

Chapter 1: Part A

General

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PART A - GENERAL

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A1. PREAMBLE

What is this Plan called?

This Plan is called *Byron Shire Development Control Plan 2010 (DCP 2010)*.

Where does this Plan apply?

DCP 2010 applies to the whole of Byron Shire.

How does this plan relate to other plans?

This plan has been prepared in accordance with Clause 74C of the *Environmental Planning and Assessment Act 1979* and the requirements of the *Environmental Planning and Assessment Regulation 2000*.

DCP 2010 repeals the following plans:

- Byron Development Control Plan 2002
- Development Control Plan No 3 – The Epicentre, Border Street, Belongil
- Development Control Plan No 4 – Friday Hut Road, Coorabell
- Development Control Plan No 6 – Bayside Brunswick Estate
- Development Control Plan No 7 – Village of Federal
- Development Control Plan No 8 – Village of Main Arm
- Development Control Plan No 9 – Suffolk Park
- Development Control Plan No 10 – Cooper’s Shoot Small Holdings Zone
- Development Control Plan No 11 – Mullumbimby
- Development Control Plan No 12 – Bangalow
- Development Control Plan No 14(a) – South Ocean Shores
- Development Control Plan No 15 – Industrial Development
- Development Control Plan No 16 – Exempt and Complying Development
- Development Control Plan No 17 – Public Exhibition and Notification of Development Applications
- Development Control Plan No 18 – Becton Site and Adjoining Lands
- Development Control Plan No 19 – Broken Head
- Development Control Plan No 20 – Bayshore Village Byron Bay
- Development Control Plan No 21 – Social Impact Assessment

The plan is generally consistent with the provisions of *Byron Local Environmental Plan 1988* as amended.

Reference should be made to adopted Policies and Guideline documents prepared by Council.

A2. PURPOSE AND STRUCTURE

What is the Purpose of this DCP?

The purpose of DCP 2010 is to provide planning strategies and controls for various types of development permissible in accordance with *Byron Local Environmental Plan 1988*.

How is this Development Control Plan structured?

DCP 2010 contains the following Chapters:

- Chapter 1: Part A General
- Part B Subdivision
- Part C Residential Development
- Part D Commercial Development
- Part E Public Art
- Part F Waste Minimisation and Management
- Part G Vehicle Circulation and Parking
- Part H Landscape
- Part I Not in Use
- Part J Coastal Erosion Lands
- Part K Flood Liable Lands
- Part L Signs
- Part M Not in Use
- Part N Stormwater Management
- Chapter 2: Not in Use
- Chapter 3: Not in Use
- Chapter 4: Friday Hut Road, Coorabell
- Chapter 5: Not in Use
- Chapter 6: Bayside Brunswick Estate
- Chapter 7: Village of Federal
- Chapter 8: Village of Main Arm
- Chapter 9: Suffolk Park
- Chapter 10: Cooper's Shoot Small Holdings Zone
- Chapter 11: Mullumbimby
- Chapter 12: Bangalow
- Chapter 13: Not in Use
- Chapter 14: South Ocean Shores
- Chapter 15: Industrial Development
- Chapter 16: Exempt and Complying Development
- Chapter 17: Public Exhibition and Notification of Development Applications
- Chapter 18: Becton Site and Adjoining Lands
- Chapter 19: Broken Head
- Chapter 20: Bayshore Village Byron Bay
- Chapter 21: Social Impact Assessment
- Chapter 22: Bangalow Urban Release Areas (Rezoned 2010)

A3. OBJECTIVES

What are the Objectives of this DCP?

The specific objectives for each matter included in this plan are described in the Chapter relating to that matter.

The general objectives of this plan are:

- To provide development controls and guidelines which will assist in achieving the Aim, Objective and Guiding Principles of *Byron Local Environmental Plan 1988*.
- To provide development controls and guidelines which are sufficiently flexible to promote innovative and imaginative building and development which relates well to its surroundings, both man-made and natural but sufficiently defined to remove ambiguity.
- To promote and encourage a high quality of design and amenity for all development in the Shire.
- To manage change in a way that ensures an ecologically, socially and economically sustainable urban and rural environment in which the needs and aspirations of the community are recognised.

A4. PROCEDURES

How does this DCP work?

Specific requirements for various forms of development addressed by DCP 2010 are generally divided into the primary *Control Elements* of the particular type of development. Control Elements comprise *Element Objectives*, *Performance Criteria* and *Prescriptive Measures*. In some cases both Performance Criteria and Prescriptive Measures are specified, but in other cases only one of those criteria is specified.

Every development proposal must meet the Element Objectives. This will usually be achieved by meeting the prescriptive measures. The prescriptive measures are requirements that Council considers are likely to meet the objectives and performance criteria of the particular control element. Alternatively Council may be prepared to approve development proposals that are demonstrated to meet both the element objectives and the performance criteria. This provision enables the development of innovative schemes that meet the particular characteristics of an individual site.

When is a Development Application not required?

The following Instruments and documents specify certain circumstances in which various types of development may be carried out without the prior submission and approval of a Development Application:

- *Byron Local Environmental Plan 1988*
- *State Environmental Planning Policy (SEPP) No. 4 – Development Without Consent*
- *State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008*
- *State Environmental Planning Policy (SEPP) (Infrastructure) 2007*
- *Byron Shire DCP 2010 Chapter 16 – Exempt and Complying Development*

Council's planning staff should be consulted to assist in determining whether or not a Development Application is required for particular developments. You may need to seek legal advice.

When is a Development Application required?

A development application is required for all permissible development, other than that listed above. Prior to the commencement of a development, formal Council consent is required. Consent can be sought through the submission of a Development Application.

Different information may be required for different types and scales of development so applicants are encouraged to consult with Council staff to determine critical issues and applicable standards prior to the preparation of plans.

When is an Environmental Impact Statement (EIS) required?

The *Environmental Planning and Assessment Regulation 2000* classifies certain developments which have the potential to cause significant environmental impact, as *Designated Development*.

Designated development requires the preparation and assessment of an Environmental Impact Statement (EIS) as part of a Development Application. Proponents of designated development are required to consult with the Department of Planning for guidelines for the preparation of the EIS.

Council's planning staff can advise whether or not particular developments will be Designated Development. You may need to seek legal advice.

How does Council consider a Development Application?

In assessing development proposals, Council will have regard to Section 79C of the *Environmental Planning and Assessment Act, 1979*. The assessment process will consider how the development satisfies the Aim, Objectives and Guiding principles of *Byron Local Environmental Plan 1988* and how it conforms with the provisions of this DCP. In assessing development proposals, consideration will also be given to how they comply with the provisions of *North Coast Regional Environmental Plan*, relevant State Environmental Planning Policies (SEPPs) and any other applicable Environmental Planning instruments.

What information is required to submit a Development Application?

See the *Environmental Planning and Assessment Regulation 2000* – Schedule1.

A5. TREE PRESERVATION AND VEGETATION MANAGEMENT

Council's Tree Preservation Order (TPO) sets out controls on clearing, removing, trimming and managing trees and certain other vegetation in Byron Shire. It also details the procedures required to obtain consent under the TPO.

The *Threatened Species Conservation Act 1995* and the *Native Vegetation Act 2003* also contain provisions which regulate clearing, removing or damaging certain vegetation in NSW. Approval may be required from state government agencies such as Department of Environment, Climate Change and Water.

Council's planning staff can assist with advice on tree and vegetation preservation requirements in Byron Shire.

A6. PLANNING FOR CRIME PREVENTION

The Department of Urban Affairs and Planning in April 2001 published “*Crime prevention and the Assessment of Development Applications – Guidelines under Section 79C of the Environmental Planning and Assessment Act 1979*”. The Guidelines recognise the principles of *Crime Prevention Through Environmental Design* (CPTED), and establish two levels of assessment of crime risk for consideration of Development Applications:

1. A formal Crime Risk assessment is required for any development which, in the Council’s opinion, is likely to create a risk of crime.
2. CPTED principles are to be considered in the assessment of *all* developments.

Formal Crime Risk Assessment

Council will usually undertake formal Crime Risk Assessments in consultation with local Police.

Council will undertake a formal Crime Risk Assessment for the following types of development:

- New or refurbished shopping centres or transport interchanges;
- Residential developments comprising more than 20 dwellings;
- Development or redevelopment of a mall or other public place, including the installation of new street furniture; and
- Other developments which, in the Council’s opinion, are likely to create a risk of crime.

Development applications for all such proposals are to be accompanied by a Crime Risk Assessment prepared by or on behalf of the applicant, which:

- Assesses the crime risk characteristics of the area; and
- Addresses the CPTED principles outlined in this Section of the DCP as they apply to the proposed development.

Applying CPTED Principles

The following CPTED principles will be considered by Council where relevant in assessing all development applications. Statements of Environmental Effects accompanying Development Applications should address these principles where relevant. A comprehensive assessment of all relevant CPTED principles by the applicant will facilitate Council’s processing of applications.

The CPTED principles

There are four principles that need to be used in the assessment of development applications to minimise the opportunity for crime:

- surveillance
- access control
- territorial reinforcement
- space management.

1. Surveillance

Providing opportunities for effective surveillance, both natural and technical can reduce the attractiveness of crime targets.

Good surveillance means that people can see what others are doing. People feel safe in public areas when they can easily see and interact with others. Would-be offenders are

often deterred from committing crime in areas with high levels of surveillance. From a design perspective, 'deterrence' can be achieved by:

- clear sightlines between public and private places
- effective lighting of public places
- landscaping that makes places attractive, but does not provide offenders with a place to hide or entrap victims.

2. Access control

Physical and symbolic barriers can be used to attract, channel or restrict the movement of people. They minimise opportunities for crime and increase the effort required to commit crime.

By making it clear where people are permitted to go or not go, it becomes difficult for potential offenders to reach and victimise people and their property. Illegible boundary markers and confusing spatial definition make it easy for criminals to make excuses for being in restricted areas. However, care needs to be taken to ensure that the barriers are not tall or hostile, creating the effect of a compound.

Effective access control can be achieved by creating:

- landscapes and physical locations that channel and group pedestrians into target areas
- public spaces which attract, rather than discourage people from gathering
- restricted access to internal areas or high-risk areas (like car parks or other rarely visited areas). This is often achieved through the use of physical barriers.

3. Territorial reinforcement

Community ownership of public space sends positive signals. People often feel comfortable in, and are more likely to visit, places which feel owned and cared for. Well used places also reduce opportunities for crime and increase risk to criminals.

If people feel that they have some ownership of public space, they are more likely to gather and to enjoy that space. Community ownership also increases the likelihood that people who witness crime will respond by quickly reporting it or by attempting to prevent it. Territorial reinforcement can be achieved through:

- design that encourages people to gather in public space and to feel some responsibility for its use and condition
- design with clear transitions and boundaries between public and private space
- clear design cues on who is to use space and what it is to be used for.

Care is needed to ensure that territorial reinforcement is not achieved by making public spaces private spaces, through gates and enclosures.

4. Space management

Popular public space is often attractive, well maintained and well used space. Linked to the principle of territorial reinforcement, space management ensures that space is appropriately utilised and well cared for.

Space management strategies include activity coordination, site cleanliness, rapid repair of vandalism and graffiti, the replacement of burned out pedestrian and car park lighting and the removal or refurbishment of decayed physical elements.

Further Information

Further information about applying CPTED principles to development proposals is available from the following sources:

1. *AMCORD* Design and Development Practice Note PND 17 – *Guidelines for Crime prevention* is an excellent source of advice and guidelines on planning to create safer neighbourhoods, commercial centres and open space areas through urban design.
2. NSW Department of Planning.
3. NSW Police Service *Safer by Design* team
4. The *Safer by Design* program and course are available on website www.police.nsw.gov.au.

A7. DEFINITIONS

What do terms used in this DCP mean?

Words and phrases used in this DCP have the meanings defined in Byron LEP 1988.

Particular words and phrases used in the various Parts of this DCP are defined in this Section. Wherever any discrepancy arises between definitions used in this DCP and Byron LEP 1988, the provisions of Byron LEP 1988 prevails.

Those words and phrases that have a definition included below have been noted with ^(D) throughout the DCP.

Allotment (or Site)

means the area to which title is held, excluding any land zoned or reserved for any other purpose.

Balcony

means a raised platform, commonly referred to as a deck or verandah, having a floor level more than 1m above an adjacent lower level or any deck or verandah covered by a roof.

Note: the Building Code of Australia would normally require a handrail to be installed where the edge of a floor level is more than 1m above an adjacent lower level.

Bed and breakfast establishment

means a dwelling-house which provides temporary home-style or farm-stay accommodation for the short-term traveller and contains no more than five (5) bedrooms for accommodation. Such that, dwelling-houses will have a total floor area not exceeding 300 m² (excluding separate garages, sheds or the like) in which not more than 12 persons would be accommodated.

Note: the reference to 300m² and 12 persons is drawn from the Building Code of Australia's definition of a Class 1b building.

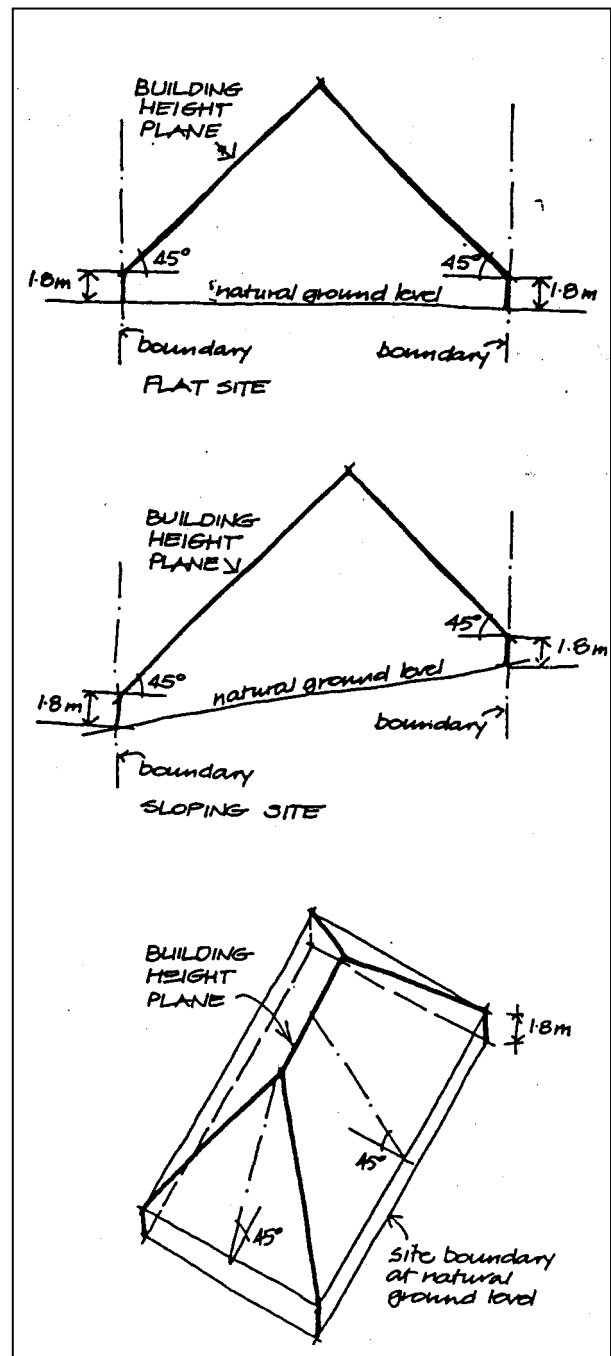
Boarding-house

includes a house let in lodgings or a hostel but does not include a motel;

Building height plane

means the plane projected at an angle of 45 degrees over the actual land to be built upon, from a distance of 1.8 metres above natural ground level at the boundary of the site.

See the diagram to the right



Caravan park

means land on which caravans, other moveable dwellings, tents or camper vehicles are, or are to be installed or placed.

Cattle feedlot

means any area of land where cattle are held and exclusively hand fed.

Common landscaped area

means that part of the site area above natural ground level not occupied by any building except swimming pools at or below natural ground level, which part is predominantly landscaped by way of planting, trees, gardens, lawns or shrubs and which is available for common use and enjoyment by the occupants of the building erected on the site.

It excludes drying yards, garbage collection and handling spaces and any spaces used for the movement or parking of vehicles.

Where Council deems it appropriate in terms of accessibility, treatment and appearance, the common landscaped area may include rooftop spaces, terraces, steps, walkways, swimming pools, pergolas or other built elements.

Dual Occupancy

Any reference to a dual occupancy development includes development consisting of 2 dwellings.

The local environmental plan provides that dual occupancy may consist of:

- a) *the conversion of a dwelling house into 2 dwellings, by alteration or addition;*
or
- b) *the erection of a building containing 2 dwellings,*

but only if not more than 2 dwellings will be created or result on the allotment.

In zones 2(a), 2(t), 2(v) or 7(f2), a dual occupancy may also consist of:

- a) *the erection of a separate dwelling on an allotment of land on which a dwelling house is already situated;*
- b) *the erection of 2 separate dwellings on an allotment of land,*

but only if not more than 2 dwellings will be created or result on the allotment.

Dwelling

means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Dwelling-house

means a building or buildings containing one but not more than one dwelling.

Erosion Line

Where used in Chapter 1 Part J of this DCP means 50 year erosion line or the 100 year erosion line, as defined in the following paragraphs.

50 year erosion line

means the line shown on the map indicating that the land to the seaward side of that line may come under threat from coastal erosion within 50 years.

100 year erosion line

means the line shown on the map indicating that the land to the seaward side of that line may come under threat from coastal erosion within 100 years.

Expanded house

means a single dwelling-house comprising of a main building and a maximum of three (3) habitable outbuildings. The design and use of the expanded house must incorporate the following requirements:

- a) all buildings are contained within a circle diameter no greater than 40 metres; and
- b) the main building contains an identifiable common living area including the kitchen; and
- c) a maximum of three (3) outbuildings may be connected to the main building by paths with an all-weather surface; and no separate driveways, car parking area or carport structure is to be provided to any outbuilding; and
- d) one outbuilding is to be limited to a maximum floor area of 45m² and the others are to be limited to a maximum 30m² excluding deck, patio, balconies and the like; and
- e) no outbuilding is to contain facilities (eg. kitchen, sink and the like) for the preparation of food or beverages; and
- f) each separate outbuilding may consist of:
 - a maximum of two (2) bedrooms or rooms with an ensuite or bathroom; and
 - a maximum of one (1) laundry.

Note: A dual occupancy development is not possible in conjunction with an expanded dwelling as the terms “attached,” “detached” and “dual occupancy building” as referred to in Byron LEP 1988 do not apply in the context of an expanded dwelling.

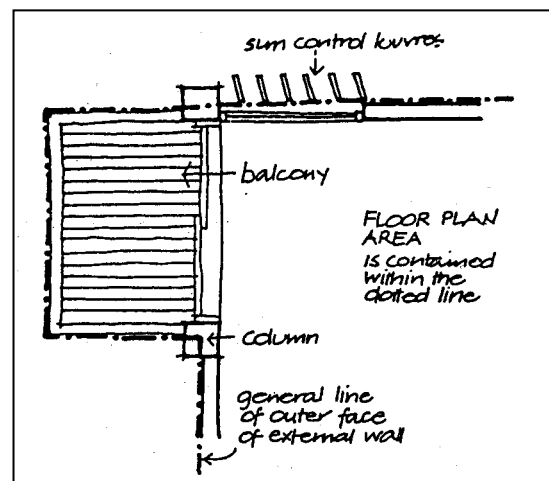
Exposed elevation

means the side or sides of a building which face towards the direction or directions which are the most likely source of a bush fire.

Floor plan area

means the area contained within the outer face of the external enclosing walls of a storey, including the area of balconies, but excluding:

- (a) columns, fin walls, sun control devices and any elements outside the general line of the outer face of the external wall;
- (b) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts;
- (c) car parking needed to meet any requirements of Council and any internal access thereto;
- (d) space for the loading and unloading of goods.



Flood planning level (FPL)

means a level that is 500 mm above the 1% AEP flood level. This represents the adopted flood level as referred to in the definition of *flood liable land* in Byron Local Environmental Plan 1988.

Floor space ratio

means the ratio of gross floor area to site area.

Gross floor area

means the sum of the floor plan areas of all floors of a building.

Group dwelling

means a group of 3 or more dwelling houses such as are commonly known as group houses, villa homes or cluster housing or the like with each dwelling having an individual entrance and access to private open space.

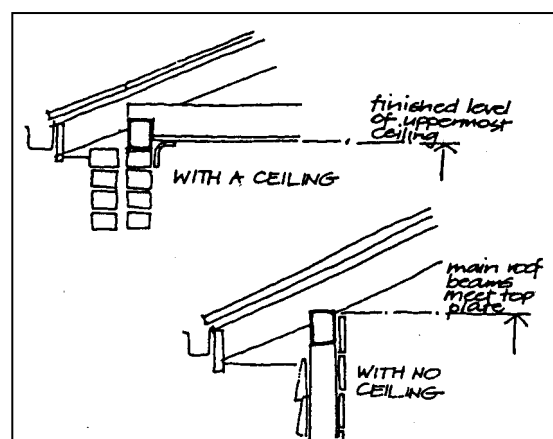
Habitable room

means

- -in a residential situation: a living or working area, such as a lounge room, dining room, rumpus room, kitchen, bedroom, workroom or the like. Laundries, bathrooms and garages are non-habitable rooms. Non-habitable rooms capable of being adapted for occupation for habitable purposes or used to store valuable possessions susceptible to flood damage will not be permitted below the flood planning level.
- -in an industrial or commercial situation: an area used for offices or to store valuable possessions susceptible to flood damage in the event of a flood

Height

means the vertical distance between natural ground level at any point and the finished level of the uppermost ceiling in the building, or where there is no ceiling or a "cathedral" ceiling, the level at which the main roof beams meet the top plate at that point.

**Holiday cabin**

means a building containing a room or a suite of rooms used, or intended to be used, for the provision of holiday accommodation only.

The building is to have a maximum gross floor area of 60 m² excluding balconies, a maximum of 2 bedrooms and may have a kitchenette and one bathroom.

Hostel

means a building or buildings incorporating bedrooms or dormitory accommodation containing beds available for separate rental and where cooking, dining, laundry, cleaning, toilet, bathrooms and other facilities are all provided on a shared basis, and primarily used or intended for use for the overnight accommodation of travellers and their vehicles.

Immediate impact line

means the line shown on the map marking the extent of land considered to be under immediate threat of coastal erosion.

Inappropriate Development

where used in Chapter 1 Part K - Flood Liable Lands, of this DCP means development that Council will not approve under any circumstances. There may be situations where, due to its proximity to higher ground, the development site could be placed in a lower flood hazard category. Council would then be able to consider the proposal on its merits.

Intensive horticulture

includes propagation nurseries, turf farming, cut flowers and the like, where the activity involves intensive propagation utilising regular mechanical and/or chemical management

of the crop likely to cause some interference or nuisance with the living amenity of residents on adjoining land.

Landscaped area

means area of ground available for planting and/or management of vegetation.

Large piggery

Means a piggery accommodating in excess of 2000 pigs or 200 breeding sows.

Map

- where used in Chapter 1 Part J of this DCP, means maps entitled 'Coastal Erosion Lands'.

Medium density development

means residential urban development consisting of three or more dwellings located on the same lot such as group houses, villa homes, town houses, terraces or cluster housing or the like.

Motel

means a building or buildings containing not less than 6 motel units, substantially used or intended to be used for the overnight accommodation of travellers and their vehicles, whether or not the building or buildings are also used in the provision of meals to those travellers or the general public.

Motel unit

means a room or suite of rooms incorporating self-contained bathroom facilities, which is substantially used or intended to be used for the overnight accommodation of travellers.

Multiple occupancy

means a form of rural settlement that enables a group of people to collectively own a single allotment of land and erect three (3) or more dwelling houses as their principal place of residence.

Other piggery

Means a piggery accommodating 10,000 pigs or less.

Porous paving

Means paving which allows infiltration of water to the subsoil.

Primitive Camping Ground

means land used for the placement of tents and campervans on a temporary basis in accordance with the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*.

Probable maximum flood (PMF)

is the flood calculated to be the maximum that is likely to occur.

Protected elevation

means the side or sides of a building which face away from the direction or directions which are the most likely source of a bush fire.

Public Art

Public Art can mean a broad spectrum of mediums and styles, from commemorative monuments in bronze to collaborative community art projects such as a fountain. It can have functional elements and use new technologies. Public art is accessible to the general public such as in parks, transit environments, urban, community and civic spaces or interior design. The artwork may be situated within the public areas of a private development. It may be incorporated within the public areas of a private development. It

may be incorporated within the fabric, design or fixtures of a building or place, or be a temporary project, such as an installation or event. It may also include place markers such as gateways.

Rural tourist facility

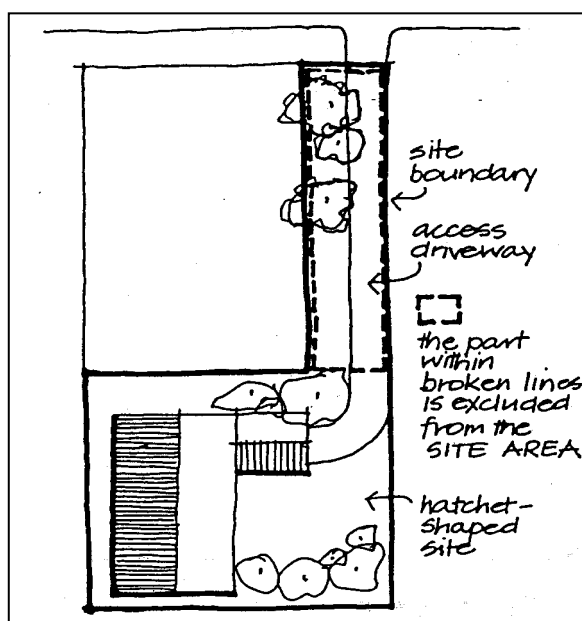
means an establishment for provision of low-scale holiday accommodation, or used for recreation or educational purposes and may consist of a bed and breakfast establishment, boat landing facilities, environmental facilities, holiday cabins, horse riding facilities, a picnic ground, a primitive camping ground or a refreshment room or the like.

Site (or allotment)

means the area to which title is held, excluding any land zoned or reserved for any other purpose.

Site area or allotment area

means the area contained within the title boundaries of the site, but, in the case of a hatchet-shaped site, excludes the area of the access corridor.



Soft landscaping area

Area of ground planted for vegetation.

Storey

means

- the space between two floors;
- the space between any floor and its ceiling or roof; and
- foundation areas, garages, workshops, plantrooms, storerooms and the like where the height between the adjacent natural ground level and horizontal plane in which the top of the floor above is situated is 1.5 metres or more.

A storey which exceeds 4.5 metres is counted as two storeys.

Zone Numbers

Zones are specified by Clause 8 of Byron Local Environmental Plan 1988

A8. PERSPECTIVES AND MODELS

Applications for residential development with a height in excess of 9 metres (ie, applications submitted under the provisions of SEPP No. 1) or (in the case of a dwelling-house) a gross floor area in excess of 300 m², are to be accompanied by suitable perspective drawings or a model to an appropriate scale.

Any application for commercial development with development/building costs in excess of \$500,000 is to be accompanied by suitable perspective drawings and photomontage. Any application for commercial development with development/building costs in excess of \$1,500,000 or a height in excess of 2 storeys is to be accompanied by a model to an appropriate scale.

Models and perspective's are to include details of other developments around the site. Pre-lodgement discussions with Council's Development Assessment Panel are recommended.

A9. BUFFER ZONES

A9.1 Element – Buffer Areas

Element Objectives

- To recognise that certain types of developments create off-site environmental impacts;
- To protect authorised residential development from intrusion by such developments ;
and
- To minimise land use conflicts between residential developments and such development;

Performance Criteria

Developments must be located so that they will not adversely affect residential development, and so that there will not be land use conflicts arising from, environmental impacts generated by developments referred to in the Prescriptive Measures.

Prescriptive Measures

To minimise land use conflicts and avoid undue interference with the living amenity of residents, the following developments must be located so as to ensure the following minimum buffer areas:

Landuse	Buffer
Large piggeries	2km
Other piggeries	1km
Feedlots	1km
Quarries	1km
Intensive horticulture ^(D)	500 metres
Sewage treatment	400 metres
Garbage tips	500 metres
Dairies	300 metres
Chicken farms	300 metres
Cattle dips	200 metres

Applicants for such development above must demonstrate to Council's satisfaction that there is a clear case for variation of this standard. The applicant must demonstrate that the element objectives and performance criteria will be met.

Applicants must address the following matters. This may involve an independent assessment of the issues by a person nominated by Council at the cost of the applicant for development.

1. Consultation with Council in respect of individual cases to determine specific matters to be addressed.
2. Operational characteristics of the land use.
3. Advice from the relevant statutory authorities.
4. Details of surveys undertaken must be provided.
5. Prevailing wind conditions and velocity of winds.
6. Topography and height^(D) of the development.
7. Slope, odour, dust and noise.

Where applications are received for development that requires buffering, the buffer zone must be provided as far as possible within the subject property and the applicant must address the abovementioned heads of consideration to Council's satisfaction.