

Planning and Assessment

IRF20/5615

Gateway determination report

LGA	Byron Shire
PPA	Byron Shire Council
NAME	Policy and Mapping Housekeeping Amendment
NUMBER	PP-2020-2005
LEP TO BE AMENDED	Byron Local Environment Plan 2014
ADDRESS	Various sites throughout the Local Government Area
DESCRIPTION	Housekeeping amendments
RECEIVED	24/11/2020
FILE NO.	IRF20/5615
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to make various minor policy and mapping housekeeping amendments to the Byron Local Environment Plan (LEP) 2014.

1.2 Site description

The planning proposal includes 12 separate amendments (items 1 – 12). The policy amendments (items 1-7) apply to various properties across a range of zones. The mapping amendments (items 8-12) affect the specific properties listed in Table 1.

1.3 Existing planning controls

The planning proposal seeks to review certain provisions, correct mapping errors and make various policy amendments to Byron LEP 2014.

1.4 Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions as it includes minor policy and mapping amendments that will help ensure the ongoing effective and efficient operation of the Byron LEP 2014.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives and intended outcomes of the planning proposal include:

- Item 1: amend clause *4.2B Maximum number of dwelling houses or dual occupancies on multiple occupancy or rural land sharing community developments* to limit secondary dwellings and dual occupancies on these sites;

- Item 2: remove clause *4.1F Exceptions to minimum lot sizes for certain rural subdivisions* from the Byron LEP 2014;
- Item 3: insert minimum lot size requirements into clause *4.1E Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings* for attached dwellings;
- Item 4: include E2 and E3 zones into clauses *4.1D Exceptions to minimum subdivision lot sizes for certain split zones* and *4.2A Erection of dwelling houses and dual occupancies on land in certain rural zones*;
- Item 5: insert 'roadside stalls' as exempt development in schedule 2;
- Item 6: amend the RU2 land use table to include 'artisan food and drink outlet' as permitted with consent;
- Item 7: insert SP2, SP3, E2 and E3 zones in clause *4.1A Minimum subdivision lot size for strata plan schemes in certain rural and residential zones* and *4.1AA Minimum subdivision lot size for community title schemes*;
- Item 8: rezone Lot 0 SP 45048 from B1 Neighbourhood Centre to R3 Medium Density Residential and amend the floor space ratio and lot size maps to reflect the residential zoning;
- Item 9: amend the land zone map LZN_003A to correct cadastre issues and rezone lots from RU1 to R5 within the village of Federal;
- Item 10: amend the land zone map LZN_003CB to remove residual SP2 zoning on surplus land along the Pacific Highway;
- Item 11: rezone part of 10 Botanic Court, Mullumbimby from deferred matters to R2 and amend the associated floor space ratio and lot size maps to correct the existing cadastre error; and
- Item 12: amend the acid sulfate soils map ASS_002 to remove acid sulfate soils mapping from Lot 4 DP 810118 in accordance with an Acid Sulfate Soils report.

2.2 Explanation of provisions

The planning proposal has been grouped into two categories:

1. Policy amendments (Items 1 – 7)
2. Mapping amendments (Items 8 – 12)

A detailed explanation is included within the planning proposal (**Attachment A**).

2.3 Mapping

A number of maps are proposed to be amended as part of this planning proposal as detailed in Table 1.

Table 1: Properties affected by the LEP map changes

LEP map type	Affected property parcel and changes	Item
Land zone map		
LZN_003CC	3-4 Cape Court, Byron Bay, Lot 0 SP 45048 (Incorrect Lot 129 DP 777329 referenced in the planning proposal report) rezone from B1 to R3	8
LZN_003A	Lots 5-7 DP 785338, Lots 13-14 DP1267660, Lots 31 – 32 DP 1242295, Lots 1 – 2 DP789653, Lot 1 DP 867995 and Lot 12 DP 1167314 rezone entire lots from part RU2 and RU5 to RU5.	9
LZN_003CB	Lot 2 DP 1229072 and Lot 3 DP 1229946 - rezone from SP2 to RU1	10
LZN_002BA	Lot 11 DP 841109 rezone R2 from deferred matters	11
Acid sulfate soils		
ASS_002	Lot 4 DP 810118 remove the acid sulfate soils map from the lot.	12
Floor space ratio		
FSR_003CC	Lot 0 SP 45048 – to apply the floor space ratio of “F” of 0.6 to the entire lot.	8
FSR_002BA	Lot 11 DP 841109 apply the floor space ratio of “D” of 0.5 to the entire lot.	11
Lot size map		
LSZ_003CC	Lot 0 SP 45048 – to apply a minimum lot size of “m” of 400m ² to the entire lot.	8
LSZ_002BA	Lot 11 DP 841109 apply a minimum lot size of “m” of 600m ² to the entire lot.	11

The planning proposal should also be amended to correctly reference Lot 0 SP 45048 and to include the existing and proposed floor space ratio and lot size maps prior to consultation.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal has arisen as a result of a periodic review of the Byron LEP 2014 to correct minor mapping anomalies, minor site specific alterations of land use zones, adjust the land use tables, refine non-mandatory provisions and amend schedules.

The following provides a summary of the proposed amendments, the justification and assessment:

Category 1 – Policy amendments

Item 1: amend when clause 4.2B is applied

The proposal seeks to limit and control the dwelling densities for new and existing dwelling houses and dual occupancies on rural multiple occupancy and community title lands. The existing clause only applies to land outlined by the 'green line' which refers to the occupancy type of 'multiple occupancy' on the Multiple Occupancy and Community Title Map (MOC).

The intent of the proposed changes is to ensure that the map applies to both occupancy types (multiple occupancy and community title) and all land containing an existing approved multiple occupancy or rural community title. Council staff have confirmed "*The intent here is to ensure if a MO or Rural CT has been approved for x dwellings, that they cannot then each apply to have a secondary dwelling and increase the density above what was initially approved.....*"

The current planning proposal includes the following proposed amendments to clause 4.2B:

- reference the 'purple line' which refers to the occupancy type of 'community title'; and
- inserting reference to land containing an existing approved multiple occupancy or rural community title.

The intent of the planning proposal is considered appropriate however the proposed draft clause in the planning proposal makes reference to approval documents or the like. The suitability of the proposed wording will need to be determined by Parliamentary Counsel, and as such, it is recommended that the planning proposal be amended prior to consultation to include an updated intent for the item and removal of the draft clause. This will help avoid any potential confusion over the proposed provisions and the preparation of the final clause by Parliamentary Counsel. This approach was discussed with Council staff who raised no objection.

Item 2: remove clause 4.1F from the Byron LEP 2014

The proposal seeks to remove clause 4.1F from the Byron LEP 2014. Council has confirmed that the clause has never been applied, is not providing any need in the shire and is causing in certain circumstances confusion as to when it can and should be applied. The removal of the clause is therefore considered satisfactory.

Item 3: insert minimum lot size requirements into clause 4.2E for attached dwellings

The proposal seeks to include a minimum lot size for attached dwellings in R2 (1000m²) and R3 (800m²) zones and a minimum lot size for dual occupancies (detached) in the R5 (4000m²) zone to provide greater consistency in the application of development standards with other housing types such as manor houses, residential flat buildings and multi dwelling housing. This is considered appropriate.

Item 4: include E2 and E3 zones into clauses 4.1D and 4.2A

The proposal seeks to include Zone E3 in clause 4.1D and Zones E2 and E3 in the application of clause 4.2A. This is considered appropriate given the recent introduction of the E Zones into the Byron LEP 2014. It is noted that the PP should also be amended prior to consultation to amend the titles of the clauses to ensure that it captures all appropriate zones.

Item 5: insert *Roadside Stalls* as exempt development in schedule 2

The proposal seeks to include roadside stalls in the RU1 and RU2 zones within Schedule 2 Exempt Development.

Proposed roadside stall clause

<p>Schedule 2 Exempt Development</p> <p>Roadside stalls</p> <p>(1) This clause applies to the use of land for a roadside stall for the sale of only agricultural produce.</p> <p>(2) The roadside stall—</p> <p>(a) must be located on land within Zone RU1 Primary Production or Zone RU2 Rural Landscape, and</p> <p>(b) must be located wholly on private property, and</p> <p>(c) must not be located on land that is adjacent to a classified road, and</p> <p>(d) must not have a footprint greater than 4m².</p> <p>(3) No more than 1 roadside stall may be used on any landholding.</p> <p>(4) Any relevant approval issued under the <i>Roads Act 1993</i> must be obtained.</p>

Roadside stalls are currently permitted with consent in Zones RU1, RU2, RU5, R5 and B1 in the Byron LEP 2014. The amendment to identify certain roadside stalls as exempt development is considered appropriate and is similar to existing provisions in the Ballina LEP 2012 and the Lismore LEP 2012. Due to potential traffic issues associated with roadside stalls it is recommended that consultation with Transport for NSW (RMS) also be undertaken to confirm the suitability of the provision.

Item 6: amend the RU2 land use table to include ‘artisan food and drink outlet’ as a permitted with consent

The proposal seeks to amend the RU2 land use table to include artisan food and drink outlet as permitted with consent. The amendment is required to permit boutique, artisan or craft food or drink outlets such as microbreweries in the RU2 zone.

During the assessment of the planning proposal the Department of Primary Industries (DPI) were contacted on the suitability of the proposal. DPI raised no “fundamental concerns” with the proposal and the issuing of a Gateway determination to allow further formal consultation to be carried out.

Item 7: insert SP1, SP3, E2 and E3 zones in clause 4.1A and 4.1AA

The proposal seeks to amend clause 4.1A and 4.1AA to ensure that minimum lot sizes for strata plan schemes and community title subdivisions are applied to SP1, SP3, E2 and E3 zones. This is considered appropriate.

Category 2 – Mapping amendments

Item 8: rezone 3-4 Cape Court, Byron Bay, Lot 0 SP 45048 (incorrect Lot 129 DP 777329) from B1 Neighbourhood Centre to R3 Medium Density Residential and amend the floor space ratio and lot size maps to reflect the residential zoning

There is an existing constructed residential development onsite (Figure 1) which is incorrectly zoned part B1 (Figure 2). The proposed changes to the zone, floor space ratio and lot size maps are considered appropriate as they reflect the existing and future residential use and development standards of the site (Figures 2 - 5).

It is noted that the planning proposal description of item 8 should also be amended to reference the correct property description.

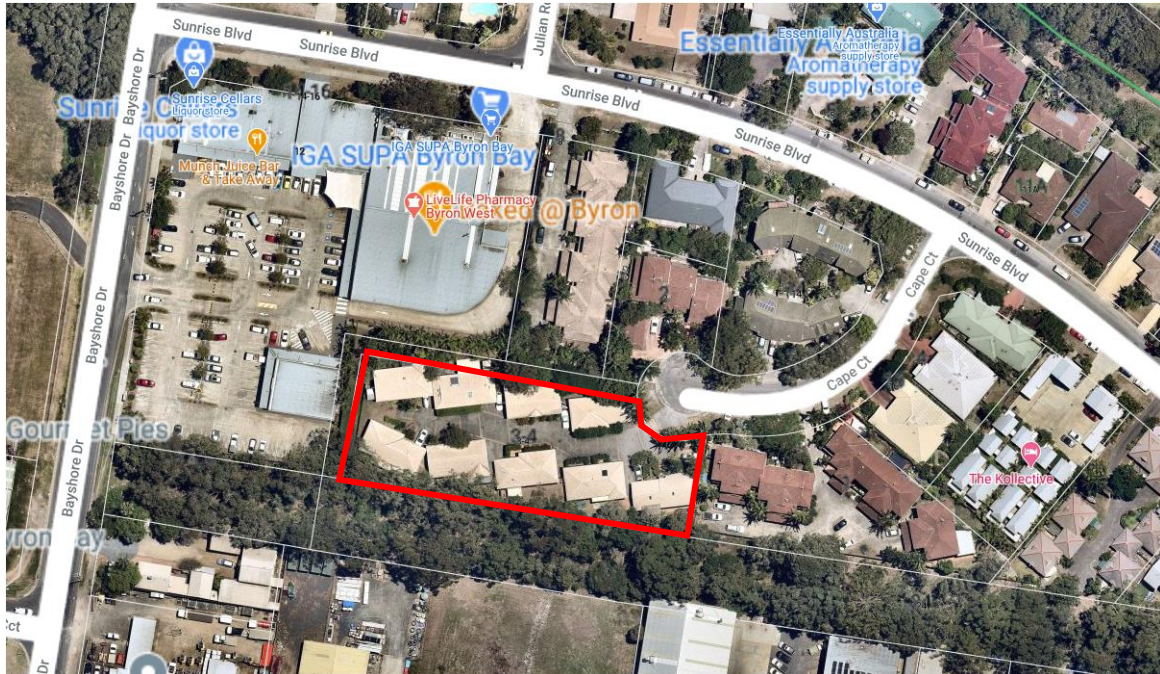


Figure 1 – Item 8 aerial site photo

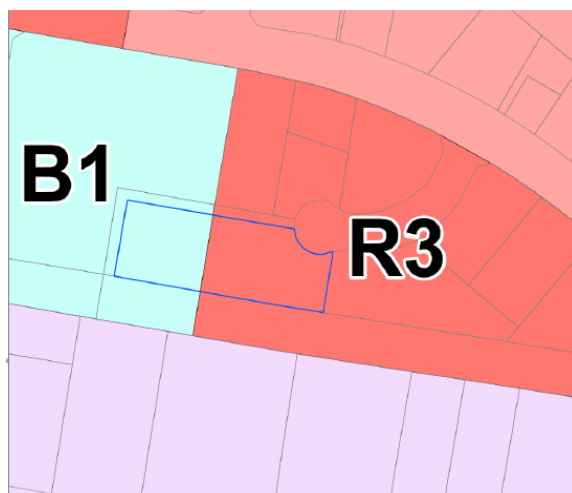


Figure 2 – Existing zoning

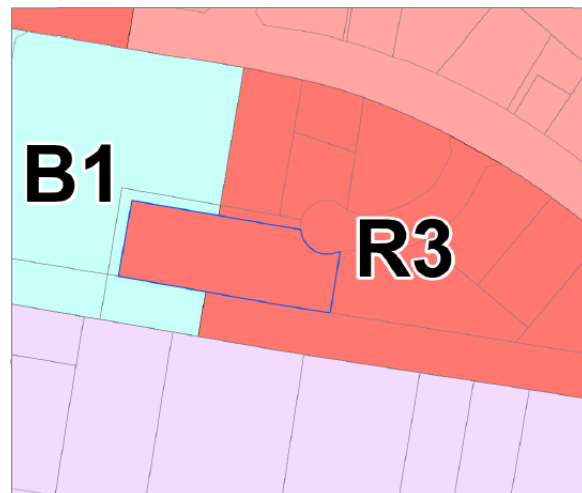


Figure 3 – Proposed zone

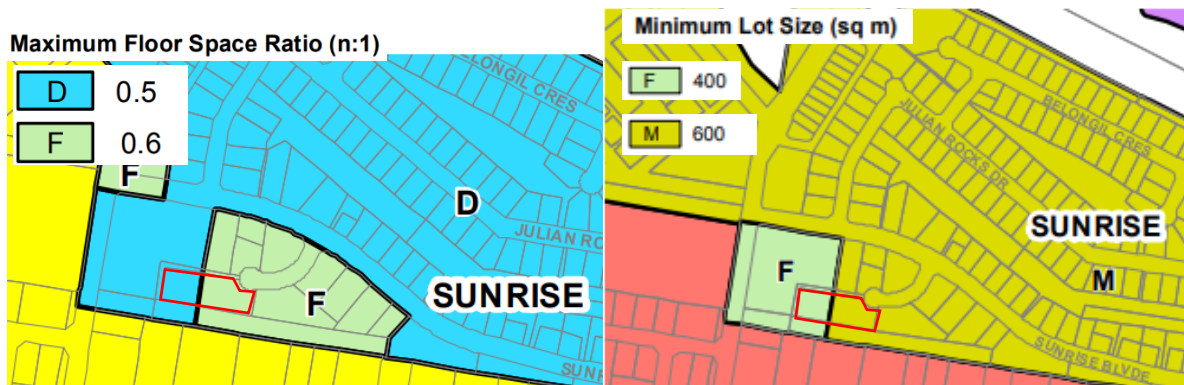


Figure 4 – Existing floor space ratio map Figure 5 – Existing lot size map

Item 9: amend the land zone map LZN_003A to correct cadastre issues and rezone lots from RU1 to R5 within the residential village of Federal

The proposed amendments are required to correctly align the zoning with the existing cadastre (Figures 6-7). The proposed mapping change is considered appropriate.

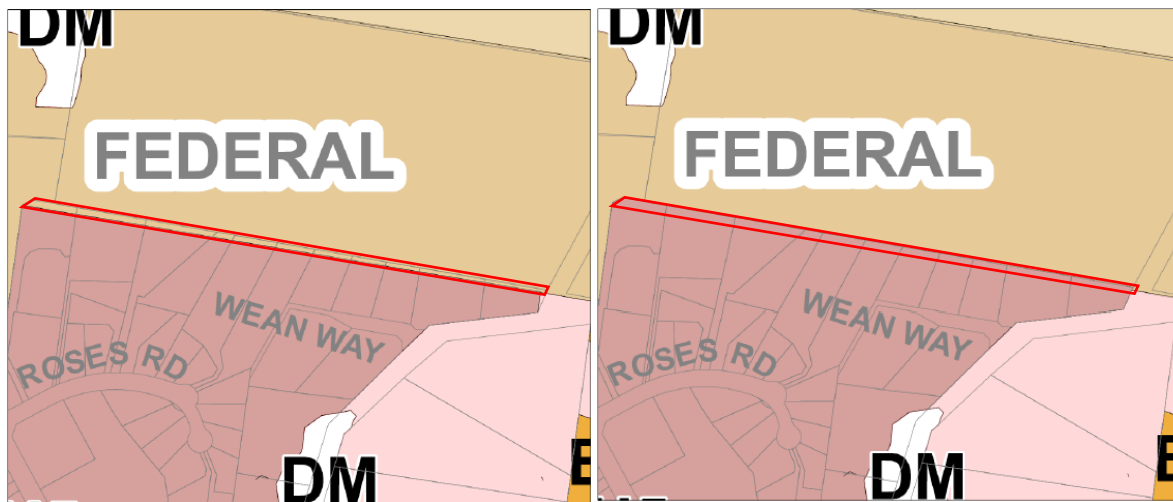


Figure 6 – Existing zoning

Figure 7 – Proposed zoning

Item 10: amend the land zone map LZN_003CB to remove residual SP2 zoning

The proposed amendments to the map are required to align the zoning with the cadastre which is considered appropriate (Figures 8 - 9) and rezone land which has been identified as surplus land owned by Transport for NSW (TfNSW) (Figure 10 - 11). Further consultation with Transport for NSW is required to confirm the suitability of the rezoning.

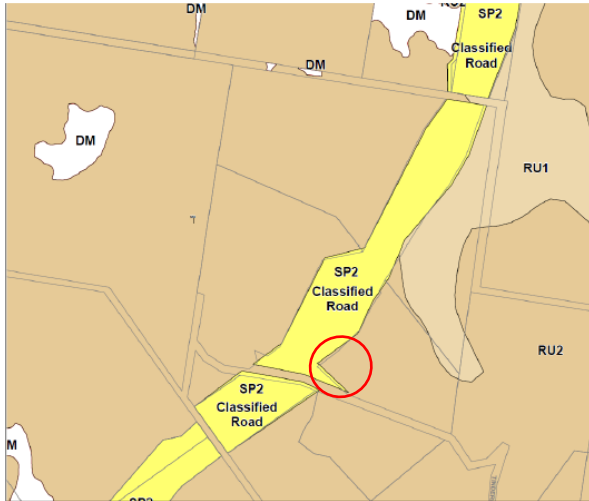


Figure 8 – Existing zoning

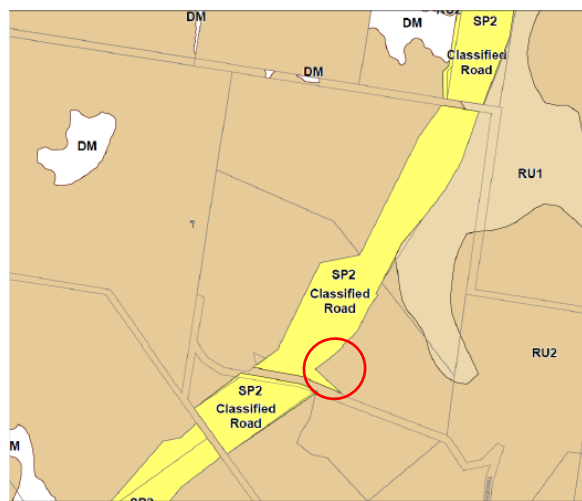


Figure 9 – Proposed zoning

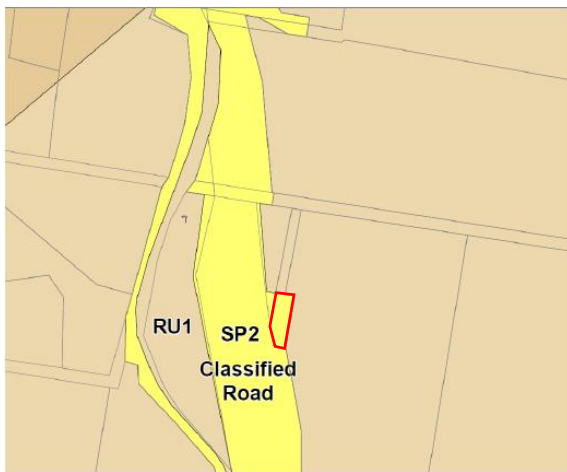


Figure 10 – Existing zoning

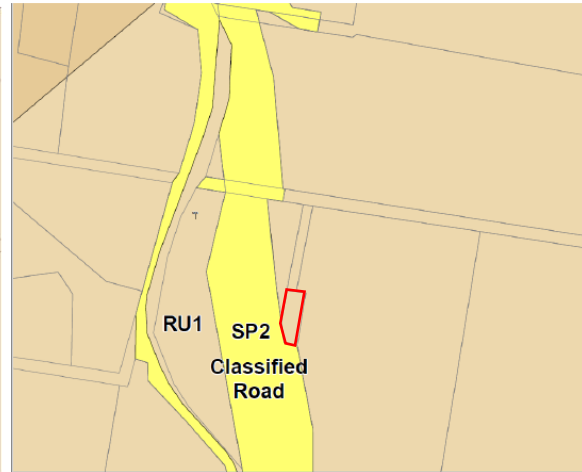


Figure 11 – Proposed zoning

Item 11: rezone part of 10 Botanic Court, Mullumbimby from deferred matters to R2 and amend the floor space ratio and lot size maps to reflect the amended zone

The proposal seeks to zone part of 10 Botanic Court, Mullumbimby from deferred matters to R2 (Figure 12 - 13) to align the zoning and cadastre for the site. The current deferred matter land is not identified as having potential high environmental values or having biodiversity values (Figure 16). The application of the residential zoning as well as the development standards to the remainder of the site is considered appropriate as they reflect the existing residential land use and cadastre (Figures 14 – 15).

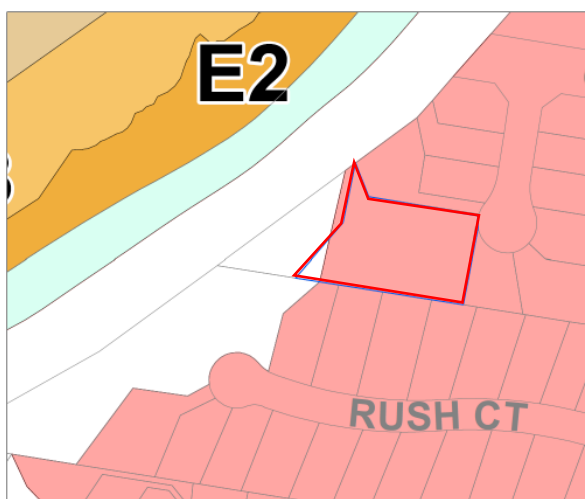


Figure 12 – Existing zoning

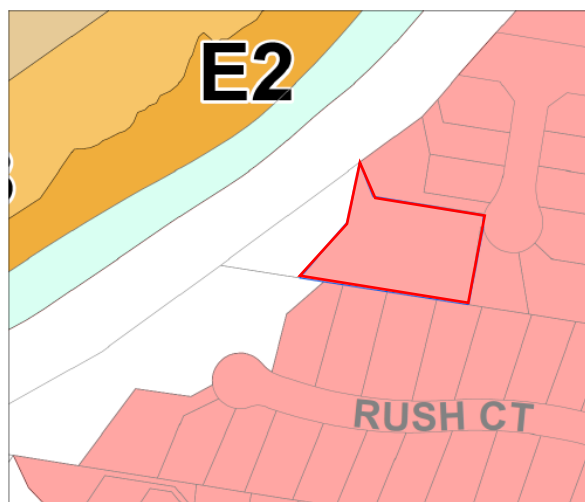


Figure 13 – Proposed zoning

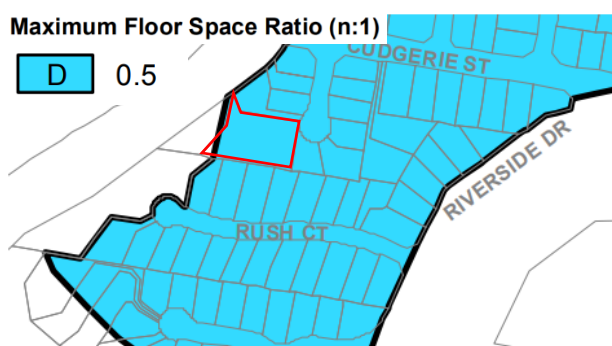


Figure 14 – existing floor space ratio map

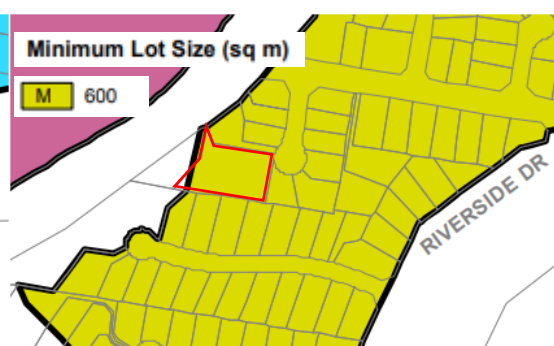


Figure 15 – Existing lot size map

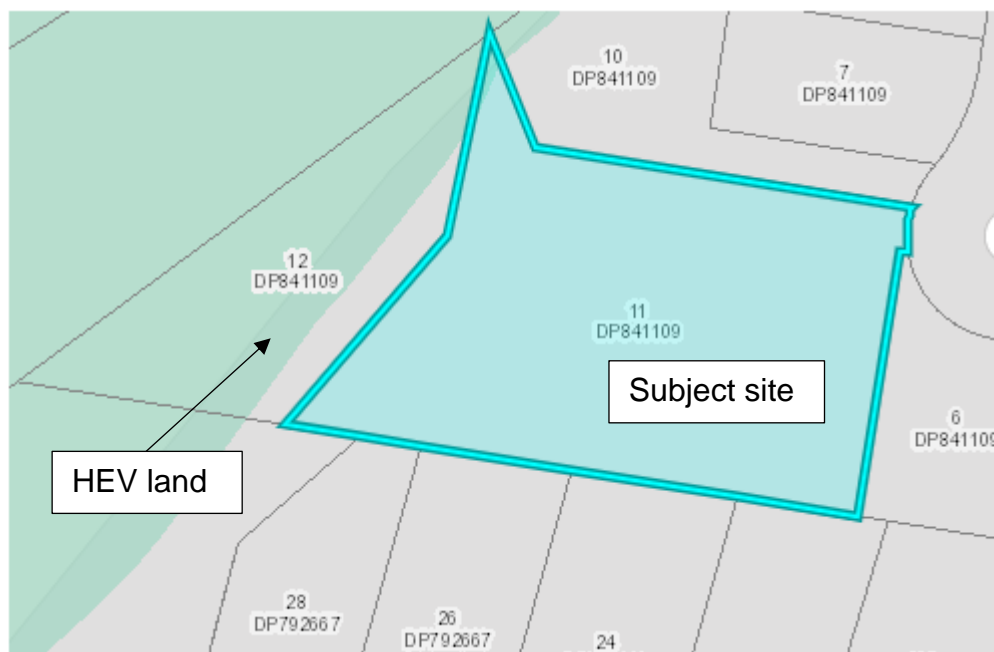


Figure 16 – Potential HEV map

Item 12: amend the acid sulfate soils map ASS_002 to remove acid sulfate soils mapping from Lot 4 DP 810118

The proposal seeks to remove the acid sulfate soils mapping from Lot 4 DP 810118 (Figures 17 – 18) due to the findings of an Acid Sulfate Soils report which was prepared to support a recent development application for earthworks. This is considered appropriate.

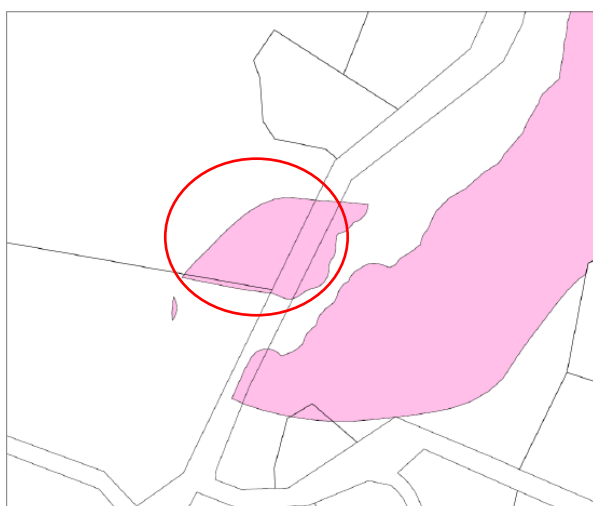


Figure 17 – Existing Acid Sulfate soils

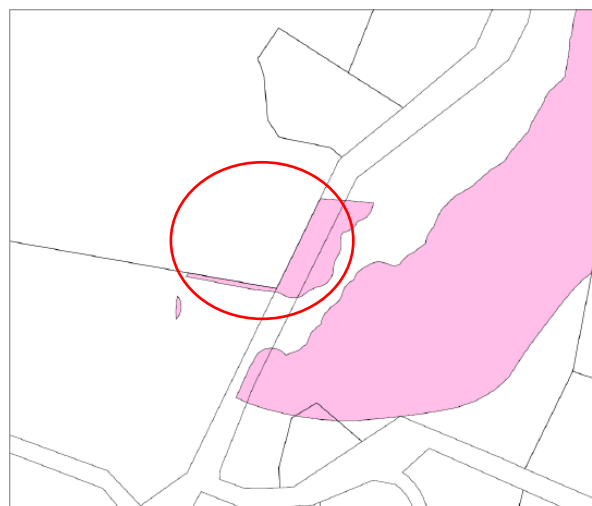


Figure 18 – Proposed acid sulfate soils

4. STRATEGIC ASSESSMENT

4.1 State

The minor changes are consistent with the state strategic planning framework and do not seek to amend or delete any provisions that are mandatory under the Standard Instrument LEP.

4.2 Regional / District

The planning proposal is consistent with the North Coast Regional Plan 2036 as follows:

Direction 1 – Deliver environmentally sustainable growth

The Direction aims to manage growth by directing development to mapped urban growth areas in order to better distribute growth and avoid pressure on the sensitive coastal environment. Part of the land in item 9 is located outside the urban growth area boundary. The Direction requires that Appendix A Urban Growth Area Variation Principles be considered and justified. Table 2 includes an assessment of the principles.

Table 2 - Urban growth Area Variation Principles

Principle	Consistency
Policy	The planning proposal is not inconsistent with the objectives and outcomes of the North Coast Regional Plan 2036. While it is noted that there are minor inconsistencies with a number of s9.1 Directions, and some that are still currently unresolved (refer to section 4.4 of this report), it is considered that the proposal is generally consistent with State and regional policy.

Infrastructure	There will be no impact on State or regional infrastructure or the requirement for additional funding. Local infrastructure is available to the land and the need for any specific servicing arrangements can be considered at the development application stage.
Environment and farmland protection	The land is already being used for residential purposes and the change is only correcting a misalignment with the zoning and cadastre
Land use conflict	The land is used primarily for residential purposes. No land use conflicts are anticipated.
Avoiding risk	The proposal confirms that any risks can be adequately addressed.
Heritage	Consultation with the LALC is recommended.
Coastal area	The proposal is considered to be a minor and contiguous variation to the urban growth area boundary.

Direction 8 – Promote the growth of tourism

This proposal directly aligns with *“Action 8.2 – Facilitate tourism and visitor accommodation and supporting land uses in coastal and rural hinterland locations through local growth management strategies and local environment plans”* as it will enable additional opportunities and facilities to increase tourism opportunities within rural areas of Byron (item 5 and 6).

Direction 11 – Protect and enhance productive agricultural lands

The proposal is consistent in particular with *“Action 11.4 – Encourage niche commercial, tourist and recreation activities that complement and promote a stronger agricultural sector and build the sector’s capacity to adapt to changing circumstances”* due to the proposed exempt roadside stall and artisan food and drink outlet provisions.

While the proposal limits the scale of the developments that can be facilitated, it is recommended that consistency with this Direction remain unresolved until after consultation with the Department of Primary Industries confirms the suitability of the proposal in terms of any potential rural land use impacts and issues.

4.3 Local

The Byron Shire Local Strategic Planning Statement (Byron LSPS) includes priority actions by themes. This planning proposal aligns with and works towards achieving the implementation framework of amending the LEP when required and the theme “Growing a strong sustainable economy”. It is also noted that a number of proposed items are consistent with Council’s Department approved Rural Land Use Strategy 2017.

4.4 Section 9.1 Ministerial Directions

The planning proposal is consistent with all Section 9.1 Directions except for the following:

Direction 1.1 Business and Industrial Zones

The planning proposal is inconsistent with this Direction as item 8 of the proposal will result in a loss of employment lands. This inconsistency is considered to be of minor significance as the existing and future use of the land is residential.

Direction 1.2 Rural Zones

The planning proposal is inconsistent with this Direction as item 9 of the proposal will rezone land from RU1 to R5. This inconsistency is considered to be of minor significance as the existing use of the land is residential and the proposal only seeks to align the zoning and cadastre boundaries.

Direction 1.5 Rural Lands

The planning proposal is inconsistent with this Direction as the proposal (Item 6, Item 9 and 10) will affect RU1 and RU2 zoned land and does not identify and protect environmental values or potentially support farmers existing rights to farm. While the inconsistency is considered likely to be of minor significance for the reasons discussed above regarding Direction 11 of the NCRP, it is recommended that the consistency with this Direction remain unresolved until after consultation with the Department of Primary Industries can confirm the suitability of the proposal in terms of any potential rural land use impacts and issues.

Direction 2.2 Coastal Management

The planning proposal is inconsistent with this Direction as Item 11 contains land mapped within the coastal zone and does not include provisions that give effect to and are consistent with the Coastal Management Act 2016 or the associated toolkits and guidelines. This inconsistency is considered to be of minor significance as the proposal does not impact on matters of coastal significance and the SEPP (Coastal Management) 2018 already contains adequate protections relating to the coastline and coastal processes.

Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this Direction as it applies to land containing acid sulfate soils and is not supported by an acid sulfate soils study (except for item 12 which confirms the land does not contain acid sulfate soils). Any inconsistency is considered to be of minor significance as the proposal is generally only making minor administrative corrections and Byron LEP 2014 already contains appropriate provisions that can adequately address any acid sulfate soil issues at the development application stage.

Direction 4.4 Planning for Bushfire Protection

This Direction applies as the proposal affects bushfire prone land, specifically item 9, item 10 (site 1) and item 11. The Direction requires Council consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast

The planning proposal is inconsistent with this Direction as item 8 proposes to rezone regionally significant farmland from RU2 to R5. The inconsistency is

considered to be satisfactory as the land is already being used for residential purposes and the rezoning only seeks to correct a misalignment between the zoning and cadastre boundaries which is not in consistent with the aims and objectives of the North Coast Regional Plan 2036.

Direction 5.10 Implementation of Regional Plans

As discussed in Section 4.2, the proposal is considered to be potentially inconsistent with the North Coast Regional Plan 2036 (Direction 11) and this Direction will remain unresolved until after consultation with the Department of Regional NSW (Primary Industries) can confirm the suitability of the proposal in terms of any potential rural land use impacts.

Direction 6.2 Reserving Land for Public Purposes

The proposal is inconsistent with this Direction as item 10 reduces existing SP2 Classified Road zonings without the agreement of the Department of Planning, Industry and Environment's Secretary. This inconsistency is considered to be of minor significance as the affected lands have been identified as surplus lands and the change has been requested by Transport for NSW or are only aligning the zoning and cadastre.

4.5 State environmental planning policies (SEPPs)

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

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal involves minor changes to the land use tables, mapping changes and amendments to Schedule 2 of the LEP to rectify anomalies and inaccuracies and improve the operation of the LEP. The planning proposal will ensure land uses and LEP maps that align more accurately with the existing and intended provisions of the Byron LEP 2014 and the planning proposal is not expected to have any negative social impacts.

5.2 Environmental

It is considered that the proposed changes are unlikely to adversely impact threatened species, populations or ecological communities and their habitat. Consultation with the NSW Biodiversity and Conservation Division is however recommended to confirm the suitability of the proposal.

It is noted that the proposed changes do apply to a number of sites that are bushfire prone. The suitability of these changes will be considered by State Government Agencies during consultation. The proposal also confirms that no areas of known contamination are affected by the proposal.

5.3 Economic

The proposed amendments are not expected to have any negative economic impacts.

5.4 Infrastructure

No additional State or Local infrastructure is considered likely as a result of the proposal.

6. CONSULTATION

6.1 Community

The proposal confirms it will be exhibited in accordance with the Gateway determination and the *Environmental Planning and Assessment Act 1979*. Council considers that a 14 day public exhibition period is appropriate in this instance as the planning proposal is considered as 'low impact' as outlined in *a guide to preparing local environmental plans*. This exhibition period is considered appropriate.

6.2 Agencies

It is recommended that the following agencies are consulted:

- NSW Rural Fire Service
- Department of Planning, Industry and Environment - Biodiversity and Conservation Division
- Transport for NSW (RMS)
- Department of Primary Industries
- Tweed Byron Local Aboriginal Land Council

7. TIME FRAME

The planning proposal includes a project timeline which estimates completion by April 2021.

To ensure the local plan making authority has adequate time to complete the necessary exhibition, agency consultation, reporting, map changes and legal drafting it is recommended that a 9 month timeframe be provided.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be authorised as the local plan making authority as the planning proposal is of local significance. This is considered appropriate.

9. CONCLUSION

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

- the planning proposal is generally consistent with the vision, land use strategy, goals, directions and actions of the North Coast Regional Plan 2036;
- the planning proposal is not inconsistent with the planning priorities of the Byron Shire Local Strategic Planning Statement or Council's adopted local strategic planning framework; and
- the amendments will help ensure the ongoing effective and efficient operation of the Byron LEP 2014.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones, 2.2 Coastal Management, 4.1 Acid Sulfate Soils, 5.3 Farmland of State and

Regional Significance on the NSW Far North Coast and 6.2 Reserving Land for Public Purposes are minor or justified; and

2. note that the consistency with section 9.1 Directions 1.5 Rural Lands, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans 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:

3. Prior to agency consultation and public exhibition, Council is to amend the planning proposal as follows:
 - (a) include an updated intent of the item 1 and remove the draft clause;
 - (b) amend the titles of the clauses relating to item 4 to ensure that it captures all appropriate zones relevant to each clause;
 - (c) all affected existing and proposed floor space ratio and minimum lot size maps are to be included; and
 - (d) the planning proposal description of item 8 should be amended to reference the correct property description
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - Department of Planning, Industry and Environment - Biodiversity and Conservation Division
 - Transport for NSW (RMS)
 - Department of Primary Industries
 - Tweed Byron Local Aboriginal Land Council
4. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority



13/1/21

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