

REQUEST FOR VARIATION UNDER CLAUSE 4.6 OF BYRON LOCAL ENVIRONMENTAL PLAN 2014 EXCEPTIONS TO DEVELOPMENT STANDARDS

Proposed detached dual occupancy dwelling, shed and studio

Lot 2 DP 1007622
No. 72 Lawlers Lane, Bangalow
28 June 2024

1.0 Introduction

This document comprises a request for a variation under Clause 4.6 of Byron Local Environmental Plan 2014 to Clause 4.2D of that plan. This document should be read as part of the Town Planning Report that is submitted with the Development Application.

2.0 Description of the development standard

Clause 4.2D of Byron Local Environmental Plan 2014 reads as follows:

4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2

- (1) The objectives of this clause are as follows—
 - (a) to provide alternative accommodation for rural families and workers,
 - (b) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,
 - (c) to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.
- (2) Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that—
 - (a) the development will not impair the use of the land, or neighbouring land, for agriculture or rural industries, and
 - (b) each dwelling will use the same vehicular access to and from a public road, and
 - (c) (Repealed)
 - (d) the land is physically suitable for the development, and
 - (e) the land is capable of accommodating the on-site disposal and management of sewage for the development, and
 - (f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.

3.0 Details of the proposal

The proposed development comprises the formalisation of an existing dwelling and the construction of alterations and additions to that dwelling. As another dwelling is approved within the property, the proposal will create a dual occupancy (detached) development. An inspection of the site confirms that the two existing dwellings are provided with separate access driveways from Lawlers Lane (one adjacent to the south-eastern corner of the allotment and the other approximately 175 metres to the west). As such, the proposal does not meet the prescriptive requirements of Clause 4.2D(2)(b) which states "each dwelling will use the same vehicular access to and from a public road".

4.0 Justification for variation

This request seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed dual occupancy development makes use of an existing building that is positioned within a previously disturbed area of the rural holding. An inspection of the site confirms that an established driveway provides access to the subject dwelling from Lawlers Lane. The other dwelling within the property also has its own vehicle access driveway from Lawlers Lane. Refer to Figure 1 at the end of this document showing the existing arrangements.

The landowner has provided evidence that the existing building within the property that is proposed for use as a dwelling has been in existence for over 120 years. The photographs below show the building in a dilapidated condition before it was reinstated as a dwelling. The building has reportedly always had access from Lawlers Lane via its own driveway. A second driveway was approved when the northern dwelling was constructed in mid 2000 (via Development Application No. 10.2000.61.1).



Images 1 & 2 – Original building that has occupied the site for over 120 years

Upon an inspection of the property, it is apparent that the construction of a connecting driveway between the two existing dwellings is unreasonable and unnecessary for this project. The proposed dwelling can safely be accessed from the existing driveway. The established driveway from the roadway to the dwelling is a practical arrangement that allows direct access for property maintenance vehicles/machinery/equipment. It would be unreasonable to require the existing access driveway to Lawlers Lane to be closed when it currently provides lawful access to the building.

The construction of a connecting driveway would create adverse amenity issues for the occupants of the northern dwelling. Further, the costs and resources that would be required to create a driveway connection would be an unreasonable burden on the landowners when a well-formed and safe access driveway is already in place. The completion of additional driveway works, merely to meet a development standard, does not uphold the principles of ecologically sustainable development.

The objectives of Clause 4.2D of Byron Local Environmental Plan 2014 are discussed below:

- (a) to provide alternative accommodation for rural families and workers,

The proposed dual occupancy dwelling will provide a home for the property owners son and his family.

- (b) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,

The proposed dual occupancy dwelling is of a scale that is consistent with existing residential development within the surrounding rural locality. The single storey dwelling contains four bedrooms and two bathrooms. This is comparable to the existing single storey dwelling within the property.

The proposed dual occupancy dwelling has been located within a disturbed area of the allotment that is outside areas set aside for rural uses.

- (c) to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.

The proposed development complies with all consent considerations for rural dual occupancy development, other than the provision which requires each dwelling to use the same vehicle access to and from a public road.

The two dwellings are within 50 metres of one another. The proposed dwelling is positioned within the most suitable area of the small rural holding for residential development. The proposal has minimal impacts on the natural and built environments.

The objectives of the RU1 Primary Production Zone under Byron Local Environmental Plan 2014 are discussed below:

The Objectives of the zone are as follows:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage consolidation of lots for the purposes of primary industry production.
- 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.

The subject property has a history of residential and low scale agricultural activities. Historic mapping and aerial photography shows residential buildings within the south-east of the property, bushland within the west and cleared areas in the north and east. The proposal seeks to add to the residential use of the site. It is noted that no intensive agricultural uses occur within the property. Predominantly rural-lifestyle properties are located within the surrounding area. Some small scale cropping occurs within the adjoining property to the east.

The use of the property as a hobby farm for grazing of stock can continue at the completion of building works. Fenced pasture paddocks will be retained. The new dwelling is positioned within a previously disturbed area of the property.

No intensive agricultural uses occur within or near to the site. A small scale fruit orchard located to the east will not be compromised by the development. The proposed dwelling is located further to the west from this orchard than the dwelling that has been approved under Development Application No. 10.2000.61.1 The design and positioning of the development ensures that the proposal does not compromise the rural/scenic character of the locality.

The development does not adversely impact on the natural environment. The nature of the proposal is such that the land use will not compromise the objectives of the zone.

The following items are considered as part of the assessment of the proposal:

- a) whether the contravention of the development standard raises any matter of significance for State or regional environmental planning; and

The proposed variation to Byron Shire Council's shared vehicle access control in this location does not create any concerns with respect to state or regional environmental planning. The small scale development with a minor variation to the development standard is appropriately dealt with at a local level.

b) the public benefit of maintaining the development standard; and

In this case, there is no public benefit in maintaining the development standard as it would cause unnecessary earthworks and driveway construction. To the contrary, there is public benefit in varying the development standard in this case as the existing driveway arrangements provide safe access to the existing and proposed dwelling sites.

c) any other matters required to be taken into consideration by Council before granting consent.

The Statement of Environmental Effects that was submitted with the Development Application provides consideration of relevant environmental planning matters for the assessment of the Development Application.

Based on the above, it is formally submitted that compliance with the shared vehicle access standard is unreasonable and unnecessary to carry out the proposed development and that a better planning outcome can be achieved by applying flexibility to the clause.

5.0 Concurrence

Council has been granted delegation to assume the concurrence of the Secretary for variations to the development standard.

6.0 Conclusion

The details provided as part of this document demonstrate that compliance with the shared vehicle access standard for the creation of a dual occupancy development is unreasonable and unnecessary for this site.

Section 4.0 of this document sets out the grounds for the variation. Byron Shire Council has provided written advice that each Development Application is assessed on its merits and that Clause 4.6 can be used to request a variation to the requirements of Clause 4.2D. Byron Shire Council has previously approved variations to this development standard under separate Development Applications. Reference is made to Development Application No. 10.2023.116.1 for No. 149 Friday Hut Road, Coorabell.

It is formally requested that development consent be granted to the development proposal with a minor variation to Clause 4.2D of Byron Local Environmental Plan 2014.

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Joe Davidson – Director
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Figure 1 – Aerial photograph showing two existing access driveways from Lawlers Lane (Metromap)