

## Planning and Assessment

IRF19/7547

### Gateway determination report

<b>LGA</b>	Byron Shire
<b>PPA</b>	To identify an office premises, light industry and restaurant or cafe as additional permitted uses with consent on Lot 1 DP 847910, 10-12 Shirley Street, Byron Bay
<b>NAME</b>	Old Byron Bay hospital
<b>NUMBER</b>	PP_BYRON_007_00
<b>LEP TO BE AMENDED</b>	Byron Local Environmental Plan 2014
<b>ADDRESS</b>	10-12 Shirley Street, Byron Bay
<b>DESCRIPTION</b>	Lot 1 DP 847910
<b>RECEIVED</b>	02/12/2019
<b>FILE NO.</b>	IRF19/7547
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The site is the former Byron Bay Hospital which was closed upon completion of the Byron Central Hospital located at Ewingsdale in May 2016. The site is approximately 5000m<sup>2</sup> in area and contains all of the former hospital buildings and associated infrastructure.

The contract of sale for purchase of Lot 1 DP 847910, 10-12 Shirley Street Byron Bay, by Council from the NSW Government, included a clause specifying the purposes for which the property could be used, being:

- community facility;
- educational establishment;
- information and education facility;
- health services facility;
- food and drink premises;
- office premises; and
- any other use which, in the Purchaser's reasonable opinion, had similar characteristics and/or is ancillary to the above uses.

The site is zoned R2 Low Density Residential pursuant to the Byron LEP 2014. An educational establishment is already permissible with consent in zone R2 pursuant to the Byron LEP 2014 and State Environmental Planning Policy (Education Establishments and Child Care Facilities) 2017.

Council are presently progressing negotiations with a tertiary education provider to occupy the site. The other community-focused land uses envisaged for the land are however prohibited in zone R2 and Council is seeking to amend Schedule 1 of the Byron LEP 2014 to add the following additional permitted land uses with consent:

- an office premises, being an administration centre for a range of community and not for profit organisations;
- a light industry, being the reuse of the existing hospital kitchen as a commercial kitchen for hire; and
- a restaurant or café, being the retention of the existing café to service students and other site users.

### **1.2 Site description**

The land is Lot 1 DP 847910, 10-12 Shirley Street, Byron Bay. In addition to a northerly frontage to Shirley Street, the site also has frontage to Wordsworth Street to the east and Byron Street to the south. Byron Street does not contain a formed road, only a bicycle path (Figures 1 and 2).

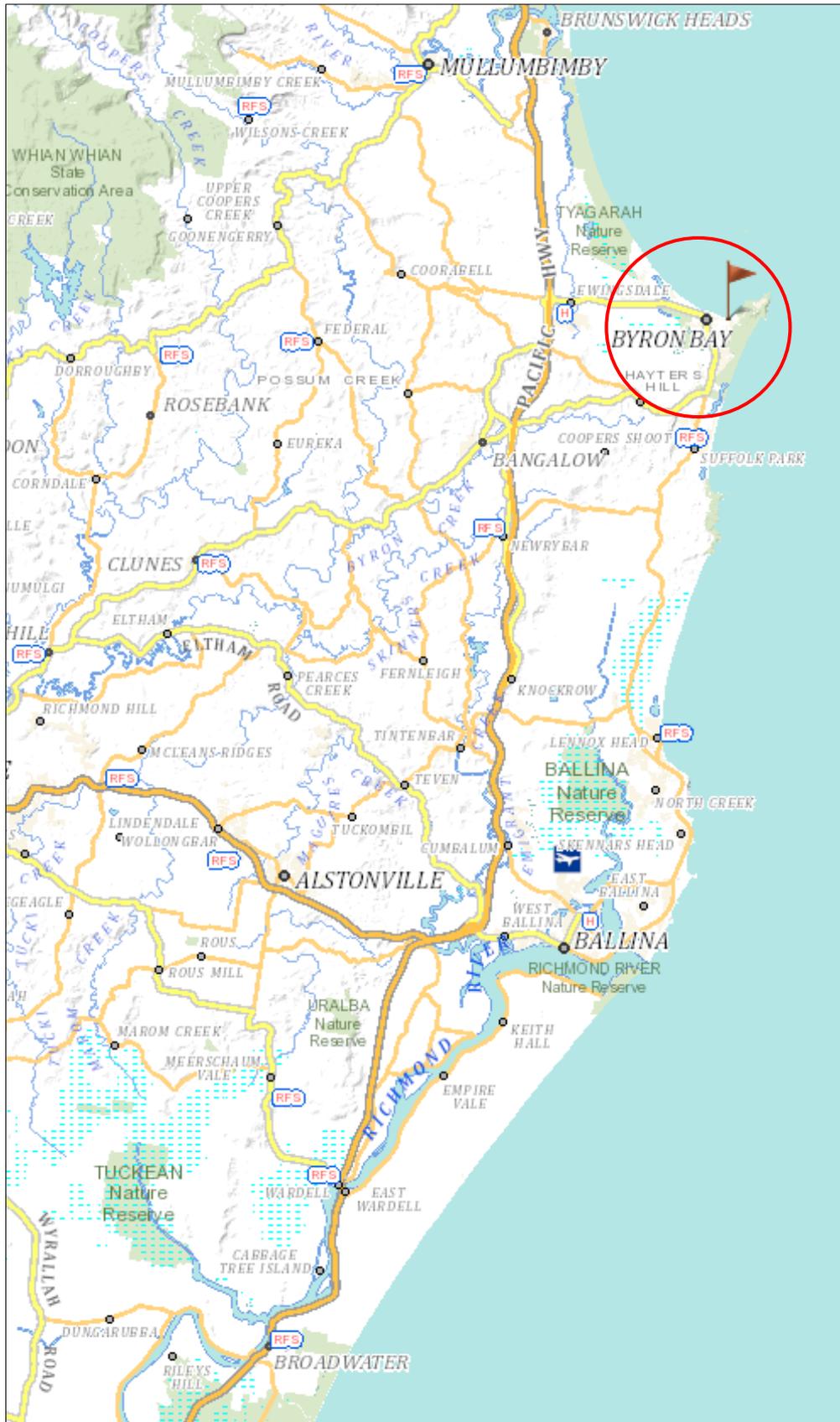


Figure 1: Locality Map (Source: Six Maps)



Figure 2: Site Plan (Source: Six Maps)

### 1.3 Existing planning controls

Pursuant to the Byron LEP 2014 the land:

- is zoned R2 Low Density Residential (Figure 3);
- has a minimum lot size of 600m<sup>2</sup> (Figure 4);
- has a maximum building height of 9m (Figure 5);
- has a floor space ratio of 0.5:1 (Figure 6);
- contains class 3 Acid Sulfate Soils (Figure 7); and
- is located in a Heritage Conservation Area (Figure 8).

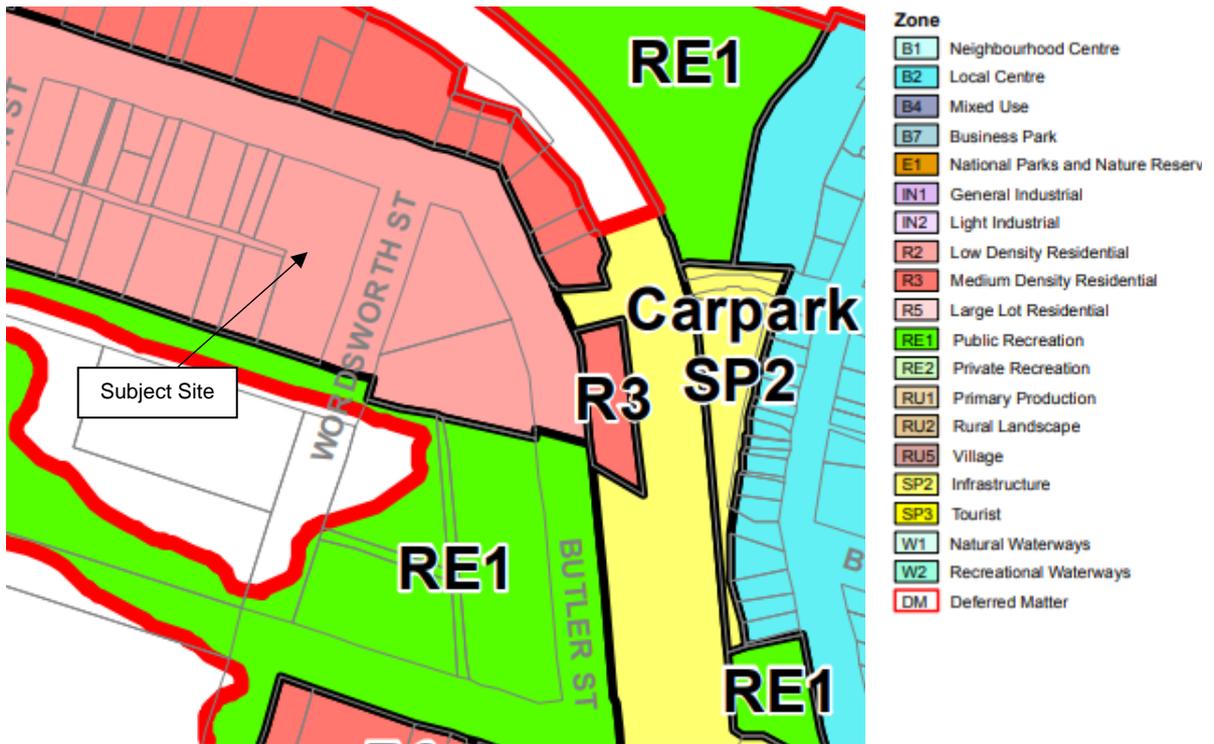


Figure 3: Extract of Land Zoning Map (Source: NSW Legislation)

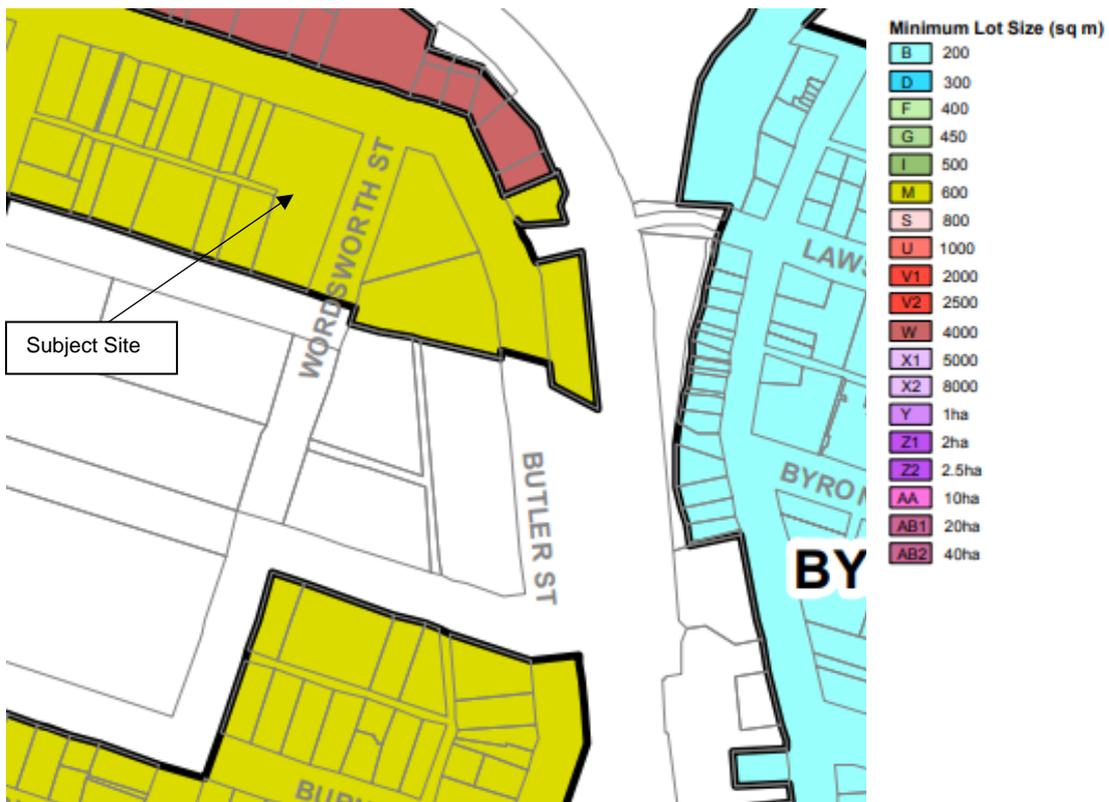


Figure 4: Extract of Lot Size Map (Source: NSW Legislation)

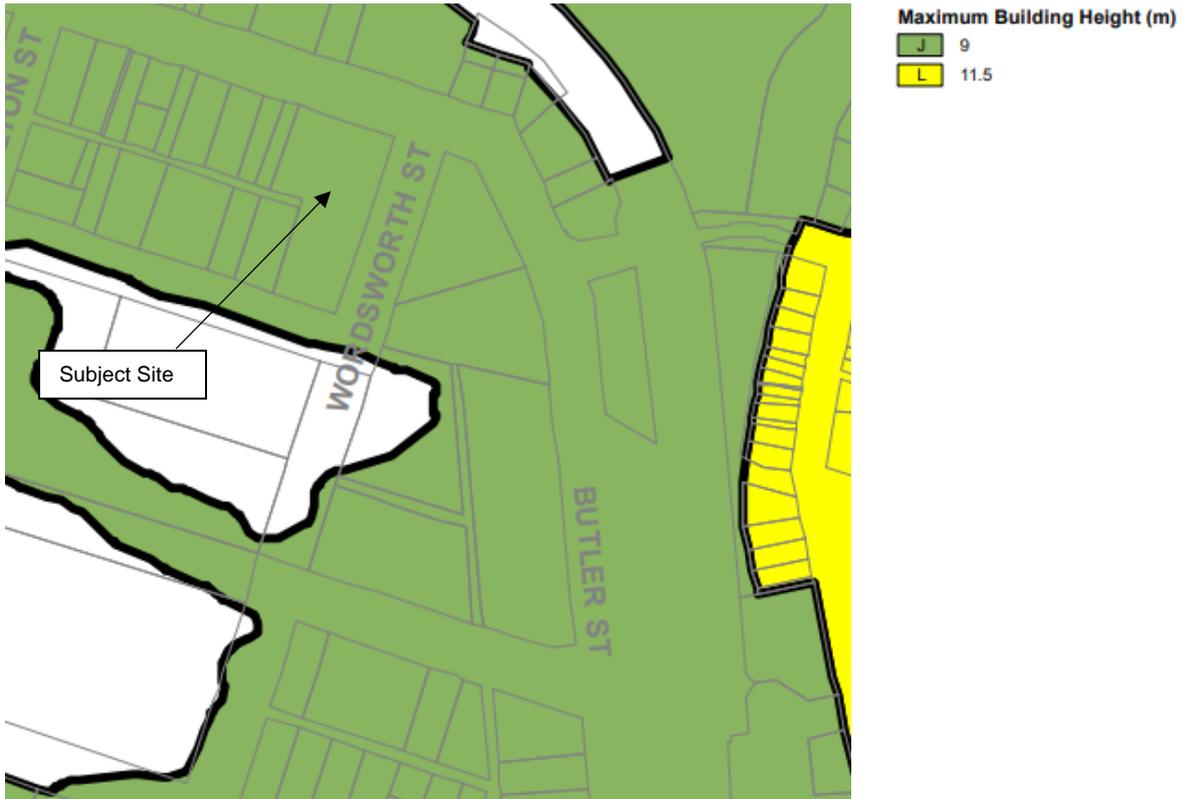


Figure 5: Extract of Height of Building Map (Source: NSW Legislation)

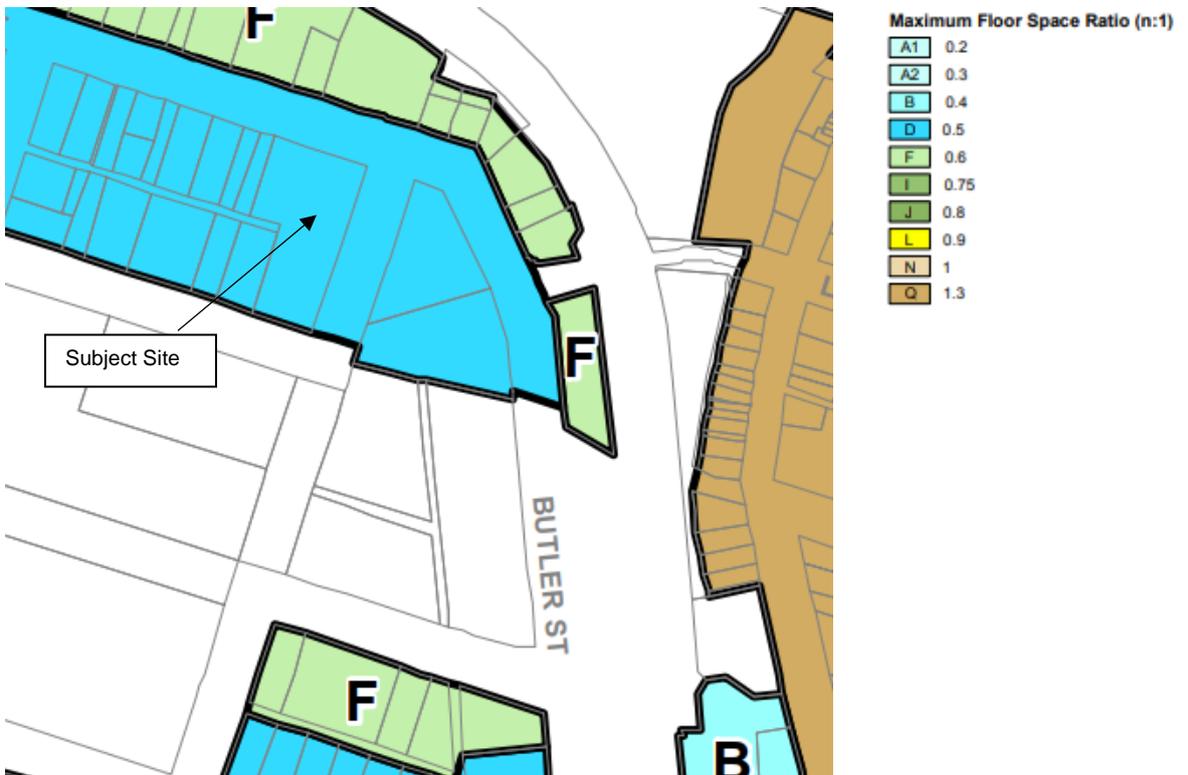


Figure 6: Extract of Floor Space Ratio Map (Source: NSW Legislation)

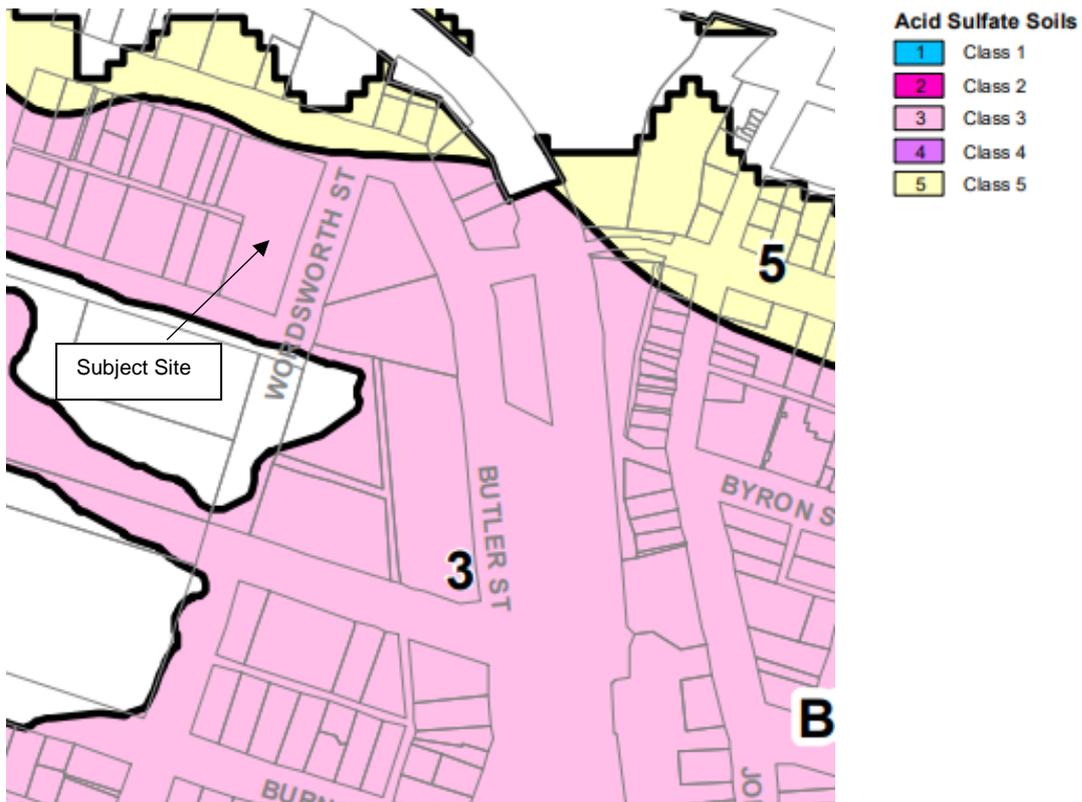


Figure 7: Extract of Acid Sulfate Soils Map (Source: NSW Legislation)

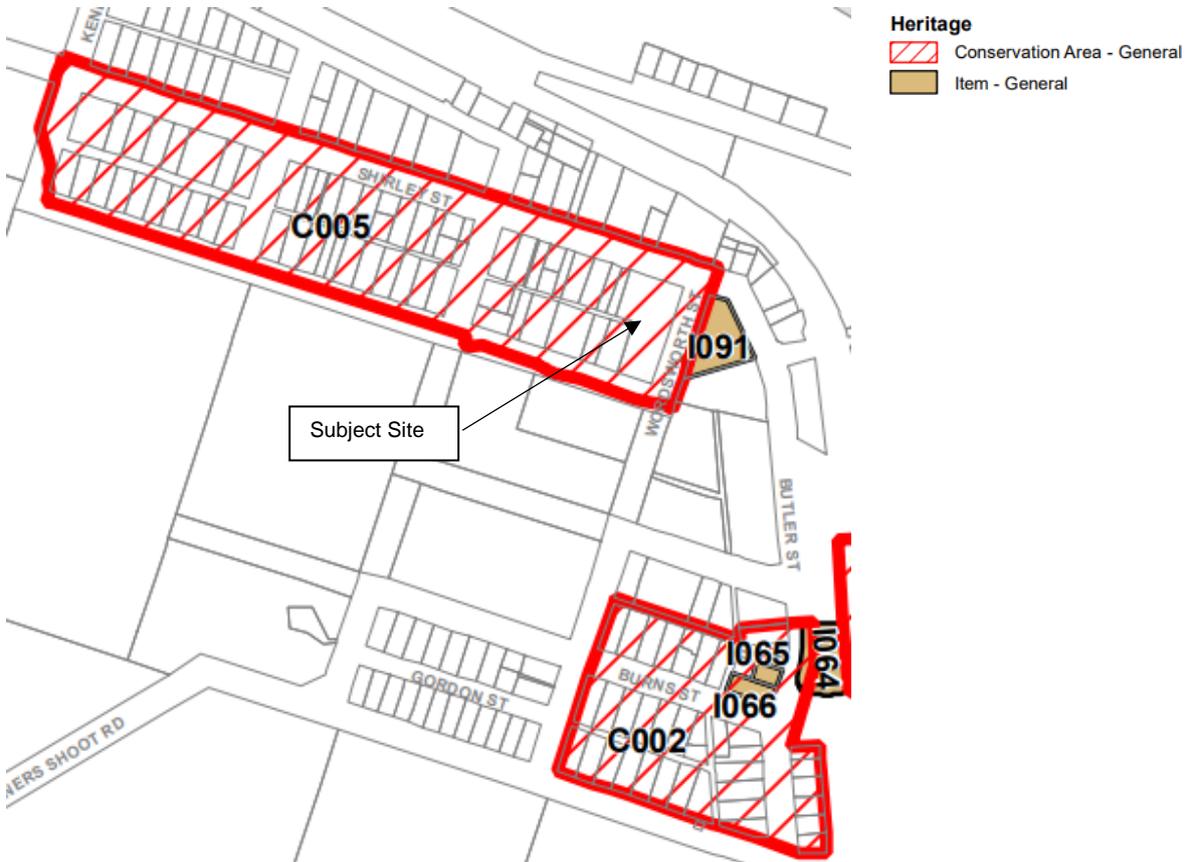


Figure 8: Extract of Heritage Map (Source: NSW Legislation)

## **1.4 Surrounding area**

The site is located to the west of the Byron town centre and south of Main Beach in an area that comprises a variety of land uses. There is an aged care home and Police station to the east, established residential and tourist accommodation to the west and north, and Cumbebin Swamp Nature Reserve to the south.

## **1.5 Summary of recommendation**

It is considered that the planning proposal has merit to proceed to Gateway for the following reasons:

- the planning proposal will provide flexibility to help deliver community-focused land uses;
- the planning proposal will facilitate the re-use of a central site for community purposes in Byron Bay;
- the planning proposal is consistent with the North Coast Regional Plan 2036; and
- the planning proposal responds to the objectives of the Byron Shire Community Strategic Plan 2028.

It is recommended that this planning proposal be supported with conditions.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The objective of the planning proposal is to amend the Byron LEP 2014 to facilitate a range of community-focused land uses, being an office premises, light industry for the purposes of a commercial kitchen and restaurant or café as additional permitted uses with consent in the former Byron Bay hospital on Lot 1 DP 847910, 10-12 Shirley Street, Byron Bay.

The objectives and intended outcomes of the planning proposal are adequately described and do not require amendment prior to community consultation.

### **2.2 Explanation of provisions**

The amendments proposed to the Byron LEP 2014 to achieve the intended outcomes are to:

- amend Schedule 1 Additional Permitted Uses to permit with consent office premises, light industry for the purposes of a commercial kitchen with a maximum floor area of 100m<sup>2</sup> and a restaurant or café on Lot 1 DP 847910, 10-12 Shirley Street, Byron Bay; and
- amend the Additional Permitted Uses map to align with the proposed changes to Schedule 1.

The explanation of provisions is adequately described and do not require amendment prior to community consultation.

### **2.3 Mapping**

The proposal seeks to amend the existing Byron LEP 2014 Additional Permitted Uses map to identify the subject land. The planning proposal includes a proposed Additional Permitted Uses map (Figure 9).

Prior to consultation it is recommended that the proposal be amended to also include the existing Additional Permitted Use LEP map sheet. These maps will also need to

be prepared to the Department's Standard Technical Requirements prior to the plan being finalised.



Figure 9: Proposed Additional Permitted Uses Map (Source: Planning Proposal)

### 3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of any strategic study or report. It is a consequence of Council's recent acquisition of the land and an active community group aiming to facilitate the positive adaptation and re-use of the former hospital site.

In this instance the proposed amendments and the identification of additional permitted uses are considered to be an acceptable means of achieving the intended outcomes as:

- the R2 zone has been applied to other areas under the Byron LEP 2014 and it is not considered appropriate that an office premises, light industry and restaurant or cafes be permitted across the entire zone;
- a range of other commercial/industrial land uses would become permitted if a business zone was applied and this does not align with the community vision for the site; and
- limiting the range of commercial/industrial land uses to those identified will ensure that a community focus for the site is maintained.

## 4. STRATEGIC ASSESSMENT

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### 4.1 State

The planning proposal does not contain any matters of State or regional significance.

### 4.2 Regional / District

The North Coast North Coast Regional Plan 2036 is relevant as follows:

#### *Direction 6: Development centres of successful employment*

This Direction identifies that the health and education sectors deliver important services and sustain employment growth and improve access to services for residents. The planning proposal aligns with Action 6.1 which aims to facilitate economic activity around anchors such as education facilities by considering new infrastructure needs and introducing planning controls that encourage clusters of related activity. In this instance, an educational establishment will be the anchor for the site, and the land uses to which this planning proposal relates will help create a community focused cluster.

#### *Direction 15: Develop healthy, safe, socially engaged and well-connected communities*

This Direction identifies that services and facilities should be provided within walking distance of each other or be easily accessible by public transport. The land is well located for this purpose being within close proximity to the Byron Bay town centre. The planning proposal is also consistent with Action 15.4 which seeks to create socially inclusive communities by establishing social infrastructure, because the planning proposal will facilitate a community focused development which will provide social services.

#### *Local Government Narratives – Byron*

The planning proposal is consistent with the Byron Local Government Narrative which supports a strong and diversified economy based on the unique character of Byron Bay and aims to manage and support growth in Byron Bay. The planning proposal will deliver a range of different land uses and will help to facilitate reuse of the site.

### 4.3 Local

The planning proposal is consistent with the following objectives of the Community Strategic Plan 2028:

- “Community Objective 1: We have infrastructure, transport and services which meet our expectations” because the planning proposal helps to facilitate reuse of the site and encourage a range of community services to be established.
- “Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community” because the vision for the site has been driven by the community and contributes to the unique character of Byron Bay.
- “Community Objective 5: We have community led decision making which is open and inclusive” because the planning proposal is a consequence of an active community group aiming to deliver a community focused development.

#### **4.4 Section 9.1 Ministerial Directions**

The planning proposal is consistent with the relevant Ministerial Directions, except for those discussed below:

##### *Direction 2.2: Coastal Management*

The planning proposal is inconsistent with this Direction as it includes land mapped in State Environmental Planning Policy (Coastal Management) 2018 and does not include provisions which give effect to the objectives of the Coastal Management Act 2016, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan. The inconsistency is considered to be of minor significance as the planning proposal relates only to additional permitted uses within existing buildings and the SEPP contains appropriate provisions that allow this issue to be adequately addressed at the development application stage if necessary.

##### *Direction 2.3: Heritage Conservation*

The planning proposal is inconsistent with this Direction as it is located in a heritage conservation area and is in proximity to recorded Aboriginal sites and identified local heritage items and does not contain specific provisions to facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance. The inconsistency is considered to be of minor significance as it is proposed only to reuse the existing buildings and the Byron LEP 2014 contains appropriate heritage provisions that allow this issue to be adequately addressed at the development application stage if necessary. Further, it is recommended that the Gateway determination require consultation with the Tweed Byron Local Aboriginal Lands Council and the Department of Premier and Cabinet – Heritage Division to confirm the suitability of the proposal.

##### *Direction 3.1 Residential Zones*

The planning proposal is inconsistent with this Direction as it will affect land within an existing residential zone and does not encourage housing that will broaden the choice of building types available in the housing market or to be of good design. The inconsistency is considered to be of minor significance given the proposal relates only to additional permitted uses within existing buildings that historically have been used for hospital purposes and does not preclude residential development.

##### *Direction 4.1 Acid Sulfate Soils*

The planning proposal is inconsistent with this Direction as it involves an intensification of land use on class 3 acid sulfate soils and is not supported by an acid sulfate soils study. This inconsistency is considered to be of minor significance as it is proposed only to re-use existing buildings and the Byron LEP 2014 contains appropriate provisions that allow this issue to be adequately addressed at the development application stage if necessary.

##### *Direction 4.3 Flood Prone Land*

The planning proposal is inconsistent with this Direction as it does not include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). The inconsistency is considered to be of minor significance given the proposal relates only to additional permitted uses within existing buildings and the Byron LEP 2014 contains provisions that allow this issue to be adequately addressed at the development application stage if necessary.

#### *Direction 4.4 Planning for Bushfire Protection*

The planning proposal is potentially inconsistent with this Direction as it applies to land that is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS is required after a Gateway Determination is issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

#### *Direction 6.3 Site Specific Provisions*

The planning proposal is inconsistent with this Direction as it proposes a 100m<sup>2</sup> limit on the size of the commercial kitchen. This inconsistency is considered to be of minor significance as the proposal seeks to facilitate the re-use of the former hospital kitchen while ensuring any activities remain of an appropriate size, scale and nature to the area.

### **4.5 State environmental planning policies (SEPPs)**

The planning proposal is considered to be consistent with all relevant SEPPs.

While clause 6 of SEPP 55 is not strictly applicable, as no change in zoning is involved, Council has confirmed that some contamination is present on site and that a remediation action plan has been developed and that the site will be suitable for its intended purpose prior to commencement.

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social**

The planning proposal will deliver a community hub for local people within close proximity to the Byron Bay town centre. Council has identified that it will provide valuable community services comprising an education facility, offices that provide a home for not-for-profits and a restaurant or café. As such, it is considered that the planning proposal will help to facilitate positive social benefits through the delivery of services and the re-use of the former hospital site.

Council has also advised that:

- the site is located within an existing heritage conservation area;
- identified local heritage items are in proximity to the site;
- an Aboriginal Heritage Information Management System (AHIMS) search conducted in September 2019 with a 200-metre buffer around the site identified two registered Aboriginal sites.

Liaison with the local Aboriginal community and the Department of Premier and Cabinet (Heritage Division) is recommended to ensure suitability of the planning proposal.

### **5.2 Environmental**

The planning proposal is identified as partly containing potential high environmental value under the North Coast Regional Plan 2036 and is within the sensitive coastal strip. No detrimental impacts to the environment are however anticipated from the adaptation and re-use of the existing buildings.

It is noted that the most southern portion of the land adjoining Byron Street is affected by the 1 in 100-year flood event. The Belongil Creek Flood Study (12 November 2009) indicates that the land is affected by a combination of flood storage and floodway. Again, as the planning proposal relates only to existing buildings, it is

not considered there will be no detrimental impacts to the environment as a consequence of flooding.

### **5.3 Economic**

The education sector delivers both important services and sustains employment growth. To allow complementary land uses including office premises, light industry and restaurant or cafe will have positive economic impacts for the local economy.

### **5.4 Infrastructure**

There will be no impact on State or regional infrastructure or the requirement for additional funding. With respect to local infrastructure, the site is located in an existing urban area and Council has advised that it is serviced by all required infrastructure.

## **6. CONSULTATION**

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### **6.1 Community**

Council has indicated that community consultation will be undertaken in accordance with the Gateway determination. However, in addition it is proposed to:

- enter into dialogue and send letters to neighbouring landowners to ensure Council continues to understand and respond to any issues of concern;
- attend meetings of the Byron Bay Town Centre Masterplan Guidance Group to keep members informed throughout the process and ensure that Council staff and Councillors remain aware of local issues and concerns;
- consult with the local Aboriginal Community; and
- carry out wider consultation with the Byron community.

A timeframe for public exhibition has not been nominated by Council. In accordance with LEPs, A guide to preparing local environmental plans (Department of Planning and Environment, 2018), a 28-day public exhibition period is considered to be an appropriate timeframe for the planning proposal.

### **6.2 Agencies**

Council has nominated that consultation will be undertaken with the NSW Rural Fire Service because the land is bushfire prone, and this is a requirement of the section 9.1 Direction 4.4 Planning for Bushfire Protection.

They have also nominated that consultation will be undertaken with the relevant government agencies with respect to ecology, aboriginal heritage, flooding and acid sulfate soils plus Roads & Maritime Services with respect to Ewingsdale Road traffic and intersection impacts.

As the planning proposal only aims to facilitate the use of existing buildings and as these matters can be addressed at the development application stage if relevant, it is not considered necessary that agency consultation be undertaken with respect to ecology, flooding or acid sulfate soils.

However, it is recommended as a condition of the Gateway determination that consultation be undertaken with the Tweed Byron Aboriginal Land Council and Heritage Division due to the close proximity of the site to recorded Aboriginal items, Roads & Maritime Services regarding the traffic impacts on the road network and NSW Rural Fire Service in accordance with the 9.1 Direction.

## **7. TIME FRAME**

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Council has nominated a timeframe of 7 months to complete the planning proposal. It is recommended that a 12 month timeframe be provided to Council to ensure an adequate period to finalise the planning proposal.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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The planning proposal is consistent or justifiably inconsistent with the State, regional and local planning framework and deals only with matters of local significance. Council has requested to be the plan making authority and it is considered appropriate that Council be provided with this authorisation.

## **9. CONCLUSION**

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It is considered that the planning proposal has merit to proceed to Gateway for the following reasons:

- the planning proposal will provide flexibility to help deliver community-focused land uses;
- the planning proposal will facilitate the re-use of a central site for community purposes in Byron Bay;
- the planning proposal is consistent with the North Coast Regional Plan 2036; and
- the planning proposal responds to the objectives of the Byron Shire Community Strategic Plan 2028.

It is recommended that this planning proposal be supported with conditions.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.2 Coastal Management, 2.3 Heritage Conservation, 3.1 Residential Zones, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 6.3 Site Specific Provisions are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection are unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
  - Department of Premier and Cabinet (Heritage Division)
  - NSW Rural Fire Service
  - NSW Transport (Roads and Maritime Services)
  - Tweed Byron Aboriginal Land Council

3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. Prior to community consultation the proposal is to be amended to include an existing Additional Permitted Uses Map.



16/12/19

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7/01/2020

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