

PLANNING PROPOSAL

Proposed amendment to Byron Local Environmental Plan 1988: Amendment to Subclause 11(3)

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Introduction

Following on from a Class 1 appeal against Council for the refusal of a Development Application, Council resolved (09-1160) to amend subclause 11(3) of the Byron Local Environmental Plan 1988 to correct an error in relation to the definition of land within this clause. While work towards the preparation of the draft LEP continues, Council has resolved to proceed with the Gateway amendment under the existing LEP prior to the bi-annual process which would delay the amendment until after June 2010.

Part 1 Objectives or Intended Outcomes

To amend the definition of 'land' within subclause 11(3) of the Byron Local Environmental Plan (BLEP) 1988 so that it refers to land within subclause 11(2) of the LEP. Through this amendment Council aims to provide clarity for people enquiring about the subdivision of land within clause 11. In doing so, the definition of 'land' will no longer refer to any parcel of land within this clause, solely relating to land within subclause 11(2). The objective of this amendment is not to alter the original provisions of clause 11, rather than to correct a referencing error which was overlooked when the LEP was originally drafted.

Part 2 Explanation of Provisions

- Amend the Byron Local Environmental Plan 1988 written instrument:
PART 3 – Special Provisions.

Clause 11(3) states:

- 11(3) In this clause-
"land" means a parcel or parcels of land held under a separate title on the appointed day.

Proposed amendment to Clause 11(3):

omit " *this clause*" and insert "subclause 11(2)"

This planning proposal seeks to ensure that only parcels of land within Zones 1(c1), 1(c2) and 1(c2) shown hatched on the map are affected by the definition of land within subclause 11(3). "Land" within this definition currently refers to a parcel or parcels of land held under a separate title on the appointed day. The 'appointed day' is the day in which the Byron LEP took effect, namely 22 April 1988.

Subclause 11(3) was originally created to ensure that anyone seeking to further subdivide land within the Zones 1(c1), 1(c2) and 1(c2H) under subclause 11(2) would need to refer back to the original number of parcels held on the appointed day. The respective formulas used in subclause 11(2)(a), (b) and (c) of the LEP all relate to the number of parcels held on the appointed day and, in turn affect the number of allotments that can be created in these Zones.

As subclause 11(3) refers to all land within clause 11, issues have arisen as the method of calculating parcels has been applied to general subdivision of land within Rural and Environmental Protection Zones as well as the 1(c1) and 1(c2) Zones. Following a Class 1 appeal against Council for the application of this definition to the

subdivision of land outside of 1(c1) and 1(c2) Zones, Council resolved to amend this clause accordingly. The replacement of 'this clause' with 'subclause 11(2)' in subclause 11(3) will provide clarity to the definition of "land" within clause 11 to avoid any further misunderstanding.

Part 3 Justification

Section A – Need for Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

This proposal arises from the endorsement of a Motion Pursuant to Notice at Byron Shire Council's 17 December 2009 Ordinary Council Meeting. The resolution 09-1160 was:

1. *That Council proceed to amend subclause 11(3) Byron Local Environmental Plan 1988 under the Gateway process as follows:*

Delete "this clause" and insert "subclause 11(2)".

2. *That Council proceed with the Gateway amendment prior to the adopted biannual process which could delay the amendment until after June 2010.*

There has not been a formal planning study or report prepared in relation to this Planning Proposal.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

As the definition of 'land' under subclause 11(3) is contained within the Byron LEP 1988, an amendment to this clause in the current LEP is the only option available to avoid further issues as highlighted above. Amending the Byron Local Environmental Plan 1988 written instrument immediately is considered the only means to achieve the objectives.

The mechanism is required in the interim, prior to the adopted biannual process which could delay the amendment until after June 2010 and lead to further appeals against Council.

3. Is there a net community benefit?

This proposal does not involve a rezoning or an amendment with a net impact on community welfare. Subsequently, the Net Community Benefit Test is not applicable to this Planning Proposal.

Section B – Relationship to Strategic Planning Framework

1. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

The planning proposal is consistent with the vision, land use strategies, policies and objectives of the Far North Coast Regional Strategy (FNCRS) 2006-2031. The FNCRS consolidates and builds on previous planning work, including the Northern Rivers Regional Strategy and local council settlement strategies.

2. *Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?*

There are a number of local strategic plans which have been adopted in the Byron Shire since 1998. These have been followed up by the Byron Shire Local Environment Study (LES) 2008 which combines information from all the local strategic plans along with further studies for the entire Shire. The LES 2008 is an assessment of the environmental, social and economic issues relevant to the review of land use controls in the Byron Shire area. The LES was also prepared to document statutory and strategic publications and act as a key matter for Council to consider in preparing a new Shire-wide LEP.

This planning proposal is consistent with the future strategic direction of the Byron Shire LES 2008 and the draft Shire-wide LEP.

3. *Is the planning proposal consistent with applicable state environmental planning policies?*

As this Planning Proposal is to correct a referencing error in the LEP, it will not affect any applicable state environmental planning policies, refer to Appendix 1.

4. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

Due to the nature of this Planning Proposal, it will not affect any applicable s.117 directions which apply to the Shire, refer to Appendix 2.

Section C – Environmental, social and economic impact

1. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

There will be no impact on ecological communities or their habitats as part of this proposed amendment to the LEP.

2. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

There are no other environmental impacts as a result of this proposed amendment to the LEP.

3. *How has the planning proposal adequately addressed any social and economic effects?*

As the proposed amendment is the correction of a referencing error, there will be no social or economic impacts on the community.

Section D – State and Commonwealth Interests

1. *Is there adequate public infrastructure for the planning proposal?*

The proposal has no impact on public infrastructure.

2. *What are the views of State and Commonwealth Public Authorities consulted in accordance with the gateway determination, and have they resulted in any variations to the planning proposal?*

Given the nature of this planning proposal, it is not intended that any other State or Commonwealth agencies will be consulted via the Gateway determination.

Part 4 – Community Consultation

Council proposes that the Planning Proposal will be exhibited in accordance with the requirements of section 57 of the Environmental Planning and Assessment Act 1979 (EP & A Act) and/or any other requirements as determined by the Gateway process.

This is considered a 'low impact planning proposal' requiring an exhibition period of 14 days. Public notification of the exhibition will include a notice in the local newspaper and a notice on Council's website.

Given the minor nature of the planning proposal, it is not intended to directly notify any business, land owner or other State or Commonwealth agencies. During the exhibition period, the planning proposal, gateway determination and other relevant documentation will be available on Council's website and hard copies will be available at Council's Administration Building.

APPENDIX 1:**State Environmental Planning Policies (at 13 March 2010)**

Policy	Comment
SEPP (Affordable Rental Housing) 2009	N/A
SEPP (Exempt and Complying Development Codes) 2008	N/A
SEPP (Rural Lands) 2008	N/A
SEPP (Infrastructure) 2007	N/A
SEPP (Temporary Structures) 2007	N/A
SEPP (Major Development) 2005	N/A
SEPP (Building Sustainability Index: BASIX) 2004	N/A
SEPP (Housing for Seniors or People with a Disability) 2004	N/A
SEPP No. 71 - Coastal Protection	N/A
SEPP No. 65 - Design Quality of Residential Flat Development	N/A
SEPP No. 64 - Advertising and Signage	N/A
SEPP No. 55 - Remediation of Land	N/A
SEPP No. 15 - Rural Land-Sharing Communities	N/A
SEPP No. 44 - Koala Habitat Protection	N/A
SEPP No. 32 - Urban Consolidation (Redevelopment of Urban Land)	N/A
SEPP No. 26 - Littoral Rainforests	N/A
SEPP No. 14 - Coastal Wetlands	N/A
SEPP No. 19 - Bushland in Urban Areas	N/A
SEPP No. 33 - Hazardous and Offensive Development	N/A
SEPP No. 4 - Development Without Consent and Miscellaneous Complying Development	N/A
SEPP No. 1 - Development Standards	N/A

APPENDIX 2:**Section 117 (2) Directions (at 13 March 2010)**

Direction	Comment
1. Employment and Resources	
1.1 Business and Industrial Zones	N/A
1.2 Rural Zones	N/A
1.3 Mining, Petroleum Production and Extractive Industries	N/A
1.4 Oyster Aquaculture	N/A
1.5 Rural Lands	N/A
2. Environment and Heritage	
2.1 Environment Protection Zones	N/A
2.2 Coastal Protection	N/A
2.3 Heritage Conservation	N/A
2.4 Recreation Vehicle Areas	N/A
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	N/A
3.2 Caravan Parks and Manufactured Home Estates	N/A
3.3 Home Occupations	N/A
3.4 Integrating Land Use and Transport	N/A
3.5 Development Near Licensed Aerodromes	N/A
4. Hazard and Risk	
4.1 Acid Sulfate Soils	N/A
4.2 Mine Subsidence and Unstable Land	N/A
4.3 Flood Prone Land	N/A
4.4 Planning for Bushfire Protection	N/A
5. Regional Planning	
5.1 Implementation of Regional Strategies	N/A
5.2 Sydney Drinking Water Catchments	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	N/A
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	N/A
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	N/A
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	N/A
5.8 Second Sydney Airport: Badgerys Creek	N/A
6. Local Plan Making	

6.1	Approval and Referral Requirements	N/A
6.2	Reserving Land for Public Purposes	N/A
6.3	Site Specific Provisions	N/A
7. Metropolitan Planning		
7.1	Implementation of the Metropolitan Strategy	N/A