

The General Manager  
Byron Shire Council  
PO Box 219  
Mullumbimby NSW 2482

RE: 29 Autumn Court, Byron Bay NSW

Application under section 82 of the Local Government Act 1993 – Local Government (Manufactured Homes, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021

To Whom It May Concern,

We intend to submit an objection under Section 82 of the *Local Government Act 1993* in relation to the *Local Government (Manufactured Homes, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021* (referred to as the LG Regulation). This objection concerns the proposed modular dwelling at 29 Autumn Court, Byron Bay, specifically in regard to Clause 137 of the Regulation:

**Clause 137** of the Regulation requires that a relocatable home and an associated structure must not be located:

- a) within 1 metre of an access road, or
- b) within 2 metres of the boundary of the caravan park.

It is important to note that the garage is to be constructed on site and therefore is not subject to the LG Regulation.

Although the proposed dwelling is not being installed within a caravan park or manufactured home estate, Clause 81 of the LG Regulation provides that approval to install an associated structure on land outside of a caravan park or camping ground is conditional upon the structure being designed, constructed, and installed in accordance with Division 4, excluding sections 133 to 136. Clause 81 states the following:

**81 Conditions of approval—relocatable homes and associated structures**

- (1) *An approval to install a relocatable home on land other than land in a caravan park or camping ground is subject to the condition that it must be designed, constructed and installed in accordance with Division 4, other than sections 133–136.*
- (2) *An approval to install an associated structure on land other than land in a caravan park or camping ground is subject to the condition that it must be designed, constructed and installed in accordance with Division 4, other than sections 133–136.*
- (3) *In Division 4—*

- (a) *a reference to a caravan park is taken to be a reference to the land on which the relocatable home or associated structure will be installed, and*
- (b) *a reference to an approval for a caravan park is taken to be a reference to the approval for the installation of the relocatable home or associated structure.*

The proposed dwelling is set back 0.9 metres from the southern boundary, 1.5 metres from the eastern boundary and 1.8m from the western boundary. As such, an objection to the setback requirements outlined in Clause 137 is being submitted. Section 82 of the *Local Government Act 1993* permits objections to regulations and local policies, and states:

**82 Objections to application of regulations and local policies**

(1) *An applicant for an approval may lodge with the council an objection—*

- (a) *that the regulations or a local policy adopted under Part 3 by the council relating to the activity for which approval is sought do not make appropriate provision with respect to that activity, or*
- (b) *that compliance with any provision of those regulations or such a policy is unreasonable or unnecessary in the particular circumstances of the case.*

(2) *The applicant must specify the grounds of the objection.*

(3) *If the objection relates to the regulations and the council is satisfied that the objection is well founded, it may, with the concurrence of the Departmental Chief Executive, in determining the application, direct that—*

(a) *such provisions of any regulation relating to that activity as are specified in the direction—*

- (i) *are not to apply, or*
- (ii) *are to apply with such modifications as are specified in the direction, in respect of the carrying out of that activity, or*

(b) *such requirements as are specified in the direction are to apply to the carrying out of that activity, or give directions under both paragraphs (a) and (b).*

(3A) *If the objection relates to a local policy adopted under Part 3 by the council and the council is satisfied that the objection is well founded, it may, in determining the application, direct that—*

(a) *such provisions of any local policy relating to that activity as are specified in the direction—*

- (i) *are not to apply, or*
- (ii) *are to apply with such modifications as are specified in the direction, in respect of the carrying out of that activity, or*

*(b) such requirements as are specified in the direction are to apply to the carrying out of that activity, or give directions under both paragraphs (a) and (b) and the council must give the reasons for its direction or directions.*

*(3B) An objection is well founded for the purposes of subsection (3A) only if the council is satisfied that no person or the public interest will be adversely affected by the variation and that any variation is consistent with the principles of ecologically sustainable development.*

*(4) Any direction given by the council under subsection (3) or (3A), if the council's approval to the application concerned is granted, has effect according to its tenor and, in the case of a direction referred to in subsection (3)(a)(ii) or (b) or subsection (3A)(a)(ii) or (b), is a condition of that approval.*

## **Justification for Objection**

The following presents the justification for objecting to the requirement of the 2 m setback to the boundary as per Clause 137.

1. Whilst the proposed dwelling is a manufactured home, it is not being installed within a caravan park and is therefore subject to a development application. As such, it is more appropriate to assess the setback requirements under the Byron Shire Development Control Plan 2014 rather than the LG Regulation, as no prior assessment has been undertaken. In contrast, a caravan park would have already undergone a development application process, including the assessment and approval of designated park spaces. The majority of the proposed manufactured home is within the building envelope as specified by the Byron Shire DCP. The minor section outside the envelope would not contravene the objectives of the setbacks clause as per the justification in the Statement of Environmental Effects submitted with the Development Application.
2. While the building will be constructed off-site and delivered in multiple modules, it more closely aligns with the characteristics of a permanent, non-moveable dwelling. Therefore, applying the setback requirements of the LG Regulation is not considered appropriate in this context, as those provisions are intended for structures within caravan parks or manufactured home estates, not standard residential lots. In manufactured home estates, individual sites are not subject to the DCP, which is why the LG Regulations apply. However, in this case, the site is subject to the Byron Shire DCP 2022, and the proposed dwelling meets the relevant performance criteria for setbacks as shown in the Statement of Environmental Effects. The method of construction—off-site versus on-site—should not dictate different setback requirements. Interpreting the clause in this way suggests it was not intended to restrict development on private residential land that is otherwise governed by the DCP.

It is considered that the objection to Clause 137 of the LG Regulation is well justified based on the reasons outlined above. The proposed variation will not result in any significant impacts, and it is therefore recommended that the objection be approved.

The proposal is generally considered to comply with all other applicable clauses of the LG Regulation.

Kind regards,

Tom Novakovic