



30 November 2015

Department of Planning & Environment
Locked Bag 9022
GRAFTON NSW 2460
Attention: Mr Paul Garnett
By email

Dear Paul,

Planning Proposal 26.2015.6.1 to amend Byron LEP 1988 – West Byron

Council at its Ordinary Meeting of 29 October 2015 received a report and resolved as follows:

15-567 Resolved:

1. That Council proceed with the planning proposal in Attachment 1 and forward to the Department of Planning and Environment with the exception of the infrastructure clause in relation to development in the E zones, which will be amended to only permit infrastructure to cross E Zones but not to run parallel/along them.
2. That Council request the Department of Planning and Environment to delegate to Council the preparation and making of the LEP Amendment.

In accordance with Section 56 of the *Environmental Planning and Assessment Act 1979*, Council submits the enclosed planning proposal for a Gateway determination. Given that the proposal is considered to be of local planning significance only, Council will be requesting delegation for the relevant plan making functions in this instance.

As outlined in the Department of Planning and Infrastructure's, *A guide to preparing local environmental plans*, it is considered appropriate that the proposal be publicly exhibited for 28 days.

Should you have any enquiries please contact Chris Larkin by phone (02) 6626 7136 or email chris.larkin@byron.nsw.gov.au.

Yours sincerely

Alex Caras

Team Leader – Strategic Land Planning

Enc. Council Review Report Doc # I2015/1282
Planning Proposal Doc # E2015/73647
Letter from Landowners in Support Doc # E2015/47362
Email from Department of Planning Doc # E2015/55003
Delegation of Authority Form Doc #E2015/74921



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PO Box 219 Mullumbimby NSW 2482 (70-90 Station Street)
DX20007 Mullumbimby E: council@byron.nsw.gov.au
P: 02 6626 7000 F: 02 6684 3018
www.byron.nsw.gov.au ABN: 14 472 131 473
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**Planning Proposal
for Amendment of Byron Local Environmental Plan 1988
- West Byron Bay**

(Byron Shire Council E2015/73647)

Authority ref: 26.2015.6.1.

Date: November 2015

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Part 1 Introduction

Purpose

The purpose of this planning proposal is to correct anomalies in the Planning Instrument in relation to the permissibility of infrastructure in the various zones, the lot size requirement for medium density housing forms in the R2 Zone, and the minimum lot sizes in the E2 and E3 zones.

Property details and existing zones

The West Byron Urban Release Area (WBURA) comprises thirteen separate lots in six different ownerships. The following table (**Table 1**) identifies each lot together with lot areas and ownership details.

TABLE 1 – PROPERTY SUMMARY TABLE				
LOT	DEPOSITED PLAN	FOLIO IDENTIFIER	LANDOWNER	AREA(Ha)
5	622736	5/622736	NSPT Pty Limited	4.939
6	622736	5/622736	NSPT Pty Limited	5.49
1	542178	1/542178	NSPT Pty Limited	21.56
227	755695	227/755695	NSPT Pty Limited	20.03
229	755695	229/755695	NSPT Pty Limited	24.99
9	111821	1/111821	NSPT Pty Limited	1.2775
1	1166535	1/1166535	NSPT Pty Limited	1582m ²
1	201626	1/201626	Telicove Pty Limited	1.143
2	542178	2/542178	Telicove Pty Limited	21.71
1	780242	1/780242	Gousse Holdings Pty Ltd	21.01
2	818403	2/818403	Anthony Roy Smith Julie Deborah Smith Fletcher Project Developments Pty Ltd	11.46
1	520063	1/520063	David John O'Connor Carol Fay O'Connor	1.619
7020	1113431	7020/1113431	Crown Land (Drainage Reserve) 30.175m wide	2.86
TOTAL AREA				138.25

Current zones are shown in **Figure 1** below.

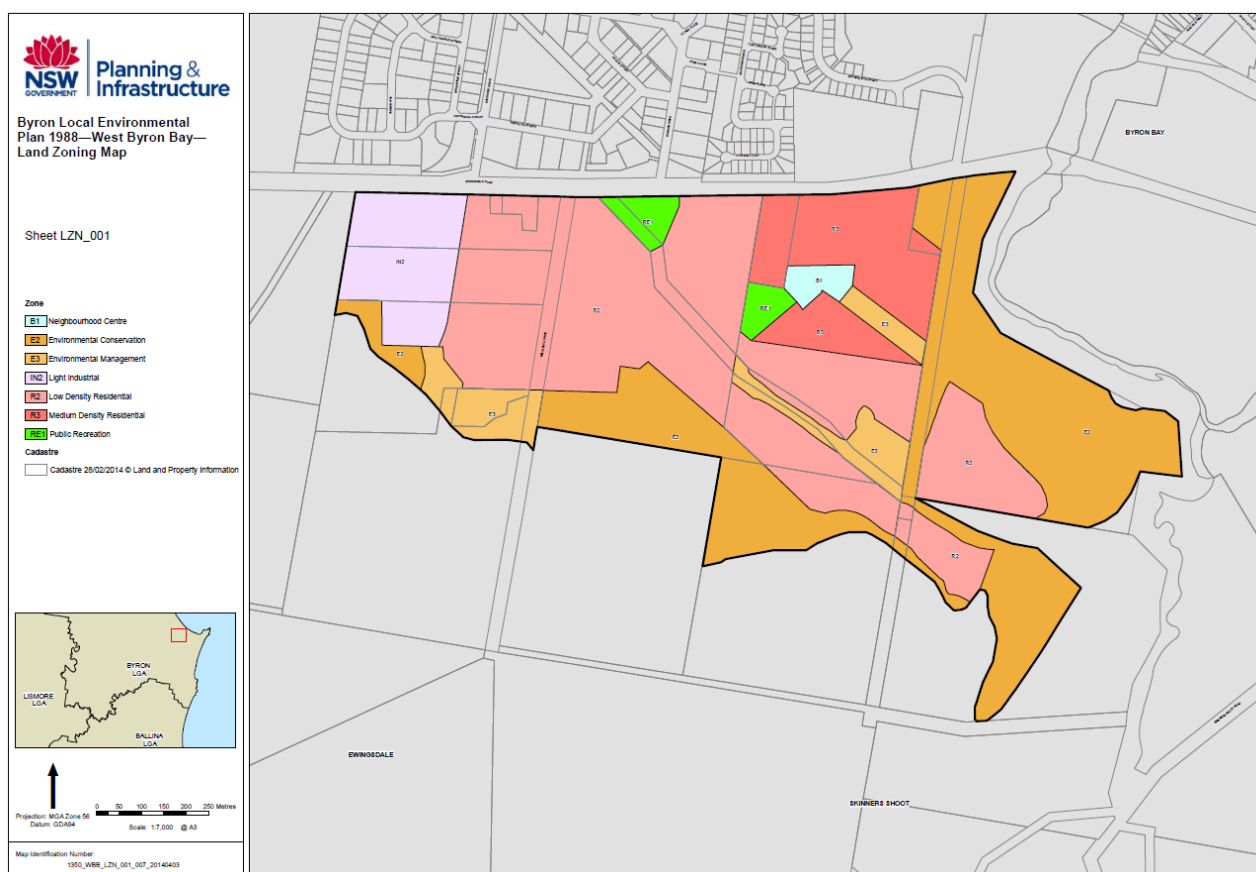


Figure 1 – Zoning Map
Source: Byron Local Environmental Plan 1988

Background

State Significant Site Study and Byron Local Environmental Plan 1988 Amendment

In October 2009, the Minister for Planning gazetted the West Byron Bay site as a potential State Significant Site.

The site is identified as a “New Release Area” in the Far North Coast Regional Strategy, 2000 – 2031.

Subsequently, a State Significant Site Study was prepared on behalf of the West Byron Bay Landowners Association and submitted to the Department in June 2011. The Study informed rezoning of the site for urban purposes.

The Study was publicly exhibited between 12 October 2011 and 14 December 2011. Following consideration of submissions received, including the proponent's response to submissions, the Department prepared draft documents to rezone the site by way of a Draft State Environmental Planning Policy. The Department's proposal was exhibited for 64 days between 28 November 2013 and 31 January 2014.

Subsequently, the site was rezoned for urban purposes by way of a State Environmental Planning Policy Amendment to Byron Local Environmental Plan 1988 (BLEP1988), which took effect from 14 November 2014.

Draft West Byron Urban Release Area – Development Control Plan 2013

The Department of Planning and Environment prepared the Draft WBURA Development Control Plan 2013 to support the rezoning and guide future development. The Draft Development Control Plan (DCP) was publicly exhibited with the Draft State Environmental Planning Policy (SEPP). However, on 28 February 2015 the Department referred the exhibited Draft DCP to Byron Shire Council (BSC) for finalisation and adoption.

Subsequently, BSC prepared a draft amendment to Byron DCP2014 incorporating specific provisions relating to the West Byron Bay site and addressing the relevant matters in Clause 101 of BLEP1988 (as amended). At the date of preparing this submission the Draft Amendment has not been publicly exhibited.

Voluntary Planning Agreement

The Draft Voluntary Planning Agreement (VPA) between the Minister for Planning and West Byron Landowners was publicly notified between 28 November 2013 and 31 January 2014 and was executed by all parties on 21 October 2014.

In summary, the VPA requires each landowner to pay contributions towards urban roads, conservation of the conservation land and preparation and implementation of a Vegetation Management Plan for the conservation land.

Planning Context

The planning proposal was initially prepared by Darryl Anderson Consulting on behalf of the various land owners within West Byron. The proposal seeks to amend clauses 82 and 83 in relation to residential development in the R2 Low Density Zone, amend Clause 85 in relation to the minimum lot size provisions for land with split zones, and insert a new clause in relation to permitting infrastructure in the Environmental Zones. The planning proposal was reported to Council on 29 October 2015 where the following was resolved:

15 – 567 Resolved

1. *That Council proceed with the planning proposal in Attachment 1 and forward to the Department of Planning and Environment with the exception of the infrastructure clause in relation to development in the E zones, which will be amended to only permit infrastructure to cross E Zones but not to run parallel/along them.*
2. *That Council request the Department of Planning and Environment to delegate to Council the preparation and making of the LEP Amendment.*

In accordance with the resolution the planning proposal has been amended to reflect the changes to the clause relating to infrastructure in the E Zones.

Part 2 Explanation of provisions

In reviewing the planning controls under Part 4 of Byron LEP 1988 for the WBURA, it has become apparent that there are several anomalies in the Planning Instrument in relation to the permissibility of certain land uses in the various zones and the ability to comply with minimum lot sizes in the E2 and E3 zones. In summary the Planning Proposal will seek to amend the West Provisions under Part 4 of Byron LEP 1988 by:

1. Providing an enabling clause to remove issues of permissibility for stormwater drainage, water and sewer reticulation and earthworks across the West Byron Site
2. Increase the lots sizes for medium density housing forms in the R2 Low Density Residential Zone; and
3. Provide an enabling clause to facilitate the subdivision of land which is partly zoned environmental protection (E2 and or E3) from the remainder of the property.

Development and infrastructure within West Byron

To enable the subject land to be subdivided and developed, including filling and construction of normal urban infrastructure (roads, drainage, water supply and sewerage, etc.) in accordance with the intent of BLEP1988, it is therefore proposed that an enabling clause be included in the Instrument to make earthworks, stormwater management systems, water supply systems and sewer reticulation systems explicitly permissible, with consent, in all zones. **Note:** stormwater management systems are not defined in the Standard Instrument but are defined in State Environmental Planning Policy (Infrastructure) 2007. Therefore it is proposed that the SEPP definition be incorporated into the Instrument.

As indicated in **Table 2**, currently earthworks, drainage and sewer reticulation systems are prohibited in the E2, E3 and RE1 zones and water supply systems are prohibited in all zones. It will be necessary to carry out earthworks, drainage, water supply and sewerage works within the E2 and E3 zones including the existing drainage channel in particular.

TABLE 2 – PERMISSIBILITY OF PROPOSED DEVELOPMENT					
ZONE	PROPOSED DEVELOPMENT				
	ROADS	EARTHWORKS (FILLING)	DRAINAGE ⁽¹⁾	WATER SUPPLY SYSTEMS ⁽²⁾	SEWER RETICULATION SYSTEMS ⁽³⁾
B1	PWC*	PWC	PWC	Prohibited	PWC
E2	PWC	Prohibited	Prohibited	Prohibited	Prohibited
E3	PWC	Prohibited	Prohibited	Prohibited	Prohibited
IN2	PWC	PWC	PWC	Prohibited	PWC
R2	PWC	PWC	PWC	Prohibited	PWC
R3	PWC	PWC	PWC	Prohibited	PWC
RE1	PWC	Prohibited ⁽⁴⁾	Prohibited ⁽⁴⁾	Prohibited ⁽⁴⁾	Prohibited ⁽⁴⁾

* PWC – Permissible with Consent

Notes:

1. State Environmental Planning Policy (Infrastructure) 2007, at Clause 111(1) provides that:

“111 Development permitted without consent

(1) Development for the purpose of stormwater management systems may be carried out by or on behalf of a public authority without consent on any land.”

2. State Environmental Planning Policy (Infrastructure) 2007, at Clause 125(1) provides that:

“125 Development permitted without consent

(1) Development for the purpose of water reticulation systems may be carried out by or on behalf of a public authority without consent on any land."

3. State Environmental Planning Policy (Infrastructure) 2007, at Clause 106(3)(b) provides that:

"106 Development permitted with or without consent

*(3) Development for the purpose of sewage reticulation systems may be carried out:
(b) by any other person with consent on any land."*

4. On the basis that the filling, drainage, water supply and sewer works are appropriately characterised as development for the purpose of a recreation area, they would be permissible, with consent, in the RE1 zone.

The provisions of State Environmental Planning Policy (Infrastructure) 2007 (SEPP1) in relation to permissibility of stormwater management systems and water reticulation systems cannot be relied upon as the infrastructure is not being "carried out by or on behalf of a public authority", but by the developer.

To remove any potential issues of how development for the purposes of earthworks, stormwater management systems and water and sewer reticulation systems are characterised and their permissibility an enabling clause is recommended.

It is therefore proposed that a new Clause 72A and a definition for Stormwater Management Systems for the purposes of the clause be inserted into Byron LEP 1988 as follows:

Clause 72A Development for the purpose of providing infrastructure in West Byron

- (1) The objective of this clause is to ensure that any person can carry out development for the purpose of stormwater management system, earthworks, water reticulation system and sewage reticulation system on any land.*
(2) Despite any other provisions of this Plan, development consent may be granted to development for the purpose of earthworks, stormwater management system, water reticulation system and sewage reticulation system on any land. Infrastructure is only permitted to cross land Zoned E2 Environmental Conservation and E3 Environmental Management, but not to extend along the length of the E2 or E3 Zones.

stormwater management system means:

- (a) works for the collection, detention, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and
(b) stormwater quality control devices (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and
(c) stormwater reuse schemes.

Subdivision and Development of Residential Zoned Land

In relation to subdivision and development of the residential zoned land, Clauses 82 and 83 of BLEP1988 are in the following terms:

"82 Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings

- (1) The objective of this clause is to achieve planned residential density in certain zones.*
(2) Despite clause 81, development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, only if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.

Column 1	Column 2	Column 3
Dual occupancy (attached)	R2 Low Density Residential R3 Medium Density Residential	300 square metres

Dual occupancy (detached)	R2 Low Density Residential R3 Medium Density Residential	400 square metres
Multi dwelling housing	R2 Low Density Residential R3 Medium Density Residential	450 square metres
Residential flat building	R3 Medium Density Residential	1,000 square metres"

“83 Exceptions to minimum subdivision lot sizes for certain residential development

- (1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.
- (2) This clause applies to development on land in the following zones:
 - (a) Zone R2 Low Density Residential,
 - (b) Zone R3 Medium Density Residential.
- (3) Development consent may be granted for a single development application for development to which this clause applies that is both of the following:
 - (a) the subdivision of land into 3 or more lots,
 - (b) the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:
 - (i) for the erection of a dwelling house—200 square metres, or
 - (ii) for the erection of an attached dwelling—150 square metres, or
 - (iii) for the erection of a semi-detached dwelling—150 square metres.”

Following consultations with Council Officers and the landowners, it is considered that due to the existing urban character of Byron Bay and the existing urban areas within the region, it would be more appropriate if the R2 zoned land in West Byron is more consistent with that which already exists and to provide a clear differentiation with the R3 zoned land. West Byron will deliver a diversity of dwellings through the development of the R3 zoned lands and with strategically placed development sites within the R2 zone where dual occupancy, multi dwelling housing and integrated housing are better suited.

The West Byron landowners have provided support to the proposed amendments to the R2 Zone with regard to increasing the minimum lot size to provide dual occupancy, multi dwelling housing and integrated housing under Clauses 82 and 83 of BLEP1988 as follows:

DEVELOPMENT FORM	ZONING	LOT SIZE
Dual Occupancy (attached)	R2	600m ²
Dual Occupancy (detached)	R2	700m ²
Multi Dwelling Housing	R2	1000m ²
Integrated Housing - Subdivision of land into 3 or more lots and a dwelling erected on each lot	R2	250m ² per attached or semi attached dwellings = 750m ² min for 3 dwellings 300m ² per detached dwellings = 900m ² min for 3 dwellings

Having regard to the above, the following amendments are proposed to Clauses 82 and 83:

82 Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings

- (1) The objective of this clause is to achieve planned residential density in certain zones.
- (2) Despite clause 81, development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, only if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.

Column 1	Column 2	Column 3
<i>Dual occupancy (attached)</i>	<i>R2 Low Density Residential</i> <i>R3 Medium Density Residential</i>	<i>600 square metres</i> <i>300 square metres</i>
<i>Dual occupancy (detached)</i>	<i>R2 Low Density Residential</i> <i>R3 Medium Density Residential</i>	<i>700 square metres</i> <i>400 square metres</i>
<i>Multi dwelling housing</i>	<i>R2 Low Density Residential</i> <i>R3 Medium Density Residential</i>	<i>1,000 square metres</i> <i>450 square metres</i>
<i>Residential flat building</i>	<i>R3 Medium Density Residential</i>	<i>1,000 square metres</i>

83 Exceptions to minimum subdivision lot sizes for certain residential development

- (1) *The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.*
- (2) *This clause applies to development on land in the following zones:*
 - (a) *Zone R2 Low Density Residential,*
 - (b) *Zone R3 Medium Density Residential.*
- (3) *Development consent may be granted for a single development application for development to which this clause applies that is both of the following:*
 - (a) *the subdivision of land into 3 or more lots,*
 - (b) *the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:*
 - (i) *for the erection of a dwelling house—300 square metres for R2 and 200 square metres for R3;*
 - (ii) *for the erection of an attached dwelling—250 square metres for R2 and 150 square metres for R3;*
 - (iii) *for the erection of a semi-detached dwelling—250 square metres for R2 and 150 square metres for R3.*

Subdivision in E2 and E3 Zones with Split Zones

In relation to subdivision of the subject land it will also be necessary to create residual lots zoned E2 and E3 with areas of less than 40 hectares, because the parent lots do not contain more than 40 hectares of E2 and E3 land. The **attached** Plan of Proposed Subdivision (**Figure 2**, 9 September 2015 and Table) show the configuration and areas of the proposed lots.

Clause 81 of Byron LEP 1988 requires a minimum lot size of 40 hectares for lots created in the E2 and E3 zones.

As indicated on the **attached** Plan of Proposed Subdivision and Table, the total area of E2/E3 land in each proposed lot is well below the 40 hectare minimum, whilst some existing lots are already substantially less than 40 hectares in area. With the land owned by multiple land owners, it is unlikely that development of these parcels will be co-ordinated in such a way to create a large residual lot of E2 and E3 Zoned Land that can meet the 40ha minimum standard.

The provisions for West Byron also fail to acknowledge that some lots also retain areas of land zoned 7(a) Environment Protection (Wetlands) which are not covered by the West Byron Provisions under Byron LEP 1988 and have been deferred from Byron LEP 2014. These areas of wetland are in all likelihood to be retained within the residual lots containing E2 and E3.

Clause 85 of BLEP1988(WB) which provides for an exception to development standards is in the following terms:

“85 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation or Zone E3 Environmental Management if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

- (c) *clause 87 (Controls relating to miscellaneous permissible uses),*
- (d) *clause 99 or 100."*

In effect, Clause 85(6)(b) requires any residue lots zoned E2 or E3 to have a minimum area of 36ha. If there is less than 36ha in the parent parcel, the effect of Clause 85(6)(b) is that the urban zoned part of the land cannot be subdivided and developed. This is clearly an outcome that cant be achieved and cannot have been the intent of the Clause.

It is noted that BLEP1988(WB) does not contain the full suite of Standard Instrument clauses relating to subdivision, particularly in relation to land within split zones.

In this regard, **Clause 4.6(6)** of BLEP2014 is in the following terms:

"4.6 Exceptions to development standards

- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include all of these zones."*

NB: Clause 85 is essentially the same as Clause 4.6(6).

Clause 4.1D of BLEP2014 is in the following terms:

"4.1D Exceptions to minimum subdivision lot sizes for certain split zones

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,*
 - (b) *to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*
- (2) *This clause applies to each lot (an **original lot**) that contains:*
 - (a) *land in a residential, business or industrial zone, and*
 - (b) *land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone R5 Large Lot Residential or Zone SP3 Tourist.*
- (3) *Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the **resulting lots**) if:*
 - (a) *one of the resulting lots will contain:*
 - (i) *land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the [Lot Size Map](#) in relation to that land, and*
 - (ii) *all of the land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone R5 Large Lot Residential or Zone SP3 Tourist that was in the original lot, and*
 - (b) *all other resulting lots will contain land that has an area that is not less than the minimum size shown on the [Lot Size Map](#) in relation to that land."*

This Clause is the typical Standard Instrument clause relating to subdivision of land in split zones, however it is impracticable and inflexible and **does not** apply to E2/E3 zones.

It is considered that Clauses 85(6), 4.6(6) and 4.1D are inappropriate because they either preclude subdivision and development of urban zoned land or lead to poor planning outcomes. In the circumstances with multiple lots and land owners, it is considered that an enabling clause should be inserted in BLEP1988(WB) to facilitate approval of the creation of residue lots within E2 and E3 zones of less than 40ha where the area of E2/E3 zoned land is already less

than 40ha and provided that land is not further fragmented. It is therefore proposed to amend BLEP1988(WB) by inserting a new Sub Clause 85(6A) in to Clause 85 as follows:

Clause 85(6A)

(6A) Notwithstanding Clause 81 and Clause 85(6), development consent may be granted for a subdivision of land within zones B1, IN2, R2, R3, RE1, E2 and E3 if the area of E2 and E3 zoned land is not fragmented and is contained in one residue lot.

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 results from anomalies in the Planning Instrument identified in the review of the planning controls for the West Byron Site.

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

Rather than insert an enabling clause to permit infrastructure, the Land Use Tables could be amended to permit the currently prohibited infrastructure. However this is not considered to be an efficient and appropriate option. Similarly, the Minimum Lot Size Map could be amended to remove the minimum lot size in the E2 and E3 zones, however again, this is not considered to be an efficient and appropriate option.

3. Is there a net community benefit?

Yes – the Planning Proposal will enable development of the WBURA to be approved and constructed to meet the objectives of the Far North Coast Regional Strategy 2006-2031 (FNCRS).

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)?

Given the facilitative nature of the proposed amendments to the Planning Instrument and as there will be no change to the existing zone boundaries, it is considered that the proposal is consistent with the FNCRS.

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:

CM4.1 Promote community compliance with Acts, Regulations, Instruments and Council policies and standards	Consistent – the Planning Proposal will remove potential compliance issues.
EC2.1 Build a tourism industry that delivers local and regional benefits in harmony with the community's values.	Not applicable.

EC2.2 Develop Byron Shire as a leader in responsible and sustainable tourism and encourage sustainable business practices within the tourism industry.	Not applicable.
EC2.3 Support and promote a collaborative shire-wide approach to managing tourism.	Not applicable.

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

1. Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP 71 – Coastal Protection	Clause 70 of BLEP1988(WB) provides that SEPP71 does not apply to the West Byron Bay site. However, the proposal is not inconsistent with relevant Clause 8 matters.
SEPP 55 – Remediation of land	The Planning Proposal is not inconsistent as it does not extend the urban footprint and SEPP55 contains adequate provisions to address contamination at the Development Application stage.
SEPP (West Byron) 2014 (Repealed)	The proposed amendments give effect to the development envisaged under the SEPP.

2. Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)?

Consistency with the s117 Directions is assessed in the following table:

Consistency with S117(2) Directions

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
1. Employment and Resources			
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).	The Planning Proposal will extend the range of permissible uses in the B1 zone to include water supply systems.	Consistent
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).	Not applicable – no rural zoned land involved.	
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.	Consistent
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	planning proposal that proposes a change in land use which could result in: (a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or (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.	Brunswick River however there is minimal likelihood the planning proposal will have adverse impacts on POAA as the proposed use of the land will be either minor (and therefore exempt development) or subject to an environmental assessment on a case by case basis through the development application process. Also most land in the vicinity of the POAA is already zoned for environmental protection or within the national parks estate. The WBURA is approximately 10km south of the Brunswick River.	
1.5 Rural Lands	Applies when: (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 (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. 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>. 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>.	7 Rural Planning Principles The Rural Planning Principles are as follows: (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas, <u>Comment:</u> The proposal does not affect potential uses of rural land. Note: no land zoned rural is affected. (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State, <u>Comment:</u> As above.	Consistent or inconsistency is minor and justified
		(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,	

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		<u>Comment:</u> As above. (d) in planning for rural lands, to balance the social, economic and environmental interests of the community, <u>Comment:</u> As above. (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land, <u>Comment:</u> Only minor disturbance of E2 and E3 zones is likely to result. (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities, <u>Comment:</u> Not applicable.	

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing, <u>Comment:</u> Not applicable. (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General. <u>Comment:</u> The proposal is consistent with the FNCRS. Note. Under section 117 of the Act, the Minister has directed that councils exercise their functions relating to local environmental plans in accordance with the Rural Planning Principles. Under section 55 of the Act, the Minister may also direct a council to prepare a local environmental plan. 8 Rural Subdivision Principles The Rural Subdivision Principles are as follows: (a) the minimisation of rural land fragmentation, <u>Comment:</u> The proposal will not fragment existing E2 and E3 zoned land. (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,	

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
		<u>Comment:</u> The proposal will not increase conflicts because it does not increase relevant additional uses in the E zones. (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands, <u>Comment:</u> Adjoining land is used predominantly for grazing. (d) the consideration of the natural and physical constraints and opportunities of land, <u>Comment:</u> No changes to the extent of the E2 and E3 zones are proposed. (e) ensuring that planning for dwelling opportunities takes account of those constraints. Not applicable. Note. Under section 117 of the Act, the Minister has directed that councils exercise their functions relating to changes in minimum lot sizes under local environmental plans in accordance with the Rural Planning Principles and the Rural Subdivision Principles. Under section 55 of the Act, the Minister may also direct a council to prepare a local environmental plan.	
2.1 Environment Protection Zones	A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive	It is not possible to avoid drainage work, earthworks, water supply and sewerage works in parts of the land zoned E2 and E3, particularly as the existing	Inconsistency justified.

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	areas. A planning proposal that applies to land within an 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>”.	drainage channel within the Crown drainage reserve is zoned partly E3, and points of discharge for stormwater will be into the E2 and E3 Zones Infrastructure within the proposed road corridors will also need to cross the E2 and E3 zones. Because of the zoning configuration and to comply with geometric road standards and given the existence of the drainage corridor, infrastructure within the E2 and E3 zones is unavoidable.	
2.2 Coastal Protection	Direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone. A planning proposal must include provisions that give effect to and are consistent with: (a) the NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997, (b) the Coastal Design Guidelines 2003, (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).	Certain land affected by this proposal is located within the coastal zone, which affects the eastern half of Byron Shire. It is consistent with the NSW Coastal Policy as there is minimal likelihood of physical impact on the environment and where a development is not minor it will require an assessment through a development application. If any land in Byron Shire affected by coastal erosion is proposed for short term rental accommodation then Council will consider the management of the coastline and response to emergencies as part of any application it receives.	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
2.3 Heritage Conservation	A planning proposal must contain provisions that facilitate the conservation of: (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, (b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey 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.	Byron LEP 2014 currently contains provisions that are consistent with this Direction.	Consistent
2.4 Recreation Vehicle Areas	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>): (a) where the land is within an environment protection zone, (b) where the land comprises a beach or a dune adjacent to or adjoining a beach,	This Planning Proposal does not enable land to be developed for a recreation vehicle area.	Consistent
	(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: (i) the provisions of the guidelines entitled <i>Guidelines</i>		

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<i>for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985, and</i> (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>		
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within: (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary), (b) any other zone in which significant residential development is permitted or proposed to be permitted. A planning proposal must include provisions that encourage the provision of housing that will: (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and	The Planning Proposal will reduce the density of residential development in the R2 zone to achieve a built form, character and amenity which is compatible with the zone objectives, which require housing <i>"within a low density residential environment"</i>. The amendment will also provide differentiation between the R2 and the R3 Zones in terms of maximum residential densities. The minimum lot sizes in Clauses 82 and 83 of the Instrument are inconsistent with the zone objectives and unlikely delivery good urban design outcomes.	Inconsistency justified
	(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or		

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.		
3.2 Caravan Parks and Manufactured Home Estates	Applies when a relevant planning authority prepares a planning proposal. In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must: (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and (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.	The Planning Proposal does not alter existing provisions relating to caravan parks.	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must: (a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located, (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 (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.		
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.	The Planning Proposal does not alter existing provisions relating to home occupations.	Consistent
3.4 Integrating Land Use and Transport	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: (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).	The Planning Proposal will not alter existing zones.	Consistent
3.5 Development Near Licensed	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	The site is not in the vicinity of an aerodrome.	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
Aerodrome	aerodrome. The main requirements of the Direction are that Council considers 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.		
4.1 Acid Sulfate Soils	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. 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.	Clause 97 of BLEP1988 (WB) contains the standard acid sulphate soils provisions.	Consistent
4.2 Mine Subsidence and Unstable Land	Applies when a relevant planning authority prepares a planning proposal that permits development on land that: (a) is within a mine subsidence district, or (b) has been identified as unstable in a study, strategy or other assessment undertaken: (i) by or on behalf of the relevant planning authority, or (ii) by or on behalf of a public authority and provided to the relevant planning authority.	The site is not within a mine subsidence district.	Consistent
4.3 Flood Prone	Applies when a relevant planning authority prepares a	The Planning Proposal does not create, remove or	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
Land	planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. 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>). 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. A planning proposal must not contain provisions that apply to the flood planning areas which: (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (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. 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	alter a zone or a provision that affects flood prone land.	

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General). 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).		

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
4.4 Planning for Bushfire Protection	Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. 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. A planning proposal must: (a) have regard to <i>Planning for Bushfire Protection 2006</i>, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: (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 (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,	Part of the site is mapped as bushfire prone, however this Planning Proposal does not increase the area of residential land and does not increase densities. Compliance with Planning for Bushfire Protection 2006 will be addressed at the Development Application stage.	Consistent
	(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate		

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
	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, (c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks, (d) contain provisions for adequate water supply for fire fighting purposes, (e) minimise the perimeter of the area of land interfacing the hazard which may be developed, (f) introduce controls on the placement of combustible materials in the Inner Protection Area.		
5. Regional Planning			
5.1 Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	Far North Coast Regional Strategy 2006 - 2031	Consistent.
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological 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.		N/A
5.4 Commercial and Retail	A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that:		N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
Development along the Pacific Highway, North Coast	(a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway, (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway. (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. A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that: (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,		
	(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway. (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.		
6. Local Plan Making			
6.1 Approval and Referral	A planning proposal must: (a) minimise the inclusion of provisions that require the	The Planning Proposal does not include provisions relating to concurrence, consultation or referral of	Consistent

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
Requirements	concurrence, consultation or referral of development applications to a Minister or public authority, and (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: (i) the appropriate Minister or public authority, and (ii) 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, and (c) not identify development as designated development unless the relevant planning authority: (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 (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.	Development Applications.	
6.2 Reserving Land for Public Purposes	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).	The Planning Proposal does not reserve land for public purposes.	N/A

S117 Direction	Application	Relevance to this planning proposal	Consistency with direction
6.3 Site Specific Provisions	Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either: (a) allow that land use to be carried out in the zone the land is situated on, or	The Planning Proposal allows additional land uses in existing zones.	N/A Consistent
	(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 (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. A planning proposal must not contain or refer to drawings that show details of the development proposal.		

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?**

The site does not contain critical habitat or threatened populations but does contain EECs, threatened species and threatened communities. However, the required infrastructure works are generally clear of these areas and are relatively minor in nature. The E2 and E3 areas are currently predominantly cleared and it is appropriate to undertake any infrastructure work prior to rehabilitation. Potential impacts and mitigation measures will be addressed at the Development Application stage.

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

Potential impacts are limited to relatively minor disturbance of land zoned E2 and E3. Impacts will be assessed and mitigated at the Development Application stage.

- 3. How has the planning proposal adequately addressed any social and economic effects?**

In the event that the proposed changes to the Planning Instrument are not made, the WBURA cannot be developed in an efficient and sustainable manner.

Section D State and Commonwealth interests

- 1. Is there adequate public infrastructure for the planning proposal?**

In rezoning the land in November 2014, the Department of Planning and Environment was satisfied that adequate public infrastructure is available. This Planning Proposal does not increase the demands on public infrastructure.

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

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
In view of the nature of the proposed amendments, it is considered that no public authorities need to be consulted.	

Part 4 Mapping

No amendments to existing maps are proposed or required. The proposed amendments are limited to the Written Instrument only.

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
January 2016	Gateway determination issued by Department of Planning and Environment.
February 2016	Public exhibition of planning proposal. Government agency consultation.
March 2016	Analysis of public submissions. Preparation of Council report.
April 2016	Public submissions report to Council.
May 2016	Endorsed planning proposal submitted to Department of Planning and Environment for finalisation or dealt with by Council under delegation.

Summary and conclusions

In summary, the proposed amendments to BLEP1988 (WB) are intended to correct existing anomalies and to facilitate approval of a Development Application for the efficient and sustainable development of the site in accordance with its current zoning and to achieve the objectives of the FNCRS. The Strategy includes the objective of providing additional housing choice within the Byron Bay area for future residents and the proposed amendments will assist in achieving this objective.

Appendix 1

Proposed Plan of Subdivision and Table of Lots Sizes and Zoned area

Proposed Lot	Zone/ Area	Area
1	R2	3.04ha
	R3	1.47ha
	B1	2459m ²
	IN2	1058m ²
	E2	87m ²
	E3	116m ²
2	RE1	8647m ²
3	RE1	9298m ²
4	R2	1.665ha
	IN2	2.959ha
5	R2	1.992ha
	IN2	2.981ha
6	R2	3.456ha
	IN2	1.38ha
	E2	1.241ha
	E3	6911m ²
	7A	4.462ha
7	R2	14.28ha
	E2	5.18ha
8	R2	7.278ha
	R3	7.6ha
	B1	8336m ²
	E3	2.5ha
9	R2	1.93ha
	E2	4.857ha
	1AH	1.212ha
	7A	12ha
10	R2	537m ²
	E3	139m ²
11	R2	1.245ha
	RE1	5018m ²
	E3	1.083ha
12	R2	5.06ha
	E2	15.39ha
	7A	1802m ²
	7B	3795m ²
13	R2	2.24ha
	E2	5.96ha
	7A	15.2ha
	7B	3.02ha



Amendments:

Notes:

- (A) EASEMENT TO DRAIN WATER S.WIDE (DP 622736)
- (B) EASEMENT FOR PIPELINE S.WIDE (Y399340) (DP 637701)

Disclaimer:

- Aerial imagery source - SIX Portal 21, DP 2015.
- The location of aerial imagery is approximate only.
- Services have not been investigated.
- Title areas and distances have been shown.

Locality: **BYRON BAY**
LGA: **BYRON**
Parish: **BYRON**
County: **ROUS**

Ref: **15024-1C**
Date: **08.09.2015**
RR: **1:5000 @ A2**
FB: **N/A**
Coord: **ASSUMED**

Datum: **N/A**
Origin: **N/A**
RL: **N/A**
Contour: **N/A**
LB: **N/A**

Surveyor: **PF**
Drawn: **SB**
Checked: **PF**
Data Files: **D01,M01**
Sheet: **1 of 2**

PLAN SHOWING PROPOSED SUBDIVISION OF:
LOT 9 DP 11821, LOTS 5 & 6 DP 622736, LOT 2 DP 818403,
LOTS 1 & 2 DP 542178, LOTS 227 & 229 DP 755695, LOT 1
DP 780242, LOT 7020 DP 1113431 & LOT 1 DP 1166535
Ewingsdale Road - FIGURE 1 - EXISTING LAYOUT
Client: **SITE R & D Pty Ltd**

10 Martin St | Ballina NSW 2478 | T 02 6686 8939 | F 02 6686 8139 | E office@chrisabbotsurveying.com | www.chrisabbotsurveying.com.au
Chris Abbott Surveying Pty Ltd | ABN 66 155 795 994 | Liability limited by a scheme approved under Professional Standards Legislation





(YY) LOT 10 CURRENTLY FORMS PART OF CROWNLAND IDENTIFIED IN LOT 7020 IN DP 1113431. A PLAN FOR FIRST TITLE ISSUE WOULD NEED TO BE CREATED AND THE TITLE ISSUED.

10 Martin St | Ballina NSW 2478 | T 02 6686 8939 | F 02 6686 8139 | E office@chrisabbottsurveying.com | www.chrisabbottsurveying.com.au
Chris Abbott Surveying Pty Ltd | ABN 68 155 795 994 | Liability limited by a scheme approved under Professional Standards Legislation

BYRON BAY WEST LANDOWNERS ASSOCIATION

C/O SITE R & D PTY LTD
PO BOX 134
KOTARA NSW 2289

Thursday 23rd of July 2015.

Mr Ken Gainger
The General Manager
Byron Shire Council
P O Box 219
MULLUMBIMBY NSW 2482

Attention: Mr Chris Larkin

Dear Sir,

Re: Minimum lots size for Multiple Dwellings in the R2 Zone.

Further to our discussions with Council staff regarding the minimum lot sizes for dual occupancy, multi-dwelling housing and integrated housing in the R2 zone the issue has been discussed with the Landowners.

The West Byron landowners believe that due to the existing urban character of Byron Bay and the existing urban areas within the region, it would be more appropriate if the R2 zoned land in West Byron is more consistent with that which already exists and to provide a clear differentiation with the R3 Zoned land.

West Byron will deliver a diversity of dwellings through the development of the R3 lands and with strategically placed development sites within the R2 zone where dual occupancy, multi dwelling housing and integrated housing are better suited.

The West Byron Landowners wish to lend their support to the proposed amendments to the R2 zone with regard to raising the minimum lot size to provide dual occupancy, multi dwelling housing and integrated housing under Clauses 82 and 83 of Byron LEP1988 as follows:

Development form	Zoning	Lot size
Dual Occupancy (attached)	R2	600 m ²
Dual Occupancy (detached)	R2	700 m ²
Multi Dwelling Housing	R2	1000 m ²

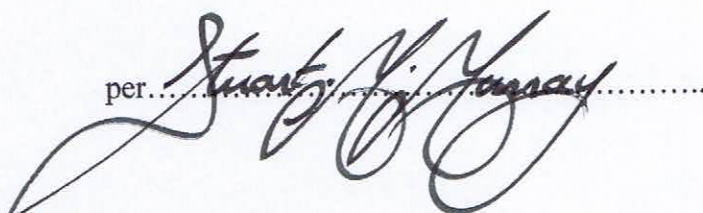
Integrated Housing	R2	250 m ² per attached or semi attached dwellings = 750 m ² min for 3 dwellings
- Subdivision of land into 3 or more lots and a dwelling erected on each lot		300m ² per detached dwellings = 900m ² min for 3 dwellings

If you have any queries please feel free to contact the West Byron Project Manager, Stuart Murray on mobile 0400 103044.

Yours faithfully,

NSPT Pty Limited
Telicove Pty Limited
Gousse Holdings Pty Ltd
Anthony & Julia Smith
Fletcher Project Developments Pty Ltd
David & Carol O'Connor

per.....



From: [Paul Garnett](#)
To: [Larkin, Chris](#)
Cc: [Jim Clark](#)
Subject: RE: West Byron - Byron LEP 1988
Date: Thursday, 16 July 2015 11:59:55 AM
Attachments: [image001.jpg](#)

G'day Chris,

As discussed today, it is possible for Council to amend the Byron LEP 1988 through the planning proposal process to alter the provisions applying to the West Byron release area.

We would expect the amendments to be relatively minor and generally consistent with SEPP(West Byron) 2014 and to ensure that an appropriate lot/dwelling yield could still be achieved across the site.

If you wish to discuss this matter further, please contact me on the phone number below.

Regards

Paul

Paul Garnett
Senior Planner
Department of Planning & Environment
Northern Region
Locked Bag 9022
Grafton NSW 2460
T 02 66416607
E paul.garnett@planning.nsw.gov.au
cid:image002.jpg@01D04CF2.197FB1E0



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From: Larkin, Chris [<mailto:Chris.Larkin@byron.nsw.gov.au>]
Sent: Tuesday, 14 July 2015 10:29 AM
To: Jim Clark
Cc: Katrina Burbidge
Subject: West Byron - Byron LEP 1988

Hi Jim,

Can Council do a planning proposal to amend any of the west Byron clauses under BLEP88.

We have a concern re the small lot size provisions in the R2 Zone under Clauses 82 and 83. Potentially we will have the same residential densities across both the medium and low density zones

We are currently talking with the developers re a possible amendment and would be looking for there support to do this.

You advice on this would be appreciated on the way forward

Chris Larkin | Senior Planner - Land and Natural Environment | **Byron Shire Council**
70-90 Station Street Mullumbimby | PO Box 219 Mullumbimby NSW Australia 2482 | DX20007
Mullumbimby

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Find out more about the development of the Byron Bay Town Centre Masterplan at
<http://www.byronbayourplan.com.au/>

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ATTACHMENT 4 – EVALUATION CRITERIA FOR THE DELEGATION OF PLAN MAKING FUNCTIONS

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:Byron Shire Council

Name of draft LEP:Planning Proposal 26.2015.6.1 Amendent to Byron LEP 1988-West Byron

Address of Land (if applicable):West Byron

Intent of draft LEP: The intent of the Planning propoSal is to correct anomalies in the Planning Instrument in relation to the permissibility of infrastructure in the various zones, the lot size requirement for medium density housing forms in the R2 zone, and the minimum lot sizes in the E2 and E3 zones.

Additional Supporting Points/Information: Please refer to the Planning Proposal

Evaluation criteria for the issuing of an Authorisation (Note: where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not relevant	Agree	Not agree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y			
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y			
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y			
Does the planning proposal contain details related to proposed consultation?	Y			
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Director-General?		X		
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?	Y			
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	Y			
Minor Mapping Error Amendments	Y/N			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N			
Heritage LEPs	Y/N			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?		X		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?		X		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?		X		

Reclassifications	Y/N			
Is there an associated spot rezoning with the reclassification?		X		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		X		
Is the planning proposal proposed to rectify an anomaly in a classification?		X		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		X		
Will the draft LEP discharge any interests in public land under section 30 of the Local Government Act, 1993?		X		
If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?		X		
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) Classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?		X		
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		X		
Spot Rezonings	Y/N			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	Y			
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?		X		
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?		X		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		X		

Does the planning proposal create an exception to a mapped development standard?	Y			
Section 73A matters				
Does the proposed instrument a. correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?; b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or c. deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land? (NOTE – the Minister (or Delegate) will need to form an Opinion under section 73(A(1)(c) of the Act in order for a matter in this category to proceed).		X		

NOTES

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.