

Byron LEP 2014 – Rezoning of 268 Ewingsdale Road, Byron Bay.

Proposal Title : **Byron LEP 2014 – Rezoning of 268 Ewingsdale Road, Byron Bay.**

Proposal Summary : **The planning proposal seeks to amend Byron LEP 2014 by rezoning parts of Lot 181 DP 755695 and Lot 7022 DP 1113424, 268 Ewingsdale Road, Byron Bay from RU2 Rural Landscape to IN2 Light Industrial and applying a 2000m2 minimum lot size and 0.9:1 Floor Space Ratio to the land, to enable the land to be developed for industrial land uses.**

PP Number : **PP_2016_BYRON_007_00** Dop File No : **16/12483**

Proposal Details

Date Planning Proposal Received : **22-Dec-2016** LGA covered : **Byron**

Region : **Northern** RPA : **Byron Shire Council**

State Electorate : **BALLINA** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **268 Ewingsdale Road**

Suburb : City : **Byron Bay** Postcode : **2482**

Land Parcel : **Lot 181 DP 755695 and Lot 7022 DP 1113424**

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre : **N/A** Release Area Name : **N/A**

Regional / Sub Regional Strategy : **Far North Coast Regional Strategy** Consistent with Strategy : **Yes**

MDP Number :		Date of Release :	
Area of Release (Ha)	13.00	Type of Release (eg Residential / Employment land) :	Employment Land
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers within the agency and lobbyists concerning this proposal.**

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The Statement of objectives describes the intention of the planning proposal. The proposal intends to amend Byron LEP 2014 to rezone part of the subject land, and change the relevant planning controls to enable additional industrial development over part of the land.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal intends to amend the Land Zoning Map, Lot Size Map, and Floor Space Ratio Map, to apply appropriate zones and other planning controls to the land.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.1 Business and Industrial Zones

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.4 Oyster Aquaculture

1.5 Rural Lands

- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
- 6.3 Site Specific Provisions

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 :

d) Which SEPPs have the RPA identified?

SEPP No 14—Coastal Wetlands
SEPP No 44—Koala Habitat Protection
SEPP No 55—Remediation of Land
SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain : **See the assessment section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The planning proposal contains maps which adequately show the subject land, the current and proposed zone. The planning proposal should also be amended prior to community consultation to include current and proposed minimum lot size and Floor Space Ratio maps. Maps which comply with the Standard Technical Requirements for SI LEP Maps will need to be prepared before the LEP is made.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The planning proposal nominates a community consultation period of 28 days.

In accordance with "A Guide to Preparing Local Environmental Plans" (the 'Guide'), it is considered that the planning proposal is not a low impact planning proposal as it is not consistent with the strategic planning framework and further investigations to address some of these inconsistencies are required. The proposal does not reclassify land. The Guide also suggests written notification to the affected and adjoining land owners. It is therefore considered that a community consultation period of 28 days is appropriate and affected and adjoining properties should be notified in writing.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Time Line

The planning proposal includes a project timeline which estimates the completion of the planning proposal in November 2017. To ensure the RPA has adequate time to complete the additional site investigations, exhibition, reporting, and legal drafting, it is recommended that a time frame of 18 months is appropriate.

Delegation.

The RPA has requested that the Department retain delegation for the making of this LEP

amendment given that the land is not identified for urban purposes in the Far North Coast Regional Strategy. The proposal is considered to be of local planning significance since it applies to a spot rezoning. The proposal is not inconsistent with the Far North Coast Regional Strategy as it can be considered to be a minor variation to the town and village growth area boundary. However the consistency with some of the aspects of the strategic planning framework are not yet known until site investigations have been completed. It is recommended that an Authorisation for the execution of delegation not be issued to the RPA at this stage.

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment :

The planning proposal satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line
6. Advising that delegation of plan making functions is not being sought.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Byron LEP 2014 is in force. This planning proposal seeks an amendment to the Byron LEP 2014.

Assessment Criteria

Need for planning proposal : Need for a planning proposal
The proposal is not the result of a strategic study or report. The planning proposal has been initiated by the applicant.

The site is located on the western edge of the Byron Bay urban area adjoining the West Byron Urban Release Area. The land, being Lot 181, is approximately 17.4 hectares in size and has frontage to Ewingsdale Road. A Crown drainage reserve (Lot 7022) traverses the site from the north east to the south west. The site is bordered to the east by the West Byron Urban Release Area which is currently undeveloped, to the south by SEPP 14 wetland, to the west by the Island Quarry reserve and SEPP 14 Wetland and to the north by Ewingsdale Road. On the northern side of Ewingsdale Road is the Byron Arts and Industry Estate and the Cavvanbah community sports centre.

The site was previously used as a chicken processing factory. The processing factory ceased operations in 2014 though the site still contains the waste treatment infrastructure, two former chicken growing sheds and associated road and hardstand areas.

Some of the buildings on the site are currently used by a grocery wholesale firm, an organic produce firm, pool supplies, bus and crane storage and a gymnasium. The majority of the site remains vacant.

The majority of the site (approximately 13 hectares) is zoned RU2 Rural Landscape under the Byron LEP 2014. The southern part of the site is deferred from the Byron LEP 2014 and is zoned part 1(a) General Rural and part 7(a) Environmental Protection Wetlands under the Byron LEP 1988. The planning proposal only seeks to rezone the RU2 zoned land to IN2 Light Industrial. It does not intend to apply a zone to the land currently deferred from the Byron LEP 2014.

The deferred lands could now be zoned as the Northern Councils E Zone Review has been

completed. The proposed site investigations could assess the suitability of the land for an E zone in accordance with the Final Recommendations. Council is however intending to consider the application of E zones, to this site and other deferred land in the LGA, in a separate planning proposal which will also specify the permissible land uses in the zones as the Byron LEP 2014 does not currently include E2 and E3 zones or land use tables. This approach is considered to be appropriate as it will enable a consistent approach to the application of E zones across the LGA and will not delay the finalisation of this specific planning proposal for the Ewingsdale Road site.

The drainage reserve, lot 7022, does not appear to be used for drainage and the applicant is consulting with the Crown to resolve issues with ownership of this land which will need to be resolved before the proposed rezoning is finalised. It is noted that land ownership resolution may be impacted by the registered native title claim, *Byron Bay Bundjalung People v NSW Minister for Land and Water Conservation*. As such this issue should be resolved prior to studies being furthered for this site.

The site is flood prone, contains acid sulfate soils, is bushfire prone and potentially contaminated. Some native vegetation exists on the site and there is a registered Aboriginal heritage site on or within 200m of the site. The planning proposal acknowledges that several site investigations will be required to address issues relating to the suitability of the site for industrial uses and are yet to be completed. These site investigations will include:

- A flora and fauna assessment;
- Flooding;
- Acid sulfate soils;
- Aboriginal cultural heritage;
- Potential site contamination;
- Bushfire;
- Traffic impacts;
- Infrastructure and services provision;
- Stormwater management to and from the site;

The site investigations should also address:

- The potential impact of future industrial development on the adjoining SEPP 14 wetlands;

The proposal to rezone the land is the best means of achieving the intent of the proposal which is to enable the land to be developed for industrial purposes.

While extensive site investigations are required to determine the suitability of the site for an industrial zone and to inform the final zone configuration for the site it is considered appropriate to issue a Gateway determination for the planning proposal at this stage. The site has merit for consideration for industrial purposes due to:

- Its history of use as a chicken processing facility;
- Its location adjacent to the IN2 zoned land in the West Byron Urban Release Area and south of the Byron Arts and Industrial Estate;
- Its location away from residential developments meaning there is a low risk of potential land use conflict;
- It has good locational characteristics to take advantage of transport infrastructure linkages including its proximity to the Pacific Highway and the Byron town centre; and
- There is a recognised demand for employment generating lands in the Byron LGA.

The issue of a Gateway determination, while providing some degree of certainty to the proponent, will only enable the site investigations to be undertaken and consideration of the most appropriate future use of the land. It does not guarantee the rezoning of the site for industrial regardless of the site's constraints.

Consistency with
strategic planning
framework :

FAR NORTH COAST REGIONAL STRATEGY (FNCRS).

The subject land is not located within the town and village growth boundary identified in the FNCRS. The site is located within the coastal area identified by the FNCRS and therefore the sustainability criteria in Appendix A1 of the FNCRS cannot be used to justify the suitability of the site for employment land release.

The FNCRS does provide for the consideration of a minor variation to the town and village growth boundary. Minor variations to the town and village growth area boundary must consider:

- the efficient use of infrastructure and services;
- avoidance of significant environmental constraints and natural resources; and
- reinforcement of the regional settlement hierarchy.

The planning proposal has included a justification against these criteria, as discussed in detail below.

INFRASTRUCTURE AND SERVICES

While upgrading of existing infrastructure would be necessary the proposed use of the subject land for industrial purposes would be able to make more efficient use of existing infrastructure and services. The site has previously been used for a chicken processing facility and therefore has a history of employment generating use. Council has advised that the water supply to the site is expected to be adequate to cater for the expected future industrial uses. There is expected to be sufficient capacity currently available in the Byron Sewerage Treatment Plant to cater for future industrial development on the site though hydraulic assessment will need to be undertaken and s64 contributions for infrastructure augmentation will be required.

The current vehicular access arrangements for the site would be inadequate for the proposed industrial zoning of the site and the expected variety of traffic generating land uses. Council has identified the need to upgrade the roundabout on Ewingsdale Road which is adjacent to the north western corner of the subject site to provide vehicular access to the site and possibly an alternative access through the site for the West Byron URA. The planning proposal identifies the need for a thorough investigation of traffic impacts associated with the proposed rezoning.

Storm water drainage is also an issue for the site. The planning proposal indicates that the site is currently poorly drained and receives surface water from the land north of Ewingsdale Road. This issue would also need to be investigated prior to rezoning the site.

ENVIRONMENTAL CONSTRAINTS AND NATURAL RESOURCES

The majority of the site does not contain significant native vegetation as a result of its past use as a chicken processing facility. However some land in the south of the site contains SEPP 14 wetland and the land on the road reserve to the west is known to contain high conservation value vegetation. A flora and fauna assessment of the site has not yet been undertaken and would need to be prepared prior to the zoning configuration of the site being finalised.

The site is also subject to flooding, acid sulfate soils and bushfire and investigations for these constraints will need to be undertaken prior to the planning proposal undergoing community consultation. The site is not mapped as regionally significant farmland under the Northern Rivers Farmland Protection Project 2005.

A preliminary site contamination assessment will need to be prepared given the previous use of the land as a chicken processing facility.

Despite the fact that information to determine the environmental constraints of the site is currently incomplete, it is expected that, given the historical and current uses on the site, there will be some part of the subject land that could be suitable for industrial purposes, and warrants further investigation.

REGIONAL SETTLEMENT HIERARCHY

The Byron Arts and Industrial Estate located to the north of the subject land is the primary employment land precinct in Byron LGA. The North Coast Employment Land Review identified that the entire area of this precinct is approximately 50 hectares of which 40 hectares is currently developed. The other industrial precincts in Byron LGA being Mullumbimby (7.3ha), Billinudgel (6ha) and Bangalow (2.5ha) industrial areas are small in comparison. The release of more industrial land on the subject site would effectively add to the Byron Arts and Industrial Estate, albeit south of Ewingsdale Road and would therefore reinforce this precinct as the primary employment land area in the Byron LGA.

SCALE OF VARIATION

The planning proposal estimates approximately 13 hectares of the site could be zoned light industrial, pending site investigations. While this area of land will yield approximately 40 lots given a proposed 2000m² MLS, this is considered to be a minor variation to the town and village growth area boundary in the context of the adjoining West Byron Urban Release Area which rezoned 108 hectares of land and the Byron Arts and Industry Estate which comprises approximately 50 hectares of industrial zoned land plus approximately 8 hectares of B7 Business Park zoned land.

ACTIONS IN FNCRS

The FNCRS contains the following actions which the proposal is considered to be consistent with:

- Use of existing vacant industrial land should be considered prior to the release of any major new industrial areas.

The proposal is essentially consistent with this direction as the site has a history of industrial uses and is currently being used for commercial/industrial purposes therefore it is appropriate to consider it for rezoning to formalise its use for further industrial land uses.

- Planning for commercial and industrial land uses must be integrated with the supply of relevant infrastructure and transport.

Council seeks to achieve an integrated traffic solution to the proposed rezoning by resolving to seek a Gateway determination conditional on the applicant entering into a planning agreement to upgrade the Cavanbah roundabout to service the proposed industrial development. Should this arrangement eventuate it will not only provide adequate vehicular access to the subject site but will also provide a potential alternative vehicular access to the industrial zoned land in the West Byron URA.

Given that the proposal is considered to be able to satisfy the requirements for a minor variation of the town and village growth area boundary, and since the proposal is consistent with other actions of the FNCRS the proposal is considered to be generally consistent with the FNCRS.

DRAFT NORTH COAST REGIONAL PLAN

The subject land is not located within the urban growth area boundary of the Draft North Coast Regional Plan (the 'Draft RP'). The Draft RP provides that future urban growth will be directed into the mapped urban growth areas, and that council only zone land for industrial purposes if it is consistent with a local growth management strategy agreed to between the Department and Council. Council has written to the Department advising that it believes a variation of the urban growth boundary for the final RP to include the subject land will be necessary.

VARIATION CRITERIA

The Draft RP states that minor and contiguous variations to the urban growth areas can be considered having regard to the Urban Growth Area Variation Principles. The principles require consideration of the following matters:

- Policy – the proposal must be consistent with the objectives and outcomes of the Draft RP and relevant S117 Directions and SEPPs. The consistency of the proposal with these components of the strategic planning framework are addressed elsewhere in this report. The inconsistency with the S117 directions and some SEPPs cannot be determined until

some of the site investigations have been completed.

- **Infrastructure** – the variation should only be permitted if adequate and cost effective infrastructure can be provided and at no cost to government. The proposal indicates that water and sewer infrastructure are likely to be adequate pending site infrastructure investigations. Traffic infrastructure is likely to need to be upgraded to service the site and Council has advised the proponent a planning agreement to address upgrade of the existing roundabout will be necessary. It is anticipated that the site will be able to be adequately serviced at no cost to government and details of the required upgrades necessary will be undertaken as part of the site investigations.

- **Environmental and Farmland Protection** – the variation should avoid areas mapped as significant farmland or that contain high environmental or heritage value. The land is not mapped as state or regionally significant farmland. The majority of the site proposed to be rezoned contains buildings and infrastructure from the previous use of the site as a chicken processing facility and is therefore unlikely to contain any significant environmental attributes. Land on the perimeter of the site contains SEPP 14 wetland and the road reserve to the west may contain high environmental value vegetation. The proposed site investigations will confirm the areas of environmental value on the site and clarify which areas of the site are suitable for the proposed industrial zone. It is considered that some of the land will be appropriate for industrial land uses.

- **Land Use Conflict** – the variation must be appropriately separated from incompatible land uses. The site is bordered by future industrial land to the east, existing industrial land to the north, and rural land to the south and west. The surrounding land uses are not considered to be incompatible with the proposed IN2 Light Industrial zone and the site has sufficient area to accommodate buffers to adjoining land containing native vegetation being roughly rectangular in shape and approximately 370m wide and 460m long. The existing industrial land uses are located in the north eastern corner of the site adjacent to the neighbouring industrial zoned land.

- **Avoiding Risk** – the variation must avoid physically constrained land. The site is flood prone, bushfire prone and subject to acid sulfate soils. Site investigations will need to be undertaken to determine whether these constraints make the land unsuitable for further industrial development.

- **Heritage** – the variation must protect and manage Aboriginal and non-Aboriginal heritage. An AHIMS search revealed that there is a registered Aboriginal heritage site on or within 200m of the subject land. An Aboriginal Archaeological Assessment and consultation with the local Aboriginal Land Council will be required to determine whether it is or isn't appropriate for this land to be used for industrial purposes.

- **Coastal Area** – variations in the coastal area are to be minor and contiguous with the urban growth areas. The subject land is contiguous with the urban growth area being located on the western edge of the West Byron URA. The proposed 13 hectares of land to be rezoned is considered to be minor in the context of the West Byron release area which comprises 108 hectares.

It is considered that, having regard to the variation criteria in the Draft RP, that the proposal may be considered for a Gateway determination providing conditions are placed on the Gateway requiring the necessary site investigations to address potential constraints to the proposed future industrial development on the site.

THE NORTH COAST EMPLOYMENT LANDS REVIEW 2015

To inform the Draft RP the North Coast Employment Lands Review 2015 (NCELR) was undertaken to determine factors influencing industry growth and employment change throughout the region and identify trends that determine future industrial land needs. The study found that generally there is sufficient supply of employment land to accommodate projected employment growth on the North Coast for the next 20 years, however some locations have limited surplus land and will need further investigation. Byron LGA is one such location with the least amount of undeveloped zoned employment land and no

proposed employment lands.

The NCELR states that there is 65.8 hectares of industrial zoned land in the Byron LGA. Of this, 79% (52.2 hectares) is developed and assuming no constraints 13.6 hectares is available for future industrial developments. The NCELR incorrectly states that the West Byron URA contains 14.1 hectares of industrial zoned land however only 7.5 hectares of industrially zoned land is contained in the West Byron URA. This land, while zoned, has not yet been made available for industrial developments.

THE NCELR generated employment projections for the region using the anticipated demographic and labour market profile of future residents. Using this method the NCELR estimates the number of new jobs in the Byron LGA is set to rise by 51 new jobs per annum between 2011 and 2031.

The expected employment projections equate to a demand for industrial land of 4.9 -6.5 hectares to 2031. Given that there is currently 20.2 hectares of zoned industrial land in Byron LGA this amounts to approximately 14.5 hectares of excess supply of industrial land in the Byron LGA.

The NCELR notes that locational and environmental constraints may mean that the existing employment land is not suitable and more industrial land may be required.

DRAFT RP ACTIONS

The Draft RP provides that the potential for land use conflict with employment lands shall be minimised by locating employment lands in appropriate areas with suitable buffers and preventing sensitive uses from encroaching on existing areas. The subject land is appropriate in this regard as it is located adjacent to existing industrial zoned land and is separated from residential and rural land and any potentially sensitive land uses by significant tracts of vegetation. Adequate buffers to this vegetation are expected to be able to be accommodated on the site.

Given the apparent siting suitability and historical industrial use of the subject site it is considered appropriate to issue a Gateway determination in order to continue investigations of the site for future industrial purposes.

Consistency with Council's Local Strategies.

Byron Council does not have an employment lands strategy. Council is intending to commence preparation of such a strategy in 2016/17 however this planning proposal has preceded the strategy work.

ASSESSMENT OF THE INDUSTRIAL LAND IN THE BYRON SHIRE LGA – SITE R&D

The applicant engaged Site R&D to prepare a report assessing the existing supply and demand of industrial land in Byron LGA. The Site R&D report examined the existing industrially zoned land in the Byron LGA and estimated the amount of this land which is currently vacant and suitable for future industrial land uses. The estimate discounted land which was considered to be constrained following a desk top review of the aerial photography of the land.

It is noted that some of the reasons the existing industrial zoned land was discounted from being suitable for industrial development are also constraints on the subject land for example flood prone, native vegetation and infrastructure. Such constraints have not yet been fully investigated for the subject land.

The Site R&D report utilised land projection figures based on the Queensland Department of Business, Industry and Regional Development's "Establishing Future Business and Industry Requirements and Identifying Strategically Important Sites". The Site R&D report concluded that:

- the current population of Byron LGA would require between 56 and 96 hectares of industrial land. There is currently approximately 73 hectares of industrial zoned land in Byron LGA in various stages of development;
- by 2031 the population would require between 63 and 108 hectares of industrial land

for a population of 36200.

The SiteR&D report therefore concludes that there is currently a major undersupply of industrial land in the Byron LGA. The report notes that this is particularly the case in the Byron industrial estate where only 7 vacant lots remain.

The Site R&D report cites anecdotal evidence of demand for extra land to enable existing businesses to expand and if no new industrial land is made available relocation of these businesses could have an adverse impact on the economy of the Byron LGA.

The SiteR&D report is generally consistent with the NCELR which, accounting for the inaccuracy in the area of zoned industrial land in West Byron, concludes that there is approximately 20 hectares of vacant industrial zoned land currently available in Byron LGA. The SiteR&D attempts to discount this supply of vacant land by estimating the constraints that may prevent future development however this does not appear to have been done in a rigorous manner. The NCELR recognises that locational and site constraints may make some of the land unsuitable for industrial purposes however has not attempted to quantify this.

Where the SiteR&D report and the NCELR differ is in the estimate of demand for industrial land to 2031. The Site R&D report estimates the need for between 7 and 12 hectares of additional industrial land to 2031 while the NCELR estimates the need for between 4.9 and 6.5 hectares of additional industrial land to 2031.

The SiteR&D report recognises that an increase in the supply of industrial lands could potentially lower the price of the land resource thereby enabling a broadening of the employment market providing job creation for the community.

STRATEGIC MERIT

The NCELR and the SiteR&D reports both note that the stock of employment lands in the Byron LGA area is limited, though the reports draw different conclusions as to whether additional employment lands are required to serve the expected population growth.

It is considered that there is sufficient strategic merit in the proposal to enable the issue of a Gateway determination for the following reasons:

- There is a very limited current supply of zoned industrial land in Byron LGA (approximately 20 hectares) of which approximately 7 hectares is currently undeveloped (West Byron) and approximately 5 may be too constrained to be used for industrial purposes (SiteR&D 2016);
- Investigations of the subject site may reveal that not all of the 13 hectares is suitable for industrial purposes and the final yield may contribute a modest increase to the industrial land stock of Byron LGA;
- The rezoning of the site could provide an alternative supply of land for industrial purposes to increase the supply of land on the market which could prevent demand driven price rises and contribute to a steady supply to serve the employment needs of the LGA.

SEPPs

The proposal lists the State environmental planning policies (SEPPs) applicable to the land. Many SEPPs apply to the subject land. In some instances the consistency of the proposal with the SEPP is yet to be determined.

SEPP 14 Coastal Wetlands – Part of the subject land in the south east and south west of the site contains SEPP 14 wetlands. These wetlands are currently zoned 7(a) Wetlands under the Byron LEP 1988. These areas of the site are not proposed to be rezoned. The flora and fauna site investigations will determine the extent of the wetland vegetation and inform the suitability of the site for industrial development having regard to the presence of the wetlands.

SEPP 44 Koala Habitat Protection

The land at the rear of the site is mapped as tertiary koala habitat by Council. The flora and fauna investigations of the site will further clarify the potential for koala habitat on the

site and consistency with the SEPP cannot be determined until these investigations have been undertaken.

SEPP 55 Remediation of Land

The site has previously been used as a poultry processing facility and therefore there is a risk of site contamination. The proposal states that site contamination investigations will need to be undertaken prior to community consultation to determine whether the land is contaminated and whether it can be appropriately remediated for future use. Until these investigations are conducted the consistency of the proposal with the direction cannot be determined.

SEPP (Rural Lands) 2008

SEPP Rural Lands (the RLSEPP) contains Rural Planning Principles to guide development of rural land. The site does not contain significant farmland. The site has a history of use as a poultry processing facility and is currently used for light industrial and commercial purposes. The site is isolated from other farmland by significant native vegetation including wetland which limit the site's use for agricultural purposes in conjunction with other rural land. The proximity of the site to the recently rezoned West Byron URA would create a high risk of land use conflict should the site be again used for intensive agricultural purposes such as the previous chicken growing and processing facility. The proposal is considered to be consistent with the Rural Planning Principles for the following reasons:

- The potential for productive and sustainable agricultural land uses on the site is limited given its size, existing land use, proximity to new residential areas and separation from other agricultural land by significant native vegetation including wetlands;
- The land does not have any agricultural significance and on balance the social and economic interests of the community could be better served by using the subject land for light industrial purposes rather than retaining it for agricultural purposes which are likely to be unsustainable or may conflict with adjoining land uses;
- The proposal does not seek to enable residential land uses on rural land which may create land use conflict;
- The site is constrained by natural hazards and while site investigations are yet to be conducted to determine the extent of the constraints and the suitability of the land for industrial purposes it is expected that some of the land could be used for industrial purposes given its history of similar land uses.

The proposal is otherwise consistent with State environmental planning policies.

S117 Directions.

The following S117 directions are applicable to the proposal, 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.4 Recreational Vehicle Areas, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, and 6.3 Site Specific Provisions.

Of the above s117 Directions the proposal is considered to be inconsistent with Direction 1.1, 1.2, 1.3, 2.1, 2.3, 4.1, 4.3, 4.4 and 5.1.

Direction 1.1 Business and Industrial Zones is relevant to the planning proposal. The direction provides that new employment areas are to be in accordance with a strategy that is approved by the Secretary of the Department of Planning and Environment. The subject land is not identified for industrial purposes in a strategy or the FNCRS.

The direction provides that a proposal may be inconsistent with the direction if it is justified by a study which gives consideration to the objectives of the direction, is consistent with the Regional Strategy, or is of minor significance.

The objectives of the direction include encouraging employment growth in suitable locations, and supporting the viability of identified strategic centres. The proposal is

considered to be consistent with the FNCRS as it can satisfy the requirements for a minor variation to the town and village growth area boundary. The proposal is also consistent with the objectives of the direction as the location of the site is considered suitable for employment generating land given its location near the Byron Bay urban area, existing industrial zoned land and major transport infrastructure. The rezoning of the land would effectively expand the Byron Arts and Industry estate which is the predominant employment land centre for the LGA and therefore would strengthen the importance of this centre.

The inconsistency of the proposal with the direction is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 1.2 Rural Zones is relevant to the proposal. The direction provides that a planning proposal must not rezone land from a rural to an industrial zone. The planning proposal seeks to rezone part of the subject land from RU2 Rural Landscape to IN2 Light Industrial. The direction provides that the planning proposal may be inconsistent with the terms of the direction if the inconsistency is justified by a strategy or study or is of minor significance.

The proposal is considered to be consistent with the FNCRS as it can satisfy the requirements for a minor variation to the town and village growth area boundary. Additionally given the relatively small area of land involved, its historical use as a poultry processing facility, the fact it is not mapped as significant farmland, and its current unsuitability for agricultural purposes due to the potential for land use conflict and bordering native vegetation constraints, it is considered that the inconsistency is of minor significance.

It is considered that the inconsistency of the proposal with the direction is justified in accordance with the terms of the direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industries is relevant to the planning proposal. The direction applies when a planning proposal would have the effect of restricting the potential development of extractive materials which are of regional significance. The subject land is located adjacent to an abandoned basalt quarry. This quarry is not mapped as a regional resource. However it is considered appropriate for Council to consult with the Department of Primary Industries and for the inconsistency of the proposal with the direction to be considered after this consultation has been undertaken.

Direction 2.1 Environmental Protection Zones is relevant to the planning proposal. The direction provides that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. The proposal indicates that the site contains areas of native vegetation, the significance of which is to be further investigated. Council has chosen to retain the existing 1(a) Rural and 7(a) Wetlands zone under the Byron LEP 1988 over this land at this stage until it establishes a clear position on how it will address E zones and overlays in a broader context across the LGA in a manner which is consistent with the Northern Councils E Zone Review Final Recommendations (the 'Final Recommendations'). The proposal is therefore considered to be inconsistent with the direction as it does not propose current environmental protection standards for the vegetated land. It is however appropriate that the application of E zones be applied consistently across the LGA and extensive work will be required to develop suitable land use tables for these zones. It is also appropriate that this occur through a single planning proposal that applies to the deferred areas of the LGA rather than on a site by site basis. The inconsistency of the proposal with the direction is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must contain provisions which facilitate the conservation of items and places of heritage significance. The proposal states that the Aboriginal Heritage Information Management System shows a registered site of Aboriginal cultural significance on or within 200m of the subject land. An Aboriginal Archaeological Assessment will need to be conducted after the issue of the gateway determination to

determine the nature of this registered site and whether the use of the land for industrial purposes is appropriate. Until this Aboriginal cultural heritage assessment has been undertaken the potential inconsistency of the proposal with the direction remains unresolved.

Direction 4.1 Acid Sulfate Soils is relevant to the planning proposal. The direction provides that a planning proposal must not propose an intensification of land uses on land containing acid sulfate soils. The Byron LEP 2014 maps the land as containing class 2 and 3 acid sulfate soils. The proponent has not prepared an acid sulfate soil report at this stage. It is considered that the Gateway determination should include a condition for the requirement of an acid sulfate soils report. Until the acid sulfate soils investigations have been undertaken it is not possible to determine whether the site is suitable for intensification of land uses associated with the proposed IN2 zone. The consistency of the proposal with the direction is therefore unresolved.

Direction 4.3 Flood Prone Land is relevant to the planning proposal. The direction provides that a proposal must not rezone land within a flood planning area to industrial. The subject land is located within the flood planning areas and is proposed to be zoned IN2 Light Industrial. The proponent has indicated that the land will be filled to the 1%AEP level of 2.9m AHD. However a flood study assessing the impact of this fill on the site and the adjoining land has not yet been undertaken for the site. It is considered that the Gateway determination should include a condition for the requirement of flood impact study. Until the flood investigations have been undertaken it is not possible to determine whether the site is suitable for intensification of land uses associated with the proposed IN2 zone. The consistency of the proposal with the direction is therefore unresolved.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. Part of the subject land is identified as being bush fire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service, and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 5.1 Implementation of Regional Strategies is relevant to the planning proposal. The direction provides that a proposal must be consistent with the relevant regional strategy which in this instance in the Far North Coast Regional Strategy. The consistency of the proposal with the FNCRS is discussed earlier in this report. The direction provides that the proposal may be inconsistent with the direction if the inconsistency is of minor significance and achieves the overall intent of the regional strategy.

While the proposal is located outside of the Town and Village Growth Boundary in the FNCRS, the site can meet the requirements for consideration of a minor variation to this boundary and is generally consistent with other actions in the strategy. The proposal is generally consistent with the overall intent of the FNCRS, in particular the aim to ensure the provision of adequate land for new industry to support the creation of jobs in the region.

The inconsistency is considered to be of minor significance and consistent with the intent of the Strategy and therefore justified in accordance with the terms of the direction.

The proposal is otherwise consistent with S117 Directions.

Environmental social
economic impacts :

The proposal has not provided adequate site investigations to determine the potential environmental or social impacts of the proposed development. A flora and fauna assessment will need to be prepared and it is recommended that this be a condition of the Gateway determination. Much of the land proposed to be rezoned has been cleared of significant native vegetation as a result of the previous land uses. It is unlikely that the rezoning of this land will have an adverse impact on critical habitat or threatened species, populations or ecological communities or their habitats.

Some of the land does however contain significant wetland and land in the road reserve

to the west may contain high value vegetation. The impact of the proposed intensification of industrial land uses on this vegetation needs to be examined.

Specific site and locality impacts arising from filling of the site, traffic generation and heritage considerations will need to be examined to determine whether any adverse social impacts may occur.

The proposal is likely to have a positive economic impact through the release of more land for employment generating land uses which will assist in providing well located land to cater for the expected job growth in the Byron LGA.

Agency Consultation.

The planning proposal indicates that Council will consult with the following State agencies:

1. Rural Fire Service;
2. Department of Primary Industries – Agricultural;
3. Office of Environment and Heritage; and
4. NSW Roads and Maritime Services

This consultation is considered to be appropriate however Council should also consult with:

1. Local Aboriginal Land Council in relation to matters of Aboriginal cultural heritage.
2. Department of Primary Industries – Mineral Resources;
3. Department of Industry - Lands

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
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Timeframe to make LEP :	18 months	Delegation :	DDG
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Public Authority Consultation - 56(2)(d) :	Office of Environment and Heritage NSW Department of Primary Industries - Agriculture NSW Department of Primary Industries - Minerals and Petroleum NSW Rural Fire Service Transport for NSW - Roads and Maritime Services
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Is Public Hearing by the PAC required?	No
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(2)(a) Should the matter proceed ?	Yes
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If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Flora

Fauna

Heritage

Flooding

Social

Other - provide details below

If Other, provide reasons :

These site investigations will include:

- **A flora and fauna assessment;**
- **Flooding;**
- **Acid sulfate soils;**

Byron LEP 2014 – Rezoning of 268 Ewingsdale Road, Byron Bay.

- Aboriginal cultural heritage;
- Potential site contamination;
- Bushfire;
- Traffic impacts;
- Infrastructure and services provision;
- Stormwater management to and from the site;

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Request for Gateway Determination - Planning Proposal Rezoning of Land at 268 Ewingsdale Rd Byron Bay.pdf	Proposal Covering Letter	Yes
1. Planning Proposal for 268 Ewingsdale Road, Byron Bay - Gateway Version (October 2016).pdf	Proposal	Yes
2. Market report Byron Industrial lands 280616 - Ex Sunnybrand site.pdf	Study	Yes
Planning Team Report.pdf	Determination Document	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones
- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 1.4 Oyster Aquaculture
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
- 6.3 Site Specific Provisions

Additional Information :

It is recommended that the planning proposal should proceed subject to the following;

1. The planning proposal proceed as a 'routine' planning proposal.
2. Consultation with the Department of Industry – Lands to resolve ownership or future use of Lot 7022 DP 1113424 is to be undertaken prior to any site investigations or consultation.
3. Prior to community consultation and prior to undertaking State agency consultation the following site investigations are to be undertaken and placed on public exhibition with the planning proposal:
 - a. A flora and fauna assessment;
 - b. Flooding;
 - c. Acid sulfate soils;
 - d. Aboriginal cultural heritage;
 - e. Potential site contamination;

- f. Bushfire;
- g. Traffic impacts;
- h. Infrastructure and services provision;
- i. Stormwater management to and from the site; and
- j. The potential impacts on the adjoining SEPP 14 Wetlands for the proposed future industrial use of the site.

4. Prior to community consultation and prior to undertaking State agency consultation the planning proposal is to be amended to:

- a. Reflect the findings of the site investigations required in condition 1;
- b. include current and proposed minimum lot size and Floor Space Ratio maps for the land proposed to be zoned IN2;

5. A community consultation period of 28 days is necessary.

6. The planning proposal is to be completed within 18 months.

7. The RPA is to consult with the following State agencies and organisations;

- a. Rural Fire Service;
- b. Department of Primary Industries – Agricultural;
- c. Office of Environment and Heritage;
- d. NSW Roads and Maritime Services;
- e. Local Aboriginal Land Council in relation to matters of Aboriginal cultural heritage; and
- f. Department of Industry – Resources and Energy.

7. A written authorisation to exercise delegation not be issued to Byron Shire Council at this stage until the investigations required by the conditions of this Gateway Determination have been completed.

8. The delegate of the Secretary agree that the inconsistencies of the proposal with S117 Directions 1.1, 1.2, 2.1 and 5.1 are justified in accordance with the terms of the directions.

9. The delegate of the Secretary note that the inconsistencies of the proposal with S117 Directions 1.3, 2.3, 4.1, 4.3, and 4.4 remain unresolved until further site investigations have been undertaken.

Supporting Reasons :

The reasons for the recommendation are as follows;

- 1. The proposal has the potential to provide an alternate supply of industrial land which is well located to contribute to the demand for employment lands in Byron LGA.
- 2. The site has site specific merit for consideration for future industrial land by virtue of a land use history and siting characteristics which make it suitable for investigation for more intensive industrial land uses.
- 3. The subject land's unique characteristics being located adjacent to an existing industrial zone in the West Byron Urban Release Area and its previous land use mean that its consideration for an industrial zoning does not undermine the strategic planning framework for Byron LGA.
- 4. The proposal's known inconsistencies with the strategic planning framework are considered to be of minor significance.

Signature:

Trentie

Printed Name:

31/1/17

Date:

Trentie .

