



Review of Planning Controls for Rural Tourist Accommodation

Byron Shire Council

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1. Introduction

1.1 Background

This review responds to Council resolution 19-284 from the Planning Meeting of 20 June 2019. The resolution requested a review of the planning controls for rural tourist accommodation in Byron Local Environmental Plan 2014 ("LEP 2014") and Byron Development Control Plan 2014 ("DCP 2014"), as follows:

Resolution 19-284

"that Council endorse Option 2 contained in this report to review and amend Byron Local Environmental Plan 2014 and Byron Development Control Plan 2014 in relation to rural tourism/holiday cabins".

The intent of the resolution is to investigate the current planning framework and look at options for limiting the scale and density of development for 'rural cabins' and farm stay accommodation. The resolution flows from a Council report suggesting that this could be achieved by bringing the LEP 2014 framework into closer alignment with that of Byron Local Environmental Plan 1988 ("LEP 1988").

The report can be found through the following link:

https://byron.infocouncil.biz/Open/2019/06/PLA_20062019_AGN_1054_WEB.htm

1.2 Scope

The scope of this review is limited to an investigation of the adequacy of the planning controls in LEP 2014 and DCP 2014 in relation to holiday cabins and farm stay accommodation.

Note. Throughout this review, the term *rural tourist accommodation* is used to describe the full set of tourist accommodation that is currently permissible in the RU1 Primary Production and RU2 Rural Landscape zones under LEP 2014. This includes holiday cabins, farm stay accommodation, bed and breakfast accommodation, eco-tourist accommodation (RU2 only) and camping grounds.

1.2 Review structure

The review has 4 main parts:

1. *An overview of the LEP 2014 planning framework for rural tourist accommodation*

This section illustrates the structure of LEP 2014 framework and highlights key development controls applying to rural tourist accommodation.

2. *Review of development applications*

Development applications received since 2014 were reviewed. This was done to help understand development trends and identify areas where the current planning rules are not achieving the intended outcomes.

3. *Discussion of key findings*

Key findings relating to the assessment process and development outcomes under the LEP 2014 planning framework are discussed. This section also includes recommendations for improving or amending the planning rules.

4. Actions

A summary of the specific actions needed to amend the planning framework.

2. Current Planning Framework

2.1 Byron Rural Settlement Strategy 1998

The current planning rules for rural tourist accommodation in LEP 2014 and DCP 2014 are largely based on a set of guidelines contained in the Byron Rural Settlement Strategy 1998 (“the 1998 Strategy”), which was a policy document developed in the late 1990’s to guide land release and development in the Shire’s rural areas over a 10 year period. The Strategy included Best Practice Guidelines and Performance Standards for the development of holiday cabins, bed and breakfast accommodation, dwellings, multiple occupancy and rural subdivision.

2.2 Byron Rural Land Use Strategy

The 1998 Strategy was replaced by the Byron Rural Land Use Strategy in 2018 (“the 2018 Strategy”). The 2018 Strategy seeks to build upon the current framework through a program of policy actions and directions, identifying areas for investigation and/or improvement over time.

Despite its repeal, the 1998 Strategy is still considered to be ‘live’ and has effect through existing references in DCP 2014, Parts D2.2.1 and D3.2.3. Although it is no longer Council policy from a land use planning perspective, it continues to operate as a development guideline that supports those parts of the DCP.

2.3 Key Planning Controls

The following is an outline of the key planning controls in LEP 2014 and DCP 2014 that apply to rural tourist accommodation.

2.4 Byron Local Environmental Plan 2014

Clause 2.3 Land use table

Clause 2.3 establishes the type of tourist accommodation that is permitted with consent or is prohibited in the RU1 and RU2 zones.

Permitted uses include:

- Tourist and visitor accommodation (parent definition);
- Bed and breakfast accommodation;
- Farm stay accommodation;
- Camping grounds;
- Eco-tourist accommodation (RU2 only).

Prohibited uses include:

- Hotels and motels;
- Serviced apartments;
- Backpacker’s accommodation.

Clause 2.3 Zone objectives

The objectives of each land use zone must be taken into account when Council considers a development application. The following RU1 and RU2 zone objectives are particularly relevant to rural tourist accommodation:

- To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.
- To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.

Clause 5.4 Controls relating to miscellaneous permissible uses

Clause 5.4 sets development standards for a range of permissible uses. It provides that where farm stay accommodation is permitted, the accommodation that is provided to guests must consist of no more than 12 bedrooms.

This standard only applies to bedrooms and does not affect the number of permissible accommodation buildings.

Clause 6.8 Rural and nature based tourism

Clause 6.8 aims to ensure that tourism development in rural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land. It is the primary LEP mechanism for regulating rural tourist accommodation.

Clause 6.8 provides four considerations that the Council must be satisfied of prior to granting consent: (1) road access must be adequate, (2) development use be “small scale” and low impact, (3) development must be complementary to the rural/environmental attributes of the land, and (4) development must not affect agricultural production or amenity.

Three prohibitions are also provided to prevent consent from being granted unless: (1) the land has a lawful dwelling or dwelling entitlement, (2) the development does not include a caretakers residence, and (3) the development must not include more than one bed and breakfast accommodation.

Clause 6.8 is reproduced below:

6.8 Rural and nature-based tourism development

- (1) The objective of this clause is to ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land.
- (2) This clause applies to land in the following zones—
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape.
- (3) Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that—
 - (a) there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and

- (b) the development is small scale and low impact, and
 - (c) the development is complementary to the rural or environmental attributes of the land and its surrounds, and
 - (d) the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.
- (4) Development consent must not be granted to development for the purpose of tourism development on land to which this clause applies unless—
- (a) a lawfully erected dwelling house or dual occupancy (attached) is situated on the land, or
 - (b) a dwelling house may be erected on the land under this Plan.
- (5) Development consent must not be granted to development under subclause (4) if the development—
- (a) includes an ancillary caretaker's or manager's residence, or
 - (b) is for the purpose of more than 1 bed and breakfast accommodation.
- (6) In this clause—

small scale means a scale that is small enough to be generally managed and operated by the principal owner living on the property.

tourism development includes, but is not necessarily limited to, development for any of the following purposes—

- i) bed and breakfast accommodation,
- ii) camping grounds,
- iii) farm stay accommodation,
- iv) eco-tourist facilities,
- v) home industries that provide services, or the sale of goods, on site to visitors,
- vi) information and education facilities,
- vii) restaurants or cafes,
- viii) rural industries that provide services, or the sale of goods, on site to visitors.

2.5 Byron Development Control Plan 2014

Detailed controls regulating the design, layout, siting and density of rural tourist accommodation are established under Chapter D3 of DCP 2014.

Chapter D3 Tourist Accommodation

Part D3.2.1 Location and Siting

This section applies to all tourism development (rural and non-rural). It provides that the siting, design and operation of tourist accommodation and associated development must not adversely affect important conservation values, ecological systems or characteristics of the site or the Shire.

Part D3.2.3 Character and Design in Rural Zones

This Part of the DCP applies to freestanding rural accommodation buildings having a maximum of two bedrooms. This can include holiday cabins, farm stay accommodation and eco-tourist accommodation.

Part D3.2.3 has two key aims: (1) to ensure that tourist accommodation in rural zones is compatible with the surrounding landscape, and (2) to implement the Aims and Guiding Principles of the Byron Rural Settlement Strategy 1998.

The relevant Aims and Objective of the 1998 Strategy, along with the Best Practice Guidelines from Chapters 7 and 8 are called up as Performance Criteria. The Aims cover a wide range of matters relating to sustainability, community consultation, environment, water quality and identity. The Best Practice Guidelines from Chapters 7 and 8 provide specific criteria for matters such as siting and design, waste water treatment, environmental enhancement, aesthetic design, riparian management, bushfire hazard mitigation and buffers from agriculture.

Part D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation

Part D3.3.4 applies specifically to rural tourist accommodation and farm stay accommodation.

This Part sets out criteria for design elements such as maximum bedroom numbers, cabin design, parking requirements, disabled and pedestrian access, landscaping, siting and environmental reparation. There is considerable overlap between the design criteria specified in D3.3.4 and the Best Practice Guidelines from the 1998 Strategy.

3. Review of Development Applications

3.1 Introduction

A review was undertaken of development applications for rural tourist accommodation received since 2014. This was done to understand development trends and to identify areas where the current set of planning controls are not achieving the intended outcomes.

3.2 Number of applications

In total, Council received 77 development applications for rural tourist accommodation between June 2014 and October 2020. Of those, 56 were approved, 12 refused or withdrawn, and 9 remain undetermined. Holiday cabins are by far the most popular type of rural tourist accommodation applied for, followed by farm stay accommodation and bed and breakfast accommodation.

Table 1: Applications determined: July 2014 – Oct 2020

| Application type | Approved | Refused or withdrawn | Undetermined |
|---------------------------|-----------|----------------------|--------------|
| Holiday Cabins | 26 | 4 | 6 |
| Farm stay | 17 | 1 | 0 |
| Bed and Breakfast (rural) | 19 | 5 | 0 |
| Eco-tourism | 2 | 2 | 1 |
| Campgrounds | 3 | 2 | 1 |
| Total | 67 | 14 | 9 |

3.3 Trends in volume and application type

Since 2016, there has been a noticeable shift in development applications towards holiday cabins and a corresponding drop in applications for all other types of rural tourist accommodation. Despite this, the total volume of applications for rural tourist

accommodation has only increased slightly over the past 4 years; averaging about 13 DA's per year.

Increasing numbers of applications for holiday cabins appear to be indicative of a change in the type of development being sought by applicants, rather than a change in the overall number of development applications.

Table 2: Applications received for different types of rural tourist accommodation June 2014 – Oct 2020

| Development type | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---------------------------|----------|----------|-----------|-----------|-----------|-----------|-----------|
| Holiday Cabins | 0 | 0 | 2 | 9 | 6 | 11 | 8 |
| Farm stay | 1 | 3 | 9 | 2 | 0 | 2 | 1 |
| Bed and Breakfast (rural) | 0 | 0 | 2 | 1 | 8 | 0 | 0 |
| Eco-tourism | 0 | 2 | 0 | 1 | 0 | 2 | 0 |
| Camp grounds | 3 | 0 | 0 | 2 | 1 | 0 | 1 |
| Total | 4 | 5 | 13 | 15 | 15 | 15 | 10 |

3.4 Scale of development

The majority of applications have sought approval for a modest scale of development, averaging about three cabins and five bedrooms per DA. Smaller applications of this kind (comprising four cabins or less) constitute about two-thirds of the total rural tourist accommodation beds approved since 2014.

At the upper end of the spectrum, Council has received nine DA's seeking approval for six cabins or more. The largest application sought approval for twelve cabins, along with a camping ground and other development. That application was refused, in large part due to non-compliance with Clause 6.8 of LEP 2014 which requires rural tourist accommodation to be "small scale and low impact". Two other applications were received for eight cabins and both were reduced in scale to six cabins as part of the assessment process. One of those was initially refused and then approved on review following deletion of two cabins. Larger scale developments typically average about eight bedrooms per DA and account for one third of the total beds approved since 2014.

A break down of applications for farm stay accommodation, eco-tourist accommodation and holiday cabins by bedroom numbers is shown in **Table 3** below:

Table 3: Scale of rural tourist accommodation applications received, 2014 – 2020 (excludes B&B and campgrounds).

| Scale of development | DA's lodged | DA's approved |
|----------------------|-------------|---------------|
| 1 Cabin | 13 | 9 |
| 2 Cabins | 9 | 6 |
| 3 Cabins | 15 | 14 |
| 4 Cabins | 8 | 7 |
| 5 Cabins | 1 | 1 |
| 6 Cabins | 9 | 6 |
| 7 Cabins | 1 | 1 |
| 8 Cabins | 2 | 1 |
| 12 Cabins | 2 | 0 |
| Total Applications | 13 | 9 |
| Should be | 59 | 45 |

The scale and density of development being applied for has not significantly increased or changed over time since the introduction of LEP 2014. That is, there has not been an

increasing trend of larger scale or more intense rural tourist accommodation being applied for over that time period.

3.5 Location of development

The most popular locations for rural tourist development have been the localities in close proximity to Byron Bay and the rural north of the Shire. Coopers Shoot, Ewingsdale, Myocum and The Pocket account for approximately half of the total DA's and bedroom numbers applied for. Refer to Table 4.

Table 4: Location of DA's received for holiday cabins, farm stay accommodation and eco-tourist accommodation, June 2014 – Oct 2020.

| Suburb | DA's received | Total cabins | Total beds |
|---------------------|---------------|--------------|------------|
| Coopers Shoot | 11 | 30 | 47 |
| The Pocket | 10 | 23 | 35 |
| Ewingsdale | 5 | 21 | 21 |
| Myocum | 5 | 16 | 22 |
| Bangalow | 3 | 19 | 25 |
| Middle Pocket | 3 | 10 | 13 |
| Mullumbimby | 3 | 24 | 37 |
| Coorabell | 2 | 10 | 12 |
| Federal | 2 | 7 | 8 |
| Mullumbimby Creek | 2 | 4 | 5 |
| Possum Creek | 2 | 7 | 10 |
| Talofa | 2 | 10 | 16 |
| Billinudgel | 1 | 3 | 6 |
| Brunswick Heads | 1 | 4 | 8 |
| Main Arm | 1 | 1 | 2 |
| Nashua | 1 | 3 | 3 |
| Skinner's Shoot | 1 | 5 | 1 |
| Tyagarah | 1 | 3 | 2 |
| Upper Coopers Creek | 1 | 2 | 2 |
| Wilsons Creek | 1 | 8 | 8 |
| Yelgun | 1 | 3 | 3 |
| Total | 59 | 213 | 286 |

It is not clear why certain locations are more popular than others. Proximity to Byron Bay and festival locations in the Shires north is a possible explanation for the number of DA's lodged in those areas.

3.6 Property types

A diverse mix of property types were represented in the DA review, ranging from large working farms through to smaller rural lifestyle properties of less than one hectare. Properties at the smaller end of the scale, (which is considered to be 20 hectares or less) account for approximately 40% of applications. The remaining 60% were accounted for by larger properties that were usually working farms or at least had potential for agricultural use.

Table 5: Applications for rural tourist accommodation, sorted by land area

| Land area | DA's Lodged | Cabins | Bedrooms |
|-------------|-------------|--------|----------|
| <=1ha | 1 | 2 | 4 |
| >1ha, <=2ha | 7 | 15 | 23 |

| | | | |
|---------------|----|-----|-----|
| >2ha, <=5ha | 3 | 8 | 11 |
| >5ha, <=10ha | 7 | 24 | 25 |
| >10ha, <=20ha | 9 | 38 | 57 |
| >20ha, <=30ha | 6 | 30 | 45 |
| >30ha, <=40ha | 13 | 62 | 81 |
| >40ha | 13 | 34 | 40 |
| Total | 59 | 219 | 293 |

Looking at the pattern of development above, it is clear that site selection criteria and minimum lot size is an issue that requires closer consideration. A proliferation of tourist accommodation on smaller sites without agricultural potential or significant capability for environmental enhancement is inconsistent with Council's broader planning objectives for rural tourism.

3.7 Environmental conservation and enhancement requirements

The DA review also briefly looked at how environmental enhancement was considered in the assessment process. Over the last 6 years, only 37% of applications for holiday cabins, farm stay accommodation or eco-tourist accommodation were lodged with a vegetation management plan (VMP) outlining an environmental enhancement project to be carried out in association with the proposed development.

Compliance was particularly poor between the years 2014-2017, but has improved significantly over time. For example, only 1 out of 10 DA's (9%) lodged in 2016 were accompanied with a VMP. By 2020, that number had increased to 8 out of 9 applications (89%). The improvement in compliance is likely the result of a DCP amendment that occurred in April 2019 which required a VMP to be lodged with each DA and included specific criteria for planting and monitoring.

Of the applications that were not supported by a VMP and received approval, only 11 out of 45 (24%) were required to provide a VMP as a condition of consent. Similarly to VMP lodgement rates, the bulk of these cases occurred between the years 2014 and 2017. More recently, almost all applications not submitted with a VMP have been required to provide one post-consent if approval was granted.

One issue evident in the review is the need for more consistency in the way that environmental enhancement is assessed and conditioned. There has been considerable variation in the types of conditions placed on development consents over time. In many cases, the conditions were not sufficiently clear as to when the works should occur and where lacking in detail regarding auditing and reporting.

It is also evident that Council does not have reliable internal processes for reviewing and auditing VMP's post-consent to ensure the intended outcomes are being achieved.

3.8 Submissions on development applications

Public submissions on all development applications for rural tourist accommodation were reviewed to identify the most common issues raised by members of the community. Submission topics were categorised into several common themes to enable comparison.

In total 136 objections were counted across all DA's lodged, with about two-thirds of those objections (63%) being generated by just five applications. The majority of development applications (57%) attracted no submissions. Applications generating significant community objection tended to be of a larger scale (4 or more cabins), although this was not true in all cases. Location, scale, perceived impacts on amenity, proximity to

neighbours and the quality of the road access were all factors influencing the number of submissions received.

The most common issues raised by the community, ranked in order, are:

1. Traffic, road access and road safety issues (26%);
2. Siting, design, scale and appearance (16%);
3. Environmental impacts and hazards (15%);
4. Unauthorised development or land uses (12%);
5. Buffers, land use conflict, relationship to agriculture (11%);
6. Amenity and social impacts (10%);
7. Specific concerns of non-compliance with planning controls (5%);
8. Other issues (5%).

Traffic and its associated impacts were by far the most commonly concern, followed by scale, density design and appearance. These issues in particular should be looked at more closely to ensure that the current planning framework is addressing community concerns.

3.9 Completion rates

Despite a moderate application volume, there has been a relatively low completion rate for holiday cabins, farm stay accommodation and eco-tourist accommodation approved since 2014. That is to say only a minority of applications approved over the past five to six years have actually proceeded to the construction phase and received an occupation certificate.

Of the 45 development consents granted since 2014, only 16 construction certificates and 14 occupation certificates have been issued, for a completion rate of about 29% of approved projects.

Table 7: Approved DA's that have received a CC and/or OC.

| Application Type | Approvals | Const. cert. | Occ. cert. | Completion rate |
|------------------|-----------|--------------|------------|-----------------|
| Holiday Cabins | 26 | 8 | 6 | 23% |
| Farm Stay | 17 | 8 | 7 | 41% |
| Eco Tourism | 2 | 0 | 0 | 0% |
| Total | 45 | 16 | 13 | 29% |

Reasons for the low completion rate are not clear, although the current economic climate and restrictions related to Covid-19 could be having an influence on recently approved projects. Market factors could also be influencing developer behaviour as the cost of constructing and operating a typical tourist facility may be less attractive than other forms of development with lower input costs and overheads such as short-term rental accommodation.

4. Review of Planning Controls – Findings

On the basis of the DA review and further analysis of the planning framework, the following findings have been identified.

Finding 1: The planning framework has shifted applicants towards holiday cabins and away from farm stay accommodation and eco-tourist accommodation

Discussion

The DA review highlighted a shift in the type of accommodation being applied for since 2016. Most applicants are now choosing to apply for holiday cabins under the general umbrella of *tourist and visitor accommodation*, rather than opt for the more specific land use definitions of farm stay accommodation or eco-tourist accommodation.

Primarily, this is happening because a large number of properties in the Shire do not have the requisite characteristics to satisfy the LEP definitions of farm stay accommodation or eco-tourist accommodation. However, even sites which do have the right characteristics are not being developed under those planning pathways because there is no tangible benefit in doing so. Applicants can achieve an identical or greater development outcome by opting for the parent definition while being subject to less restrictive planning rules.

At a broader level, the change in accommodation type is not a necessarily negative outcome when one considers that holiday cabins are allowable under LEP1988 and have been a permissible form of development in the Shire for several decades. In some sense, it can be seen as merely a continuation of the former planning policy following the introduction more flexible land use controls in mid-2016.

The main issue needing closer consideration are the differences in the planning rules for holiday cabins under LEP 1988 compared to those in LEP 2014 and DCP 2014.

When LEP 2014 was introduced, a number of the key planning rules existing under LEP 1988 were removed and repackaged into a suite of new controls in DCP 2014. For a number reasons discussed further in this review, the DCP controls in their current form have not been as effective in shaping development outcomes as those in LEP 1988. It is suggested that the planning controls should be amended where necessary to bring the current framework into alignment with that of LEP 1988 to ensure similar outcomes are achieved.

Recommendation

It is recommended that the parent definition of tourist and visitor accommodation be retained as a permissible use to provide flexibility for different the types of rural tourist accommodation provided in the Shire.

Other parts of the planning framework regulating density, lot size and design should be reviewed and amended where necessary to ensure the controls are aligned with those contained in LEP 1988.

Finding 2: There is a need for better site selection criteria, including a minimum lot size

Discussion

A significant proportion of the sites approved for rural tourist accommodation since the introduction of LEP 2014 have been smaller properties with less than 20 hectares in land area. This pattern of development is considered to be problematic for a few reasons.

Firstly, smaller sites are often less viable due to a lack of suitable land to accommodate environmental reparations. DCP 2014 currently specifies that applicants must provide 900 native trees per cabin which usually requires several hectares of land to be set aside for

restoration depending on the species chosen and the environmental characteristics of the land. Additional land is also needed in bushfire prone areas as new vegetation needs to be planted outside asset protection zones and clear of neighbouring development.

Secondly, it is often more difficult to site buildings on smaller lots while maintaining adequate buffers from adjoining agricultural uses and neighbouring dwellings. Reduced buffers can impact on amenity and result in land use conflict or even sterilisation of development potential on neighbouring rural land in some cases.

Finally, one of the key benefits of rural tourism is to generate an additional income stream for rural land owners to subsidise agricultural operations or fund larger scale environmental reparations. Allowing a proliferation of development on smaller sites does not help to achieve that objective since those properties usually have less potential for agriculture or environmental enhancement to begin with.

In general, it is considered that most of these issues could be mitigated by the use of better site selection criteria in the current planning framework including the requirement for a minimum lot size, similar to what exists under LEP 1988.

Under the LEP 2014 framework, lot size and density are regulated by two planning controls in Chapter D3 of DCP 2014. Unfortunately, the two controls are somewhat contradictory and this has led to varied outcomes in the assessment process.

DCP Part D3.2.3 calls up the best practice guidelines from Chapter 7 of the 1998 Strategy, which in turn provides: “the minimum land area considered to be suitable for rural tourist cabins must not be less than 20 hectares”. However, a different standard is provided by Part D3.3.4, Prescriptive Measure 1, which states that up to three bedrooms are allowed on sites between 0-3 hectares. Due to the inherent conflict between the two controls, the majority of assessments have tended to rely on Part D3.3.4, with the end result being that the 20 hectare standard specified in the 1998 Strategy has been largely abandoned.

Recommendation

To ensure development is occurring on sites with appropriate characteristics to support low scale development in accordance with zone objectives, it is recommended that rural tourist accommodation be subject to a 20 hectare minimum lot size, preferably under Clause 6.8 of LEP 2014.

Further consideration should also be given to developing a map of appropriate sites for rural tourist accommodation that takes into consideration additional site selection criteria such as aspect, slope, hazards, environmental values and road access.

Finding 3: Environmental enhancement and conservation outcomes have been highly variable, although recent DCP amendments have improved consistency in the assessment process

Discussion

The DA review highlighted that environmental enhancement and conservation efforts were usually an afterthought in applications received between the years 2014 and 2017. Thankfully, compliance rates have improved significantly since recent DCP amendments in 2019 and the majority of applications now include a vegetation management plan detailing an environmental enhancement concept as part of the development proposal.

Given this finding, the current planning controls for environmental enhancement and conservation are considered to be generally adequate and not in need significant change. One potential improvement would be to include an objective for ecological enhancement in DCP Part D3.3.4. This would help bring the DCP objectives into alignment with the zone objectives and make the assessment process more robust (noting that applicants only need to comply with the Objectives of each part of the DCP).

Another finding was the wide variation in the way that environmental enhancement and conservation works are regulated through conditions of consent. Some applications were approved with clear conditions setting out requirements for the establishment of works (i.e. prior to occupation), while other approvals were vague on this issue. Similarly, there was a wide degree of variation in conditions relating to auditing and reporting for vegetation management programs post-consent.

This is an area that requires further consideration and could be helped by the development of a standardised set of conditions of consent. This would not require an amendment to the LEP or DCP and would instead be a procedural matter for Council assessment staff when determining DA's.

Recommendations

It is recommended that an additional objective for environmental enhancement be added to DCP Part D3.3.4 to bring it into alignment with the zone objectives.

To improve consistency of outcomes, it is recommended that Council develop a set of standard conditions of consent for environmental enhancement and vegetation management plans. It is suggested that restoration works should be substantially commenced prior to the occupation stage, and that VMP's be subject to annual or biannual reporting over a five year timeline. To support this approach, Council will also need to develop a process for recording and auditing applications subject to VMP's.

Finding 4: Maximum density of development should be reduced. The planning controls should be simplified to reduce ambiguity over the maximum number of accommodation buildings.

There is confusion over the maximum permissible number of accommodation buildings for both farm stay and holiday cabins. This is primarily due to the presence of conflicting or unclear planning controls in the LEP and DCP which regulate the density and scale of development.

The current planning framework limits the density of rural tourist accommodation through three separate controls:

- **Clause 5.4 of LEP 2014:**
Clause 5.4 limits the maximum density of farm stay accommodation to 12 guest bedrooms.
- **DCP 2014, Part D3.3.4, Prescriptive Measure 1:**
D3.3.4 applies to farm stay accommodation and holiday cabins. It provides a sliding density scale that allows up to 3 bedrooms on sites between 0-3 hectares, with 1 additional bedroom being permitted for every 1.5 ha, up to a maximum of 12 bedrooms.

- **DCP 2014, Part D3.2.3, Performance Criteria 3(c):**
D3.2.3 applies to farm stay accommodation, holiday cabins, camping grounds, caravan parks and eco-tourist facilities. It calls up the Best Practice Guidelines from Chapter 7 of the 1998 Strategy. Part 7.2 (2) of the Strategy states: “no more than 6 holiday cabins may be constructed in the site area”.

Some applicants have argued that the above controls permit up to 12 one bedroom cabins, noting that both Clause 5.4 and D3.3.4 only stipulate bedroom numbers rather than cabin numbers, while D3.2.3 makes reference to the 1998 Strategy which has since been repealed.

Furthermore, Clause 5.4 is inconsistent with Part D3.3.4 because it allows up to 12 bedrooms unconditionally, whereas D3.3.4 restricts bedrooms to a figure between 3 and 12 depending on the size of the allotment. This is problematic in terms of the structure and hierarchy of the planning rules, given that a DCP control cannot impose a more onerous standard than a higher order planning instrument like an LEP.

In addition, current density limits are relatively generous and could be resulting in overdevelopment of some sites when considered cumulatively with other forms of development. Under the current planning framework it is possible to apply for rural tourist and visitor accommodation comprising up to 12 bedrooms, a dual occupancy with up to 6 expanded house habitable outbuildings, a studio, a rural workers dwelling, recreation facility and a restaurant/café all on the one parcel of rural land.

Reducing the maximum density to 8 bedrooms and 4 cabins would limit this cumulative effect and result in a form of development more closely aligned with the objective for rural tourism to be small scale and low impact.

Recommendation

Council should consider reducing the maximum density of development to 8 bedrooms within 4 accommodation buildings. This will involve amending clause 5.4 of LEP 2014 and the relevant sections of DCP 2014, Parts D3.2.3 and D3.3.4.

Furthermore, the controls should be simplified to remove any ambiguity over the maximum number of bedrooms and accommodation buildings. If the 20 hectare minimum lot size standard is implemented as per Finding 2, this will negate the need for the sliding density scale in D3.3.4.

Finding 5: Clustering and siting provisions are ambiguous and in need of clarification

Discussion

One of key design criteria for rural tourist accommodation is the concept of ‘clustering’, which means that accommodation buildings should be grouped together on one part of the site, generally within 80m of each other on average. The intent of clustering is to minimise the developments physical footprint and reduce any associated impacts on amenity and the surrounding landscape.

For smaller scale developments of four cabins or less, the existing planning controls appear to be working relatively well. The majority of these applications had no trouble clustering buildings together within 80m of each other while still offering a reasonable level of privacy and amenity to guests.

On the other hand, larger scale developments of six cabins or more tended to have greater difficulty meeting the clustering requirements depending on the various constraints applying to the site such as slope and vegetation coverage. In most cases, this occurred because applicants were seeking to site buildings at higher elevations to provide views and breezes to guests. Rather than stepping down the slope, cabins were set out in a linear form which is less sympathetic to the surrounding landscape.

Interpretation of the clustering provisions has been the subject of public debate in a number of development applications with the main source of disagreement coming from the use of 'averaging' to determine the separation distances. Further confusion is added by the use of two definitions: one in Part D3.2.3, which calls up Chapter 7 of the 1998 Strategy, and another in Part D3.3.4.

For example, Part 7.2 (7)(d) of the 1998 Strategy states:

"all holiday cabins are to be arranged in a 'cluster' pattern unless a dispersed arrangement can be clearly demonstrated to be an ecologically superior solution. In the context of rural tourist facilities, a 'cluster' is defined as a group of three (3) or more cabins located an average of 80 m and not more than 160 m apart from each other with adequate vegetation screening between the cabins (i.e. to ensure privacy) and with the layout of developments in the cluster having regard to the physical site characteristics of the land and the need to provide access to the cabins for the provision of accident or fire emergency and other services such as sewerage disposal system, water supply and electricity".

At the same time, Part D3.3.4, Prescriptive Measure 2 (h) (iii) provides:

"rural tourist accommodation is to be arranged in a 'cluster' pattern and located on average no further than 80 metres apart with adequate vegetation screening between for privacy and amenity purposes".

In addition to having slightly different meanings, the above definitions do not make it clear how the averaging rules should be applied. One interpretation could be that all development needs to be contained in a circle with a diameter of 80m, while a different interpretation could be that each building is able to be separated by up to 80m from one another.

Recommendation

It is recommended that clustering should be re-defined by using an unambiguous numerical standard instead of relying on 'average' separation distances. It is suggested that a 20m separation distance between each accommodation building should be permitted to allow for a reasonable level of privacy and amenity for users. The size of the 'cluster' will depend on the scale of the development. That is, a development comprising only a few cabins would be required to group the buildings in a smaller cluster than a development comprising 6 cabins.

A degree of flexibility should be allowed to account for sites with unusual physical or environmental constraints, but only in circumstance where it can be demonstrated that a dispersed arrangement is a superior solution when taking into consideration environmental issues, land use conflict, loss of farmland and impacts on rural character.

Finding 6: Controls relating to design, aesthetics and rural character could be strengthened

Discussion

A review of assessment reports highlighted that impacts on rural character and scenic landscapes were not always being addressed consistently. Generally speaking this was not major issue for most DA's comprising only a few cabins although outcomes were varied in general and very few applications were supported by a visual impact assessment.

In terms of the planning framework, the need to protect scenic landscapes is one of the objectives of the RU1 and R2 zone, while general requirements for all development on visually prominent sites is dealt with by DCP Chapter C3 - Visually Prominent sites. Specific design requirements for aesthetics and scenic character for rural tourist accommodation are also established under Chapter 8, Part 8.3 of the 1998 Strategy which is called up via DCP Part D3.2.3, Performance Criteria (3)(d).

Chapter 8 of the 1998 Strategy provides that development should remain below the tree line and step with the slope of the hill. It also includes requirements for the use of complementary earth toned colour values and landscaping to screen development from highly visible locations.

As with the other provisions from the 1998 Strategy discussed in this review, the requirements for aesthetic design, siting, colour values and landscaping established in Chapter 8 have not been implemented effectively in the assessment process since 2014.

Recommendation

Recommend that the aesthetic design guidelines in the 1998 Strategy be implemented directly into the Part D3.2.3 of the DCP to give greater emphasis to the importance of sympathetic design that harmonises with the landscape. Development on ridgelines and visually prominent locations should be avoided in the first instance. In circumstances where there are no other suitable locations, the development should be fully justified by a visual impact assessment in accordance with Chapter C3.

Finding 7: Traffic and road access is generally being dealt with effectively. Further consideration should be given to amenity impacts relating to noise, dust and light pollution

Discussion

Traffic generation, road access and pedestrian/vehicular safety were by far the most commonly cited complaint in submissions received on DA's for rural tourist accommodation. Shared driveways and roads servicing multiple properties were a major source of concern, as were roads or driveways passing in close proximity to neighbouring dwellings.

In terms of assessment processes, traffic generation and road access is dealt with by DCP Chapter B3 Services and Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access. Part D3.2.1 of Chapter B3 provides that where road(s) providing access to the immediate site frontage do not meet Council's construction standards, Council will require partial or full construction or upgrading of those roads to Council adopted standards. This is supported by Part B4.2.1 of Chapter B4 which establishes the circumstances in which a traffic impact assessment is required to determine the potential impact of development on the local road network.

A review of assessment reports indicated that these controls have been fairly effective in addressing road access issues by requiring road upgrades proportionate to the level of traffic generated by proposed development. In some cases applicants were required to provide substantial upgrades to public roads including regrading or sealing the full length of an access road to the nearest intersection.

One issue that was dealt with less consistently however were associated amenity impacts such as increased noise, dust and light pollution. This is because traffic impact assessments generally focus on road capacity and safety issues and pay less attention to residential amenity which is generally viewed as a planning issue. This is an area where further improvements to the planning controls could be considered.

In addition, a few applications were identified where cabins were serviced by multiple driveways. As with residential accommodation, this is generally an undesirable outcome in terms of road safety and amenity and should be discouraged in most cases. Further consideration could be given to strengthening the planning controls by restricting multiple driveways except in cases where it is required for emergency access or where the site has unique characteristics that support such an outcome.

Recommendations

To improve consistency in the assessment process, it is recommended that where development comprises three or more cabins and the access road is not in accordance with the Council's minimum standards, a traffic impact statement should be provided to support the application. The DCP may also specify that road user impacts such as noise, dust and light pollution are to be covered by the TIS, supported with additional controls to guide the assessment of these matters.

Better site selection criteria may also help by ensuring sites have access to sealed roads to begin with, or have adequate site features to allow access roads and driveways to be provided in a way that does not create adverse amenity or safety impacts for local residents.

Clearer controls should also be developed which limit access to one driveway for each rural tourism development.

Finding 8: Water and sustainability measures need improvement. OSMS provisions are working relatively well.

Discussion

The majority of rural tourism accommodation is located on rural land that is not serviced by reticulated water and sewer. These developments generally rely on rainwater harvesting and on-site sewage management systems to provide potable drinking water to guests, fill swimming pools, and treat effluent.

In terms of effluent disposal, the current set of planning controls appears to be working effectively in ensuring safe and environmentally sustainable outcomes. Water supply on the other hand is not dealt with as consistently, particularly in relation to the design and operation of rainwater storage systems servicing rural tourist accommodation.

Water supply for rural tourist accommodation is currently dealt with by DCP 2014, Part D3.2.1 Provision of Services. This DCP section requires businesses and facilities not on reticulated water to comply with the *Private Water Supply Guidelines*, by NSW health.

The health guidelines focus mainly on drinking water quality (an essential consideration), but does not provide clear guidance on the storage capacity and design requirements for drinking water systems servicing rural tourist accommodation.

Recommendation

It is recommended that Council develop minimum water supply and design guidelines for rural tourism, similar to those developed for residential accommodation which stipulates 40kL capacity for rural dwellings and 20kL for secondary dwellings. It should also be clarified that drinking water supply should be separate to firefighting water supply and where swimming pools are proposed additional storage measures should be implemented.

For larger scaler developments comprising four or more cabins or development in visually prominent areas, details of the system capacity and tank locations should be identified in the application.

Finding 9: The DCP controls in Chapter D3 should be simplified and consolidated. Areas of duplication or conflict should be removed.

As discussed throughout this review, one the main issues affecting the assessment process is the presence of duplicated, redundant or conflicting planning controls within DCP 2014. This has arisen mostly due to continued references to the Best Practice Guidelines and Performance Standards from Chapters 7 and 8 of the 1998 Strategy.

A few examples of conflict or duplication originating from the 1998 Strategy are summarised in the table below:

Table 8: Summary of conflicting or duplicate controls between the 1998 Strategy and other parts of the planning framework

| Planning Control | Issue |
|--|--|
| Chapter D3, Part D3.2.3: Performance Criteria 3 (a), (b) | |
| All development to be in accordance with the relevant aims, best practice guidelines and performance contained in the Byron Rural Settlement Strategy 1998. Specific aims and guiding Principles listed under performance criteria 3(a) and (b) | These are broad level strategic planning objectives that are difficult to apply at the level of development assessment. Some of the aims are addressed comprehensively in other parts of the legislative framework and do not need to be considered again under the DCP. |
| Chapter D3, Part D3.2.3: Performance Criteria 3 (c) | |
| The following Best Practice Guidelines from Chapter 7 are relevant: | |
| (1) The minimum land area considered to be suitable for rural tourist cabins must no be less than 20 hectares. | Conflicts with D3.3.4, Prescriptive Measure 1 which allows up to 3 cabins on sites between 0-3 hectares. |
| (2) No more than six (6) holiday cabins may be constructed within the site area. | Doesn't align with D3.3.4 prescriptive Measure 1 which allows up to 12 bedrooms, but does not specify cabin numbers. Interpreted by some as allowing 12 * one bedroom cabins. |
| (5) All weather centralised car parking required at the rate of one car parking space per dwelling. | Conflicts with D3.3.4, Prescriptive Measure 2 (b), which requires parking to be in accordance with DCP chapter B4. Centralised parking is not a requirement. |
| (7c) Cabins must be on land with a N, | Duplication with D3.3.4, Prescriptive Measure |

| | |
|---|---|
| NW, NE, or E aspect, unless it can be demonstrated that other compensating arrangements will maximise solar energy collection and minimise energy use. | 2(h)(ii). Slightly different drafting between the two clauses creates confusion. |
| (7d) cabin must be arranged in a cluster pattern unless a dispersed arrangement can be demonstrated to be a superior outcome. A cluster is defined as three or more cabins located an average of 80m and not more than 160m apart. | Duplication with D3.3.4, Prescriptive Measure 2(h)(iii). Slightly different drafting between the two clauses creates confusion. |
| (7e) specifies requirements for effluent disposal. Release of sewage effluent must not occur: <ul style="list-style-type: none"> • within 100m of natural waterbody. • In an area of high water table; • In an area of highly permeable soils • In an area of acid sulfate or sodic soils | Superseded by new OSMS provisions in Chapters B3, C4 and Byron Shire OSMS guidelines. |
| Chapter D3, Part D3.2.3: Performance Criteria 3 (d) | |
| The following Best Practice Guidelines from Chapter 8 are relevant: | |
| 8.1 <u>Wastewater treatment</u> Detailed extensive guidelines and reporting requirements for OSMS design. | Superseded by DCP Chapter D3 and Council's OSMS guidelines. |
| 8.2 <u>Environmental enhancement</u> 900 native plantings per holiday cabin along with other requirements for an Environmental Enhancement and Management Plan. | Duplicated by DCP Part D3.3.4, Prescriptive Measure 3. Slightly different requirements between the two controls create confusion. |
| 8.5 <u>Bushfire hazard mitigation</u> Detailed and extensive requirements for bushfire hazard mitigation. | Superseded by the RFS document 'Planning for Bushfire Protection'. |
| 8.6 <u>Buffers to agriculture and extractive industries</u> Specifies separation distances between development and potentially conflicting land uses. | Superseded by DCP 2014 Chapter B6. |

In addition to the above mentioned issues, the Prescriptive Measures and Performance Criteria for D3.3.4 are not well aligned which further contributes to inconsistency in the assessment process. Some design elements are dealt with only in the Performance Criteria, while other elements are only covered by the Prescriptive Measures.

For example, Prescriptive Measure D3.3.4 (2)(h) provides that all development should be sited on land having a North, North-East or Easterly aspect. Yet, under the Performance Criteria, there are no equivalent requirements for siting or orientation. For the controls to work effectively, all design elements need to have an equivalent Performance Criteria that relates to a relevant planning Objective for each DCP section.

Recommendation

It is recommended that the relevant planning controls from the 1998 Strategy's best practice guidelines be placed directly into DCP 2014 and any conflicting measures in

other areas of the DCP be rectified. References to the 1998 Strategy in Part D3.2.3 of the DCP should be consequentially removed.

Further, the Prescriptive Measures and Performance Criteria in Part D3.3.4 should be redrafted and brought into closer alignment with one another.

5. Actions

In order to address the findings and recommendations of this review, the following actions are proposed:

1. **Proposed amendments to Byron LEP 2014**

- a. Retain the definition of tourist and visitor accommodation as permitted with consent in the RU1 and RU2 zones.
- b. Introduce a 20 hectare minimum lot size for rural tourist accommodation as an LEP standard.
- c. Reduce the number of farm stay accommodation bedrooms to 8.

2. **Proposed amendments to Byron DCP 2014:**

- a. Add an additional objective for environmental enhancement into DCP Part D3.3.4.
- b. Scale and density of development to be limited to 4 accommodation buildings and 8 bedrooms in total. Existing DCP controls to be consolidated and amended where necessary.
- c. Include a clear numeric standard to guide the clustering of rural tourist accommodation buildings. The size of the cluster is to scale-up depending on the number of accommodation buildings.
- d. Implement the aesthetic design guidelines from Chapter 8 of the 1998 into DCP 2014 Part D3.2.3.
- e. Include a new Prescriptive Measure into DCP Part D3.3.4 limiting the number of driveways to one per development.
- f. Develop rainwater harvesting requirements for rural tourist accommodation. Update DCP Chapter B3 accordingly.
- g. Additional control to be added to D3.3.4 specifying that development for three cabins or more on a road that does not meet Council's standards to be accompanied by a Traffic Impact Statement detailing road user impacts such as dust, noise and light pollution.
- h. Redraft various provisions in D3.3.4 to ensure the Prescriptive Measures and Performance Criteria are more closely aligned.

3. **Other matters:**

- a. Develop a set of standard conditions of consent for environmental enhancement and vegetation management plans.

- b. Investigate mechanisms for reviewing and auditing vegetation management plans post consent to ensure compliance with conditions.
- c. Consider developing a map of suitable sites for tourist and visitor accommodation based on site selection criteria.

6. Conclusion

This review is the first step in the process of amending the planning controls for rural tourist accommodation. If the Council elects to proceed, the next steps will be the preparation of a planning proposal to amend Byron LEP 2014 and/or Byron DCP 2014.

Future LEP and DCP amendments will be subject to community consultation in accordance the Community Participation Plan and will be reported back to Council for endorsement.