

Responses to Questions on Notice

Received at the 8 September 2022
Planning Meeting of Council

A handwritten signature in black ink, appearing to read "Mark Arnold".

Mark Arnold
General Manager

QUESTIONS WITH NOTICE

1 Community Title Sites 3
2 LEP and DCP Documents 4

QUESTIONS WITH NOTICE

Question with Notice No. 1.0 Community Title Sites

File No: I2022/1249

At Council's Planning Meeting held on 8 September 2022, John Anderson asked the following question which was taken on notice:

A lot of rural landowners have in recent times constructed huge so called 'Machinery Sheds' and immediately fitted them out for comfortable accommodation sometimes with upstairs and downstairs. If the staff proposal for dual occupancy of Community Titles Sites is approved, would Council count such construction as the secondary dwelling or will Council continue to pretend that it's just a machinery shed so that we might end up with 3 dwellings per site?

Response Director Sustainable Environment and Economy:

Guidelines have been developed for how we investigate and respond to unauthorised dwellings.

[Agenda of Ordinary Meeting - Thursday, 28 October 2021 \(infocouncil.biz\)](#)

The guidelines support the [Enforcement Policy 2020](#).

A link to Council's unauthorised dwelling web page follows [Unauthorised dwellings - Byron Shire Council \(nsw.gov.au\)](#)

Question with Notice No. 2.0 LEP and DCP Documents

File No: I2022/1250

At Council's Planning Meeting held on 8 September 2022, John Lazarus asked the following question which was taken on notice:

The community informed LEP sets building height limits in Planning Law. The Community informed DCP sets the limit in Planning Law 'that facilities on top of a building must not breach LEP height limits'. The select group, which included developers, proposed that the Byron Bay Masterplan increase height limits. Due to widespread community opposition to the Masterplans proposed increase height limits, Council held a community workshop. The Byron Environment Centre sent a rep to the workshop, which enabled the BEC to advise Council that no attendee supported increased height limits, but Council just ignored acting on that. Council then, in another attempt to increase height limits, did a Town Centre Planning Control proposal to increase heights, but due to the overwhelming individual and Petition objections, Council's final Town Centre Planning Control Report stated, 'no increase in heights, and that the 9-metre height facilitated two storeys, with the 11.5 metre height facilitating 3 storeys'. But despite not getting community support for height increases Council is now just ignoring Councils failed attempt to get height increases, has abandoned even pretence at acting on that community input, and is now just giving repeated Consents for height increases in breach of the LEP, and Consents for even greater height increases for rooftop facilities on top of buildings that already breach LEP heights.

I am aware that a previous town centre development, built to the LEP height limit, received Court Consent in breach of Councils opposition, for an approx. 1 metre breach of the LEP & DCP, to construct a roof top recreation area. But since then, Council Consents have abandoned the LEP and DCP height limits for multiple buildings, to allow construction of buildings breaching LEP heights, and additional Consent for roof top facilities on top of the buildings that already breached LEP heights.

Council's Report to the JRPP identified in this Meetings Report on Planning Variations, supported the height and DCP breaches.

Council Consents have turned the LEP and DCP into irrelevant documents. Many residents consider that Council has turned into an apartheid organisation, prejudicing Developers breaches while ignoring the residents overwhelming opposition to these breaches. Residents see Council now giving repeated prejudiced Consents for developers to breach LEP and DCP height limits and see council bending over backwards to even ignore Councils own failed attempts to get height increases from Councils community workshops and from Councils community rejected Town Centre Planning Controls proposals.

Can Council give any reason why residents shouldn't just burn these LEP and DCP documents in protest, and act outside of Council to facilitate the actual Community's aspirations for Byron?

BYRON SHIRE COUNCIL

Response Director Sustainable Environment and Economy:

All development applications are assessed again the relevant planning instruments for a council area like a Local Environmental Plan.

Each Local Environmental Plan includes clauses that provide development standards that place restrictions on height, floor space ratios and minimum lot size requirements for development.

Clause 4.6 of the Standard Instrument LEP, as adopted by council LEPs provides flexibility in the application of development standards in certain circumstances allowing consent authorities, such as local councils, to approve a variation to development standards.

Unlike the Development Control Plan, which is a non-legislative document, in order to vary a development standard, the application needs to be accompanied by a report specified under clause 4.6 of the LEP. This clause gives the applicant the opportunity to demonstrate that the variation to the development standard is justifiable in the specific circumstance.

A clause 4.6 variation request is a complicated report that provides an assessment of the non compliance in relation to the objectives of the development standard, the objectives of the zone and the objectives of the Act. The report also assesses any other variations to the development standard that have been approved by Council in the area.

Council has an obligation to publish all variation to development standards that are approved as part of the development application process. This report is generally available on Council's website [Variations to development standards - Byron Shire Council \(nsw.gov.au\)](http://www.byronshire.nsw.gov.au/development-standards) and provides the numerical variation as a percentage.

A link to Council web page on Development Assessment follow:
[The DA process - Byron Shire Council \(nsw.gov.au\)](http://www.byronshire.nsw.gov.au/development-standards)