

Report No. 13.8 PLANNING - Review of Planning Controls for Rural Tourist Accommodation

Directorate: Sustainable Environment and Economy

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Summary:

At the Planning Meeting of 20 June 2019, Council resolved to review and amend Byron Local Environmental Plan (LEP) 2014 and Development Control Plan (DCP) 2014 in relation to rural tourism/holiday cabins. The resolution was made in response to a staff report which noted that the current planning framework for rural tourist accommodation was resulting in development on rural land that is not entirely consistent with the RU1 and RU2 zone objectives.

A link to the staff report can be found here:

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

The Resolution is shown below:

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”.

As per the resolution, an investigation has been carried out into the adequacy of the planning controls in LEP 2014 and DCP 2014 for holiday cabins and farm stay accommodation. This included a review of development applications received since 2014 and an analysis of the current planning framework.

The review found that the pattern of development under LEP 2014 has not always been closely aligned with the objectives for tourism in the Shire’s rural zoned areas. In particular, there has been a prevalence of smaller sites being developed along with inconsistent outcomes in relation to environmental enhancement and conservation.

Primarily, this is occurring due to the current structure of the planning rules which are in need of simplification and consolidation. Chapter D3 of DCP 2014 contains a number of overlapping and conflicting planning controls and this is causing difficulty in the assessment process leading to somewhat inconsistent outcomes.

The review recommends that a number of amendments be made to LEP 2014 and DCP 2014 to address these issues. Proposed amendments include the introduction of a minimum lot size and reduction of the number of bedrooms, environmental enhancement, clustering and visual impact.

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 or draft DCP amendment to update 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.

NOTE TO COUNCILLORS:

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council

Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:**That Council:**

1. **Requests staff to prepare a planning proposal to amend Byron Local Environmental Plan 2014 and a draft amendment to Byron Development Control Plan 2014, to accord with the recommendations of the Review of Planning Controls for Rural Tourist Accommodation in Attachment 1 (E2020/94209).**
2. **Authorises staff to submit the planning proposal to the Department of Industry and Environment for Gateway determination.**
3. **Pending gateway determination, undertakes public exhibition of the planning proposal and development control plan amendment and consult with government agencies as required by the gateway determination; and**
4. **Receives a report outlining the public exhibition outcomes.**

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Attachments:

- 1 Review of Planning Controls for Rural Tourist Accommodation, E2020/94209

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REPORT

Purpose

- 5 The purpose of this report is to provide a review of the planning controls for rural tourist accommodation in accordance with Council resolution **19-284** from Council Meeting date 20 June 2019. The review includes an audit of development applications for rural tourist accommodation since 2014 and provides findings and recommendations to amend the planning framework.

10 Background

- 15 The review originates from a Notice of Motion (NOM) that was included in the Ordinary Meeting Agenda of 18 April 2019, but withdrawn on the day. The NOM identified a significant increase in the number of development applications (DA's) for rural holiday cabins and raised concerns over the potential impacts of increased tourism in the Shire's rural areas. The NOM recommended that Council consider removing the provisions for rural holiday cabins entirely, along with a review of the farm stay provisions in both LEP's and DCP's.

- 20 In response, a staff report was tabled at the Planning Meeting of 20 June 2019 which noted an increase in the number of applications for rural tourist accommodation and concluded that the current planning framework was resulting in development on rural land that is not entirely consistent with the RU1 and RU2 zone objectives in the LEP.

- 25 The report suggested that the issue could be addressed by bringing the planning controls in LEP 2014 into closer alignment with those in LEP 1988.

Three options were offered to Council:

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 1. No change to the existing controls;
 2. Amend the LEP and DCP controls to limit the scale and density of rural tourism development;
 3. Remove provisions for holiday cabins entirely.

Council elected to adopt Option 2 and resolved as follows:

35 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".

- 40 The report can be found through the following link:

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

Review of planning controls

- 45 In accordance with the above resolution, an investigation was carried out into the adequacy of the planning controls in LEP 2014 and DCP 2014 for holiday cabins and farm stay accommodation.

The review has 4 main parts:

- 50
 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 includes recommendations for improving or amending the planning rules.

4. Actions

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

Summary of the findings and recommendations

The full review can be found in Attachment 1 to this report. The following is summary of the key findings and recommendations.

Analysis of the Planning Controls - Findings and Recommendations

On the basis of the DA review and analysis of the planning framework, the following findings were identified.

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

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. Overall, 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. This indicates a change in the type of development being sought by applicants, rather than a change in the total number of development applications.

The growth in applications for holiday cabins not necessarily a negative outcome considering that this form of development is allowed under LEP 1988 and have been a permissible use in the Shire for several decades. The main issue requiring closer consideration is the differences in the planning rules between LEP 2014 and those in LEP 1988 which has resulted in different development outcomes being 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 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.

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

In terms of development outcomes, the most significant finding of the review is the high take up rate of development on smaller sites since 2014. About 40% of sites approved for rural tourist accommodation were properties with an area of less than 20 hectares.

This pattern of development is considered to be problematic for a few reasons. Firstly, smaller sites are generally less viable for environmental enhancement and conservation projects due to a lack of land to accommodate new plantings. DCP 2014 specifies that applicants must provide 900 native trees per cabin which requires several hectares of land to be set aside for restoration. 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.

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.

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.

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

The 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.

Another issue was the wide variation in the way that environmental enhancement and conservation works are regulated through conditions of consent.

Given these findings, it is considered that the existing DCP controls for environmental enhancement and conservation do not need to be changed in any significant way. One potential improvement would be to include an objective for ecological enhancement in DCP Part D3.3.4 to bring the DCP into alignment with the zone objectives. Consideration should also be given to developing a set of standard conditions for environmental enhancement and conservation. 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.

Recommendation

- 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.

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.

5. Clustering and siting provisions are ambiguous and in need of clarification

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. The intent of clustering is to minimise the developments physical footprint and reduce any associated impacts on amenity and the surrounding landscape.

The current planning controls provide that all accommodation buildings are to be arranged in a 'cluster' pattern and located on average no further than 80 metres apart.

Some applicants have interpreted the 80 metre 'average' separation distance as meaning that all development needs to be contained in a circle with a diameter of 80m while others have interpreted it as meaning that each building can be separated by up to 80m. The control needs to be clarified to remove doubt and improve the assessment process.

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.

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

The DA review highlighted that requirements for aesthetic design, siting, colour values and landscaping established in Chapter 8 of the 1998 Strategy have not been implemented effectively in the assessment process since 2014.

These design principles should be articulated more clearly in the DCP and given greater weight in the assessment process.

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.

5 **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**

10 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.

15 However, in terms of outcomes, the existing DCP controls appear to have been fairly effective in addressing road access issues in most cases. Some applicants were required to provide substantial upgrades to public roads such as regrading or sealing the full length of an access road to the nearest intersection to account for increased traffic generation.

20 One issue that was dealt with less consistently however were associated amenity impacts such as increased noise, dust and light pollution which were a common source of objections on DA's. This is an area where further improvements to the planning controls could be considered.

Recommendation

- 25 • 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.
- 30 • 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.
- 35 • Clearer controls should also be developed which limit access to one driveway for each rural tourism development.

40 **8. Water and sustainability measures need improvement. OSMS provisions are working relatively well**

45 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.

Recommendation

- 50 • 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.

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- 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.

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

10 As discussed throughout the 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 Byron Rural Settlement Strategy 1998.

15 In addition to the above mentioned issues, the Prescriptive Measures and Performance Criteria for DCP Part 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.

20 The DCP controls in Chapter D3 need to be simplified and consolidated. Areas of duplication or conflict should be removed.

Recommendation

- 25 • 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.
- 30 • Further, the Prescriptive Measures and Performance Criteria in Part D3.3.4 should be redrafted and brought into closer alignment with one another.

Proposed actions

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

1. Proposed amendments to Byron LEP 2014

- 40 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.

45 2. Proposed amendments to Byron DCP 2014:

- a. Add an additional objective for environmental enhancement into DCP Part D3.3.4.
- 50 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.

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 amendment to 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.

STRATEGIC CONSIDERATIONS

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	4: Support tourism and events that reflect our culture and lifestyle	4.1.1	4: We manage growth and change responsibly	4.1.1.1	Progress draft Planning Proposal and DCP amendments to improve the planning controls for rural tourist accommodation.

Legal/Statutory/Policy Considerations

The review of the planning controls will be used to inform future changes to the Byron Local Environmental Plan 2014 and the Byron Development Control Plan 2014.

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Financial Considerations

Not applicable.

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Consultation and Engagement

Consultation and engagement for any future LEP and/or DCP amendments will be undertaken in accordance with the Community Participation Plan and will be reported back to Council for endorsement.