

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.14

Report No. 13.14 **PLANNING - 26.2015.3.1 General Policy and Housekeeping Changes - Byron Local Environmental Plan (LEP) 2014**

Directorate: Sustainable Environment and Economy

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5 **File No:** I2015/874

Theme: Ecology

Planning Policy and Natural Environment

10 **Summary:**

This report presents a Council initiated Planning Proposal that amends Byron LEP 2014 in relation to 18 matters as follows:

- 15 • Minor amendments to the land use table that will affect all land within zones R2 Low Density Residential and R5 Large Lot Residential, RU1 Primary Production, IN1 General Industrial, IN2 Light Industrial, B1 Neighbourhood Centre, B2 Local Centre, B4 Mixed Use, B7 Business Park, W1 Natural Waterways, and W2 Recreational Waterways.
- 20 • Inclusion of a new clause that will permit a "*special purpose subdivision*" in all RU1 Primary Production and RU2 Rural Landscape zones.
- Alterations to the heading to clause 4.1B to properly reflect the content of the clause and alter a term used throughout the clause to better reflect its intent.
- Remove "R5 Large Lot Residential" from one part of Clause 4.1D relating to subdivision of split zone lots and insert it into other parts of the same clause.

25 For site specific matters, the planning proposal will:

- Permit *registered clubs* as an additional use on the Cavanbah Sports Centre site at West Byron (Lot 3 DP 706286).
- 30 • Alter schedule 5 (Environmental Heritage) to delete item I173 (Roundhouse site) as the Roundhouse building has been demolished and the land subdivided for residential purposes.
- Permit a *dwelling* on Lot 1 DP 394451, Jones Road consistent with previous advice to the landowner based on the history of the site.
- 35 • Alter the SP1 zone that applies to Lot 1 DP 1031848, Broken Head to describe the SP1 zone as "private education facility". Alter schedule 1 to define "private education facility" as it applies to the subject land.
- Rezone three irregular shaped lots adjacent to Kulkan Court, Ocean Shores from RU2 Rural Landscape to R2 Low Density Residential to be consistent with surrounding land use and approved residential development. Amend the corresponding Floor Space Ratio (FSR) and Minimum Lot Size (MLS) maps for the same lots to make them consistent with the surrounding R2 Low Density Residential zone.
- 40 • Amend the Minimum Lot Size map for a Bangalow urban release area (Lot 12 DP1189289) to better align location of the existing 300m² MLS with a recent subdivision approval.

45 This report recommends that the LEP amendments in this Planning Proposal be supported and sent to the Department of Planning and Environment for Gateway Approval.

50 NOTE TO COUNCILLORS:

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

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RECOMMENDATION:

That Council proceed with the planning proposal contained in Attachment 1 and send it to the NSW Department of Planning and Environment requesting a Gateway Approval.

Attachments:

- 5 1 Planning Proposal for LEP 2014 General Amendment No.2 - General Policy and Housekeeping Changes In Byron Shire, E2015/54624
- 2 Form of Special Disclosure of Pecuniary Interest, E2012/2815

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The purpose of the planning proposal is to amend various parts of Byron LEP 2014 as part of an annual review of the planning instrument. The amendments are unrelated. Some are general and some site specific. Some have come from Council resolutions and some have come from staff observations, consultants or landowners. They are discussed below.

A. Insert recreation facility (indoor) in the B1 Neighbourhood Centre land use table as permissible with consent

At its Meeting on 26 February 2015 Council resolved

15-050 Resolved:

1. That Council reviews permitted land uses in B1 Neighbourhood Centre zones (including Suffolk Park) in the Byron LEP 2014 to include 'recreational facilities (indoor)', and any other additional uses considered appropriate.
2. That any proposed amendments be included in the next 'housekeeping' Planning Proposal adjustments to the Byron 2014 LEP.

The B1 Neighbourhood Centre zone affects land at Bayside Brunswick, Bayshore Drive West Byron and Suffolk Park shopping centre. The amendment will permit uses such as gyms and health studios (for example). The land use table is otherwise similar to neighbouring Council's and no other changes are warranted. The Planning Proposal in Attachment 1 includes an amendment to the land use table for zone B1 Neighbourhood Centre.

B. Insert secondary dwelling in the R2 Low Density Residential and R5 Large Lot Residential land use tables as permissible with consent

Council staff noted that in LEP 2014 *secondary dwellings* are prohibited in the R2 and R5 zones while in the R3 zone they are permitted with consent. They are permitted under the Affordable Housing SEPP in all these zones and should be in the LEP as well. The Planning Proposal in Attachment 1 includes an amendment to the land use table for zone R2 Low Density Residential and R5 Large Lot Residential to permit *secondary dwellings* as permitted with consent.

C. Insert dual occupancy (detached) in the R5 Large Lot Residential land use table as permissible with consent

During the recent exhibition of the detached rural dual occupancy planning proposal it was noted by staff that the Council resolution did not include *dual occupancy (detached)* as permitted with consent in the R5 Large Lot Residential Zone. Given that the R5 areas are better serviced than RU1 and RU2 areas this appears to be an oversight and it should have been included. The Planning Proposal in Attachment 1 includes an amendment to the land use table for the R5 Large Lot Residential zone to permit *dual occupancy (detached)* as permitted with consent.

D. Insert agriculture in the RU1 Primary Production land use table as permissible with consent. Insert aquaculture as a prohibited use. Delete intensive animal agriculture and intensive plant agriculture from permissible with consent (they will be covered by agriculture).

Consistent with the RU2 Rural Landscape land use table, Council staff noted that *agriculture* should be "permissible with consent" in zone RU1 Primary Production given the objectives of the zone. Similarly, *Intensive livestock agriculture* and *intensive plant agriculture* can then be removed from permissible with consent (because they are covered by *agriculture*) while *Aquaculture* needs to be added to prohibited development. The Planning Proposal in Attachment 1 includes an amendment to the land use table for the RU1 Primary Production zone to effect these changes.

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- E. Insert waste or resource management facilities as a prohibited use in the B2 Local Centre, B4 Mixed Use and B7 Business park zone land use tables. Delete any references to its "child" definitions in these land use tables wherever they occur.

5 It was not Council's intent to allow *waste or resource management facilities* (or any of its "child" definitions) in any of the business zones in LEP 2014. The draft LEP was amended to permit *waste or resource management facilities* with consent in the B2, B4 and B7 zones by DPE without consultation with Council. *Waste or resource management facilities* should be prohibited in the B2 Local Centre, B4 mixed Use and B7 Business Park zones. *Waste disposal facility* and *resource*
10 *recovery facility* should be removed from all three zones. The Planning Proposal in Attachment 1 includes an amendment to the land use table for the B2 Local Centre, B4 mixed Use and B7 Business Park zones zone to effect these changes.

- F. Delete environmental facilities as a prohibited use in the B4 Mixed Use zone land use table.

15 In its draft LEP Council inadvertently listed *environmental facilities* as both permitted and prohibited in the B4 Mixed Use zone. It was meant to be permitted with consent. It was incorrectly changed by DPE without consultation. *Environmental facilities* will be added to the permitted with consent section of the B4 Mixed use zone. The Planning Proposal in Attachment 1 includes an amendment
20 to the land use table for the B4 Mixed Use zone to permit *environmental facilities* with consent.

- G. Delete biosolids treatment facilities, sewage treatment plants and water recycling facilities from the prohibited section of the land use table in the IN1 General Industrial zone.

25 SEPP (Infrastructure) permits with consent *biosolids treatment facilities, sewage reticulation systems, sewage treatment plants* and *water recycling facilities* in the IN1 General Industrial zone. Any person can lodge a development application for these uses under the SEPP. LEP 2014 permits the parent definition of *sewerage systems* but prohibits all of the "child" definitions except *sewerage reticulation systems*. Although the SEPP over rides the LEP, it does not make sense to
30 have an LEP that appears to be intentionally at odds with the SEPP. This was not Councils intent with its draft LEP. *Biosolids treatment facilities, sewage treatment plants* and *water recycling facilities* should all be deleted from the prohibited section, making them permitted with consent in the IN1 zone. The Planning Proposal in Attachment 1 includes an amendment to the land use table for the IN1 General Industrial zone to effect these changes.

- 35 H. Insert electricity generating works as a prohibited use in the IN2 Light Industrial zone land use table.

40 It was not Council's intent to allow *electricity generating works* in the IN2 Light Industrial zone. It was advertised in the draft LEP as a prohibited use and changed by DPE without consultation. *Electricity generating works* should be added to the prohibited section of the IN2 Light Industrial zone. The Planning Proposal in Attachment 1 includes an amendment to the land use table for the IN2 Light Industrial zone to add *electricity generating works* as a prohibited use.

- 45 I. Insert roads in the W1 Natural Waterways and W2 Recreational Waterways zone land use tables as permissible with consent.

50 It was not Council's intent to prohibit *roads* in the W1 Natural Waterways and W2 Recreational Waterways zones. In the case of waterways zoned W1 and W2 it's important that *roads* can be permitted with consent on merit if they are required to cross a waterway (ie bridges are roads). Therefore the Planning Proposal in Attachment 1 includes an amendment to the land use table for the W1 Natural Waterways and W2 Recreational Waterways zones to add *roads* as permitted with consent.

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- J. Insert a new clause in Part 4 Principal Development Standards to enable certain subdivision (sometimes referred to as a special purpose subdivision) to be approved on land zoned RU1 and RU2 where the lot will be less than the minimum lot size shown on the minimum lot size map.

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A consultant suggested that Council include a "special purpose subdivision" provision in Byron LEP 2014. This is because under LEP 1988, Council had the ability to grant consent to a rural zoned lot of any size as long as it was not for the purposes of "agriculture, forestry or a dwelling house". The provision was abandoned with the gazettal of the Byron LEP 2014 as a result of the standardisation of LEP provisions. Other north coast LEPs (eg. Clarence Valley Council and Richmond Valley Council) have included a "special purpose subdivision" provision that would enable an approved use to be lawfully subdivided from a parent lot. The Planning Proposal in Attachment 1 includes a clause based on the Clarence Valley Council provision.

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- K. Amend the heading to clause 4.1B "Minimum subdivision lot size for multiple occupancy or rural landsharing community developments" to better reflect the content of the clause. The revised heading would be "Minimum subdivision lot size for multiple occupancy or rural community title developments".
Amend clause 4.1B to replace "rural landsharing developments" with "rural community title development" wherever it occurs.

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Council staff noted that this clause uses terminology (*rural landsharing*) that does not fit the type of development that it was intended to deal with (namely *multiple occupancy or rural community title developments*). It is a minor amendment that will make the clause more accurate. The Planning Proposal in Attachment 1 includes a variation to this clause to effect these changes.

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- L. Amend clause 4.1D relating to subdivision of split zone lots.

Clause 4.1D applies to land that is affected by more than one zone. The intention of a split lot clause is to allow land that is zoned for a more intensive use — such as residential, rural residential, business or industrial — to be subdivided off from a rural or other less intensive zone where the latter zoned land is less than the Minimum Lot Size (often 40 hectares). In Council's existing clause the rural residential zone appears on both sides of the list of zones to be separated. This does not make sense and has created confusion. To fix the clause, reference to "large lot residential" needs to be located with the intensive land uses [subclause (3)(a)(i)] and deleted from the list of less intensive land uses [subclause (3)(a)(ii)]. The Planning Proposal in Attachment 1 includes a variation to this clause to effect these changes.

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- M. Allow registered clubs as an additional permitted use on the Cavanbah Sports Centre site at West Byron (Lot 3 DP 706286) by amending Schedule 1.

Council staff noted that in order to facilitate future commercial opportunities on Council land zoned *RE1 Public Recreation*, LEP 2014 should allow registered football club training facilities to be developed on sports grounds such as the Cavanbah Sport Centre, in West Byron. Registered clubs were not a permitted use in the 1988 LEP on land zoned 6(a) Public Open Space. Realising this use on sites such as the Cavanbah Sports Centre would require Council to review its plan of management as a separate process. To create this commercial potential, the Planning Proposal in Attachment 1 includes an amendment to Schedule 1 that specifically permits registered clubs with consent on this site.

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Note: The RE1 zone is used extensively in Byron Shire including New Brighton Oval, Water Lilly Park, open space throughout Ocean Shores, all three Brunswick Heads Caravan Parks, Brunswick River foreshore, Stan Thompson Oval, Cavanbah Sports Centre, Butler Street Reserve, First Sun Caravan Park, part of Sandhills Estate, Tennyson Street playing fields, and Suffolk Park Caravan Park. It would be difficult to justify also permitting registered

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clubs in many of these locations in the absence of an adopted policy framework for land in this zone.

N. Amend Schedule 5 Environmental Heritage by deleting item 1173 (Roundhouse site).

In implementing Council's decision to reclassify the Roundhouse site at Ocean Shores staff noted that it was still listed in LEP 2014 as a heritage item. The building has been demolished for some time and the land on which it stood is zoned for residential purposes and has been approved for subdivision. Retaining the listing serves no purpose. The Planning Proposal in Attachment 1 includes an amendment to Schedule 5 that deletes heritage item 1173 (Roundhouse Site).

O. Permit a dwelling house on Lot 1 DP 394451, Jones Road.

This lot is one of four small lots at the end of Jones Road created in the 1950's. Three have dwellings on them and this one does not have a dwelling entitlement. It is approximately 5 hectares and is part RU2 Rural Landscape and part deferred matter (7k habitat under LEP 1988). It has Billinudgel Nature Reserve on two sides. In July 2014 the (then) Director of Planning advised the owner "The inability for consent to be granted for a dwelling house on the subject lot under Byron LEP 2014 (despite Council supporting such an outcome) has resulted from re-drafting of Clause 4.2A since the time that the draft LEP was first prepared (as guided by the LES). Given these circumstances an amendment to allow consent to be granted for a dwelling house on the subject lot will be included in one of the first amendments to Byron LEP 2014."

The applicant has not undertaken a SEPP 55 preliminary contaminated land assessment and has not supplied any information on bushfire hazard. The State government Aboriginal Heritage Information Management System (AHIMS) lists the subject land as containing a registered Aboriginal site. Subject to the Gateway Determination issued by Department of Planning & Environment, Council may require submission of this information (i) prior to finalising the planning proposal or (ii) at the development application stage once the dwelling curtilage and accompanying land uses are known.

The Planning Proposal in Attachment 1 includes an amendment to Schedule 1 that specifically permits a dwelling house on the subject land (as shown in Map 1 below).



Map 1 - Lot 1 DP 394451, Jones Road.

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- P. Amend map sheet LZN 003D to correct an error with the zone label for Lot 1 DP 1031848 to change the label from " educational establishment" to "private education facility".

5 At its Meeting on 5 February 2015 Council resolved:

15-029 Resolved:

4. *That at the next general update of Byron LEP 2014 Council will amend the SP1 zone on Lot 1 DP 1031848 to refer to a private education facility, and amend Schedule 1 to define private education facility and specifically permit it as a use on the subject land.*

The Planning Proposal in Attachment 1 includes an amendment to Schedule 1 that defines private education facility and permits it with consent on this site. An amendment to the zoning map will also be made to describe the subject land as "private education facility".

- Q. Amend map sheet LZN 002CA to change the land use zone for Lot 12 DP 1128095, Lot 11 DP 1128095 and Lot 606 DP 240398, Ocean Shores, from RU2 Rural Landscape to R2 Low Density Residential. Amend map sheet LSZ 002CA to change the MLS for the same lots from 40 ha to 600 m². Amend map sheet FSR 002CA to include a 0.5 FSR for the same lots.

Council approved a large senior's housing development on land near Kulgan Court in Ocean Shores. Part of that land is in the RU2 Rural Landscape zone because it was previously in a rural investigation zone. It encompasses three irregular shaped lots with a combined area of approximately 8600 m². Two extremely narrow strips are owned by Council and the slightly larger lot is privately owned. The two very narrow strips (approximately 600mm wide) were created at the rear of private land that backs onto a proposed road corridor at Ocean Shores near Kulgan Court. The proposed road has been abandoned and sold for private development and the strips are no longer required. It makes sense that the narrow strips be included in the R2 Low Density Residential zone the same as most of the land in the vicinity. With residential land on two sides and a residential (seniors) approval in place this serviced urban land should be included in an urban zone. It is not used for agriculture and contains no significant habitat. It has been subject to a preliminary contamination assessment under SEPP 55 and is not likely to be contaminated from past land use. It is not known to contain Aboriginal sites. In combination with it changing to an R2 Low Density Residential zone it also should have a minimum lot size (MLS) of 600 m² and a floor space ratio (FSR) of 0.5. These are the same as surrounding residential land.

The Planning Proposal in Attachment 1 includes an amendment to Byron LEP 2014 map sheets LZN 002CA, LSZ 002CA, and FSR 002CA to apply the above changes to the subject land. Please refer to Map 3 of the Planning Proposal at Attachment 1.

- R. Amend map sheet LSZ 003CB to modify the existing 300 m² MLS for certain land at Bangalow (Lot 12 DP1189289, Parrot Tree Place) to align with a recent subdivision on the same parent lot further to the west.

In amending Byron DCP Council received a submission in relation to the Bangalow urban release area shown in Map 2 below. Staff commented that *"the relevant 300m² areas on the LEP 2014 Lot Size Map are inconsistent with the indicative medium density residential areas illustrated on the suggested Structure Plan and inconsistent with the plan of subdivision approved under the consent to DA 10.2012.6.1. It is recommended that options be explored at a later date to amend the relevant LEP 2014 Lot Size Map such that the 300m² Lot Size areas more closely reflect the Medium density residential areas in the submission."*

To this end the Planning Proposal in Attachment 1 includes an amendment to Byron LEP 2014 map sheet LSZ 003CB that applies the above changes to the subject land.



- 5 **Map 2 – Land shown as “medium density residential” represents the preferred location for the 300m² Minimum Lot Size on Lot 12 DP1189289, Bangalow**

Matters that have been omitted from this Planning Proposal

- 10 **Building Heights In Lawson Street**

At its meeting on 21 May 2015 Council resolved:

15-216 Resolved:

- 15 *That the height limits be reviewed for Zone B2 in Lawson Street on the eastern side of the road as part of the housekeeping amendment report of the Byron LEP 2014.*

20 Building heights are one influence on the urban form of Byron CBD, but they should not be reviewed in isolation of floor space ratio, car parking, landscaping, etc. The Byron Bay Town Centre Masterplan is addressing the issue of built form in the CBD which includes the B2 zone along Lawson Street. Once the final master plan has been delivered and considered by Council it is appropriate that issues such as height, FSR, car parking, etc be revisited. The LEP (and DCP) can be used to achieve the urban form that Council has agreed through the master plan process.

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Council Landholdings

The following land affected by this planning proposal is owned by Council:

- 5 ▪ Item Q includes Lot 11 DP1128095 and Lot 606 DP 240398. These are two very narrow lots (approximately 600mm wide) that were created at the rear of private land that backs onto a proposed road corridor at Ocean Shores near Kulgan Court. These narrow strips will be included in the R2 Low Density Residential zone which is the same as most of the land in the vicinity.
- 10 ▪ Item M applies to the Cavanbah Sports Centre at Ewingsdale Road, West Byron (Lot 3 DP 706286). This land was acquired by Council partly for a sports facility and partly for disposal of treated recycled water from the nearby STP. It is part Community land and part Operational land under the Local Government Act, 1993. It is subject to a plan of management. This land
- 15 will be included in Schedule 1 (Additional permitted uses) so that "*registered clubs*" can be permitted with consent, which in turn will enable future commercial opportunities on Council land.

State Policy and Planning Controls

- 20 The planning proposal is generally consistent or justifiably inconsistent with the applicable State Environmental Planning Policies. The key SEPP's that require particular consideration are *SEPP 55 Remediation of Land* and *SEPP (Rural Lands) 2008*.

SEPP 55 Remediation of Land

- 25 Clause 6(1) of SEPP 55 requires that a Council cannot approve a rezoning application (especially from rural to residential) unless it has duly considered whether such land is contaminated.

- Two items are affected directly by this SEPP. Item Q (land near Kulgan Court, Ocean Shores) is changing from a rural to a residential zone. In this case the previous landowners undertook a preliminary analysis pursuant to SEPP 55 and found there was no evidence of past contamination. It is consistent with the SEPP.
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- Item O (Jones Road) is a single 5 hectare rural lot at the end of Jones Road that has currently does not have a "dwelling entitlement". The land is not being rezoned, but the amendment will allow a dwelling to be erected on it for the first time. No preliminary analysis of the land has been supplied to Council and it is not yet possible for Council to be satisfied that the draft LEP is consistent with Clause 6 of SEPP 55. Subject to the Gateway Determination issued by Department of Planning & Environment, Council may require submission of this information (i) prior to finalising the planning proposal or (ii) at the development application stage once the dwelling curtilage and accompanying land uses are known.
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Although this part of the planning proposal is not consistent with SEPP 55 Remediation of Land, it should proceed to Gateway Determination.

- 45 *SEPP (Rural Lands) 2008*

- The focus of this SEPP is on unnecessary fragmentation of rural land and in particular state and regionally significant farm land. The principles in the SEPP are required to be considered as part of the S.117 directions when rezoning land. In this case the land affected by changes to the land use tables for RU1 and R5 will not impact significantly (if at all) on agriculture. The loss of less than 1 hectare of RU2 land at Ocean Shores that is not currently used for agriculture is also not significant. Neither the land at Ocean Shores (Item Q) nor the land at Jones Road (Item O) is mapped as state and regional agricultural land.
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On this basis the planning proposal is consistent with SEPP (Rural Lands) 2008.

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Section 117 Directions

The planning proposal is not consistent with S. 117 Direction 1.2 Rural Zones because of Item Q and Item O. It is generally compliant with the other S.117 Directions.

- 5 The inconsistency is justifiable in the circumstances because the land near Kulgan Court Ocean Shores (Item Q) is surrounded by zoned residential land on two sides, is not used for agriculture or mapped as state or regional agricultural land, is fully serviced and has no significant environmental values. It is very small (8600 m²) and is subject to an existing approval for seniors development. The inconsistency is justifiable as a minor matter pursuant to sub clause 5(d) of the Direction.

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The inconsistency relating to land on Jones Road (Item O) is justifiable because it will remain in an RU2 zone, but with a dwelling permitted. This alters the dwelling density in this location. However, the site is not currently used for agriculture, is not mapped as state or regional agricultural land and is very small. The inconsistency is justifiable as a minor matter pursuant to sub clause 5(d) of the

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Direction.

Options to Move Forward

There are a number of options open to Council on this matter:

- 20 1. Proceed with the planning proposal as included as Attachment 1 to this report.
2. Amend the planning proposal as required.

Conclusion

- 25 This planning proposal is a culmination of matters accumulated over the last 12 months arising from Council resolutions, staff observations or submitted by consultants or the community. There is sufficient merit for it to proceed.

- 30 Council should proceed with a planning proposal to amend Byron LEP 2014 in accordance with the planning proposal at Attachment 1.

- 35 In relation to Item O (Jones Road) the landowner will need to supply a preliminary land contamination assessment pursuant to SEPP55, an Aboriginal archaeological site assessment and a bushfire assessment to establish that the site has a location within the area zoned RU2 Rural Landscape that is suitable for a dwelling. The timing of when this information is required will be determined in the Gateway Determination issued by Department of Planning & Environment.

Financial Implications

- 40 As a Council initiated this planning proposal, the processing costs will be borne by Council. If Council chooses not to proceed then the matter does not incur any additional costs.

Statutory and Policy Compliance Implications

- 45 The relevant policy considerations are addressed above and in the attached planning proposal.