree clearing is required for the function centre.*
- (2) *Applications for development consent for a function centre must include an Events Management Plan, which contains (as a minimum) provisions that:*
- (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*
 - (b) *ensure that all amplified music will cease no later than 8:00pm; and*
 - (c) *ensure that all event attendees will be off-site no later than 8.30pm; and*
 - (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 six-monthly reporting of results to Council; and*
 - (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*
 - (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) *the use of fireworks, helicopters and/or other comparable activities known to cause disturbance to livestock and/or farming activities will be prohibited.*
- (3) *In deciding whether to grant consent for a function centre on land zoned RU2 Rural landscape, the consent authority must consider:*
- (a) *the need for a development consent to be limited to a particular period and/or number of events;*
 - (b) *the potential loss of farming on land that is mapped as either State or 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*
 - (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.*

Mapping

The planning proposal does not involve any changes to the mapping in Byron LEP 2014.

NEED FOR THE PLANNING PROPOSAL

In recent years there has been a growth in the wedding industry in the Northern Rivers region, with Council responding to a number of complaints about unauthorised wedding venues in rural parts of the Shire. Development applications for function centres in rural areas have also been received by Council, the majority of which have been refused or withdrawn.

Council has undertaken preliminary community consultation about function centres in rural zones. Results reveal that 63% of respondents agree with permitting function centres in rural zones and 37% want function centres to remain prohibited development.

Council states that the main concerns from respondents who wish to retain current prohibition of function centres are:

- *loss of productive farmland and impact on farming;*
- *erosion of the rural character and amenity, particularly by disturbance to residents;*
- *the commercialisation of rural land; and*
- *a lack of trust in the ability for Council to monitor and police compliance with approval conditions.*

Respondents who accepted that function centres could be permitted in rural zones generally agreed that controls should be included to define the suitability of sites and the management of events, particularly in relation to noise and traffic issues.

During the community consultation, there was also some acknowledgement of the economic benefits of the wedding industry to the region.

Council has considered the following alternative options for this planning proposal:

Status Quo – Function centres remain prohibited in Rural Zones

Under the existing controls of Clause 2.8 Temporary Use of Land, Council can approve temporary use of land for weddings for up to 14 days in a 12-month period.

This clause is restrictive in terms of impacts on adjoining land and amenity of the neighbourhood and does not allow permanent centres to be built.

Function Centre permissible in RU1 and RU2

Permitting function centres in the RU1 zone has the potential for significant loss of primary production in the area.

This option is not recommended as the RU1 zone is for land deemed to have the highest agriculture value.

Function Centre defined in new local clause

This option looks at allowing smaller functions such as weddings to be permissible in the RU2 zone under a 'function centre' clause which would preclude larger scale

land uses such as conference centres and exhibition centres. This approach is more consistent with Council's current conditions on rural tourism development.

This option is not preferred as changes to a standard definition would create ambiguity in the LEP.

Function centre a permissible use, without a new local clause

This option allows function centres in the RU2 zone but does not include specific provisions. Each development application would be assessed on its merits, in accordance with the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979.

Considering the contentiousness of the issue, and the community's wish to regulate wedding venues, this option is not recommended. If function centres were permitted, provisions would be required to ensure there would be no adverse impacts on farmland, amenity or the environment.

STRATEGIC ASSESSMENT

State

NSW State Priorities

The proposal is not inconsistent with any of the eighteen State priorities being actioned by the State Government.

Regional / District

North Coast Regional Plan 2036 (NCRP)

The NCRP's direction, in relation to agriculture and tourism, is to encourage agritourism through niche activities in rural lands rather than broad scale tourism (Action 11.4).

Byron Shire has large tracts of mapped regionally significant land in the RU2 zone (see Attachment E). The importance of this land is particularly reflected in the NCRP Byron Local Government Narrative priority to protect farmland at Eureka, Federal, Bangalow, Goonengerry, Coorabell, Tyagarah, Mullumbimby, Nashua and Billinudgel.

The NCRP Byron Local Government Narrative also aims to have *a strong and diversified economy based on Byron Shire's unique character, landscapes and important farmland*. The proposal shows consistency with this direction by recommending function centres as a diverse income stream in the RU2 zone.

It is considered that the encroachment of additional commercial land uses on rural land could erode the agricultural value of the farmland, limit its operation and may result in neglect of productive land. However, given the limited number of function centres that would likely to be established and the proposed heads of consideration the impacts on agricultural land are considered manageable.

Local

Byron Shire Rural Land Use Strategy

The key planning directions for the rural economy in the Byron Shire Rural Land Use Strategy are to protect, promote and facilitate agriculture in the LGA. However, the

Strategy also seeks to extend rural tourism activities to enable a more secure, diverse and viable agricultural industry. The Byron Shire Rural Land Use Strategy recommends the following action:

Investigate the potential for allowing 'wedding venues' (a type of function centre) in rural zones and, where appropriate, planning provisions to ensure their location, scale and operation are compatible with the rural setting.

The proposal delivers this action by proposing function centres are to be permitted in the RU2 zone with consent.

It is noted in the Strategy's directions that:

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.

It is considered that function centres do not build on the agricultural industry, but they may complement it by promoting local food, agriculture and artisan products. If the LEP amendment was to proceed, consideration would need to be made at the development application phase to ensure that the primary use of important agricultural land would not be eroded by function centres and land use conflict does not occur.

Section 9.1 Ministerial Directions

The following Section 9.1 Directions are relevant to the planning proposal: 1.5 Rural Lands; 2.1 Environment Protection Zones; 2.2 Coastal Protection; 2.3 Heritage Conservation; 4.1 Acid Sulfate Soils; 4.3 Flood Prone Land; 4.4 Planning for Bushfire Protection; 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; 5.10 Implementation of Regional Plans; and 6.1 Approval and Referral Requirements.

Of these the proposal is considered to be inconsistent with Directions 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.4 Commercial and Retail Development along the Pacific Highway, North Coast, and 5.10 Implementation of Regional Plans.

1.5 Rural Lands

The planning proposal will affect land within the existing RU2 Rural Landscape zone and must be consistent with the Rural Planning Principles listed in SEPP (Rural Lands) 2008. The relevant Rural Planning Principles are (a), (b), (c) and (h).

(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas;

(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State;

(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development.

In relation to the above principles, the planning proposal identifies that there is a demand for additional commercial uses on agricultural land and is responding to that demand by proposing function centres be permissible on RU2 land. While this may generate economic benefits for the tourism sector, there is no direct benefit to the agricultural sector. However, given the limited number of centres that would likely to be established and the proposed heads of consideration the impacts on agricultural land are considered manageable.

There is much land mapped in Byron Shire as Regionally Significant, including large areas of RU2 zoned land, and it is important to afford protection for this farmland. Primary production on important farmland could lessen in favour of function centres, land use conflict could increase, and productive farming land could be lost. The proposal acknowledges the significance of rural land by including a clause to consider the potential loss of farming on the property where it is mapped as Regionally Significant. It is recommended a referral to DPI – Agriculture and until this referral has been considered the consistency with this Direction remain unresolved.

(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Refer to discussion under the NCRP.

2.1 Environment Protection Zones is relevant to the planning proposal. The direction provides that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. This proposal does not detract from the environmental protections which already exist within the Byron LEP. As adequate provisions already exist the inconsistency is considered to be justified as being of minor significance.

2.2 Coastal Protection is relevant to the planning proposal. This direction provides that a planning proposal must contain provisions which give effect to NSW Coastal policies. This proposal does not impact on matters of coastal significance, in addition the SEPP already contains protections relating to the coastline and coastal processes. As adequate provisions already exist the inconsistency with this Direction is considered to be justified as being of minor significance.

2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must contain provisions which facilitate the conservation of matters of environmental and Aboriginal cultural heritage significance. This proposal does not detract from the heritage protection provisions which already exist within the Byron LEP. As adequate provisions already exist the inconsistency with this Direction is considered to be justified as being of minor significance.

4.1 Acid Sulfate Soils is relevant to the planning proposal. This Direction requires that an acid sulfate soils study must be considered prior to rezoning land mapped as containing ASS. The planning proposal impacts on lands identified with Acid Sulfate Soil risk classes 2 to 5. The Byron LEP contains existing provisions to ensure the consideration of ASS during development assessment. Considering the existing provisions providing protection and the nature of the proposal it is considered any inconsistency with this direction is justified as being of minor significance.

4.3 Flood Prone Land is relevant to the planning proposal. This Direction applies when creating, removing or altering a zone or a provision that affects flood prone land. The planning proposal enables function centres on flood prone land. This proposal does not detract from the flood planning and risk management provisions which already exist within the Byron LEP. As adequate provisions already exist the inconsistency with this Direction is considered to be justified as being of minor significance.

4.4 Planning for Bushfire Protection

The RU2 zoned land includes land which is bushfire prone. The direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service, and the draft plan must include provisions relating to bushfire control. Consultation with the Rural Fire Service is required after a Gateway Determination is issued and before public exhibition. Consistency with this Direction will be resolved when this consultation has occurred.

5.3 Farmland of State or Regional Significance on the NSW Far North Coast

The planning proposal does not propose rezoning any land and is considered consistent with this direction.

5.4 Commercial and Retail Development along the Pacific Highway, North Coast

The RU2 Rural Landscape zone includes parcels of land along the Pacific Highway. The direction requires that Council must make provisions in relation to development along the Pacific Highway. It is recommended that Council consult with the Roads and Maritime Services so that any potential issues can be addressed if necessary.

It is considered that any inconsistencies will be resolved when this occurs.

5.10 Implementation of Regional Plans

The consistency with the North Coast Regional Plan is discussed previously in this report. It is recommended that a referral to DPI – Agriculture be undertaken before consistency with this Direction is agreed to.

6.1 Approval and Referral Requirements

The planning proposal does not propose the inclusion of any concurrence, consultation or referral provisions and therefore is considered to be consistent with this direction.

State environmental planning policies

The following SEPPs are relevant to this proposal:

SEPP 44 Koala Habitat Protection

Rural land in Byron Shire contains areas of potential and core koala habitat. The planning proposal enables an additional land use with development consent and includes a provision that no tree clearing is to be undertaken on the event site.

Future development applications for function centres would require consideration of any potential impact on koala habitat and may require a koala plan of management to be prepared.

The proposal is consistent with SEPP 44.

SEPP 55 Remediation of Land

SEPP 55 requires investigations into the potential contamination of land before it is rezoned. The proposal will make the additional land use permissible with consent. Any potential contamination can be assessed at development application stage.

Function centres are not habitable buildings and are unlikely to increase the potential of exposure of residents to contaminants on the land.

The proposal is consistent with SEPP 55.

SEPP (Rural Lands) 2008

The Rural Lands SEPP includes rural planning principles which must be considered when a proposal affects rural land. This planning proposal affects land in areas zoned RU2 Rural Landscape. Consistency with the rural planning principles is considered in the s9.1 Ministerial Directions above.

SITE-SPECIFIC ASSESSMENT

Social

The social impact and acceptability of any future function centre in the RU2 zone will depend on the location and scale of any individual development application.

The preliminary community consultation undertaken by Council has identified that 63% of respondents agreed to permitting function centres in rural zones. However, most agreed that controls were needed to avoid any adverse impacts. Issues of concern that were identified include but are not limited to: erosion of rural character and amenity; noise; lighting; visual impact; conflicting farmland usage; and traffic and safety issues.

In general, the potential social impacts arising from permitting function centres in the RU2 zone can be addressed at the development application stage.

Environmental

The environmental impact of any function centre also depends on the location and scale of any future proposals. Issues of concern may include biodiversity, significant vegetation, geophysical features, visual amenity, biosecurity, wastewater disposal and increased pollution including balloon releases and confetti.

Function centres will require consent and, in the development application process, will be subject to the proposed new provisions, including preparation of an event management plan. Any potential impacts should be mitigated at this stage.

Economic

The greatest positive economic impact to the area would be an increase in local employment through the function centres and the wedding and tourism industry, including event management, catering and floristry. Additional flow-on effects would arise for other businesses through lengthened stays by wedding guests.

The most significant detrimental economic impact for the planning proposal is the potential loss of agricultural land. However, given the limited number of centres that would likely to be established and the proposed heads of consideration the impacts on agricultural land are considered manageable.

Infrastructure

The proposal will not require the provision or funding of state infrastructure. The increased development potential that will arise because of the proposed additional permitted uses in the RU2 zone is not expected to generate a significant demand for infrastructure.

Additional vehicular traffic would impact on Council roads and infrastructure, and it is noted that the proposal addresses this with provisions for the subject sites and possible offsets through development contributions.

CONSULTATION

Community

Council has identified that the planning proposal is not a low impact proposal and has nominated a 28-day public exhibition period. Given that the proposal is controversial and that rural land zones cover a large area of the LGA this period of time is considered appropriate.

Agencies

It is appropriate that Council proposes to consult with the Department of Primary Industry - Agriculture for impacts on farmland, NSW Rural Fire Service for consideration of planning for bushfire and the Office of Environment and Heritage for consideration of ecological issues and Aboriginal and European heritage.

In addition to these agencies, it is recommended that Council also consult with the Roads and Maritime Services to ensure any issues relating to function centres near the Pacific Highway are addressed.

TIME FRAME

The planning proposal includes a project timeline which estimates completion of the planning proposal within four (4) months of the issues of the Gateway determination. Given the potentially controversial nature of the proposal and the need for Council to consult with State agencies and the community, it is suggested that a twelve (12) month time frame is more appropriate.

LOCAL PLAN-MAKING AUTHORITY

Council has requested that the Department of Planning and Environment not authorise Council to be the local plan-making authority.

This amendment to the Byron LEP 2014 is also not considered to be of regional significance and therefore it is recommended that Council be authorised to be the local plan-making authority. Council may choose not to use this power at a later date.

CONCLUSION

It is recommended that the planning proposal proceed subject to conditions for the following reasons:

1. The proposal will facilitate additional land uses in the RU2 zone which will provide opportunities for employment generation and tourist facilities which are expected to have positive impact on the local economy;
2. The proposal is generally consistent with the broader strategic planning framework with any inconsistencies being justified; and
3. Inconsistencies with the Rural SEPP and NCRP can be addressed through development controls, following consideration of DPI – Agriculture comments.

RECOMMENDATION

It is recommended that the delegate of the Minister for Planning:

1. agree that the inconsistencies with Section 9.1 Directions 2.1 Environment Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.4 Commercial and Retail Development along the Pacific Highway, North Coast are justified in accordance of the terms of the direction; and
2. note that the consistencies with Section 9.1 Directions 1.5 Rural Lands, 4.4 Planning for Bushfire Protection and 5.4 Commercial and Retail Development along the Pacific Highway, North Coast and 5.10 Implementation of Regional Plans are unresolved and will require justification once consultation with State agencies has been completed.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation the planning proposal is to be updated to include a plain English description of the proposed local clause and include a note that the final clause will be subject to legal drafting by Parliamentary Counsel.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - Department of Primary Industry - Agriculture; and
 - Office of Environment and Heritage; and
 - NSW Rural Fire Service; and
 - Roads and Maritime Services.
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.

5. Given the nature of the planning proposal, Council should be the local plan-making authority.



3/9/18

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