



PLANNING PROPOSAL FOR SECONDARY DWELLINGS  
IN RU5 VILLAGE ZONE  
**(Byron Shire Council)**

GATEWAY VERSION (#E2015/13874)  
(Authority ref: 26.2015.2.1)

**3 March 2015**



# Contents

<b>Introduction</b> .....	<b>4</b>
Purpose.....	4
Property details and existing zones.....	4
Background... ..	4
<b>Part 1 Objectives and intended outcomes</b> .....	<b>6</b>
<b>Part 2 Explanation of provisions</b> .....	<b>6</b>
<b>Part 3 Justification</b> .....	<b>6</b>
Section A Need for the planning proposal.....	6
1 Is the planning proposal a result of any strategic study or report?.....	6
2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way? .....	6
3 Is there a net community benefit?.....	6
Section B Relationship to strategic planning framework .....	6
1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (in this case the Far North Coast Regional Strategy)? .....	6
2 Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plan? .....	7
3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)? .....	7
4 Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)? .....	8
Section C Environmental, social and economic impact.....	24
1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal? .....	24
2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed? .....	24
3 How has the planning proposal adequately addressed any social and economic effects?.....	24
Section D State and Commonwealth interests .....	24
1 Is there adequate public infrastructure for the planning proposal? .....	24
2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination? .....	24
<b>Part 4 Mapping</b> .....	<b>26</b>
<b>Part 5 Community consultation</b> .....	<b>26</b>
<b>Part 6 Project timeline</b> .....	<b>26</b>
<b>Summary and conclusions</b> .....	<b>26</b>

## Introduction

### Purpose

At the Byron Shire Council meeting of 13 June 2013, Council discussed the need to amend its new LEP and resolved as follows:

- “2. *Permissibility of dual occupancies (detached) and secondary dwellings in the RU1, RU2 and RU5 zones be considered in a Planning Proposal to amend the Byron LEP 2012 after the plan’s gazettal.*”

This resolution affects two different types of land, being the RU1 Primary Production and RU2 Rural Landscape land that are the predominant zones for the non-urban parts of Byron Shire, and the RU5 Village land that affects Billinudgel, Federal and Main Arm villages only.

Given the different impacts of this resolution on a rural area compared to an urban area, the planning proposal was split into two parts. This planning proposal deals only with the amendment of Byron LEP 2014 in relation to the RU5 Village zone. A separate planning proposal dealing with the RU1 and RU2 zones component of the resolution was dealt with previously and has received a Gateway Approval, has been publicly exhibited and is due to be reported back to Council for finalisation in the June 2015.

A report dealing with the RU5 Village zone was considered by Byron Shire Council on 20 November 2014 where Council resolved as follows:

*14-596 Resolved:*

- 1. That Byron LEP 2014 be amended to permit secondary dwellings with Council consent as an additional use in the RU5 Village zone.*
- 2. That Staff prepare a planning proposal to achieve this and forward it to the Department of Planning and Environment for Gateway Determination.*

### Property details and existing zones

The planning proposal directly affects all land zoned RU5 Village under Byron LEP 2014. This currently includes Billinudgel, Federal and Main Arm villages.

### Background

Byron LEP 2014 prohibits secondary dwellings in the RU5 Village zone. Under Byron LEP 1988 Council permitted only attached dual occupancy dwellings in the RU5 zone as the concept of secondary dwellings did not exist. A major factor in the content of LEP 2014 was that it would largely transition the 1988 planning controls into the Standard LEP format without too many policy changes. Secondary dwellings can be both attached and detached so they were listed as prohibited. Attached dual occupancies are still permitted.

The issue of detached dual occupancy and secondary dwellings in the RU5 zone was raised during the public exhibition, but it was not in the exhibited draft LEP so staff recommended that it be dealt with as a planning proposal after gazettal of the new LEP.

A report to Council’s Ordinary Meeting of 20 November 2014 identifies the issues that arise if either secondary dwellings or detached dual occupancy dwellings are permitted in the RU5 zones in Byron Shire. On consideration of this report Council agreed to proceed

to allow secondary dwellings with consent in the RU5 zone but not detached dual occupancy dwellings.

In Byron LEP 2014 the current definitions and controls apply:

**secondary dwelling** means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the **principal dwelling**), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

(Note: See clause 5.4 for controls relating to the total floor area of secondary dwellings.)

Also Clause 5.4 of LEP 2014 currently states:

*“If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:*

- (a) 60 square metres,*
- (b) 35% of the total floor area of the principal dwelling.”*

## Part 1 Objectives and intended outcomes

This planning proposal will permit secondary dwellings in the RU5 Village zone with Council consent.

This should provide for an additional form of village housing for land owners that (if correctly implemented) should have limited negative impacts on neighbouring land uses.

## Part 2 Explanation of provisions

The intended outcomes are to be achieved by an amendment to Byron Shire Council LEP 2014 as follows:

Amend the Land Use Table in Part 2 of LEP 2014 for the RU5 Village zone to delete the words “secondary dwellings” from the Prohibited section. This has the effect of permitting secondary dwellings in the RU5 zone.

No other changes are proposed. If the Department gives a Gateway Determination to proceed with the planning proposal, the amendment will be subject to public consultation and changes can be made in light of comments from the community.

## Part 3 Justification

### Section A Need for the planning proposal

#### 1 Is the planning proposal a result of any strategic study or report?

No. The planning proposal is an amendment to LEP 2014 that came up at a Councillor workshop during discussion of submissions relating to the draft Shire-wide LEP. The resolution then came from Council after considering a planning report in November 2014.

#### 2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A planning proposal is considered to be the only way to change the land use table for the RU5 zone.

#### 3 Is there a net community benefit?

The Net Community Benefit Criteria is identified in the NSW Government’s publication *The Right Place for Business and Services*. Assessment against the Net Community Benefit Assessment Criteria is not appropriate for a planning proposal that deals with village housing issues.

### Section B Relationship to strategic planning framework

#### 1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (in this case the Far North Coast Regional Strategy)?

The planning proposal is largely consistent with the outcomes and actions contained within the Far North Coast Regional Strategy (FNCRS). In particular, the actions

related to Settlement and Housing and Environment and Natural Resources. The proposal specifically responds to the following actions:

- Councils will plan for a range of housing types of appropriate densities, location and suitability that are capable of adapting and responding to the ageing of the population.
- Local government will consider a range of affordable housing strategies, including forms of low cost housing.

**2 Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plan?**

In 2012 Council adopted a 10 year + *Community Strategic Plan 2022 (CSP)*. The plan is based on five key themes being Corporate Management, Economy, Environment, Community Infrastructure, Society and Culture. The planning proposal is generally consistent with the following relevant Goals:

<i>EN3.6 Support initiatives that enhance socio-economic prosperity and resilience at the local level</i>	<i>Permitting additional village housing options can enhance the social outcomes for extended families or others that want to live in a village locality as well as providing rental income for a property owner.</i>
---	---

On this basis the planning proposal is generally consistent with Council’s *CSP*.

**3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?**

Most State Environmental Planning Policies are not applicable to this planning proposal. The planning proposal is consistent with State Environmental Planning Policy No 55 – Remediation of land as discussed below.

**SEPP No 55 – Remediation of Land**

SEPP 55 (Remediation of Land) recognises that land which is known to be contaminated by past land uses can still be zoned for development as long as:

- “(a) the planning authority has considered whether the land is contaminated, and*
- (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.”*

In this case no land is actually being rezoned and the secondary dwelling will only be permissible where a dwelling is already permitted on the land.

Because the planning proposal is not significantly increasing the range of sensitive land uses on the site and past land use will still be addressed in any development application, it is consistent with the SEPP.

**4 Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)?**

Consistency with the s117 Directions is assessed in the following Table 1.

**Table 1: Consistency with S117(2) Directions**

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
<b>1. Employment and Resources</b>			
1.1 Business and Industrial Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).	This planning proposal will not affect business or industrial zones.	N/A
1.2 Rural Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).  Under this direction a planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	This planning proposal will not alter the zone of any rural land. RU5 Village is an urban zone.	N/A
1.3 Mining, Petroleum Production and Extractive Industries	Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	Nothing in this planning proposal will prohibit or restrict exploration or mining.	N/A
1.4 Oyster	Applies when a relevant planning authority prepares any	Priority Oyster Aquaculture Areas (POAA) exist in the	Consistent.

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
Aquaculture	<p>planning proposal that proposes a change in land use which could result in:</p> <p>(a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or</p> <p>(b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses.</p>	<p>Brunswick River however there is minimal likelihood the planning proposal will have adverse impacts on POAA as an environmental assessment will be required on a case by case basis. Also most land in the vicinity of the POAA is already zoned for environmental protection or within the national parks estate.</p>	
1.5 Rural Lands	<p>Applies when:</p> <p>(a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or</p> <p>(b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.</p> <p>A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p> <p>A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p>	<p>This planning proposal will not affect land zoned RU1 or RU2.</p>	N/A
<b>2 Environment and Heritage</b>			
2.1 Environment Protection Zones	<p>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A planning proposal that applies to land within an</p>	<p>The planning proposal does not alter or remove any environment protection zone.</p>	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “<i>Rural Lands</i>”.</p>		
<p>2.2 Coastal Protection</p>	<p>Direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.</p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> <li>(a) the NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997,</li> <li>(b) the Coastal Design Guidelines 2003,</li> <li>(c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the NSW Coastline Management Manual 1990).</li> </ul>	<p>Certain land affected by this proposal is located within the coastal zone, which affects the eastern half of Byron Shire.</p> <p>It is consistent with the NSW Coastal Policy as there is minimal likelihood of physical impact on the environment and it will require an assessment of the visual impact on a case by case basis. RU5 land does not currently apply to any land in Byron Shire affected by coastal erosion issues. If this is the case in the future then Council will consider the management of the coastline should it be relevant to an application it receives.</p>	<p>Consistent.</p>
<p>2.3 Heritage Conservation</p>	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> <li>(a) Items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</li> <li>(b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and</li> <li>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey</li> </ul>	<p>Byron LEP 2014 currently contains provisions that are consistent with this Direction. This planning proposal will not alter those provisions and they will apply to any future applications for secondary dwellings.</p>	<p>N/A</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>		
<p>2.4 Recreation Vehicle Areas</p>	<p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>):</p> <ul style="list-style-type: none"> <li>(a) where the land is within an environment protection zone,</li> <li>(b) where the land comprises a beach or a dune adjacent to or adjoining a beach,</li> <li>(c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration: <ul style="list-style-type: none"> <li>(i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and</li> <li>(ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</i>.</li> </ul> </li> </ul>	<p>The proposal does not enable land to be developed for the purpose of a recreation vehicle area.</p>	<p>N/A</p>
<p>3. Housing, Infrastructure and Urban Development</p>			
<p>3.1 Residential Zones</p>	<p>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <ul style="list-style-type: none"> <li>(a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),</li> <li>(b) any other zone in which significant residential development is permitted or proposed to be permitted.</li> </ul> <p>A planning proposal must include provisions that encourage</p>	<p>The planning proposal will affect residential zoned land (village).</p> <p>The purpose of the LEP amendment is to broaden the choice for residential buildings in the RU5 zoned areas by permitting secondary dwellings.</p> <p>This may have a slight reduction on the consumption of land for housing on the urban fringe.</p>	<p>Consistent</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>the provision of housing that will:</p> <ul style="list-style-type: none"> <li>(a) broaden the choice of building types and locations available in the housing market, and</li> <li>(b) make more efficient use of existing infrastructure and services, and</li> <li>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</li> <li>(d) be of good design.</li> </ul> <p>A planning proposal must, in relation to land to which this direction applies:</p> <ul style="list-style-type: none"> <li>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</li> <li>(b) not contain provisions which will reduce the permissible residential density of land.</li> </ul>	<p>This will not significantly affect the density of RU5 land as attached dual occupancy is currently permitted.</p> <p>It will give the choice of having a detached secondary dwelling if it meets the criteria in the LEP.</p> <p>Existing clause 6.6 of Byron LEP 2014 already requires adequate essential services to be available to the land at the time at which consent is granted.</p>	
<p>3.2 Caravan Parks and Manufactured Home Estates</p>	<p>Applies when a relevant planning authority prepares a planning proposal.</p> <p>In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> <li>(a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and</li> <li>(b) retain the zonings of existing caravan parks, or in the case of a new principal LEP, zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park.</li> </ul> <p>In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal,</p>	<p>This proposal does not seek development for the purposes of a caravan park or manufactured homes estate, nor does it impact upon any land that does permit development for the purposes of a caravan park or manufactured homes estate.</p>	<p>N/A</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>the relevant planning authority must:</p> <ul style="list-style-type: none"> <li>(a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located,</li> <li>(b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and</li> <li>(c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent.</li> </ul>		
3.3 Home Occupations	<p>Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.</p>	<p>This proposal does not alter home occupation provisions in Byron LEP 2014.</p>	N/A
3.4 Integrating Land Use and Transport	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <ul style="list-style-type: none"> <li>(a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and</li> <li>(b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).</li> </ul>	<p>The planning proposal will alter the RU5 Village zone permitted uses. However, it will not extend the zone boundary or create a new zoned area. There is unlikely to be any impact on public transport as a result of this planning proposal.</p>	Consistent.
3.5 Development Near Licensed Aerodrome	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.</p>	<p>The planning proposal will alter provisions on RU5 land. This zone is not currently located in the vicinity of the Tyagarah aerodrome.</p>	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>The main requirements of the Direction are that Council takes into consideration the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential purposes, and does not increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.</p>		
<p>4. Hazard and Risk</p>			
<p>4.1 Acid Sulfate Soils</p>	<p>Applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.</p> <p>A council shall not prepare a draft LEP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.</p>	<p>The Billinudgel village is zoned RU5 and is affected by acid sulfate soils. Main Arm and Federal are not affected. The planning proposal will not necessarily lead to intensification of land uses proposed on land identified on the Acid Sulfate Soils Planning Maps. Council will consider acid sulfate soils if it receives an application in this location in accordance with cl. 6.1 of Byron LEP 2014.</p>	<p>Consistent.</p>
<p>4.2 Mine Subsidence and Unstable Land</p>	<p>Applies when a relevant planning authority prepares a planning proposal that permits development on land that:</p> <ul style="list-style-type: none"> <li>(a) is within a mine subsidence district, or</li> <li>(b) has been identified as unstable in a study, strategy or other assessment undertaken:                             <ul style="list-style-type: none"> <li>(i) by or on behalf of the relevant planning authority, or</li> <li>(ii) by or on behalf of a public authority and provided to the relevant planning authority.</li> </ul> </li> </ul>	<p>This proposal does not impact on any mine subsidence area.</p>	<p>N/A</p>
<p>4.3 Flood Prone Land</p>	<p>Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or</p>	<p>The planning proposal will not rezone any land. Byron LEP 2014 already contains a flood planning</p>	<p>Consistent.</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>a provision that affects flood prone land.</p> <p>A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).</p> <p>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environment Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p> <p>A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> <li>(a) permit development in floodway areas,</li> <li>(b) permit development that will result in significant flood impacts to other properties,</li> <li>(c) permit a significant increase in the development of that land,</li> <li>(d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or</li> <li>(e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.</li> </ul> <p>A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an</p>	<p>clause that would apply to secondary dwellings if they were proposed on land that is flood prone.</p> <p>Given that attached dual occupancy is already permitted in the RU5 zone, the planning proposal will not permit significant development on flood prone land (beyond that already permitted).</p> <p>Secondary dwellings will require Council consent. Their inclusion in Byron LEP 2014 as a permitted use in the RU5 zone is consistent with the Floodplain Development Manual 2005, and there is unlikely to be a net increase in demand for flood rescue services for sites where it is approved.</p>	

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>officer of the Department nominated by the Director-General).</p> <p>For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p>		
<p>4.4 Planning for Bushfire Protection</p>	<p>Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) have regard to <i>Planning for Bushfire Protection 2006</i>,</li> <li>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</li> <li>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</li> </ul> <p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> <li>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</li> </ul>	<p>Some parts of the land zoned RU5 in Byron Shire may be identified as bushfire prone land. This will be a consideration in any application for a secondary dwelling.</p> <p>Consultation with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act will take place when the gateway determination has been received. It is assumed that any concerns they may have can be addressed.</p>	<p>Consistent.</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<ul style="list-style-type: none"> <li>(i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and</li> <li>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</li> <li>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the <i>Rural Fires Act 1997</i>), the APZ provisions must be complied with,</li> <li>(c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks,</li> <li>(d) contain provisions for adequate water supply for fire fighting purposes,</li> <li>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</li> <li>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</li> </ul>		
5. Regional Planning			
5.1 Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	The planning proposal is largely consistent with the outcomes and actions contained within the Far North Coast Regional Strategy (FNCRS). In particular, the actions related to Settlement and Housing and Environment and Natural Resources. The proposal specifically responds to the following actions:	Consistent.

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		<p><i>Councils will plan for a range of housing types of appropriate densities, location and suitability that are capable of adapting and responding to the ageing of the population.</i></p> <p><i>Local government will consider a range of affordable housing strategies, including forms of low cost housing.</i></p> <p>The limited area of RU5 zoned land will also limit the location and impact of secondary dwellings.</p>	
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	The proposal is not within this catchment.	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	The planning proposal must not rezone land mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project for an urban use.	No land is proposed to be rezoned by this planning proposal. It is a minor change to the land use controls for RU5 zoned land.	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	<p>A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that:</p> <p>(a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway,</p> <p>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway.</p> <p>(c) For the purposes of this paragraph, “within town” means areas which, prior to the draft local environmental plan, have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) and where the Pacific Highway speed limit is less than 80 km/hour.</p> <p>A planning proposal that applies to land located on “out-of-</p>	This planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway.	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>town” segments of the Pacific Highway must provide that:</p> <ul style="list-style-type: none"> <li>(a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction,</li> <li>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway.</li> <li>(c) For the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80 km/hour or greater.</li> </ul>		
<p><b>6. Local Plan Making</b></p>			
<p>6.1 Approval and Referral Requirements</p>	<p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</li> <li>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: <ul style="list-style-type: none"> <li>(i) the appropriate Minister or public authority, and</li> <li>(ii) the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General),</li> </ul> <p>prior to undertaking community consultation in satisfaction of section 57 of the Act, and</p> </li> <li>(c) not identify development as designated development</li> </ul>	<p>The planning proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.</p>	<p>N/A</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>unless the relevant planning authority:</p> <ul style="list-style-type: none"> <li>(i) can satisfy the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and</li> <li>(ii) has obtained the approval of the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.</li> </ul>		
<p>6.2 Reserving Land for Public Purposes</p>	<p>A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General).</p>	<p>The planning proposal does not create, alter or reduce land reserved for a public purpose.</p>	<p>N/A</p>
<p>6.3 Site Specific Provisions</p>	<p>Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.</p> <p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> <li>(a) allow that land use to be carried out in the zone the land is situated on, or</li> <li>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</li> <li>(c) allow that land use on the relevant land without</li> </ul>	<p>The planning proposal does not seek to allow a particular development to be carried out.</p> <p>The planning proposal does not contain schematic drawings.</p>	<p>N/A</p>

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</p> <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>		



## Section C Environmental, social and economic impact

### 1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

No. Byron Shire is a biodiversity hot spot with large numbers of threatened species and endangered ecological communities. This planning proposal does not prevent the proper assessment and management of these attributes when future development applications are lodged. Secondary dwellings would generally be regarded as minor development as a primary dwelling would normally be in place on the subject land. It will only affect land zoned RU5 Village. However if appropriate, Council will still require a thorough ecological assessment to accompany any application consistent with its "Guidelines for Ecological Assessment in Byron Shire".

### 2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The planning proposal may result in an impact on village character over time. This will depend on the extent of take up of secondary dwellings and the style and location of structures. Council will need to consider this in any DA. Other environmental impacts, such as managing on-site effluent disposal, can be addressed at the development assessment stage.

### 3 How has the planning proposal adequately addressed any social and economic effects?

The planning proposal will allow additional choices of dwelling types to rural land owners, which has the potential to provide increased social, financial and physical support for residents of village areas. It also allows family members to support an ageing population. It may also permit lower cost rental accommodation in some situations.

## Section D State and Commonwealth interests

### 1 Is there adequate public infrastructure for the planning proposal?

Secondary dwellings in villages are typically going to be self-sufficient in water and on-site sewage management. Power and telephone will usually be linked to the primary dwelling (if not also self-sufficient). Section 94 contributions may be applicable to development applications for secondary dwellings but this will be a future decision for Council. If collected, these contributions will be applied to village and rural road maintenance and services as provided in Council's Contributions Plan. Council may need to consider how it wants the Contributions Plan to apply to secondary dwellings. Requiring a shared driveway to the public road will assist in minimising traffic issues. On balance, the planning proposal is unlikely to create excessive demands for public infrastructure.

### 2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

State and Commonwealth public authorities have not been formally involved in this particular planning proposal as it is yet to receive Gateway Approval.

At this stage there do not appear to be any issues of interest to Commonwealth authorities.

The following table provides a summary of the relevant public authorities, which in the opinion of Council, should be consulted in accordance with the Gateway Determination:

Public authority/stakeholder	Issue requiring comment
NSW Rural Fire Service	Section 117 of the <i>Environmental Planning and Assessment Act 1979</i> , Ministerial Direction 4.4 to consult with the Commissioner of the NSW Rural Fire Service.

## Part 4 Mapping

The planning proposal does not involve any map amendments.

## Part 5 Community consultation

Council will commence community consultation in accordance with the Gateway Determination. For the purposes of public notification, the planning proposal is not considered to be low impact as outlined in the Department of Planning and Infrastructure's, *A guide to preparing local environmental plans*, and a **28 day public exhibition period** is recommended.

Notification of the exhibited planning proposal will include:

- a newspaper advertisement that circulates in the Byron LGA, which is the area affected by the planning proposal
- the website of Byron Shire Council and the Department of Planning and Environment.

## Part 6 Project timeline

The proposed timeline for the completion of the planning proposal is as follows:

Estimated completion	Plan making step
September 2015	Gateway determination issued by Department of Planning and Environment.
October/November 2015	Public exhibition of planning proposal. Government agency consultation.
December 2015	Analysis of public submissions. Preparation of Council report.
December 2015	Public submissions report to Council.
February 2016	Endorsed planning proposal submitted to Department of Planning and Environment for finalisation.

## Summary and conclusions

Byron Shire Council has initiated a planning proposal to modify its 2014 LEP to permit secondary dwellings in the RU5 zone.

The preferred method to achieve this will be to amend the Land Use Table in Part 2 of LEP 2014 for the RU5 Village zone to delete the words "secondary dwellings" from the Prohibited section. This has the effect of permitting secondary dwellings in the RU5 zone.

The planning proposal is broadly consistent with the Far North Coast Regional Strategy and SEPPs. It is also consistent with section 117 Directions.

It is not considered that this planning proposal raises any issues that require further studies or detailed assessment.