

COPY

Memorandum

Department of Urban Affairs and Planning

To: Trevor Prior;
 From: David Papps, Executive Director, Regional NSW Planning
 Date: 29 July 1999
 Subject: Byron Rural Settlement Strategy – Outstanding Issues

Background

Late in 1998, Byron Shire Council forwarded the Byron Shire Rural Settlement Strategy to the Department for approval under clause 20(1) of the North Coast Regional Environmental Plan 1988. the REP requires only that a land release program and the general location of future releases areas be approved by the Department. The Department's Regional Director, Northern approved the Strategy for that purpose in December 1998.

Four matters being dealt with through the Strategy were deferred for further consideration by the Department:

1. the community title settlement proposal at Fowlers Lane (Richmond's land).
2. the subdivision of six lots at Tyagarah (Byrnes' land);
3. the subdivision of two lots at Pinegroves (Groves' land);
4. conversion of existing and approved Multiple Occupancies to Community Title rural settlement;

These matters were deferred due to the policy issues they involve. The Department noted in its advice to the Council at the time that:

- a. the rural landsharing provisions are inconsistent with State Environmental planning Policy 15 in that they require each application to include at least six dwellings; and
- b. the decision by Council to allow existing MOs to convert to community title is not consistent with the Department's understanding at the purpose of MOs. Community title rural living is rural residential development and must therefore conform to the rural residential provisions of the strategy. Accordingly local environmental plans which allow existing MOs outside of 2km/Skm "rings" to convert to community title will be problematic.

More detailed background information is available on the file, particularly at folios 572 -575 and 580 - 583.

Consistent with previous practice, these matters were referred to me for determination. I have inspected each site and spoken directly with each applicant, with the relevant Council planners and with Regional staff.

In arriving at my decisions I have been driven by a desire to obtain the best outcome for the environment and people involved rather than be unnecessarily constrained by planning "rules",

Clause 20 of the North Coast REP notes the requirement on Councils to prepare a rural land release strategy and that any plan permitting rural residential or small holding development must be "generally consistent" with that strategy. Generally consistent implies some flexibility: the strategy is not a rigid determinant of planning decisions at the cost of sensible and reasonable variations in order to deliver preferred outcomes.

In this regard I also place considerable significance on the timing of applications and the nature of the initial Departmental response, Proposals generated before the adoption of current guidelines and strategies and encouraged or endorsed by the Department should not be dealt with as if they were new.

The Byron Strategy is of high quality and the methodology used to identify land suitable for rural residential development particularly appropriate. The Department should continue to strongly support its reasoned application to any proposals developed after its adoption,

Fowlers Lane

Proposed Amendment 61 to the Byron LEP sought to rezone Mr Paul Richmond's land off Fowlers Lane, near Bangalow, to permit development of 13 rural residential lots and a community lot.

The previous Minister for Urban Affairs and Planning, the Hon Craig Knowles, based on advice contained within the Department's s.69 report, had refused to make amendment 61 to the Byron LEP.

Byron Council has consistently supported the proposal.

There are two separate but related issues to be dealt with concerning Mr, Richmond's proposal. Firstly, is the question of whether it should be accommodated under the terms of the strategy, as it does not comply with the planning criteria adopted by the Strategy to identify appropriate locations for rural residential development. In particular, the property lies outside the 2km/5km "rings" from villages and towns. It also relies on the Pacific Highway for access to any service centre and the Roads and Traffic Authority has raised concerns regarding the safety and standard of Fowlers Lane access to and from the Highway,

Second, if the Department were to agree to include the proposal within the provisions of the Strategy should it also reconsider the approval of the development?

The proposal is innovative and represents a significant advance in restoring and utilizing degraded rural land in an ecologically sustainable manner. It also has inherent social merit. Whether it succeeds in delivering on either objective is a matter to be tested over time,

NSW Agriculture has noted that the proposal has the potential to rejuvenate landscapes in the area and could significantly improve water quality. The National Parks and Wildlife Service does not object. The proposal is consistent with the policies of the Northern Rivers Regional Strategy.

Fowlers Lane is central to all facilities/amenities at both Bangalow and Byron Bay.

Mr. Richmond's proposal was developed, at Council's unfair in my view to treat it as if it had arisen once the strategy had been adopted.

Mr. Richmond has requested the Minister to reconsider his decision thereby avoiding the need for Council to recommence the entire LEP amendment process. The Department has sought advice on this question from Mr, McClellan QC. That advice was unequivocal: the Minister cannot reconsider his previous decision. Council will have to start the process anew, Mr Richmond's legal advice is to the contrary..

Therefore, I:

- (i) support the inclusion of the Fowlers Lane proposal in the Strategy;
- (ii) would recommend approval of the development proceeding as intended through the most appropriate statutory mechanism.

Tyagarah Sub-division

This subdivision does not comply with the Strategy's criteria. Therefore, its approval could be interpreted as undermining the integrity of the Strategy,

However, this proposal was initiated before adoption of the current Strategy. It has safe Pacific Highway access; acceptable trip times to local centres; a high quality local road network; and is amidst significant existing rural residential development.

I can find no good reason to oppose inclusion of this area within the Strategy (and its subsequent sub-division).

Pinegroves Sub-division

This proposal is consistent with nearby land uses and is not prime agricultural land. The road network is in good condition and trip times to local centres are acceptable. This is a much smaller subdivision proposal than Tyagarah but essentially the same arguments apply. Therefore, my decision is the same.

The property contains a small but significant wildlife refuge. The Department should encourage the landowners to consider a voluntary conservation agreement with the NPWS over the refuge to provide an additional layer of protection.

It would not be appropriate for Council to seek any further non-complying amendments to the Strategy. The reflected Council's considered assessment of which non-complying proposals merited inclusion,

Conversion of Multiple Occupancies to Community Titles.

Council had decided it will allow only those approved MOs already in existence to convert to Community Title providing they registered their intent to do so within a defined period. This approach would not result in any increase in rural settlement but would provide far better land management,

The option of community title was not available at the time of the creation of these MOs and represents, for many of these settlements, a better mechanism to give effect to their desire to provide small community-based ecologically sustainable development.

The contrary view notes that community title allows subdivision to permit individual landholdings, provided the remainder of the land is communally managed with regard to a specific theme (presumably sustainability). Community titling was apparently rejected in a review of SEPP 15 in 1994 and to allow Byron Council to accommodate conversion would set a State-wide precedent.

SEPP 15 does not apply in Byron Shire as the Byron LEP has specific clauses for multiple occupancy.

The Department's other concern in regard to this matter was when the MOs were outside of the areas identified as suitable for rural residential development under the Strategy. I have already noted the innate inequity of assessing developments legitimately commenced well before adoption of the strategy and the fact that the Strategy is clearly not intended to be inflexible.

Refusal of conversion for those MOs already in existence outside of the areas identified for rural residential development simply means that these developments will continue to operate sub-optimally. This will perpetuate poor environmental and social outcomes. It is surely not intended to drive MOs to collapse by denying their voluntary conversion to community title simply because

they do not comply with the locational criteria in a set of guidelines adopted after their establishment?

Therefore, I believe Council should allow voluntary conversion of existing MOs to community title on a case-by-case basis where Council can be convinced that social and environment outcomes will be improved and the broad policy objectives of multiple occupancy will not be compromised,

On the other hand, all new community title proposals should be assessed as rural residential developments in light of the Strategy.

The other issue relating to Community Titles is Council's intention to adopt a minimum of six dwellings rather than three dwellings in the definition of multiple occupancy. This proposal self-evidently improves the viability of community residential living and is acceptable. It is also likely to make more efficient use of scarce rural land suitable for residential development.

Action

Note my decisions and proceed expeditiously to advise Council and each applicant accordingly. All letters should be checked by Legal Services Branch.

(Signed)

.....
David Papps
Executive Director
Regional NSW Planning

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COPY

Department of
Urban Affairs and Planning
PO Box 3927 GPO Sydney 2001

Our Ref: GS2/00212

(Stamped as received by Byron Council 25 August 1999)

Mr.R.Kent
General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Dear Mr Kent

I refer to the Department's letter of 22 December 1998, which advised of the Department's agreements to the strategy pursuant to clause 20 of the North Coast Regional Environmental Plan, with the exception of certain matters which were deferred for further consideration.

The Department has now carefully considered the deferred matters. Council's additions to the agreed strategy at Fowlers Lane and Tyagarah (Grays Lane and "Pinegroves") are acceptable. In respect of Fowlers Lane, the Department's legal advice is that, having decided not to make the relevant LEP (Amendment No 81) the Minister thereafter is not entitled to revisit that decision. If, notwithstanding this, the Council continues to support the proposal, a new LEP amendment can be sought by the Council in accordance with Division 4 of Part 3 of the Environmental Planning and Assessment Act.

The acceptance to the above proposal reflects previous Council (and to a certain extent, Departmental) endorsement of them, it would not, therefore, be appropriate for Council to seek further non-complying amendments to the strategy.

In regard to the matters relating to multiple occupancy:

- There is no objection to altering the minimum number of dwellings in one application from three (as in SEPP15) to six. I understand a draft LEP amendment to achieve this has already been prepared; and
- Voluntary conversion of existing approved multiple occupancies to community title on a case-by-case basis is agreed, where Council is convinced that social and environmental outcomes will be improved and the broad policy objectives of multiple occupancy will not be compromised. In this regard, it is understood that Council intends to restrict such conversions to MO's existing prior to 1 October 1998, and place a time limit on a period of registration of interest for such conversions. Council will need to examine individually each proposed conversion and demonstrate how it will improve the social and environmental outcomes and not compromise the objectives of the Council's MO provisions. Such demonstration should accompany any LEP amendment.

If you need to discuss any of these issues please contact the North Coast Office.

Yours sincerely

(Signed)

.....
David Papps
Executive Director
Regional NSW Planning

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BYRON SHIRE
25 AUG 1999
COUNCIL REC.

Department of
Urban Affairs and Planning

Mr R Kent
General Manager
Byron Shire Council
PO Box 216
MULLUMBIMBY NSW 2482

Contact:
Our reference: GS2/00212
Your reference:

Regional NSW Planning
Governor Macquarie Tower
1 Farrer Place Sydney 2000
PO Box 3927 GPO Sydney 2001

Telephone: 0391 2008
Facsimile: 0391 2391

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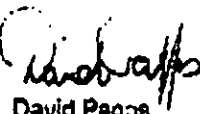
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**MINUTES LISMORE BASE HOSPITAL
SERVICE IMPROVEMENT GROUP
HELD ON THE 13 SEPTEMBER 2000
IN THE BOARD ROOM CRAWFORD HOUSE**

1. **Present:**
Liz Clarke(Chair), Wayne Jones, M Hind, K Carter, S Robinson, R Roder, K Watson, K Dolby, R Davis, R Hawkins, P Leslie, C Robinson (Minutes)
2. **Apologies:**
Warren Jones, A Formosa
3. **Confirmation of the Minutes:**
Minutes of 24 August 2000 meeting accepted by Wayne Jones.
4. **Correspondence:**
In:
Nil
5. **Guest Speaker:**
Nil
6. **Business Arising:**
 - 6.1 **Aims** - Liz Clarke stressed that the SIG will be the peak quality structure (committee) in the LBH organisation. Whilst it is recognised that the group will be driven from the top down, all information comes from the bottom up. It is this grass roots information that is important.
 - 6.2 **Reports** -There was discussion about how regular reports should be made: Area only requires 6 monthly reports but it was suggested that locally we should have monthly reports in order to address problems. Wayne Jones stressed that there must be standardised reporting on accepted benchmarks. It is known that surgical sub-specialties collect much data (eg re infection rates). With Clinical Privilege LBH SIG could access this data enabling open debate without fear of reprisal. The Committee should be able to monitor indicators so that if there is a strength or weakness in any area it should be able to be identified.
 - 6.3 **Role of Committee** - to fulfill EQUIP functions and as well to marry with the guidelines from Dept of Health. Wayne Jones commented that Quality is presented and discussed in a bureaucratic way - the language alienates the actual people who are doing the work. The data needs to be presented (and gathered) in a logical and meaningful way - in real language that most people easily understand and can work with. Information should be relative and relate to the services we provide at LBH. Kathy Dolby reminded the Committee that this was the Quality committee that drives other committees. P Leslie said that each dept seems to be doing their own thing with quality but it doesn't link in with other depts. Wayne Jones said that we are given targets by Area and we then can report actual figures as indicators of how busy (or not) we are. At the moment there is confusion between Base Hospitals so as an organisation we



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Consistent with previous practice, these matters were referred to me for determination. I have inspected each site and spoken directly with each applicant, with the relevant Council planners and with Regional staff.

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Mr. Richmond's proposal was developed, at Council's urging and with the explicit support of the Department, well before the Strategy was conceived. It is unfair in my view to treat it as if it had arisen once the Strategy had been adopted.

Mr. Richmond has requested the Minister to reconsider his decision thereby avoiding the need for Council to recommence the entire LEP amendment process. The Department has sought advice on this question from Mr. McClellan QC. That advice was unequivocal: the Minister cannot reconsider his previous decision. Council will have to start the process anew. Mr Richmond's legal advice is to the contrary.

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The property contains a small but significant wild life refuge. The Department should encourage the landowners to consider a voluntary conservation agreement with the NPWS over the refuge to provide an additional layer of protection.

It would not be appropriate for Council to seek any further non-complying amendments to the Strategy. The Department would view these unfavourably on the assumption that those presented with the Strategy reflected Council's considered assessment of which non-complying proposals merited inclusion.

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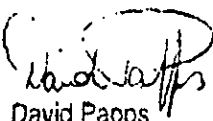
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