

Bundaberg Regional Council Planning Scheme 2015
Amendment No. 11 – Building height

Consultation Report: Qualified State Interest amendment



Summary of Consultation

Public notification period:

- The proposed amendment was placed on public consultation from 24 June to 22 July 2022.

Number of submissions received:

- 77 submissions received.

Key concerns raised:

- Concerns regarding building height.
- Impacts on character and amenity of Bargara.
- Impacts on sea turtles from the proposed amendment to building heights at Bargara.
- Impacts on development infrastructure and services in Bargara.
- Other concerns and considerations.

Summary of Proposed Amendment

At its meeting held 26 April 2022, Council resolved to make a Qualified State Interest amendment to the Bundaberg Regional Council Planning Scheme. The amendment aims to strengthen current provisions relating to building height, particularly for development in coastal locations within the Sea turtle sensitive area.

The proposed changes seek to: -

- provide greater certainty to building heights, providing the opportunity for community input (through the impact assessment process) on any development proposal within the Sea turtle sensitive area that exceeds the building height nominated for the zone;
- minimise adverse impacts from development on sea turtles; and
- protect the character and amenity of localities.

The amendment is intended to replace Temporary Local Planning Instrument (TLPI) 1/2021: Protection of Sea Turtles – Bargara Building Heights. The amendment also includes changes to how building height is assessed in other zones and localities across the Bundaberg Region.

Overview of Public Consultation

The proposed amendment was placed on public consultation for 20 business days, from 24 June to 22 July 2022. Consultation was undertaken in accordance with the Communications Strategy prepared by Council and approved by the Planning Minister. The following activities were undertaken as part of the public consultation program:

- A public notice and news article was published in Bundaberg Now on Friday, 24 June 2022;
- Letters were sent to property owners in the High density residential zone at Bargara on 20 June 2022 (for properties already developed for multiple dwellings, a letter was sent to the Body Corporate);
- Emails were sent to the UDIA, Development Industry stakeholders and the Sea Turtle Alliance on 23 June 2022;
- The proposed amendment, factsheet, submission form and supporting information were made available for viewing at Council's Development Counter and via Council's community engagement hub 'Our Bundaberg Region', with links from Council's website;
- Council's Strategic Planning team attended the Bargara Progress Association meeting held 6 July 2022 (approx. 15 attendees) and Burnett Heads Sports and Progress Association meeting held 12 July 2022 (approx. 35 attendees); and
- Various phone, email, and counter enquiries.

Summary and consideration of matters raised in submissions

Most submissions raise 4 key issues relating to the amendment namely –

- Building height (generally);
- Impacts on character and amenity;
- Sea turtle protection;
- Development infrastructure issues.

These key issues along with other matters raised in submissions are discussed below.

Building height

Submissions relating to building height at Bargara are summarised as follows: -

- 62 submissions objected to the proposed amendment and/or any increase to building height or raised other considerations. Of these objections:
 - 17 submitters stated the maximum building height should be 3 storeys (or less);
 - 12 submitters recommended limiting the maximum number of ocean front and adjacent lots that can be approved for 5 storeys and limiting the maximum building height in the Bargara Town Centre and on both sides of See and Burkitt Streets to 3 storeys;
 - 4 submitters stated the maximum building height should be 5 storeys (20 metres), or 5 storeys, with 3 storeys along the Esplanade;
 - 29 submitters did not state or recommend a maximum building height.
- 10 submissions were in support (or generally supportive) of the proposed amendment.
- 5 submissions supported increased building heights (above 5 to 6 storeys).

Three submissions also raised concerns about building height across the Bundaberg Region, including that building height should be restricted to 3 storeys (should not protrude above the tree line) along the length of the region's coastline.

Council consideration/ response

Submissions outlining support for the proposed amendment are noted. Submissions objecting to the proposed amendment, or outlining other concerns or issues, are considered below: -

The proposed amendment specifically seeks to address concerns raised by the State Government and the community that building height outcomes in the Planning Scheme for the High density residential zone at Bargara lacked certainty.

This included that –

- (a) the acceptable outcomes for building height (i.e., 3 storeys, up to 5 storeys for 'exemplary development') are unclear/ lack certainty in terms of desired built form outcomes;
- (b) an applicant can apply for development that exceeds the "maximum" building height; and
- (c) the community does not have the opportunity to make a submission for development that exceeds the maximum building height.

The concerns raised at items (a) above were addressed, in a temporary capacity, through Temporary Local Planning Instruments (TLPs) which have been in place since 30 May 2019. These TLPs, including outcomes for 5 to 6 storey development within the High density residential zone at Bargara, were specifically put in place to override current provisions in Council's Planning Scheme, to: -

- provide greater certainty to building heights;
- address the risk of adverse impacts from development on sea turtle nesting and sea turtle activity; and
- ensure development was compatible with the existing scale and character of the area.

In terms of items (b) and (c) above, while local planning instruments cannot prohibit development, the proposed amendment seeks to strengthen and provide improved clarity in relation to building height outcomes for development. This includes providing the opportunity for public submissions for any development in the Sea turtle sensitive area that exceeds the building height nominated for the zone.

The proposed amendment does not seek to materially change the preferred built form outcomes sought for Bargara. The proposed outcomes for building height of up to 5 to 6 storeys for the High density residential zone at Bargara are generally consistent with: -

- (a) existing low to medium-rise development in the area;
- (b) building height outcomes nominated in current and previous local planning instruments for the area since the mid-1970s; and
- (c) the provisions that were put in place under TLPs, which have had effect since 30 May 2019.

Given that building height provisions within the current planning scheme are consistent across both the High density residential zone and the Local centre zone at Bargara (i.e., 3 storeys, up to 5 storeys for 'exemplary development'), consistent building height outcomes have been included for both areas/ zones under the proposed amendment.

No other changes are proposed to maximum building heights across the Bundaberg Region.

Character and amenity

Concerns regarding the character and amenity of Bargara are summarised below: -

- The proposed building heights will impact on the quiet, coastal village atmosphere of Bargara.
- Residents and visitors come to Bargara to enjoy its low rise built form and appeal. It is not overdeveloped like other beachside locations (e.g., Sunshine Coast, Gold Coast).
- The proposed amendment would result in a “continuous barricade” of 5 storey esplanade facing buildings, creating a “concrete jungle”.
- 5 storey development will impact access to sunlight and breezes, and create extensive periods of shading of the beach, public areas and adjoining properties – will create a “ghetto like atmosphere” in the shaded, drafty streetscape.
- Residents of mixed use developments in the Bargara town centre will have to undertake daily routines in company with shoppers and customers.
- Character and amenity is subjective.

Other matters supportive of increased building height include the need or opportunity to redevelop Bargara for a mix of dwellings/ residential uses and shops/ commercial spaces, and the need for more tourism and commercial activity.

Council consideration/ response

To elevate the importance of building height provisions within the planning scheme to address impacts on character and amenity, the proposed amendment makes building heights nominated within the zone codes a Performance Outcome rather than an Acceptable Outcome. Performance Outcomes provide a clear outcome to be achieved, as opposed to Acceptable Outcomes, which demonstrate just one way to achieve the Performance Outcome.

Where an application for development in the Sea turtle sensitive area proposes a building height which exceeds the maximum building height prescribed in the relevant zone code, the application will require impact assessment. This is the highest level of assessment for a development application, requiring assessment against the entire planning scheme (and any other relevant benchmarks nominated under the *Planning Act 2016*), providing opportunity for public submissions, and affording third-party appeal rights to submitters.

Aside from the above changes, there are various parts of the planning scheme that already seek to protect the character and amenity of localities, which

are not proposed to be changed as part of the current amendment. These include: -

- The High density residential zone code requires that development has a built form and scale that positively contributes to the streetscape and maintains or provides a high level of residential amenity having regard to (among other things): adequate day light and ventilation to habitable rooms; overshadowing and other microclimatic impacts; privacy and overlooking; and building mass and scale as seen from neighbouring premises and the street.

This code also requires development to be sympathetic to the scale and character of surrounding development, and responsive to the area's sub-tropical climate, including the Queensland 'coastal beach' vernacular.

- The Multi unit residential uses code contains requirements to ensure that development maintains satisfactory access to prevailing breezes and sunlight penetration to adjoining properties, regulates building mass and composition (e.g., boundary setbacks, site cover, landscaping and building design), and provides residents of mixed-use development with reasonable privacy and security (e.g., separate entry areas, secure parking, access security measures).
- The Local Centre zone code includes outcomes for the Bargara Town Centre to provide an active and vibrant public realm, accommodating a variety of shopping, dining and entertainment activities. This zone code also provides for a limited range of residential activities, primarily accommodated in mixed use buildings, where such activities are ancillary to and support the predominant business functions of the zone. Short term accommodation is also facilitated in the Bargara Town Centre, to cater for tourists and travellers.

In addition to providing for a range of higher density residential housing choices, the High density residential zone also supports mixed use development for non-residential uses that complement tourist accommodation and offer food, shopping, entertainment and personal services to residents and visitors.

Sea turtle protection

Concerns and other considerations regarding sea turtle protection are summarised below:

- The proposed amendment measures do not align with Council's acknowledgement that artificial lighting has a negative impact on sea turtles.
- High rise development will cause greater light and noise impacts on sea turtles, and result in more people on nesting beaches.
- Current Acceptable Outcome AO5 of the Sea turtle sensitive area overlay code relating to landscape buffers will be completely ineffective in blocking lighting from a 5 or 6 storey building.
- There are/ will be ongoing compliance with conditions of development approvals, including ensuring design measures to minimise lighting impacts are implemented during construction and retained by subsequent landowners (e.g., educational material for visitors of holiday accommodation).
- The proposed amendments will impact sea turtle related tourism, particularly the Mon Repos Turtle Centre.
- Submissions questioning the scientific evidence regarding the impacts of artificial lighting on sea turtles, the evidence behind impacts of increased building height, and/or evidence that has informed the proposed amendments/ building heights.
- Lighting design measures should be considered instead of building height – new design standards for high rise can compensate for light spillage. More urban glow is contributed from low density residential housing and unshielded streetlights.
- There is an opportunity for developers to invest in the community, providing modern accommodation with a smaller footprint than traditional housing and building within modern codes that prioritise preservation and protection of marine life and ecosystems.

Council consideration/ response

Council's planning scheme contains a Sea turtle sensitive area overlay code which provides siting, design, and lighting provisions for assessable development within the Sea turtle sensitive area. This code is generally consistent with the State Government's 'model code'.

The Sea turtle sensitive area covers the entire length of the region's coastline, extending inland approximately 1.5km.

To ensure building height is considered when assessing potential impacts of development on sea

turtles, the proposed amendment includes a Performance Outcome within the overlay code to reinforce the maximum building heights prescribed for development and avoid adverse impacts on sea turtle nesting and activity. To demonstrate compliance with this Performance Outcome, Council may require the applicant to submit a visual impact assessment and/or artificial light impact assessment and management plan prepared by a suitably qualified professional.

In terms of satisfying the requirements of the current Acceptable Outcome AO5 in the Sea turtle sensitive area overlay code, as with other applicable assessment benchmarks, any development application will need to demonstrate how the proposal satisfies this acceptable outcome, the corresponding performance outcome and/or the overall outcomes of the code. Other requirements within the overlay code for lighting, building height, shielding, tinting, and reducing reflective glare are also applicable to development (such as multi-unit residential development) within the High density residential zone and Local centre zone at Bargara.

In terms of street lighting, Council's Planning scheme policy for development works requires that all street lighting, park lighting and outdoor lighting within the Sea turtle sensitive area is the most energy efficient, dark sky compliant, and amber lighting available in the National Electricity Market Load Tables for Unmetered Connection Points (AEMO 2015), while also meeting the applicable Australian Standards (for safety, etc.). Dark sky compliant lighting prevents light from escaping upward. Where necessary, lights may be shrouded to direct light down and away from the beach.

There are current/ recent development approvals within Council's Sea turtle sensitive area where measures such as lighting management plans, educational material and visitor and/or resident codes of conduct have been prepared and conditioned as part of the development approval.

Comments raised in relation to enforcement of development conditions are noted. Conditions of a development approval are binding on the land and successors in title. This may include, for example, future owners or occupants of a multi-unit residential development. If Council conducts an audit of development conditions or otherwise receives a complaint about alleged non-compliant development, Council's Development Compliance team will investigate the complaint as appropriate, to determine compliance with the development approval and provisions of the planning scheme.

In terms of research on the impacts of building height and/or artificial lighting on sea turtle nesting and activity, the Mon Repos Turtle Centre is dedicated to marine turtle research, protection, and education - further information and resources can be found on the Queensland Government's website ([here](#)). The proposed amendments, and previous amendments including the Sea turtle sensitive area overlay code, were informed through consultation with the State Government.

It is noted that the Reducing Urban Glow project was a collaboration between Bundaberg Regional Council, project partners and technical experts which aimed to measure urban glow along the Bundaberg region's coastline. This project included the deployment of smart lighting technology across select areas along the region's coast. To find out more about these lighting improvement locations visit www.bundaberg.qld.gov.au/know-your-glow.

Development Infrastructure

Concerns and other considerations regarding development infrastructure are summarised below: -

- Infrastructure is already straining to keep up with present demand.
- Concerns regarding congested streets, lack of public parking, restricted pedestrian movement, inadequate access for pedestrians and disability users, vehicles, and emergency services.
- Infrastructure for public transport and active transport (e.g., cycling) in Bargara is not adequate to cater for higher density development.
- Concerns regarding drainage issues and impacts from development on the drainage system.
- Increased development will need a significant increase in water and sewerage infrastructure at ratepayer expense.
- No feasibility studies have been prepared which consider population projections/ assumptions, how the transport network will need to be upgraded, pedestrian access, future upgrades to water, sewerage, drainage, and other development infrastructure.
- The proposed amendment will provide greater certainty to building heights and encourage investment to proceed in the future which, in turn, will provide more employment and infrastructure.

Council consideration/ response

Submissions outlining support for the proposed amendment are noted. Submissions objecting to the proposed amendment, or outlining other concerns or issues, are considered below: -

- Council's Planning Scheme was informed by a range of studies, including a Housing and Residential Development Study.
- The Planning Scheme includes a Local Government Infrastructure Plan (LGIP) to ensure alignment between Council's land use planning, and planning for trunk infrastructure. The LGIP is informed by planning assumptions about future growth and urban development including the demand on each trunk infrastructure network (i.e., water supply, sewerage, stormwater, transport, and parks and land for community facilities).
- As part of any development approval, development is conditioned to provide any trunk and/or non-trunk infrastructure required to service the development (e.g., water, sewer, access, car parking). Council also levies infrastructure charges for development that places additional demand on trunk infrastructure.
- The Transport and parking code within the Planning Scheme includes minimum on-site parking requirements to ensure that development provides sufficient on-site parking to meet the needs of, and anticipated demand generated by, the development. For example, the code requires Multiple dwelling development in the High density residential zone at Bargara to provide a minimum of 1 car parking space (covered) per dwelling plus 1 visitor space per 2 dwellings.
- As part of a development application, Council may require the submission of a traffic impact assessment report to demonstrate the development will not have any unacceptable impacts on the road/transport network, surrounding land uses, the streetscape, and the amenity of the surrounding area.

Other concerns and considerations

Other matters raised in submissions are summarised below: -

- Council did not undertake any consultation to inform the drafting of the proposed amendment.
- Concerns that the planning scheme is becoming merely a guideline.
- Concerns regarding other environmental impacts, including impacts on other wildlife, changes to wind patterns, water quality, sea level rise, coastal erosion and loss of dunes.
- Concerns regarding impacts on property rates.
- Concerns that the proposed amendment means that Council decisions on development applications will no longer be scrutinised by a higher authority when the community objects.

- Submission asking Council to identify any applications over five storeys that are currently awaiting Council approval.
- Concerns regarding the current housing crisis - support for the proposed amendment to provide some relief to housing shortage and tourist accommodation, and opposing suggestions (by others) that housing relief should be provided elsewhere.

Council consideration/ response

Submissions outlining support for the proposed amendment are noted. Submissions objecting to the proposed amendment, or outlining other concerns or issues, are considered below: -

The proposed amendments and previous amendments for the Sea turtle sensitive area overlay code, were informed through consultation with the State Government. As mentioned under the section on 'Building height' above, the proposed amendment seeks to provide certainty regarding building height. The proposed amendment has not sought to materially change the preferred built form outcomes for Bargara that have been in place over an extended period of time; are reflective of the current character and amenity of the area; and which address the risk of adverse impacts from development on sea turtle nesting and sea turtle activity.

In accordance with the Minister's Guidelines and Rules, the proposed amendment was subject to review by relevant State Government agencies prior to allowing Council to proceed to public consultation.

The proposed amendment does not affect the Planning Minister's rights to make directions or call-in and decide a development application under Chapter 3, Part 6 of the *Planning Act 2016*, in relation to a matter that involves or is likely to involve a State interest.

Further, the impact assessment process gives any person that has made a properly made submission about a development application the ability to appeal a decision on that application to the Planning and Environment Court.

Development applications lodged with Council and development applications currently on public notification can be viewed via PD Online on Council's website at da.bundaberg.qld.gov.au.

Property value (as valued by the State Government Department of Resources), along with the main or primary land use, is the basis for the calculation of the general rate. The proposed amendment provides for land use outcomes that, among other matters, seek to maximise the efficient use of infrastructure.

In terms of issues such as water quality, storm tide and other environmental impacts, Council's planning scheme already includes assessment benchmarks addressing these matters.

Council Decision

Having considered the matters raised in submissions, Council has decided to proceed with the proposed Planning Scheme Amendment No.11 (Building Height) and no changes have been made to the proposed amendment in response to matters raised in submissions.

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