

Report No. 1. **PLANNING – Planning Proposal for an amendment to Byron Local Environmental Plan 2014 to rezone land and permit additional uses at Lot 10 DP 748099, Byron Bay Road, Bangalow**

Executive Manager: Environment and Planning
Report Author: Joe Davidson, Planning Team Leader
File No: #E2014/46148

Theme Land and Natural Environment

Summary: The purpose of this report is to provide Council with a copy of the Planning Proposal to amend Byron Local Environmental Plan 2014 to rezone part of the subject land to R2 Low Density Residential Zone and part SP3 Tourist Zone. It then recommends that Council forward the planning proposal to the Department of Planning and Infrastructure for a Gateway determination.

NOTE TO COUNCILLORS:

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

1. That Council forward the planning proposal contained in Annexure 2(a), #E2014/51076, to the Department of Planning and Infrastructure for a Gateway determination; and
2. That Council advise the Department that it seeks to have relevant plan making functions delegated given that the proposal is of local planning significance only.

Attachments:

- Planning Proposal #E2014/51076 [36 pages]..... **Annexure 2(a)**
- Form of Special Disclosure of Pecuniary Interest #E2012/2815 [2 pages]..... **Annexure 2(b)**

This report is for submission to **Ordinary Meeting** Date of Meeting: **28 August 2014**

Signed:
(EXECUTIVE MANAGER)

Signed:
(GENERAL MANAGER)

Report

On 26 May 2014 Council received a Planning Proposal prepared by Newton Denny Chapelle with respect to land adjacent to the Bangalow Bowling Club. The proposal follows ongoing discussions between Council staff and the applicant. During those discussions, Council staff expressed support for the aims of the submission and suggested that a Planning Proposal be submitted to Council for consideration.

The Planning Proposal

The subject land is described as Lot 10 DP 748099 and is located on the northern side of Byron Bay Road at Bangalow. The allotment is made up of two parts that are separated by a Council owned allotment. The planning proposal relates to the eastern part of the lot which is adjacent to Council owned tennis courts and a residential property (refer to image below).



Subject site on northern side of Byron Bay Road
(note potential misalignment of aerial photography)

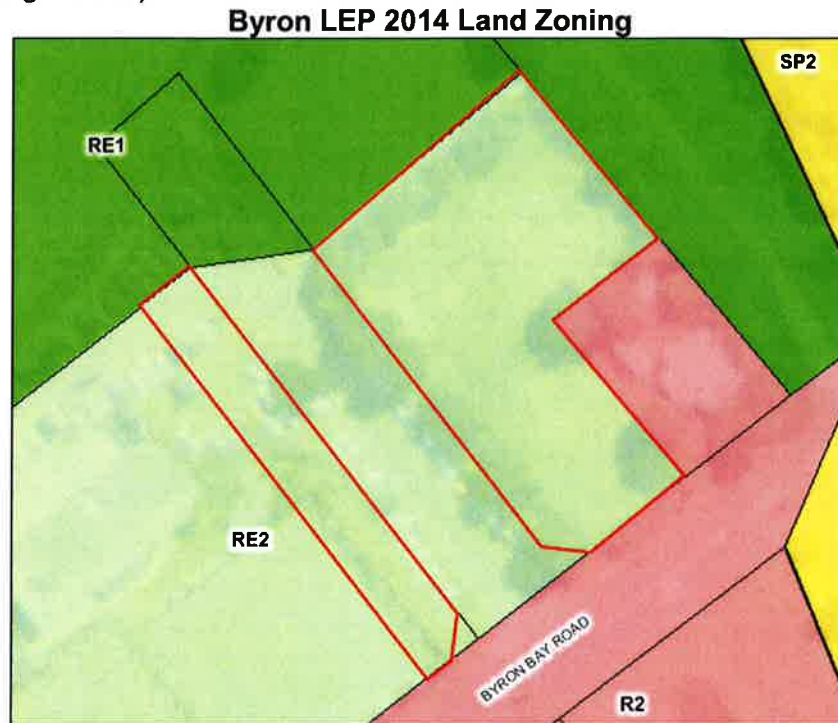
The applicant has provided concept plans for an 18 unit two storey motel, a two storey manager's residence and four x two storey townhouses within the site. Access to the development is conceptually shown from the adjoining Council owned property. Car parking and open space areas are proposed within the site.

The applicant seeks to have the land partly rezoned to SP3 Tourist and partly rezoned to R2 Low Density Residential within Byron Local Environmental Plan 2014. The applicant has also proposed that the maximum Floor Space Ratio Map for the eastern part of the site be amended to 0.5:1, and that the Minimum Lot Size Map be amended to nominate the eastern part of the site with a 600 square metre minimum.

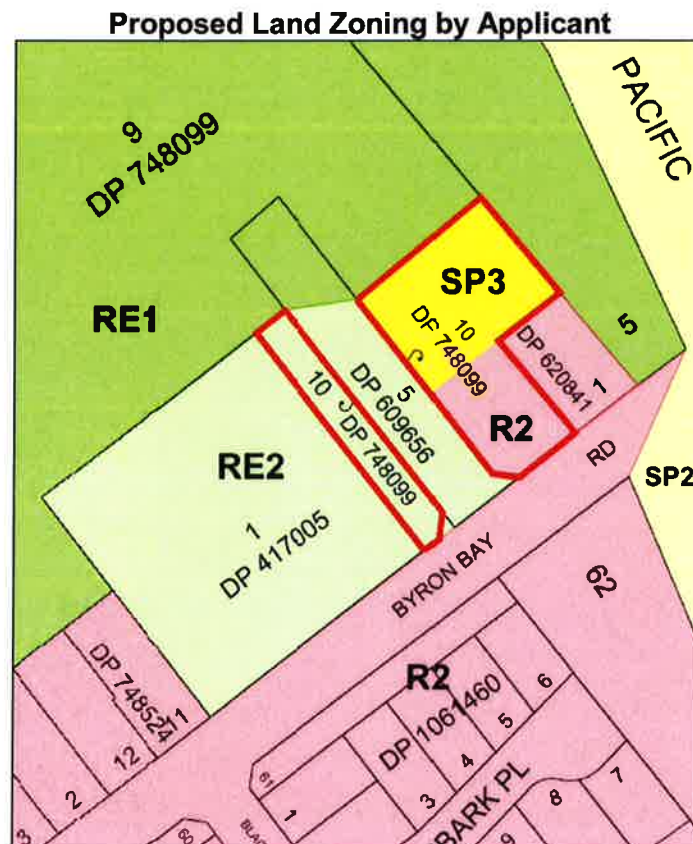
It is noted that Clause 4.1 of Byron Local Environmental Plan 2014 provides that no minimum lot size applies to a strata plan or community title scheme.

Current and Proposed Zonings

The subject land is currently zoned RE2 Private Recreation under Byron Local Environmental Plan 2014 (refer to image below):



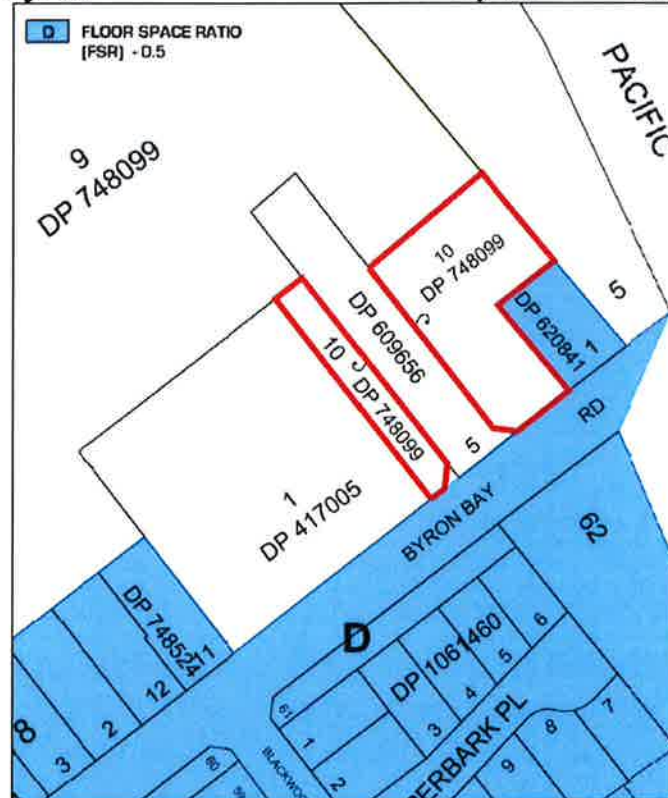
To facilitate the proposed development, the Applicant proposes to rezone the eastern part of the subject allotment to SP3 Tourist and R2 Low Density Residential (refer to image below)..



Current and Proposed Floor Space Ratio

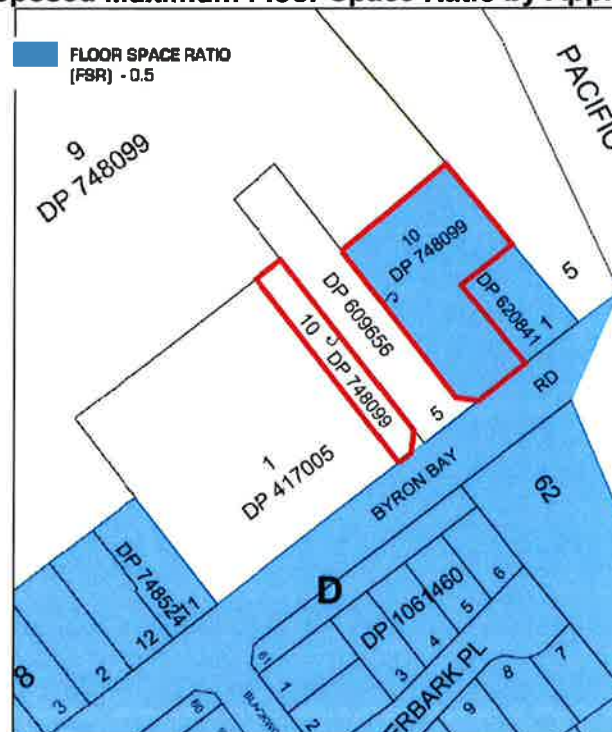
The subject land currently has no maximum Floor Space Ratio under Byron Local Environmental Plan 2014 (refer to image below):

Byron LEP 2014 Maximum Floor Space Ratio Map



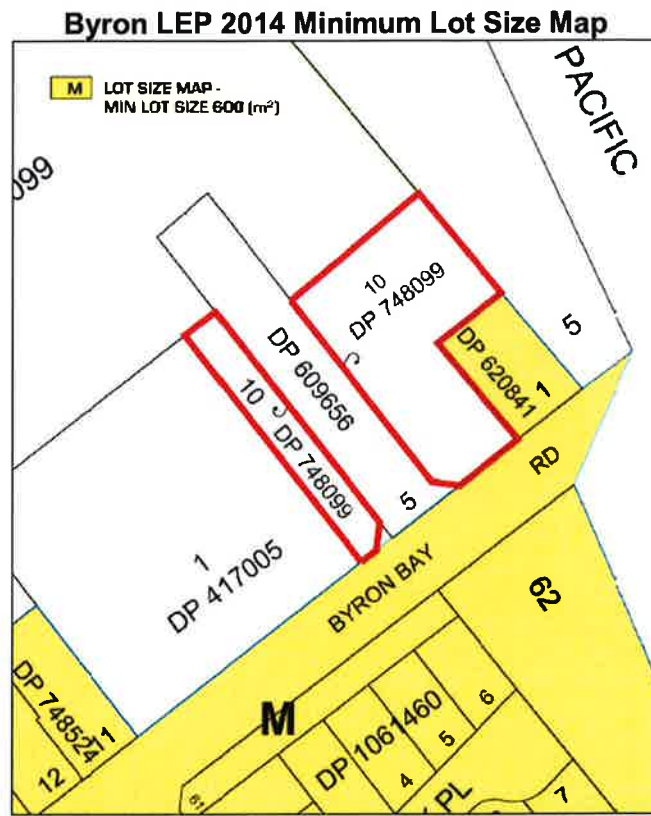
The Applicant proposes to restrict the maximum Floor Space Ratio of the eastern part of the subject site to 0.5:1 (refer to image below).

Proposed Maximum Floor Space Ratio by Applicant

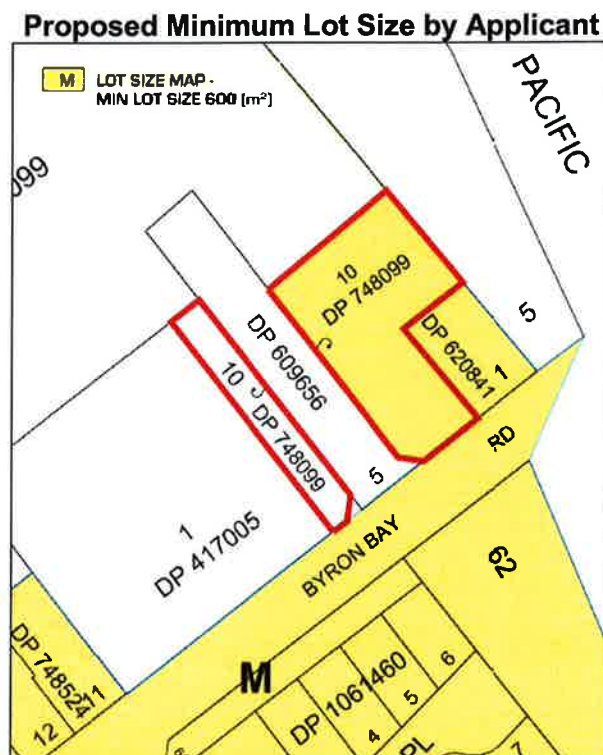


Current and Proposed Minimum Lot Size

The subject land currently has no minimum lot size nominated under Byron Local Environmental Plan 2014 (refer to image below):



The Applicant proposes to restrict the minimum lot size within the eastern part of the subject site to 600 square metres (refer to image below). It is appropriate for the proposed R2 area of the site to have a minimum 600 square metre lot size, however from Council's perspective, it would be more appropriate to restrict the proposed SP3 area of the site to a 4000 square metre lot size.



Strategic Planning Context

Attachments 2 and 3 of the Planning Proposal as prepared by Newton Denny Chapelle comment on the strategic planning context of the subject site and its future development. The key strategic planning documents applying to the site are discussed below:

Far North Coast Regional Strategy – the subject site is located within the “existing urban footprint” as shown within the Town and Village Growth Boundary Map of this strategy. The strategy provides the following comment with respect to Town and Village Growth Boundaries:

The Strategy plans to efficiently use land allocated for urban development without sacrificing the identity of the area. For some towns and villages this will result in infill development, with greater housing choice and affordability. For other areas it may result in the creation of new villages or extensions to existing ones.

The areas within the Town and Village Growth Boundaries (see map series at back of document) identify the land required to meet the Region’s urban housing and employment needs until 2031 (not including future rural residential development). These areas will accommodate a range of urban uses including housing, tourism, industry, business, infrastructure, community facilities and urban open spaces.

Not all land identified within the Town and Village Growth Boundary can be developed for urban uses. The rezoning of land or the development of existing zoned land within the Town and Village Growth Boundary for urban, commercial or industrial uses will be subject to more detailed investigations to determine its capability and future yield...

As the subject site is within the existing urban footprint, the strategy acknowledges the range of potential uses (ie. housing, tourism, industry, business, infrastructure, community facilities and urban open spaces). The proposed tourism and residential use of the site is within this range of potential uses. The strategy also acknowledges that detailed investigations are required for the rezoning of land for urban uses. This Planning Proposal forms the basis of more detailed investigations in this regard.

The Far North Coast Regional Strategy includes provisions with respect to protecting significant environmental and natural resources. The subject site is of low environmental value given that it is largely clear of native vegetation and formerly used as netball courts.

The strategy includes a further requirement that Local Environmental Plans ensure new urban development reinforces the existing centres. With the subject site within the mapped village footprint, the proposal will reinforce the urban centre and will not detract from rural landscapes.

State Environmental Planning Policy No. 55 – Remediation of Land – Although no evidence exists of problems on the site, the applicant has agreed to undertake further investigations with respect to site contamination as part of the Planning Proposal process.

North Coast Regional Environmental Plan – the proposal is minor in the context of the North Coast Regional Environmental Plan. The most relevant clauses of this plan are within Part 6 – Tourism and Recreation, as discussed below:

- *Plan Preparation – Environmental Features and Hazards*

The site is not significantly constrained by environmental hazards.

- *Plan Preparation – Principles for Location of Tourism Development*

The site of the proposed development is consistent with the provisions of the Regional Plan with respect to location of tourism development.

- *Plan Preparation – Residential Development and Tourism*

The proposal will allow for a development that comprises two distinct parts, a motel and a residential flat building (townhouse development). Accordingly, the residential and tourism uses will be separate stand alone uses.

Bangalow Settlement Strategy 2003 – This Strategy acknowledges a delineation of the village edge using topographical features such as roads or by implementing buffers. The subject site is adjacent to a road reserve that defines the village footprint. The site does not increase the village footprint, but seeks to be used for infill development.

The Strategy also acknowledges tourism as an increasing contributor to the Bangalow village. Chapter 4.7 of the Strategy provides the following comments with respect to Tourism:

The impact of tourism on Bangalow is most noticeable through the number of galleries, antique and special interest shops that are locating in Byron Street. While specialty shops draw tourists to the villages, services for the local community need to be retained and enhanced.

Limited tourist accommodation is available. The village would be well suited to the provision of bed & breakfast accommodation or a small motel. A well-developed caravan park or camping facility suitably located would provide an alternative style of accommodation. Land near the Old Pacific Highway (Area 4) could be suited to this type of development.

Motels and hostels should be concentrated in the village centre 3(a)(Business Zone) and within walking distance (400 metres) of the village centre on the approach roads. This will limit the impact of these developments on residential areas and will encourage visitors to appreciate the village atmosphere of Bangalow on foot.

The Bangalow Settlement Strategy 2003 recognises the potential for a motel development within the town. It is noted that the subject site is located on approach road to the town. Although some 850 metres from the town centre, established bike and pedestrian paths link the site to the town. The site is adjacent to residential uses. The proposed zoning of the site allows for both residential use on the southern area and tourism within the northern area.

Byron Development Control Plan 2010 Chapter 12 Bangalow – A review of the Development Guidelines Map for the Bangalow village within Byron Development Control Plan 2010 found a notation for “Potential Tourist Accommodation Subject to Rezoning” within the vicinity of the subject site. This notation refers to a parcel of land that has since been occupied by an aged care facility. Accordingly, although tourism development was planned for the eastern side of the Bangalow village, the rezoning of land has never been carried out.

The subject site appears to be a suitable substitute for this land use given that it remains vacant of development and is in the vicinity of DCP nominated site. It is noted however, that Byron Development Control Plan 2010 was replaced by Byron Development Control Plan 2014 on 21 July 2014, and that the Development Guidelines Map for the Bangalow village has not been included in the updated document.

Use of Lot 5 DP 609656 for access

The concept plans submitted with the proposal show that future development on the subject site would take access from the adjoining Council owned allotment (Lot 5 DP 609656). This allotment is classified as Community Land. The Plan of Management that incorporates the subject land, dated 24 February 2005, indicates that the land is for General Community Use. Section 6 of the Plan of Management includes the following provisions:

In accordance with the Local Government Act 1993 a Plan of Management must expressly authorise any proposed developments on community land. It must detail the scale and intensity of this development and the purpose for which it will be used.

The following table details the developments that this Plan of Management expressly authorises for Community Facilities.

Community Facilities	Purpose / Use	Authorised scale of development
Community Facilities in General.	General Community Use.	Development authorised for structural works to community facilities where required, either for improvements to operational effectiveness or safety purposes.
Community Facilities in General.	General Community Use.	General building maintenance works are authorised for community facilities.
Community Facilities in General.	General Community Use.	Easements are authorised over the land for the purpose of providing pipes, conduit or other connections under the surface of the ground. This is limited to easements that connect premises on the Ground to an existing water, sewer, drainage or electricity facility of Council or other public utility provided that is situated on the land.
Community Facilities in General.	General Community Use.	Development authorised for community facility embellishments, including where relevant, but not limited to: - Drainage & irrigation; - Picnic Facilities; - Playground Equipment; - Lighting; - Minor earthworks; - Fencing; - Seating.
Community Facilities in General.	General Community Use.	Leases and licences over the land are authorised for purposes as outlined in the Act.

As the proposed access over Lot 5 DP 609656 is not expressly authorised under the Plan of Management, it will be a requirement for access issues to be resolved as part of the Planning Proposal. If the applicant seeks to use Lot 5 DP 609656 for access purposes, this land would need to be converted to Operational Land and/or dedicated as a public road. Alternatively, future development would need to obtain direct vehicle access from Byron Bay Road.

Discussions between the Applicant and Council staff have identified potential for a land swap or rationalisation of access and parking over Lot 5 DP 609656 taking into consideration the western part of the land to which the Planning Proposal relates (Lot 10 DP 748099). As participants of the Bangalow sporting fields and tennis courts currently use these lands for vehicle access and parking, there is public benefit in Council considering options.

Lot 5 DP 609656 is currently zoned RE2 Private Recreation. Roads are permissible with the consent of Council within this zone.

Sewer infrastructure:

The subject property is located on the eastern periphery of the Bangalow village. Council's GIS indicates that the adjoining allotment to the west (Lot 1 DP 417005) is connected to Council sewer services that flow to the Bangalow Sewage Treatment Plant. In addition, residential land on the

opposite side of Byron Bay Road to the south is serviced by Council mains. As the proposal seeks to allow for a development with a capacity of less than 20ET, connection to the Sewage Treatment Plant is possible subject to further assessment of infrastructure provisioning. Provision of required infrastructure (such as pump stations and mains) would be at the expense of the Applicant. Payment of levies under Section 64 of the Water Management Act 2000 would also be payable.

Water infrastructure:

The adjoining property to the west (occupied by the Bangalow Bowling Club) is also connected to Council's reticulated water service. Connecting the site to this service is possible subject to provision of infrastructure at the expense of the applicant.

Stormwater drainage:

An inspection of the site by Council staff found that the residential subdivision located on the southern side of Byron Bay Road drains to a detention basin that discharges to the north of Byron Bay Road adjacent to the subject site. Stormwater drainage from this discharge point has not been formalised, and appears to pass through the subject site without easement.

With respect to a future solution for drainage arrangements, Council's Manager Community Infrastructure advised that "the drain should be contained within the road [that is located within Lot 5 DP 609656] either by way of a table drain for its current condition but if the site is developed we should consider piping it within the road reserve and discharging it to the northern area where the drain opens up past the tennis courts."

Such works would be at the expense of the developer.

Traffic:

Arrangements with respect to access to and from the site would be resolved as part of the planning proposal. However, vehicles will ultimately use Byron Bay Road for access purposes. This road is the main entry to Bangalow from the east. It is constructed to a standard that can accommodate additional vehicle movements associated with the proposed motel and townhouse development.

Further Information Requirements:

While the information provided with the planning proposal is adequate for this stage of Council's consideration, further detailed site assessments still need to be undertaken to ascertain the suitability of the site for the proposed development. Additionally, Council needs to be satisfied as to the infrastructure demands of the proposal.

Should Council resolve to progress the planning proposal as an amending LEP, the applicant will be required to provide further information addressing the following matters:

- *Minimum Lot Size* – Consideration of endorsing a minimum lot size of 4000 square metres within the proposed SP3 zoned area of the site, instead of 600 square metres as proposed by the applicant..
- *Land Contamination* – The history of the site is uncertain. The preparation of a suitable site contamination investigation under SEPP 55 will be required.
- *Noise impact assessment* due to proximity of the Pacific Highway.

Conclusion:

It is recommended that Council endorse the planning proposal and forward to the Department of Planning and Infrastructure for a Gateway determination under section 58(2) of the Environmental Planning and Assessment Act 1979, subject to the further information requirements listed above being addressed.

Delegation of plan making functions to local Councils

Proposed instruments that are routinely delegated to Councils to make include (but are not limited to) the following:

- Spot rezonings consistent with a regional strategy or a local strategy that is endorsed by the Director-General.
- Other matters that the Gateway determines to be a matter of local planning significance.

It is recommended that Council seek to have relevant plan making functions delegated given that the proposal is of local planning significance only.

Financial Implications

Council is able to recover the initial processing costs for an applicant initiated LEP amendment. Council has received \$2000 from the applicant to cover initial costs associated with preparing the Council report. If the proposal is to proceed through the Gateway process then full cost recovery of the remaining stages will be required by Council.

Statutory and Policy Compliance Implications

The relevant policy considerations are addressed above.