



New South Wales

## **Byron Local Environmental Plan 1988 (Amendment No 101)**

under the

Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (G98/00239/PC)

DIANE BEAMER, M.P.,

Minister Assisting the Minister for Infrastructure  
and Planning (Planning Administration)

## 2003 No 828

Clause 1 Byron Local Environmental Plan 1988 (Amendment No 101)

---

# Byron Local Environmental Plan 1988 (Amendment No 101)

under the

Environmental Planning and Assessment Act 1979

## 1 Name of plan

This plan is *Byron Local Environmental Plan 1988 (Amendment No 101)*.

## 2 Aims of plan

This plan aims to insert a clause in the *Byron Local Environmental Plan 1988* to:

- (a) provide environmental planning controls that will result in better management of acid sulfate soils in the Byron local government area so as to minimise impacts on natural waterbodies and wetlands and on agricultural, fishing, aquaculture, urban and infrastructure activities, and
- (b) require development consent for works, including some agricultural-related works that would disturb soils or groundwater levels in localities identified as having acid sulfate soils, and
- (c) require special assessment of certain development on land identified as being subject to risks associated with the disturbance of acid sulfate soils, and
- (d) provide exemptions from the need to obtain development consent in the form of a self-regulation regime to enable the farming of sugar cane, endorsed by the Department of Infrastructure, Planning and Natural Resources through its Memorandum of Understanding with the New South Wales Sugar Milling Co-operative Limited, and
- (e) provide exemptions for the Council, county councils and public authorities from the need to obtain development consent for minor works in specific circumstances.

---

**3 Land to which plan applies**

This plan applies to land within the local government area of Byron classified as Class 1, 2, 3, 4, or 5 on the map marked “Acid Sulfate Soils Planning Map Byron Local Environmental Plan 1988 (Amendment No 101)” deposited in the office of Byron Shire Council.

**4 Amendment of Byron Local Environmental Plan 1988**

*Byron Local Environmental Plan 1988* is amended as set out in Schedule 1.

## 2003 No 828

Byron Local Environmental Plan 1988 (Amendment No 101)

Schedule 1 Amendments

---

### Schedule 1 Amendments

(Clause 4)

#### Clause 63

Insert after clause 62:

#### 63 Development on land identified on the Acid Sulfate Soils Planning Map

(1) In this clause:

*acid sulfate soils* means naturally occurring sediments and soils containing iron sulfides (principally pyrite) and/or their precursors or oxidation products, the exposure to oxygen of which (for example, by drainage or excavation) leads to the generation of sulfuric acid.

*Acid Sulfate Soils Assessment Guidelines* means the *Acid Sulfate Soils Assessment Guidelines* as published by the NSW Acid Sulfate Soils Management Advisory Committee and adopted for the time being by the Director-General of the Department of Infrastructure, Planning and Natural Resources.

*Acid Sulfate Soils Management Plan* means, in relation to works to which subclause (2) applies, a management plan including a full description of the management procedures to be applied to the works and prepared in accordance with the *Acid Sulfate Soils Manual*.

*Acid Sulfate Soils Manual* means the *Acid Sulfate Soils Manual* published by the NSW Acid Sulfate Soils Management Advisory Committee and adopted for the time being by the Director-General of the Department of Infrastructure, Planning and Natural Resources.

*Acid Sulfate Soils Planning Map* means the map marked "Acid Sulfate Soils Planning Map Byron Local Environmental Plan 1988 (Amendment No 101)" deposited in the office of the Council.

*acid water* includes waters containing oxidation products or other consequences of acid sulfate soils, such as elevated metal concentrations and depressed dissolved oxygen levels.

*AHD* means Australian Height Datum within the meaning of the *Surveying Act 2002*.

---

***Council's works*** means such works as are owned or controlled by the Council.

***county council*** has the same meaning as in the *Local Government Act 1993*.

***drain*** means artificial depressions, ditches or channels, used to convey water from one area to another.

***emergency work*** includes the repair or replacement of any part of the Council's works, of the works of a public authority or of the works of a county council because:

- (a) it has been (or is being) damaged by a natural disaster, an accident, an act of vandalism or a like occurrence, or
- (b) it has ceased to function or suddenly ceased to function adequately, or
- (c) it may be a potential risk to the environment or to public health and safety,

and includes work reasonably necessary to prevent or limit any further such damage, malfunction or risk.

***environmental protection zone*** means any of Zones Nos 7 (a), 7 (b), 7 (c), 7 (d), 7 (f1), 7 (f2), 7 (j) or 7 (k).

***flood mitigation works*** means structural measures intended to reduce flood damage by either reducing flood levels or the lateral extent or duration of flooding and may include:

- (a) levees, and
- (b) flood mitigation dams, and
- (c) retarding basins, and
- (d) by-pass flood ways, and
- (e) flood gates on drains, and
- (f) channel improvement.

***minor work*** means new work carried out by the Council, a public authority or a county council, not being drainage work, that has a value of less than \$20,000.

***public authority*** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

***routine maintenance*** means the periodic inspection, cleaning, repair and replacement of the Council's works, the works of a public authority or the works of a county council,

## 2003 No 828

Byron Local Environmental Plan 1988 (Amendment No 101)

Schedule 1 Amendments

---

but does not include work that would result in an increase in the design capacity of any part of those works or necessitate the deepening of an existing works capacity where more than one tonne of soil is disturbed.

**works** means:

- (a) any landform alteration that may result in the disturbance of more than one tonne of soil (including the carrying out of agriculture, land levelling, extractive industry and dredging, the construction of drains (and the maintenance, widening, deepening or extension of existing drains), the construction of artificial waterbodies (including canals, dams or detention basins), the construction of foundations and flood mitigation works), and
- (b) any works that may lower ground water levels.

**works of a county council** means such works as are owned or controlled by a county council.

**works of a public authority** means such works as are owned or controlled by a public authority.

- (2) A person must not, without development consent, carry out works on land shown as being Class 1, 2, 3, 4 or 5 on the Acid Sulfate Soils Planning Map being the works specified for the class of land in the following table:

<b>Class of land as shown on Acid Sulfate Soils Planning Map</b>	<b>Works</b>
1	Any works
2	Works below the natural ground surface Works by which the watertable is likely to be lowered
3	Works beyond 1 metre below the natural ground surface Works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface

---

<b>Class of land as shown on Acid Sulfate Soils Planning Map</b>	<b>Works</b>
4	Works beyond 2 metres below the natural ground surface Works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land below 5 metres AHD likely to lower the watertable below 1 metre AHD on the adjacent Class 1, 2, 3 or 4 land

---

- (3) This clause does not require development consent for the carrying out of works referred to in subclause (2) if:
- (a) a preliminary assessment has been undertaken by the proponent of the works in accordance with the *Acid Sulfate Soils Assessment Guidelines* and provided to the Council, and
  - (b) the Council has provided written advice to the proponent of the works confirming that the results of the preliminary assessment indicate the works need not be carried out pursuant to an Acid Sulfate Soils Management Plan.
- (4) The consent authority must not grant a consent required by this clause for the carrying out of works unless it has considered:
- (a) the adequacy of an Acid Sulfate Soils Management Plan prepared for the works in accordance with the *Acid Sulfate Soils Assessment Guidelines*, and
  - (b) the likelihood of the works resulting in the discharge of acid water, and
  - (c) any comments received from the Department of Infrastructure, Planning and Natural Resources within 21 days of the consent authority having sent the Department of Infrastructure, Planning and Natural

## 2003 No 828

Byron Local Environmental Plan 1988 (Amendment No 101)

Schedule 1 Amendments

---

Resources a copy of the development application and the Acid Sulfate Soils Management Plan prepared for the works.

- (5) This clause requires consent for development to be carried out by the Council, county councils, public authorities and private drainage boards despite clause 62 (a), and items 2 and 11 of Schedule 12.
- (6) This clause does not require development consent for the carrying out of works referred to in subclause (2) if:
  - (a) the works are ancillary to the purpose of the production of sugar cane as an agricultural activity, and
  - (b) an agreement (including a memorandum of understanding) between the Department of Infrastructure, Planning and Natural Resources and the New South Wales Sugar Milling Co-operative Limited (or its successor) applies to the land the works are carried out on, and
  - (c) a production area entitlement relating to the growing of sugar cane and approved by the New South Wales Sugar Milling Co-operative Limited (or its successor) applied immediately before the amendment of this plan by *Byron Local Environmental Plan 1988 (Amendment No 101)* to the land the works are carried out on and applies to the land the works are carried out on, and
  - (d) the works are in accordance with a drainage management plan lodged with, and endorsed by, the New South Wales Sugar Milling Co-operative Limited (or its successor) and provided to the Council as so endorsed, and
  - (e) the drainage management plan was prepared in accordance with the *NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils*, and
  - (f) the *NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils* have been approved by the Director-General of the Department of Infrastructure, Planning and Natural Resources in consultation with the NSW Acid Sulfate Soils Management Advisory Committee and the Department of Agriculture and have been adopted by the Council, and



- 
- (g) the works are not carried out on land within an environmental protection zone, and
- (h) the Council has not served a notice under the *Environmental Planning and Assessment Act 1979* on the person carrying out or using the works, or published a notice in a newspaper circulating in the locality of the works, requiring that development consent must be obtained prior to the carrying out or further use of the works.
- (7) Each year, the Council may nominate production area entitlements for the purposes of an annual audit. An audit is to be carried out of drainage management plans and works on land to which a production area entitlement so nominated applies. Such an annual audit is to be undertaken by a suitably qualified auditor on behalf of New South Wales Sugar Mills Co-operative Limited (or its successor). The Council is to be issued with a copy of the results of such an annual audit immediately after it has been carried out.
- (8) Notwithstanding the provisions of subclause (5), the Council, a public authority or a county council may carry out, without development consent, the following types of development:
- (a) development consisting of emergency work,
  - (b) development consisting of routine maintenance,
  - (c) development consisting of minor work,
- and development ancillary to that development, such as the carrying out of excavation work, the construction of accessways and the provision of power supplies.
- (9) Where the Council, a public authority or a county council carries out development described in subclause (8) and encounters, or is reasonably likely to encounter, acid sulfate soils or potential acid sulfate soils, the Council, public authority or county council, as the case may be, shall properly deal with those soils in accordance with the *Acid Sulfate Soils Assessment Guidelines* and the *Acid Sulfate Soils Management Guidelines* in the *Acid Sulfate Soils Manual* so as to minimise the actual or potential impact on the environment arising from the disturbance of the soils.

## 2003 No 828

Byron Local Environmental Plan 1988 (Amendment No 101)

Schedule 1 Amendments

---

- (10) This clause does not require development consent for the carrying out of works on land referred to in subclause (2) if the land has been lawfully filled or is required to be filled in accordance with any condition of a current development consent and the proposed works do not extend beneath the depth of the fill.
- (11) Nothing in this clause prohibits or requires consent for:
  - (a) any activity pursuant to Part 5 of the *Environmental Planning and Assessment Act 1979* as it relates to the Byron Bay Sewerage Augmentation Scheme, or
  - (b) any development the subject of an existing development consent granted before the amendment of this plan by *Byron Local Environmental Plan 1988 (Amendment No 101)*.

BY AUTHORITY

---