

BYRON SHIRE COUNCIL

ORDINARY MEETING

25TH FEBRUARY 1997 (6)

MANAGERS' REPORTS

ITEM NO. 1.

STRATEGIC PLANNING MANAGER'S REPORT

SUBJECT: SUBMISSION ON DEPARTMENT OF URBAN AFFAIRS AND PLANNING'S DRAFT STATE ENVIRONMENTAL PLANNING POLICY NO. 15 - MULTIPLE OCCUPANCY OF RURAL LAND.

File No: PLN801501

Program: Strategic Planning

Objective: To enhance the community's well being.

Summary: The Department of Urban Affairs and Planning has placed a draft State Environmental Planning Policy No. 15 - Multiple Occupancy of Rural Land on public exhibition. The intention of this State Environmental Planning Policy is to re-introduce Multiple Occupancy on rural lands throughout much of coastal New South Wales. In the draft Byron Shire has been excluded as a result of Council's previous exclusion from State Environmental Planning Policy No. 15 because Council had provisions reflecting that policy in its draft Local Environmental Plan 1988.

*Fixed to Rob.
23-4-02
Not done or
done? →*

As Council will be aware the Multiple Occupancy provisions in Byron LEP 1988 are in the process of being withdrawn as a result of Council's preparation of draft Local Environmental Plan No 11/96 with the intention of introducing a new set of Multiple Occupancy provisions resulting from Council's Rural Settlement Strategy.

This report to Council seeks Council's support for a submission to the Department of Urban Affairs and Planning on the draft State Environment Planning Policy No. 15 - Multiple Occupancy of Rural Land. Essentially it recommends that Council still be excluded from State Environmental Planning Policy No 15 on the basis that it is intending to introduce specific clauses on Multiple Occupancy which reflect the particular circumstances and needs of the Shire. These clauses will no doubt limit Multiple Occupancy to certain areas within the Shire as determined through Council's Rural Settlement Strategy and should ensure that Multiple Occupancy becomes a more sustainable form of development.

RECOMMENDATION: It is recommended that the Council agree to issuing the letter attached to this report to the Department of Urban Affairs and Planning as its submission on the Draft State Environmental Planning Policy No. 15 - Multiple Occupancy of Rural Land which is currently on exhibition.

BYRON SHIRE COUNCIL

ORDINARY MEETING

25TH FEBRUARY 1997

(7)

Attachments:

- A. Letter from Council to the Director General, Department of Urban Affairs and Planning (Council's submission on Draft State Environmental Planning Policy No. 15 - Multiple Occupancy of Rural Land) (4 Pages)
- B. Draft State Environmental Planning Policy No. 15 - Multiple Occupancy of Rural Land (16 Pages)

BYRON SHIRE COUNCIL

ORDINARY MEETING

25TH FEBRUARY 1997 (8)

Attachment 'A'
Council's Letter to Department of Urban Affairs and Planning

BSC File No: DRK/PJT/PLN801501
Your Ref:

DRAFT

The Director General
Department of Urban Affairs and Planning
Governor Macquarie Tower
1 Farrer Place
SYDNEY, NSW 2000

ATTENTION: Mr Roger Elliott

Dear Ms Kibble

Re: State Environmental Planning Policy No. 15 - Multiple Occupancy of Rural Land

Thank you for the opportunity to provide comments on the Department's State Environmental Planning Policy No. 15 - Multiple Occupancy of Rural Land.

Byron Shire Council is in the process of deleting its current Local Environmental Plan provisions for Multiple Occupancy with the intention of replacing those provisions with more acceptable provisions which reflect:-

1. application of ecologically sustainable development aims, objectives and guidelines as detailed in Council's draft LEP on Ecologically Sustainable Development which is now on public exhibition; and
2. the outcome of Council's Rural Settlement Strategy. The Land Capability Assessment for this Strategy is now completed and was available for public comment for two (2) months, during December, 1996 and January, 1997.

The current provisions in the Byron LEP 1988 provide for Multiple Occupancy to occur on rural lands throughout the Shire generally in accordance with the old State Environmental Planning Policy No. 15. Council's experience found that allowing Multiple Occupancy throughout the rural areas of the Shire has resulted in developments which:-

- Are often defacto rural subdivisions with houses dispersed over land. A disperse settlement pattern has been found to be damaging to the ecology resulting from lengthy internal road networks, lengthy internal electricity distribution easements, greater potential for the siltation of drainage lines and waterways and the destruction of vegetation to provide for these accesses and rights of way. A dispersed settlement pattern also often has visual impacts resulting in unacceptable social impacts on an otherwise rural area.

Ordinary Meeting 25/2/97.

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Chairman

BYRON SHIRE COUNCIL

ORDINARY MEETING

25TH FEBRUARY 1997 (9)

- Are often located in areas which have very poor road services and which are distant from other essential community services such as a general store, post office and primary school; and
- Are often located in areas subject to bushfire hazard, land slip and other land capability problems.

As a result of the above Council is convinced that while Multiple Occupancy as originally intended is a valid land use, it is valid only in appropriate locations. The tendency to use Multiple Occupancy as a defacto form of rural residential subdivision should be stopped. Therefore a very clear distinction is necessary between Multiple Occupancy and the objectives that this land use is trying to achieve and other forms of rural settlement.

Council is also of the opinion that all rural settlement should be considered as an entity rather than looking at individual component parts as if they are totally separate and unrelated land uses.

As a result of this experience with Multiple Occupancies Council has resolved as part of its Rural Settlement Strategy to consider Multiple Occupancies along with all other forms of rural settlement in the Shire. The Rural Settlement Strategy has been completed to the point where a Shire-wide Land Capability Assessment has been on informal public exhibition for over two (2) months with comments received. The Rural Settlement Land Capability Assessment for the Shire clearly indicates certain areas as having capability for Multiple Occupancies and for other forms of rural settlement. It also clearly indicates that quite large areas in the Shire are totally inappropriate for Multiple Occupancy as it is for other forms of rural settlement.

The next stage in the Rural Settlement Strategy is to assess the opportunities that are available in those areas which have physical land capability. This further assessment will involve a consideration of social and economic impacts resulting from Multiple Occupancy and a range of other forms of rural settlement. Council envisages that the Rural Settlement Strategy will be completed for final public exhibition around June 1997 with formal adoption around August or September. Council's 1988 Local Environmental Plan will then be amended to include a new set of clauses for Multiple Occupancy with applicability being restricted to those lands which are capable from an ecological, social and economic point of view. Council is committed to ensuring that the future development of this Shire is sustainable and does not occur in an adhoc fashion. The experience of the past few years since the original introduction of State Environmental Planning Policy No. 15 and Council's subsequent amendments to its Local Environmental Plan to include similar provisions has been that Multiple Occupancy has occurred in an adhoc haphazard way resulting in cumulative ecological, social and economic problems.

Council is keen to ensure that the proposed State Environmental Planning Policy No. 15 does not apply to Byron Shire. In this regard Council requests that it be excluded from State Environmental Planning Policy No. 15 on the understanding that towards the end of 1997 a new set of Multiple Occupancy clauses will be added to Byron Shire's Local Environmental Plan which better provides for a sustainable future for the Shire.

In summary the key issues for this Council, if State Environmental Planning Policy No. 15 were to be re-introduced with application to Byron Shire are:-

- Ecologically Sustainable Development should be seen as a requirement for Multiple Occupancy. Ecologically Sustainable Development includes consideration of ecological, social and economic matters. These need to be carefully balanced and an optimum achieved if

BYRON SHIRE COUNCIL

ORDINARY MEETING

25TH FEBRUARY 1997 (10)

development is to be sustainable.

- To clearly define Multiple Occupancy as a distinct form of land use from other forms of rural settlement. There is no doubt that Multiple Occupancy is being used as a defacto form of rural residential subdivision. 0
- Multiple Occupancy must be community based and clear evidence needs to be provided at time of application that membership of an intentional community exist, ie. Multiple Occupancy is not a traditional developer initiated process where dwelling entitlements are then sold after MO approval. 0
- Multiple Occupancy must involve the clustering of development. If this does not occur then major ecological problems occur. ✓
- Multiple Occupancy should not occur on prime agricultural land. Where a Multiple Occupancy proposal involves a mix of agricultural land capabilities, no dwellings or other structures should be located on prime agricultural land. ✓
- Multiple Occupancy should ensure adequate buffering between the Multiple Occupancy and any neighbouring or potential land uses, including agricultural land uses. Consideration should also be given to the privacy of existing dwellings on neighbouring lands being maintained. ✓
- Multiple Occupancy proposals should include property management plans with provisions for environmental repair, among other matters. ✓
- Multiple Occupancy should also include some proposal for income generation and employment creation where the Multiple Occupancy is remote from centres of employment. ✓
- Multiple Occupancies should provide reasonable road upgrading contributions to reflect likely road transport usage. If there is no on-site employment generation, it is likely the road usage will be similar, if not identical, to conventional rural residential subdivision and should be treated accordingly. ✓
- Road carrying capacity: Where Multiple Occupancies don't provide for road upgrades commensurate with the increased level of vehicle usage then some limit should be placed on the number of dwellings permissible having regard to the road's existing safety and operating conditions. ✓
- Multiple Occupancies should clearly ban all forms of subdivision by what ever means and this includes defacto subdivisions generally created by spurious arrangements for dispersed housing and for the private use of parcels of land within the Multiple Occupancy. ✓
- Multiple Occupancies should contain significant levels of and provision for common land management and common use of facilities. The level of facilities should reflect the size of the Multiple Occupancy. ✓
- The calculation of the number of dwellings to be allowed in the Multiple Occupancy should be based on the area of land assessed as being developable rather than the total area of the holding. This was a major failing in the old SEPP No 15 and must be addressed On quite a number of properties where Council has assessed Multiple Occupancy development ?

BYRON SHIRE COUNCIL

ORDINARY MEETING

25TH FEBRUARY 1997 (11)

applications the area of developable land and accessible land is quite small yet the number of houses sought is quite large reflecting the size of the holding as a whole. This results in unacceptable densities on that part of the holding which is developable.

Council welcomes this opportunity to comment on the proposed SEPP 15. It also seeks your support to continue with preparing new Multiple Occupancy clauses which suit the conditions in Byron Shire and reflect the experience of Byron Shire as an alternative to being included in SEPP 15. Even if Council is excluded from SEPP 15 Council is keen to assist the Department in preparing a better SEPP 15 than that which was prepared in the past and would be prepared to discuss these matters further. If it should assist the Department the Council would be prepared to host a meeting of Far North Coast Council planners at Council's Administration Building in Mullumbimby to provide an opportunity for Departmental officers and council planners to discuss their experiences with implementing Multiple Occupancy provisions through the old SEPP 15 and the lessons to be learnt from that process. Such a meeting may assist the Department in preparing a better State Environmental Planning Policy for the future to deal with Multiple Occupancies.

Thank you again for the opportunity to comment. I trust the above points are of assistance. Should you require any further contact with Council in regard to this matter please contact Council's Strategic Planning Manager, Mr David Kanaley, on (066) 267169, who will be pleased to assist.

Yours faithfully

Mark Norris
ACTING GENERAL MANAGER

Action Officer: Mr David Kanaley

*This has adopted
as is*

cc Mr Trevor Prior
Regional Manager
Northern Regions
Department of Urban Affairs and Planning
PO Box 6
GRAFTON. NSW 2460

FAX DOCUMENT FROM PETER HAMILTON

✓ 1/50 Paterson Street, Byron Bay, 2481 (02) 6685 8648 (F/T) email: peterh@nor.com.au
Pan Community Council Homepage:- <http://www.nor.com.au/users/pancom>

TO:

Rob Doolan

FAX No:

DATE:

23-11-02

Number of pages (including this sheet):

7

SUBJECT:

SEPP-15

COMMENTS:

Herewith Council's letter to DAP seeking exemption from SEPP-15. I am advised Council adopted this Report as is.
Please ring me re to discuss options.

Peter.

Pancon

22-4-01

Review of mo/Lic + what applies in BSE as at this date.

Items

Rural Settlement Strategy (which sets out constraints) has not yet been adopted as a formal policy, but (as I understood it) because this Strategy requires an LEP amendment then this form of development can apply (with concurrence of PNEW).

Note the RSS provides that LEP can proceed without an amendment to LEP.

Surely this implies the ^{current} provision of the LEP prevail!

Why can't anyone still apply for LEPs under LEP (on the understanding that they can't apply to convert to CT unless all other requirements are met).

Is there any ^{of inference} proposal to do away with cl 17A in the LEP?

Rob. 22/4/01

NB1 Byron omitted from new SEPP-15 1998

NB2 LEP 17A prevail. (provided on sep title)

NB3 What in DEP has relevance: if any?

① What is Rob's ref to Pappas? — see Karoly to Gabriel

② Why is LEP-14C not avail to Rob in his DA?

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(3)

22-4-02

Rob's view is if say 5000 total lots in Shire, then 3000 of these suitable for mo'.

NA Rob claims Karaley used the old Shire Ag land Maps & the new ones which were available were not used.

See the Objectives of SEPP-15 NA - these are NOT being ^{achieved} as effectively as is possible due to the ASS proposals!! eg SEPP15 req min 3 house sites, RFR = 6. / + what goes with it. eg development land.

Rob describes the topography generally as being in 3 zones viz.

1. Coast
2. Hills containing red soil - open - flat, needs enablers/labour & encourages/suggests open settlement of houses viz not necessarily clustered.

- 3 Valleys - steep, poorer ag land in "broad ha", viz in small fertile river patches & which suggests/requires clustering of house sites.

Summary - one solution/coat does not fit all sizes!!

Rob familiar with Karablow area. The surrounding area is mostly owned in large holdings. He refers to the 'Jenny' Coman factor. Viz see Map 11 - why is there no development (??)

potential in this area - Answer - because
Jenny didn't want it!!

Factors as to why this is a good time to move:-

- David & no longer with Council.
- Robin's departure (4/15 mths to go)
- Election year (State)
- By election may be expected to return
majority support for environment &
affordable housing.
- The 'John Hart' factor. eg
"no skyline dev." as determined in context
of place management - viz skyline =
what can be seen from the place
(or say 500m from coast/beach line)
- The "objections" raised in Kewaley sub to SWAP
no exception to merits of SEPP-15 p10
The 1st 2 items arguments are supported
& can be addressed by 2 stage DA
on proposal. In the 1st. viz stage 2
requires OK of shareholders who are
actually going to have to carry out
the c/c as a 'community' - viz they hold
the veto to the DA.
This is a constraint on developers being
interested.
- All the other items on p10 apart from the last
one essentially apply now & are consistent
with SEPP-15.
- The last item has merit & can be worked

5
4. advantages of achieving app. & beneficial land settlement.

Summary of relevant RSS-Maps

Map 2 (p26) U & ET land release areas
of Map 10 Existing MO sites. (p94)

Map 9 (p73) Potential land for Rural Tenist Colonies - total 6
Why not also see?

Map 10 (p94) Existing Settlement Pattern
(Shows existing MOs)

Map 11 (p95) Proposed Rural Settlement

Map 12 (p96) Long Term Potential Settlement.

Map 17 (p112) Ruwete Dy - shows road ha only

Map 21 (p116) Potential settlement areas having
no 'physical' or 'ecological' constraints?

PerCom

19-11-01

Rob says for MO. The Rural Strategy
proposed requires a minimum of 6 houses.
(Rob has personally protested against this,
saying that it will preclude (in his view)
all future MO in Byron.

Also that big developers have bought up all
the identified MO-CT land for CT development.

Re: a device to restrict certain things happening
as a CC to a DA: is use of s. 88A instrument
eg in his case a ^{MO} property which had
access to both a side rural street
& the highway. A s. 88A was applied as
a CC to require no access to the highway.

Re power of a Certifier.

My proposal being to have as a CC to DA that a
Certifier be req'd to be presented to Council
at say every 12 months that the app dev
complied with all the cond. of consent (C/C).

Rob does not know if this is within their
jurisdiction or who to ask to find out?

His view is that he sees no reason why a developer
could not 3 months after original DA approved
put another DA in seeking use as a bed & breakfast.
While to be logically Council could & should refuse
same - but in practice Rob says this unlikely to
be done.