

Planning and Assessment

IRF20/5192

Gateway determination report

LGA	Byron Shire
PPA	Byron Shire Council
NAME	Introduce an E4 Environmental Living Zone into Byron LEP 2014, rezone land for environmental purposes, and facilitate a residential development at Bayshore Drive, Byron Bay
NUMBER	PP_2020_BYRON_006_00 / PP-2020-2720
LEP TO BE AMENDED	Byron Local Environment Plan 2014
ADDRESS	Bayshore Drive Byron Bay
DESCRIPTION	Lot 1, 2 and 4 DP 1215893 Lot 12 and 13 DP 243218 Lot 449 DP 812102 Lot 1 DP 1215814 Lot 2 DP 620642
RECEIVED	2 February 2021 (revised version)
FILE NO.	EF20/30418
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 amend the Byron LEP 2014:

- to rezone land at Bayshore Drive Byron Bay to part E4 Environmental Living, part E3 Environmental Management, part E2 Environmental Conservation and part SP3 Tourist;
- apply a maximum building height to part of Lot 449 DP 812102, Lots 12 and 13 DP 243218 and part of Lot 2 DP 1215893;
- apply a minimum lot size of 2ha to part of Lot 449 DP 812102, Lots 12 and 13 DP 243218 and part of Lot 2 DP 1215893;
- introduce the E4 Environmental Living Zone land use table into Byron LEP 2014; and
- schedule an additional permitted use to facilitate limited residential development consistent with a proposed subdivision pattern.

1.2 Site description and surrounding area

The planning proposal applies to Lots 1, 2 and 4 DP 1215893, Lots 12 and 13 DP 243218, Lot 449 DP 812102, Lot 2 DP 620642 and Lot 1 DP 1215814, Bayshore Drive, Byron Bay and has a total lot area of 79.03 ha (Figure 1).

Lot 1 DP1215893 contains the Elements of Byron Resort and the remaining lots are vacant, some of which were previously used as a private golf course. The land is generally flat with two main drainage lines traversing the site which drain to Belongil Creek and a number of artificial water bodies located across the site.

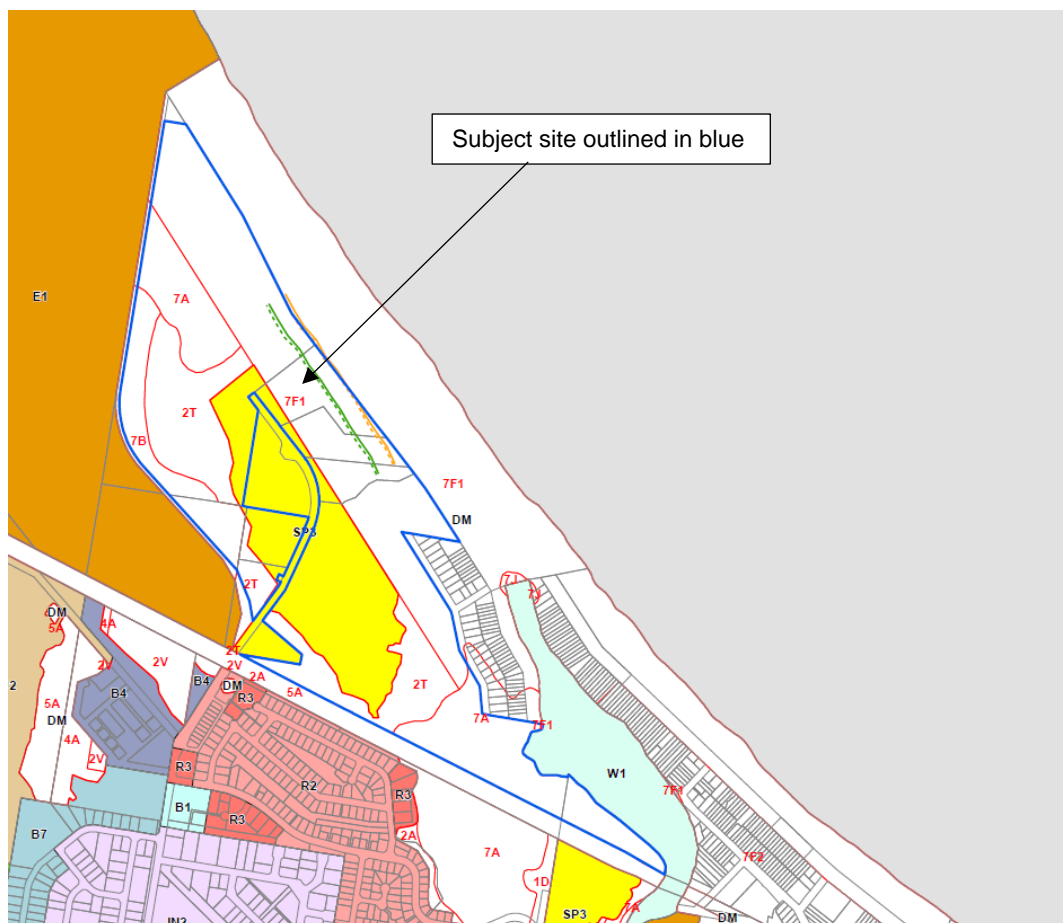
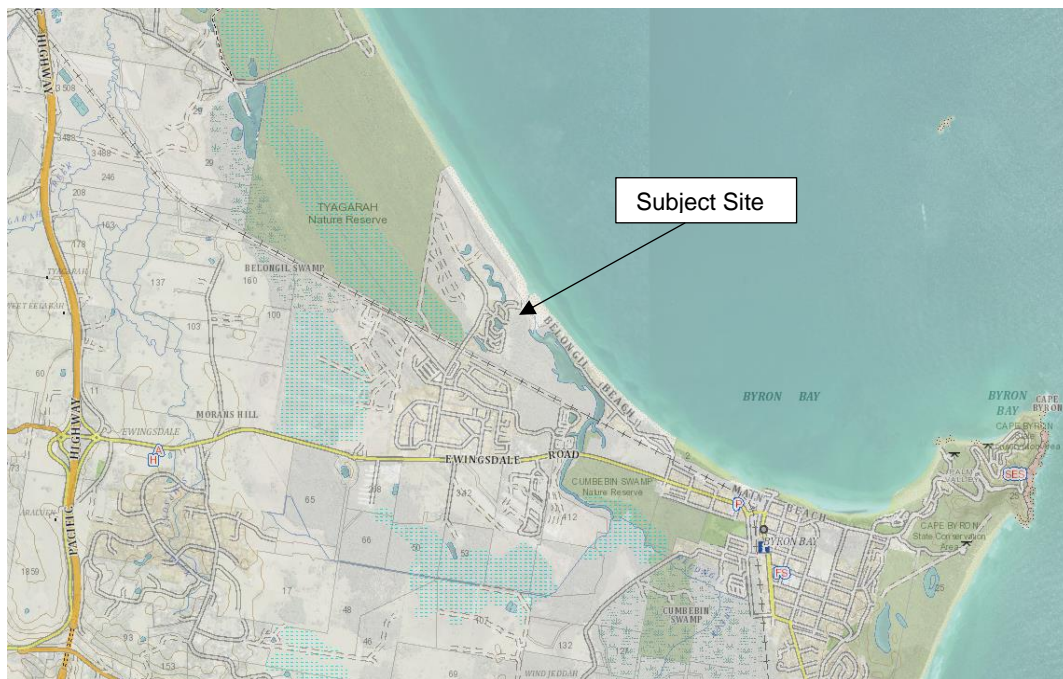


Figure 1 – Subject site

The site is impacted by flood (Figure 2), bushfire (Figure 3) and Class 3 acid sulfate soils (Figure 3). The site also has mapped coastal wetlands, proximity to coastal wetlands, littoral rainforest, proximity to littoral rainforest areas, coastal environment area and coastal use area (Figures 5 and 6) under the *State Environmental Planning Policy (Coastal Management) 2018* (Coastal management SEPP 2018).

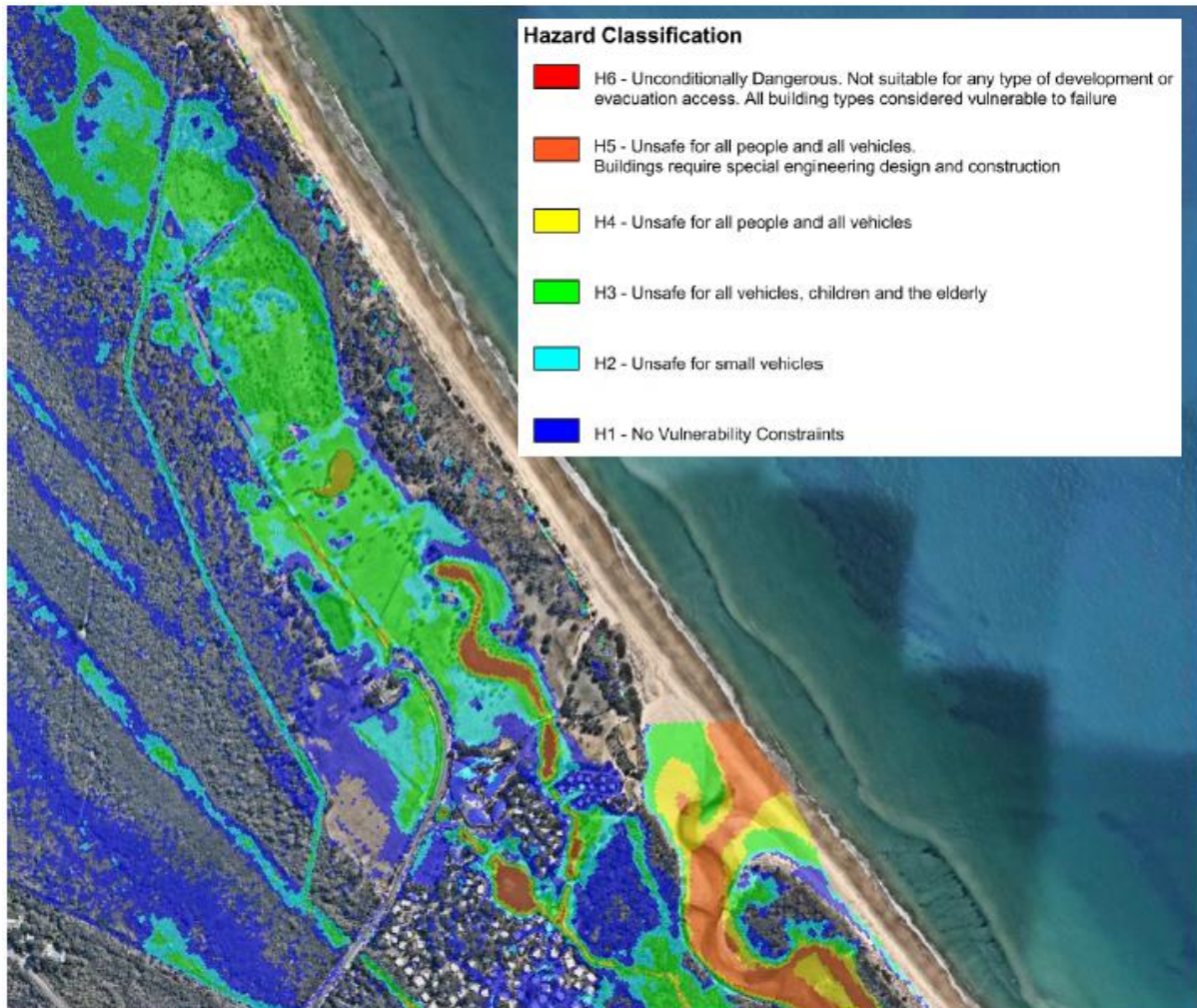


Figure 2 – Existing 100yr ARI Flood Hazard



Figure 3 – bushfire hazard



Figure 4 – Acid sulfate soils

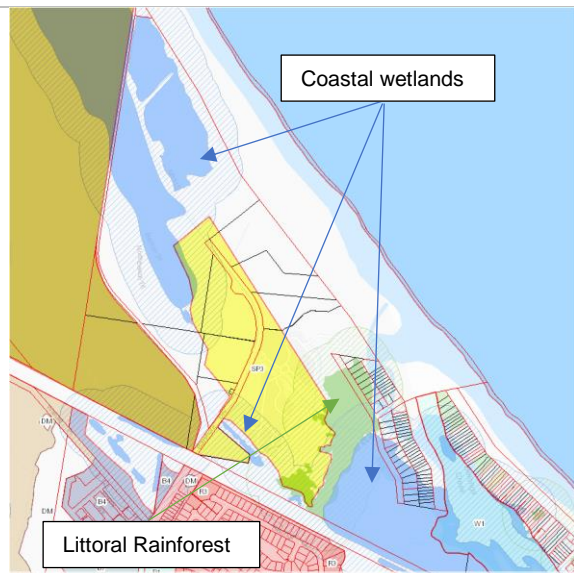


Figure 5 – Coastal wetland and Littoral Rainforest of the Coastal Management SEPP 2018

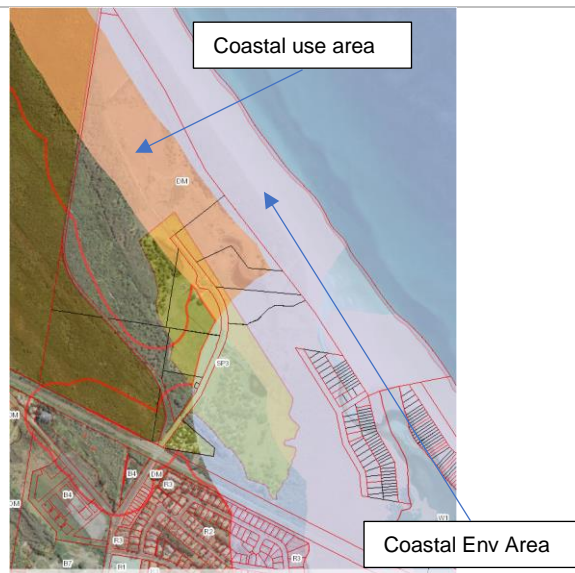


Figure 6 – Coastal environment area, coastal use area and land application map of the Coastal Management SEPP 2018

The subject site is located at the northern end of Bayshore Drive, Byron Bay, with the north eastern boundary of the site adjoining Belongil Beach. The site is surrounded by bushlands, coastal wetlands, littoral rainforest and Tyagarah Nature Reserve to the north. The southern boundary of the site adjoins the railway line with a residential, business park and industrial estate further to the south (Figure 7).



Figure 7 – Surrounding area context

1.3 Existing planning controls

The subject site is zoned part SP3 Tourist under the Byron LEP 2014 and part 2(t) Tourist Area, 7(a) Wetlands, 7(b) Coastal Habitat and 7(f1) Coastal Lands under the Byron LEP 1988 (Figure 8). Table 1 details the specific zones, lot size and use of each lot included in the planning proposal.

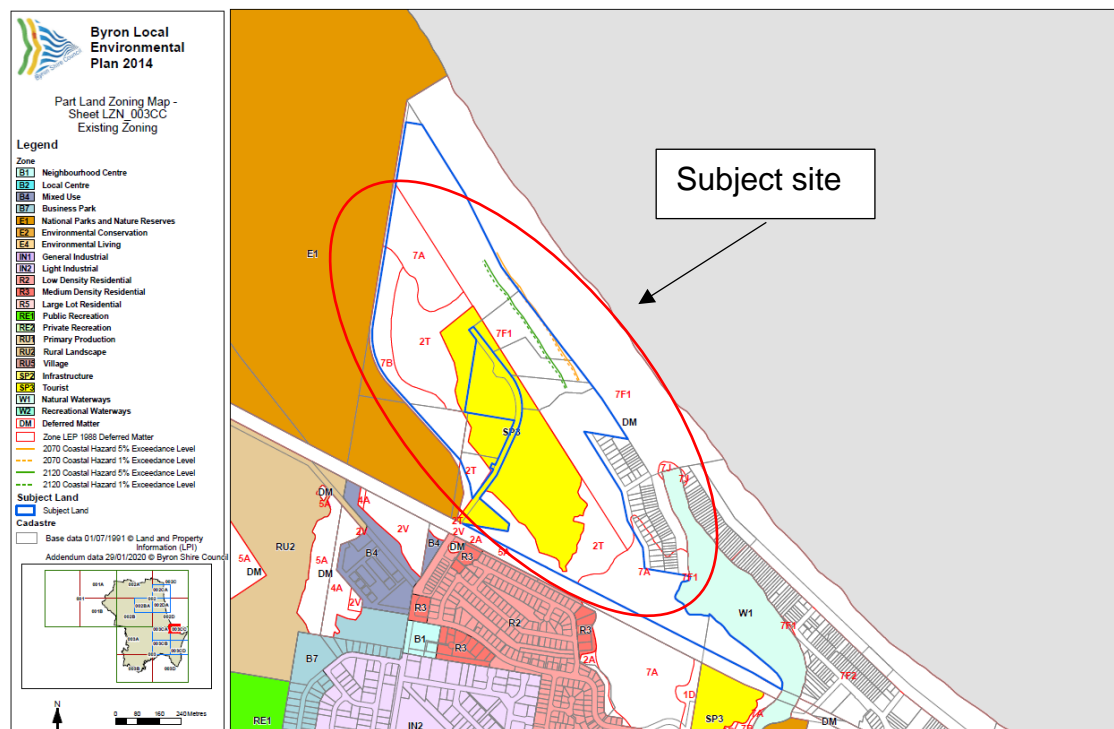


Figure 8 – Existing zones over site - Byron LEP 1988 and Byron LEP 2014 combined

Table 1 - Details on each lot included in this planning proposal

Property	Total Area (ha)	Current zoning	Existing Uses
Lot 1 DP 1215893	32.73	LEP 2014: SP3 Tourist LEP 1988: 2(t) Tourist Area 7(a) Wetlands 7(f1) Coastal Lands	Elements of Byron resort
Lot 2 DP 1215893	2.02	LEP 2014: SP3 Tourist LEP 1988: 7(f1) Coastal Lands	Vacant
Lot 12 DP 243218	2.73	LEP 2014: SP3 Tourist LEP 1988: 7(f1) Coastal Lands	Vacant
Lot 13 DP 243218	3.95	LEP 2014 SP3 Tourist LEP 1988 7(f1) Coastal Lands	Vacant
Lot 449 DP 812102	32.08	LEP 2014: SP3 Tourist LEP 1988: 2(t) Tourist Area 7(a) Wetlands 7(b) Coastal Habitat 7(f1) Coastal Lands	Vacant
Lot 4 DP 1215893	2.27	LEP 2014: SP3 Tourist LEP 1988: 2(t) Tourist Area	Vacant
Lot 1 DP 1215814	1.20	LEP 2014: SP3 Tourist LEP 1988: 2(t) Tourist Area	Vacant
Lot 2 DP 620642	2.05	LEP 1988: 7(a) Wetlands	Vacant

1.5 Summary of recommendation

It is considered that the planning proposal has merit to proceed to a Gateway determination for the following reasons;

- the planning proposal is generally consistent with the vision, land use strategy, goals, directions or 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; and
- the planning proposal is consistent with the Northern Councils E Zone Review Final Recommendations.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objectives and intended outcomes of the planning proposal include:

- introducing an E4 Environmental Living Zone into Byron LEP 2014;
- rezoning and amending associated development standards on part of the land to part E4 Environmental Living and part SP3 Tourist to enable a nine lot residential subdivision;
- applying environmental zones (E2 Environmental Conservation and E3 Environmental Management) to land identified as meeting the criteria for an E zone as set out in the Northern Councils E Zone Review Final Recommendations and other land with the agreement of the landowner.

2.2 Explanation of provisions

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

- rezone land at Bayshore Drive Byron Bay to E4 Environmental Living, E3 Environmental Management, E2 Environmental Conservation and SP3 Tourist (Table 2) (Figure 9);
- apply a maximum 9m building height to part of Lot 449 DP 812102, part of Lots 12 and 13 DP 243218 and part of Lot 2 DP 1215893 consistent with the proposed E4 Living Zone and SP3 Tourist Zone;
- apply a minimum lot size of 2ha to part of Lot 449 DP 812102, part of Lots 12 and 13 DP 243218 and part of Lot 2 DP 1215893 consistent with the proposed E4 Environmental Living Zone and (Figure 11);
- introduce an E4 Environmental Living Zone land use table into Byron LEP 2014; and
- include an additional permitted use clause to allow the residential subdivision of the proposed E4 zone land for a maximum of 9 lots on part of Lot 449 DP 812102, part of Lots 12 and 13 DP 243218 and part of Lot 2 DP 1215893.

The E4 Environmental Living zone has not previously been applied in the Byron LEP 2014. The planning proposal includes the zone table to be implemented as part of this proposal (Table 3). The proposed zone table and introduction of the E4 Environmental Living zone into the Byron LEP 2014 is consistent with the requirements of the Standard Instrument LEP template and is considered appropriate as the site characteristics align with the objectives of the zone and intent of the planning proposal.

Table 2 – Proposed zones

Property	Current zoning	Proposed zone
Lot 1 DP 1215893	SP3 Tourist (BLEP 2014)	No change
	2(t) Tourist Area (BLEP 1988)	Part E2 Environmental Conservation Part E3 Environmental Management
	7(a) Wetland (BLEP 1988)	Part E2 Environmental Conservation
	7(f1) Coastal Lands (BLEP 1988)	No change

Lot 2 DP 1215893	SP3 Tourist (BLEP 2014)	Part E4 Environmental Living Part SP3 Tourist (unchanged)
	7(f1) Coastal Lands (BLEP 1988)	Part E4 Environmental Living Part E2 Environmental Conservation Part SP3 Tourist
Lot 12 DP 243218	SP3 Tourist (BLEP 2014)	Part E4 Environmental Living
	7(f1) Coastal Lands (BLEP 1988)	Part E4 Environmental Living Part E2 Environmental Conservation
Lot 13 DP 243218	SP3 Tourist (BLEP 2014)	Part E4 Environmental Living
	7(f1) Coastal Lands (BLEP 1988)	Part E4 Environmental Living Part E2 Environmental Conservation
Lot 449 DP 812102	SP3 Tourist (BLEP 2014)	E4 Environmental Living
	2(t) Tourist Area (BLEP 1988)	Part E2 Environmental Conservation Part E4 Environmental Living
	7(a) Wetland (BLEP 1988)	Part E2 Environmental Conservation Part E4 Environmental Living
	7(b) Coastal Habitat (BLEP 1988)	E2 Environmental Conservation
	7(f1) Coastal Lands (BLEP 1988)	Part E2 Environmental Conservation Part E4 Environmental Living Part no change
Lot 4 DP 1215893	SP3 Tourist (BLEP 2014)	No change
	2(t) Tourist Area (BLEP 1988)	E2 Environmental Conservation
Lot 1 DP 1215814	SP3 Tourist (BLEP 2014)	No change
	2(t) Tourist Area (BLEP 1988)	E2 Environmental Conservation
Lot 2 DP 620642	7(a) Wetland (BLEP 1988)	E2 Environmental Conservation

Table 3 – Standard Instrument and proposed E4 Land Zone table

Standard instrument LEP	Proposed Byron LEP 2014
<p>1. Objectives of zone</p> <ul style="list-style-type: none"> To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. To ensure that residential development does not have an adverse effect on those values. <p>2. Permitted without consent</p> <p>Home occupations</p> <p>3. Permitted with consent</p> <p>Dwelling houses; Oyster aquaculture; Pond-based aquaculture; Tank-based aquaculture</p>	<p>1. Objectives of zone</p> <ul style="list-style-type: none"> To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. To ensure that residential development does not have an adverse effect on those values. <p>2. Permitted without consent</p> <p>Environmental protection works; Home occupations</p> <p>3. Permitted with consent</p> <p>Dwelling houses; Oyster aquaculture; Pond-based aquaculture; <i>Roads</i>; Tank-based aquaculture</p> <p>4. Prohibited</p>

4. Prohibited

Industries; Service stations;
Warehouse or distribution centres;
Any other development not
specified in item 2 or 3

Home industries; Industries;
Residential accommodation; Service
stations; Warehouse or distribution
centres; Any other development not
specified in item 2 or 3

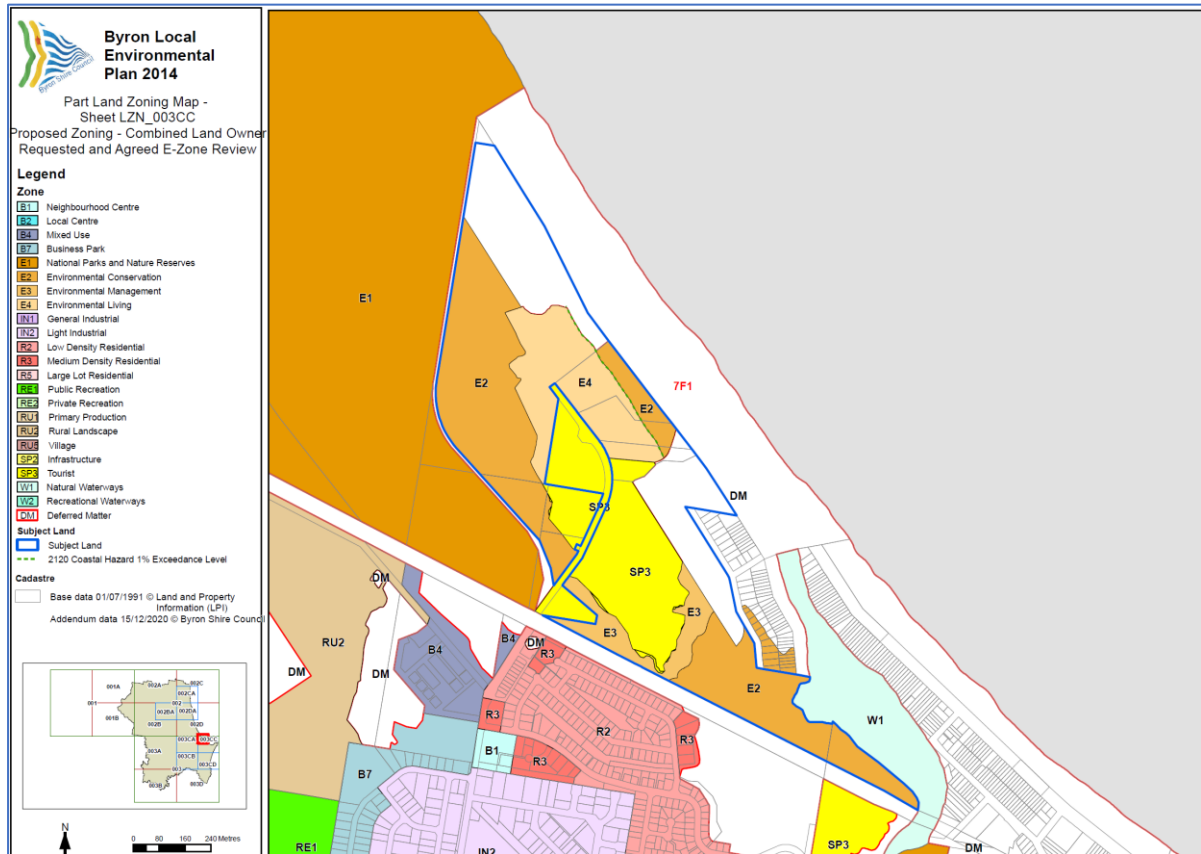


Figure 9 – Proposed zoning over site



Figure 10 – Future proposed 9 lot subdivision

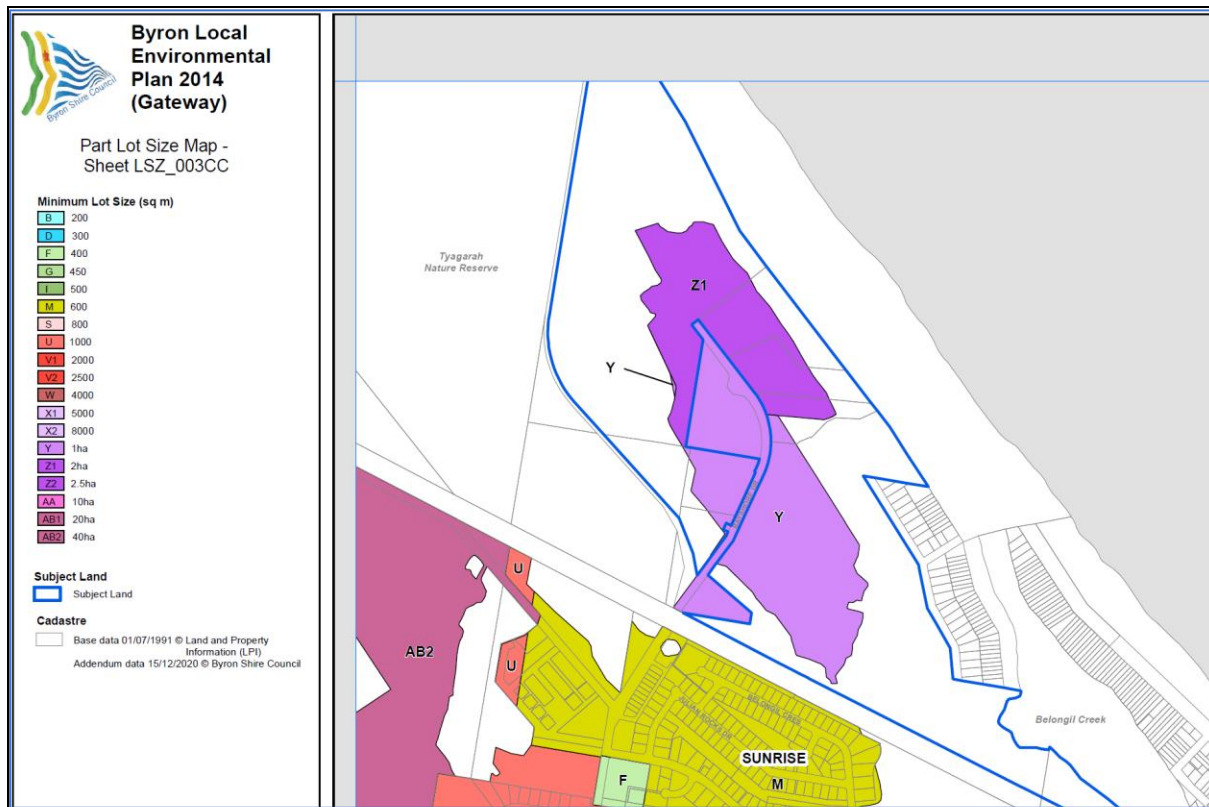


Figure 11 – Proposed lot sizes to be applied over the site

2.3 Mapping

The planning proposal will require the following maps to be amended:

- Land Zoning Map – LZN_003CC
- Lot Size Map – LSZ_003CC
- Height of Buildings Map – HOB_003CC
- Acid Sulfate Soils Map – ASS_003CC
- Land Application Map – LAP_001

The planning proposal includes the proposed lot size map, along with the existing zone map, land-owner requested land zoning map, agreed E-zone review map and agreed proposed zoning map. The proposed changes to the height of building map, acid sulfate soils map and land application map have not been included in the planning proposal report or attachments.

It is recommended that the planning proposal be amended prior to community consultation to include the current and proposed versions of each map required to be amended to facilitate the planning proposal.

It is also recommended that the planning proposal be amended prior to community consultation to remove the “land-owner requested” map and “agreed E zone review” map, so as to reduce possible confusion regarding the proposed outcome of the planning proposal.

The proposed minimum lot size map identifies a small area of land with a 1ha minimum lot size adjoining the western boundary of the proposed E4 zone. This is presumably a residual area of the existing SP3 zone. As this area is now proposed to be zoned E2 Environmental Conservation, it should be removed from the map, consistent with the other proposed E2 zoned lands in the planning proposal. The map should also be updated to apply a 1ha lot size to the proposed extension of the SP3 Tourist zone consistent with the remainder of the zone.

Similarly, the proposed zoning map contains anomalies along the proposed boundary of the SP3 zone with the E2 and E3 zones. These should be resolved and clarified in the planning proposal prior to community consultation.

3. NEED FOR THE PLANNING PROPOSAL

The request to amend the Byron LEP 2014 was submitted to Council by Planners North on behalf of the landowner to rezone part of the site to E4 to enable a nine lot subdivision over the site. The planning proposal also seeks to incorporate into the Byron LEP 2014 some of the land that was deferred from the LEP which the landowner has agreed can now be zoned E2 and E3.

It is considered that a planning proposal is the best and only means of incorporating the deferred land into the Byron LEP 2014 and applying appropriate zones, development standards and other planning controls.

The planning proposal includes the following consequential amendments to the land application, land zoning, height of building, minimum lot size and acid sulfate soil classification mapping contained in Byron LEP 2014.

Height of building

The proposed changes to the height of building map are required to include the currently deferred land with no height provision and apply a suitable maximum building height. While it is understood that this will be a 9m height consistent with the existing LEP 2014 standards on the site and surrounding lands, the planning proposal does not specifically state what maximum building height is proposed. This should be clarified prior to consultation.

Minimum lot size

The proposed change to the minimum lot size (MLS) map applies a minimum lot size for subdivision to the land within the proposed E4 Environmental Living zone. Page 13 of the planning proposal inadvertently refers to a proposed 1ha minimum lot size for the E4 zoned land. The planning proposal should be amended prior to consultation to clarify that a 2ha minimum lot size is proposed for this area.

Acid sulfate soils

Extensive areas of the eastern portion of the Byron LGA contain acid sulfate soils. The mapping of the acid sulfate soil classification of land is now included in the Byron LEP 2014. The application of an acid sulfate soil classification to the deferred land subject to this planning proposal is considered to be appropriate.

Additional permitted uses clause

The proposed additional permitted use clause is required to enable the proposed E4 zoned land to be subdivided to a maximum of nine lots consistent with a Council and landowner agreed proposed subdivision layout. The subdivision involves a mixture of lot sizes and may still be subject to some minor refinements. An additional permitted use clause is necessary in this instance to achieve the desired outcome and provide a level of flexibility that could not be achieved by solely relying on the minimum lot size map.

4. STRATEGIC ASSESSMENT

4.1 State

Northern Councils E Zone Review Final Recommendations Report

The final recommendations report sets out clear criteria and methodologies for Far North Coast Councils to follow when seeking to apply E zones. This is further supported by a Section 9.1 Ministerial Direction requiring Councils to be consistent with the adopted recommendations. A directive from the Department's former Secretary (1 March 2016) also provides further guidance on how to apply the final recommendations. The final recommendations also clarify that the application of E zones under the criteria only applies to land proposed for an E zone.

The proposal is considered to be consistent with the Northern Councils E Zone Review Final Recommendations Report criteria and methodology (Attachment E). It is noted that the subject site was not identified to be zoned E4 Environmental Living in the Draft Byron LEP (Figure 12), as the E Zone Review Final Recommendations requires any proposed E4 Zones in the draft Byron LEP 2014 to be zoned to an appropriate residential zone.

It is also normally required that landowners receive formal notification of any proposed E zones during consultation. In this instance, this requirement is not necessary as there is only one affected landowner, who has initiated this planning proposal and has agreed to the zoning through the lodgement of the planning

proposal. As landowner's consent has been granted to the application of the E zones, the proposal is also considered to be consistent with the E Zones Review Final Report recommendations and section 9.1 Direction 2.5 *Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs*.

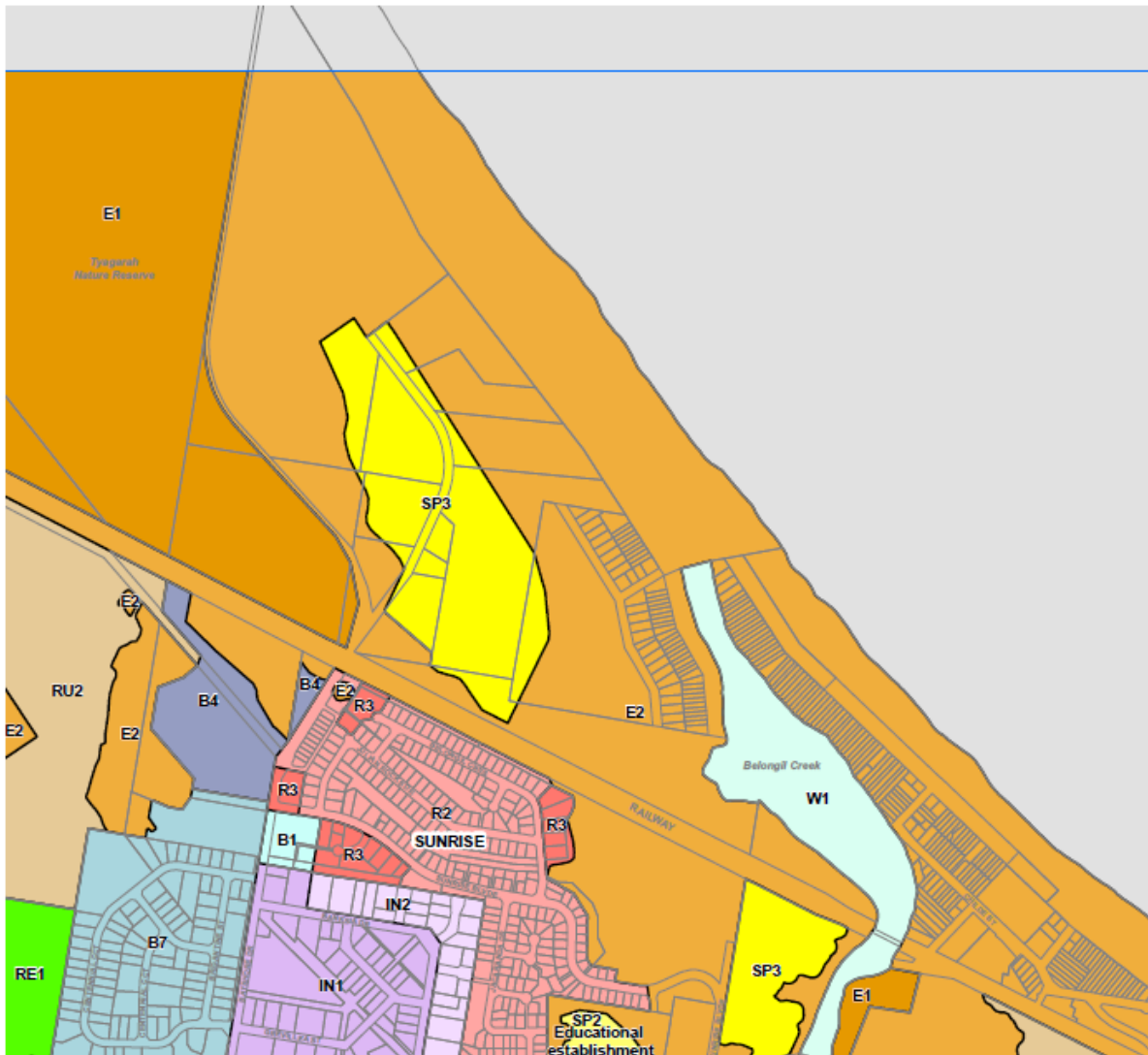


Figure 12 – Exhibited Draft Byron LEP in 2011 with land zoning

4.2 Regional

North Coast Regional Plan 2036 (NCRP)

The NCRP contains the following Directions and associated actions of relevance to the planning proposal:

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 subject to this planning proposal is located outside the urban growth area boundary (Figure 13).

The Direction also provides that only minor and contiguous variations to urban growth areas in the coastal strip will be considered due to its environmental sensitivity and the range of land uses competing for this limited area.

The Direction requires that Appendix A Urban Growth Area Variation Principles be considered and justified. Table 4 includes an assessment of the principles.

Table 4 - 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 specific servicing arrangements will be considered at the development application stage.
Environment and farmland protection	Parts of the site are identified as having potential high environmental values with these parts of the subject site proposed to be zoned E2, E3 and E4. The parts of the land to be zoned E4 Environmental Living are predominantly clear of vegetation and have a number of artificial water bodies due to its previous use as a private golf course. An ecological assessment was provided to support the application.
Land use conflict	The land is appropriately separated from incompatible land uses. The proposal will ensure that a maximum of 9 lots is facilitated on the site. The objectives of the E4 zone are to provide low impact residential development, with impacts on the environment therefore unlikely to conflict with proposed E2 and E3 zoned land.
Avoiding risk	<p>The land is mapped as bushfire prone, flood prone, subject to coastal hazard and partially containing acid sulfate soils. The proposal confirms that these matters can be adequately addressed noting that:</p> <ul style="list-style-type: none"> • acid sulfate soils can be considered at the development application stage with appropriate provisions already contained within Byron LEP 2014; and • the Gateway determination will require consultation with the NSW Rural Fire Service and the NSW Biodiversity and Conservation Division to confirm the suitability of the proposal in terms of bushfire, flooding and coastal hazard.
Heritage	Consultation has occurred with Tweed Byron Local Aboriginal Land Council (TBLALC) who have raised no objection to the proposal proceeding. Further formal consultation is however still recommended.
Coastal area	The planning proposal seeks to rezone a small area of land to E4 Environmental Living outside the urban growth boundary within the coastal strip. The proposal is considered to be a minor and contiguous variation to the urban growth area boundary.



Figure 13 – Urban Growth boundary

Direction 2 – Enhance biodiversity, coastal and aquatic habitat and water catchments

This Direction requires that new development is appropriately located to limit any adverse impact on the region's biodiversity, coastal and aquatic habitats and water catchments. Action 2.1 aims to focus development to areas of least biodiversity sensitivity and implement the 'avoid, minimise, offset' hierarchy to biodiversity including area of high environment value.

The land subject to the planning proposal does contain areas of potentially high environmental value (Figure 14) and biodiversity values (Figure 15). The areas mapped as having biodiversity values are proposed to be zoned E2 and E3, whilst there are some areas identified as having potential high environmental value (HEV) proposed to be rezoned to E4 (noting that much of this land is currently zoned either SP3 Tourist or 2(t)Tourist Area).

The planning proposal was accompanied by an ecological assessment of the area to be zoned E4 Environmental Living, which confirms the ecological characteristics of the land and noted:

- The area proposed as E4 zone is dominated primarily by exotic grassland and contains three constructed waterbodies which have freshwater wetland characteristics. Features of the waterbodies include: native fringing and submerged vegetation; native and exotic frogs (e.g. the cane toad); native and exotic fish (e.g., the native eels and exotic plague minnow); native waterbirds; and regenerating trees and shrubs within the water body buffer;
- The flora and fauna surveys undertaken did not record threatened frogs or birds within the waterbodies or the surrounding grassland in the proposed E4 zone. However, a number of vulnerable bat species are likely to forage over the water bodies; and
- Vegetation within the proposed E4 zone comprises predominantly scattered trees (coast banksia, *Banksia integrifolia* var. *integrifolia* and broad-leaved paperbark, *Melaleuca quinquenervia*) and exotic grassland.

As the planning proposal applies to potential HEV land and land identified as having biodiversity values, it is recommended that consultation with the NSW Biodiversity and Conservation Division be undertaken to confirm the suitability of the submitted ecological assessment and the proposal.

Direction 3: Manage natural hazards and climate change

This Direction identifies that the North Coast is prone to a range of natural hazards. Action 3.1 aims to reduce the risk from natural hazards by identifying, avoiding and managing areas vulnerable to hazards.

The land subject to the planning proposal is bushfire prone. It is recommended as a condition of the Gateway determination, and as a requirement of the section 9.1 Direction 4.4 Planning for Bushfire Protection, that consultation be undertaken with the NSW Rural Fire Service to confirm the suitability of the proposal and whether measures must be implemented to manage the hazard.

The land subject to the planning proposal is prone to flooding from the Belongil catchment, which is heavily influenced by tailwater levels in Belongil Creek, including tidal and storm surges. A flood assessment report was submitted with the planning proposal, providing a review of the previous flood studies carried out within Belongil Creek catchment, a review of Council's flood model and existing and predicted post development flood impacts. It is recommended as a condition of the Gateway determination, that consultation with the NSW Biodiversity and Conservation Division be undertaken to confirm the suitability of the proposal.

The land proposed to be rezoned has also previously been identified as being potentially subject to coastal hazards. A coastal hazard assessment report was submitted with the planning proposal which undertook a probabilistic assessment of the coastal hazard affecting the site. Council has determined that it is appropriate to rezone the land to a new 'contemporary' 100 year (2120) coastal hazard line as proposed within the coastal hazard assessment report. A small area of land seaward of the coastal hazard line identified in the coastal hazard assessment is proposed to be zoned E2 Environmental Conservation, while the remainder will retain its current 7(f1) Coastal Lands zoning under the Byron LEP 1988, pending the completion of the Coastal Management Plan (currently being prepared). Although, Council and the NSW Biodiversity and Conservation Division were consulted during the preparation

of the coastal hazard assessment, it is recommended that the Gateway determination require formal consultation with the NSW Biodiversity and Conservation Division be undertaken to confirm the suitability of the proposal in regard to this issue.



Figure 14 – Potential High Environmental Value land map

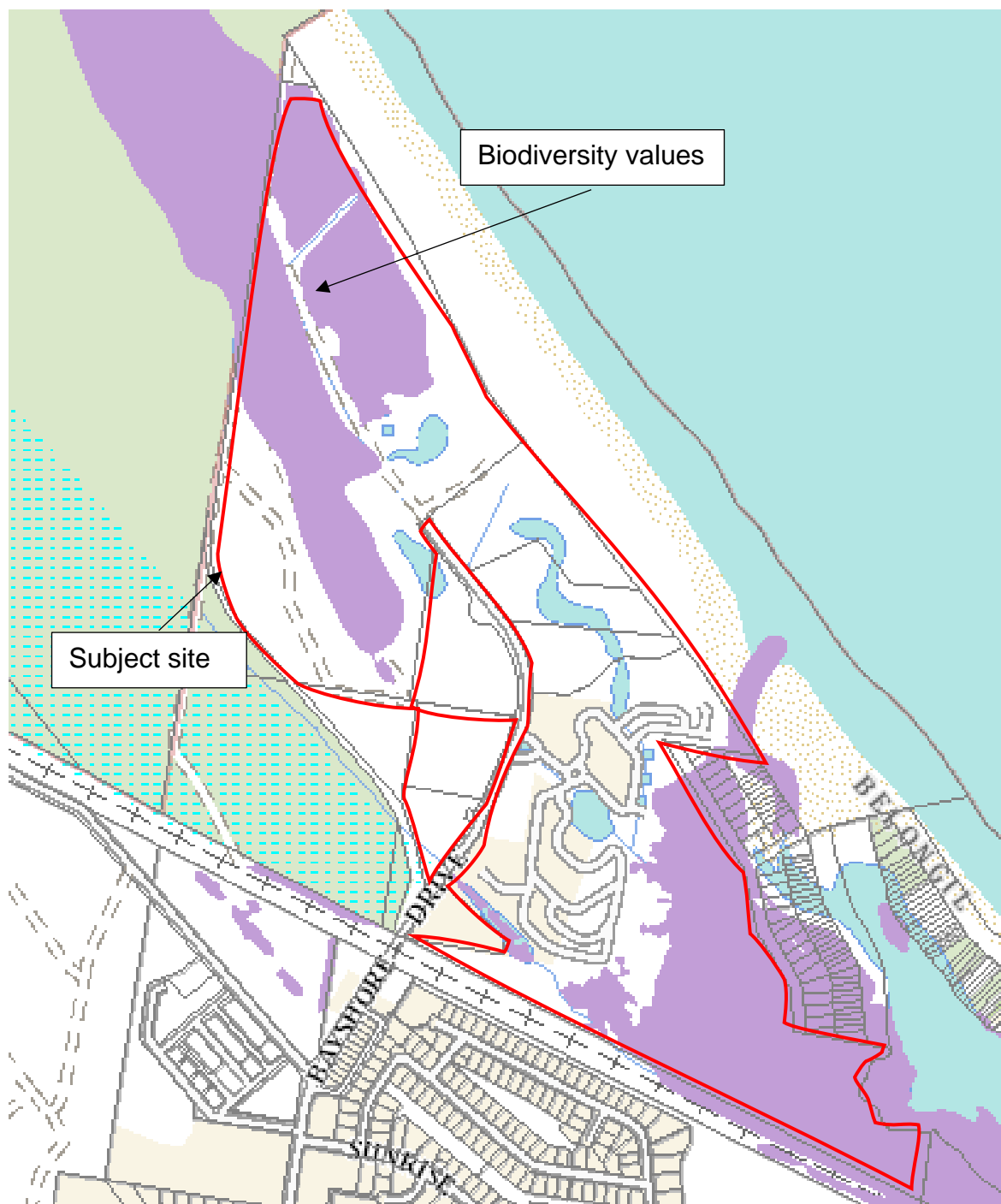


Figure 15 – Biodiversity values map

4.3 Local

The Byron Shire Local Strategic Planning Statement (Byron LSPS) includes priority actions by theme. This planning proposal aligns with and works towards achieving the Sustainable Shire theme action SA1. *Review and update LEP and DCP to reflect HEV mapping and implement E Zones in accordance with State Government requirements.* It is considered that the proposal aligns with action SA1 as it supports the continued implementation of E zones.

4.4 Section 9.1 Ministerial Directions

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

Direction 2.2 Coastal Management

The proposal is inconsistent with this Direction as it includes land mapped in the State Environmental Planning Policy (Coastal Management) 2018 as coastal wetland, proximity area for coastal wetlands, littoral rainforest and proximity to littoral rainforest and does not include provisions which give effect to the objectives of the Coastal Management Act 2016 and the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003. It is recommended that this inconsistency remains unresolved until consultation with the NSW Biodiversity and Conservation Division is undertaken to confirm the suitability of the proposal

Direction 2.6 Remediation of Contaminated Land

This proposal is potentially inconsistent with the Direction as seeks to apply the E4 Environmental Living Zone to land which may have been contamination from its previous use as a private golf course. It is recommended that the Gateway determination require a preliminary investigation of the land be carried out in accordance with the contaminated land planning guidelines to confirm the proposal can satisfy the requirements of the Direction and the suitability of the land for its proposed use. Until this has been completed it is recommended that this Direction remains unresolved.

Direction 4.1 Acid Sulfate Soils

The planning proposal is inconsistent with this Direction as allows an intensification of use on acid sulfate soils and is not supported by an acid sulfate soils study. This inconsistency is considered to be of minor significance as Byron LEP 2014 contains acid sulfate soil provisions that can adequately address this matter at the development application stage.

Direction 4.3 Flood Prone Land

The planning proposal is inconsistent with this Direction as it rezones flood prone land to E4 Environmental Living and does not demonstrate consistency with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guide on Development Controls on Low Flood risk Areas). While a supporting flood study has been prepared indicating that suitable building envelopes can be established with minimal impact on localised flooding, it is recommended that this inconsistency remains unresolved until consultation with the NSW Biodiversity and Conservation Division is undertaken to confirm the suitability of the proposal.

Direction 4.4 Planning for Bushfire Protection

This Direction applies as the proposal affects bushfire prone land. The Direction requires Council to 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 5.10 Implementation of Regional Plans

As discussed in Section 4.2, it is considered that consultation with the NSW Biodiversity and Conservation Division is required to confirm the suitability of the proposal in terms of any potential flooding, coastal hazard or environmental impacts.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Aboriginal cultural heritage

The Tweed Byron Local Aboriginal Land Council (TBLALC) was consulted during preparation of the planning proposal. The TBLALC undertook a site inspection and provided a cultural heritage site inspection report. An AHIMS web service search noted 3 aboriginal sites recorded in or near the subject site (Figure 17).

The key recommendations of the report note that *“in TBLALC’s opinion there is nothing at this stage to halt or delay the consideration of subdivision or rezoning of this site”* subject to further consultation regarding future development applications on the project area being undertaken.

While TBLALC has provided preliminary advice confirming the suitability of the proposal in terms of Aboriginal cultural heritage, it is recommended that the Gateway determination require formal consultation with TBLALC and Heritage NSW to confirm the suitability of the proposal



Figure 17 – AHIMS search results

5.2 Environmental

The proposal is not expected to have an adverse impact on critical habitat or threatened species, populations or ecological communities or their habitats. The zones proposed for the subject land reflect the attributes and current primary uses of the land. The proposed zones will not result in a significant increase in development potential on any land containing substantial native vegetation.

Flooding, bushfire, coastal hazard and environmental values onsite have been discussed throughout this report, with supporting studies having been provided confirming the suitability of the proposal in terms of these issues. This is considered

satisfactory subject to post Gateway determination investigations and consultation with appropriate agencies.

5.3 Economic

The proposal is not expected to have any significant negative economic impacts.

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 28 day public exhibition period is appropriate in this instance as the planning proposal is not 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
- NSW Biodiversity and Conservation Division
- Tweed Byron Local Aboriginal Land Council
- Heritage NSW

7. TIME FRAME

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

Consistent with the Secretary's directive of 1 March 2016, an authorisation to act as the local plan-making authority cannot be issued to Northern councils where a planning proposal seeks to apply an E zone to land. This is to ensure a consistent approach to the finalisation of zoning decisions consistent with the E zone review final recommendations report.

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 or 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;
- the planning proposal is consistent with the Northern Councils E Zone Review Final Recommendations.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree that any inconsistency with section 9.1 Direction 4.1 Acid Sulfate Soils is justified in accordance with the terms of the Direction; and
2. note that the consistency with section 9.1 Directions 2.2 Coastal Management, 2.6 Remediation of Contaminated Lands, 4.3 Flood Prone Land, 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:

1. Prior to agency consultation and public exhibition, Council is to:
 - (a) prepare a preliminary contamination investigation report;
 - (b) amend the planning proposal as follows:
 - i. update the proposed minimum lot size map and proposed zone map to resolve any minimum lot size and zone boundary anomalies, including the application of a one hectare minimum lot size to all proposed SP3 Tourist Zone land;
 - ii. include the current and proposed versions of each map required to be amended to facilitate the planning proposal;
 - iii. remove the landowner requested map and agreed E zone review map;
 - iv. clarify and confirm the proposed height of building changes; and
 - v. clarify throughout the document that a 2 hectare minimum lot size is proposed for the proposed E4 zone.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - NSW Biodiversity and Conservation Division
 - Tweed Byron Local Aboriginal Land Council
 - Heritage NSW
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 not be authorised to be the local plan-making authority to make this plan.



18/2/21

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22/2/2021

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