



**Planning Proposal 26.2019.5.1
for amendment of Byron Local Environmental Plan 2014
to change the zoning of part of the rail
corridor in Byron Bay**

Byron Shire Council

Authority ref: 26.2019.5.1

Version #1

Date: November 2019

Document History

Doc No.	Date Amended	Details Comments e.g. Resolution No.
E2019/71925	November 2019	Draft Planning Proposal

Contents

Part 1 Introduction.....	3
1.1 Objective and intended outcomes	3
1.2 Subject land.....	3
1.3 Background	3
Part 2 Explanation of provisions	4
2.1 Rezoning.....	4
2.2 Schedule 1 Additional Permitted Uses.....	5
2.3 Consequential amendments.....	6
Part 3 Justification.....	6
Section A Need for the planning proposal.....	6
Section B Relationship to strategic planning framework.....	7
Section C Environmental, social and economic impact	28
Section D State and Commonwealth interests.....	28
Part 4 Mapping	28
Part 5 Community consultation	28
Part 6 Project timeline	29
Conclusion.....	29
Appendix 1	30

Part 1 Introduction

1.1 Objective and intended outcomes

The objectives of this planning proposal are to amend the Byron Local Environmental Plan (BLEP14) 2014 to:

1. change the zoning of the section of rail corridor located between Bayshore Drive and Lawson Street Byron Bay to SP2 Infrastructure; and
2. insert a new clause within Schedule 1 Additional Permitted Uses, to provide for maintenance works and the like to be carried out without consent by the rail operator.

The Schedule 1 amendment will continue the current provisions applying to the railway undertakings contained within Schedule 12 of Byron LEP 1988.

Consequential amendments to the BLEP14 are also proposed as a result of deferred matter being brought into the BLEP14. These amendments are to the Acid Sulfate Soils Mapping and Land Application Map.

Details of the suggested BLEP14 amendments are outlined in Part 2 of this planning proposal.

1.2 Subject land

This planning proposal relates to land contained within the corridor that houses the North Coast Rail Line, located between Bayshore Drive and Lawson Street in Byron Bay, as shown below in subject land.

The property descriptions that relate to this planning proposal are:

- Lot 4730 DP 1228112;
- Part Lot 4731 DP 1228113;
- Lot 2 DP 915184;
- Lot 2 Sec 4 DP 1623;
- Lot 62A DP 915209; and
- Part Lot 4729 DP 1228104.

The majority of this section of the rail corridor is currently a Deferred Matter under Byron LEP 2014, retaining the 5(a) Special Use zoning under Byron LEP 1988.

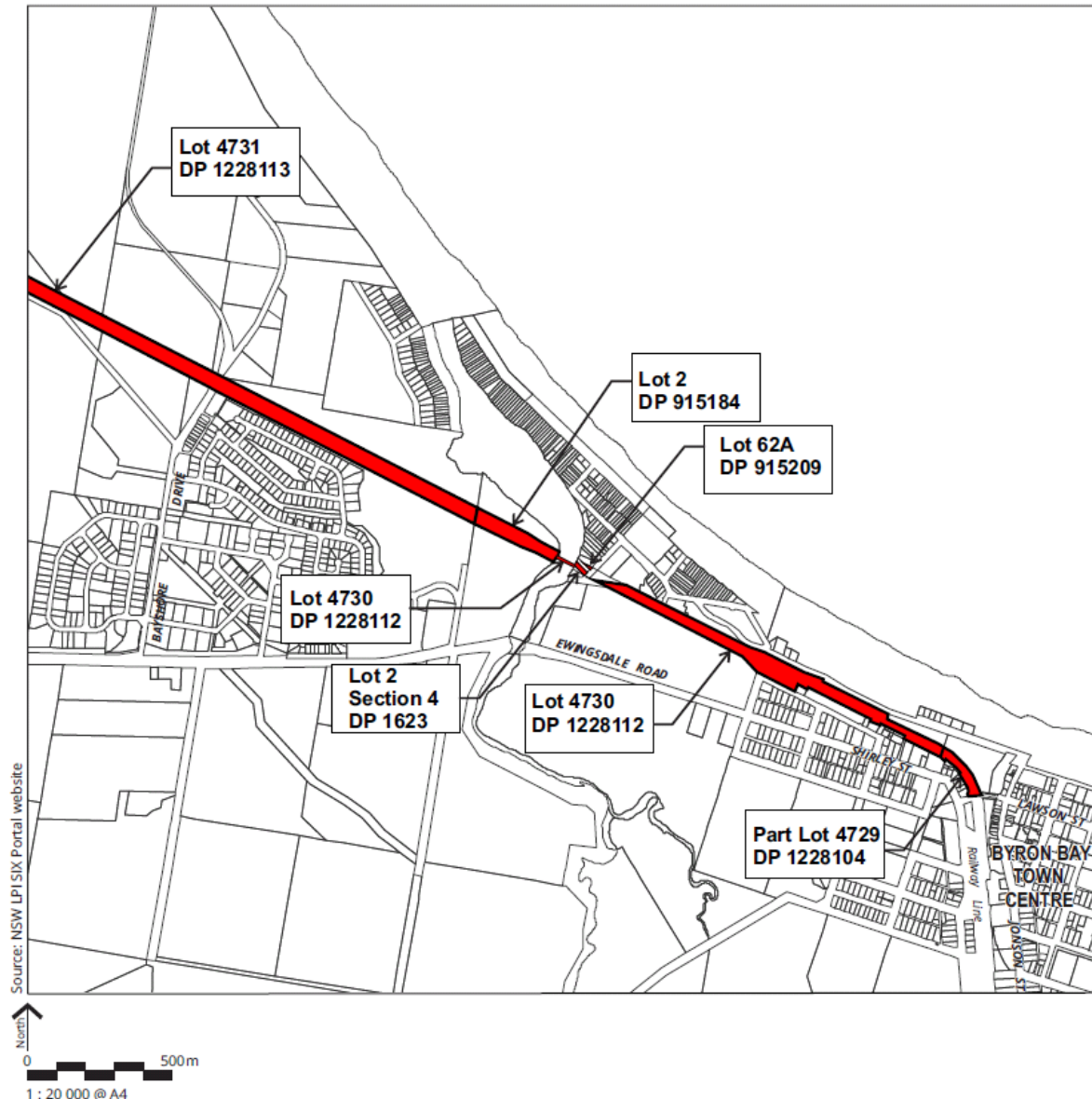
A short section of the corridor, consisting of the rail bridge over Belongil Creek, is zoned W1 Natural Waterway under BLEP 2014.

1.3 Background

Byron Bay Railroad Company currently has a licence to operate railway activities on this section of the rail corridor, and they operate a solar-powered train transporting passengers from Lawson Street in the Byron Bay town centre to the Elements Resort at Bayshore Drive (and to the adjoining Arts and Industry Estate).

This is the only section of the rail corridor within Byron Shire that is operational for active rail services.

The planning proposal will reflect the ongoing use of this land for rail transport and allow the proponents to continue to maintain the infrastructure required.



Subject Land

Part 2 Explanation of provisions

To accommodate the continued rail transport use of the corridor within this section of the rail line, three amendments are proposed to BLEP14.

2.1 Rezoning

The provisions of the planning proposal will zone the rail corridor between Bayshore Drive and Lawson Street to SP2 Infrastructure. This is consistent with the zoning of the rail corridor within the Byron Bay town centre.

The majority of this section of the rail corridor is currently a Deferred Matter under Byron LEP 2014, other than a short section of the corridor, consisting of the rail bridge over Belongil Creek, which is zoned W1 Natural Waterway, and another short section adjacent to Lawson Street in the Town Centre, which is zoned SP2 Infrastructure.

Currently, the deferred areas retain the zoning under BLEP 1988, which is a combination of 5(a) Special Uses (Bayshore Drive to Kendall Street) and 7(f2) Urban Coastal Land (Kendall Street to Lawson Street).

The change of zoning from W1 Natural Waterways will only occur on the area of the existing bridge across Belongil Creek. The proposed zoning is shown on a map in **Appendix 1**.

Given the zoning of the land under BLEP14 will apply to land presently identified as Deferred Matter and W1 Natural Waterways in accordance with the provisions of BLEP14, it is considered that no amendment is required to BLEP88.

The SP2 Infrastructure zone is the appropriate zoning for an operational rail corridor under BLEP2014. The objectives and permissibility of the SP2 zone are shown below.

Zone SP2 Infrastructure

1 Objectives of zone

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Environmental facilities; Roads; The purpose shown on the [Land Zoning Map](#), including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3

2.2 Schedule 1 Additional Permitted Uses

An additional clause is proposed to be added to Schedule 1 of BLEP 2014 to permit nominated rail-related works to be undertaken within this section of the rail corridor without development consent, in accordance with Clause 2.5 of BLEP14. This Schedule 1 amendment will also require an amendment to the Additional Permitted Uses Map in BLEP14.

The proposed amendment to Schedule 1 will reflect the existing provisions of Schedule 12 within BLEP88, which permits nominated railway undertakings without consent.

The following is proposed to be inserted in Schedule 1 of BLEP14:

Schedule 1 Additional Permitted Uses

10. Use of certain land comprising rail corridor at Byron Bay

(1) *This clause applies to land within the North Coast Rail Corridor, located between Bayshore Drive and Lawson Street, Byron Bay, being:*

- Lot 4730 DP 1228112;
- Part Lot 4731 DP 1228113;
- Lot 2 DP 915184;
- Lot 2 Sec 4 DP 1623;
- Lot 62A DP 915209; and
- Part Lot 4729 DP 1228104.

- (2) *Development for the purpose of a railway or rail infrastructure facilities may be carried out without consent.*
- (3) *In this clause, a reference to development for the purpose of a railway or rail infrastructure facilities includes a reference to operation of a railway and to development for any of the following purposes if the development is in connection with a railway or rail infrastructure facilities:*
 - (a) *any development required in connection with the movement of traffic by rail, including the construction, reconstruction, alteration, maintenance and repair of ways, works and plant, and*
 - (b) *the erection within the limits of a railway station of buildings for any purpose, but excluding:*
 - (c) *the construction of new railways, railway stations and bridges over roads, and*
 - (d) *the erection, reconstruction and alteration of buildings for purposes other than railway undertaking purposes outside the limits of a railway station and the reconstruction or alteration of railway stations or bridges so as materially to affect their design, and*
 - (e) *the formation or alteration of any means of access to a road, and*
 - (f) *the erection, reconstruction and alteration of buildings for purposes other than railway purposes where such buildings have direct access to a public place.*

The proposed clause seeks to maintain existing provisions within Schedule 12 of BLEP88 and also refine the provisions contained within clause 79 of *State Environmental Planning Policy (Infrastructure) 2007*.

The SEPP provision allows railway works, including maintenance, to be undertaken without development consent, but only where those works are carried out “by or on behalf of a public authority”.

The Byron Bay Railroad Company is not a public authority, and operates the existing rail operation under licence from Transport for NSW.

2.3 Consequential amendments

As this planning proposal introduces zones on areas currently deferred under BLEP14, consequential amendments will be required to the Land Application Map and the Acid Sulfate Soils Map, as these are not currently mapped for this specific site in the BLEP 2014.

Part 3 Justification

Section A Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

This is an applicant initiated planning proposal and is not a direct result of any strategic study or report. However, the planning proposal is consistent with and will support a number of strategies as outlined in Q4.

Q2. Is the planning proposal the best means of achieving the objective or intended outcomes, or is there a better way?

Yes. The planning proposal is considered the best means of achieving an appropriate zoning on the rail corridor to facilitate rail transport.

Section B Relationship to strategic planning framework

Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (in this case the North Coast Regional Plan 2036)?

Yes. The planning proposal is consistent with the North Coast Regional Plan 2036, which is a 20-year blueprint for the future of the North Coast. The NSW Government's vision for the North Coast is to create the best region in Australia to live, work and play, thanks to its spectacular environment and vibrant communities. The consistency of the planning proposal with the three principles of the North Coast Regional Plan 2036 is demonstrated in the table below.

Principle	Consistency
1. DIRECT GROWTH TO IDENTIFIED URBAN GROWTH AREAS Urban growth areas have been identified to achieve a balance between urban expansion and protecting coastal and other environmental assets. They help maintain the distinctive character of the North Coast, direct growth away from significant farmland and sensitive ecosystems and enable efficient planning for infrastructure and services.	The proposal relates to the existing railway corridor and the rail services provide transport for existing urban areas, whilst not significantly impacting on sensitive ecosystems.
2. MANAGE THE SENSITIVE COASTAL STRIP The coastal strip comprises land east of the planned Pacific Highway alignment plus the urban areas of Tweed Heads around the Cobaki Broadwater. The coastal strip is ecologically diverse and contains wetlands, lakes, estuaries, aquifers, significant farmland, and has areas of local, State, national and international environmental significance. Much of this land is also subject to natural hazards, including flooding, coastal inundation, erosion and recession.	The existing rail corridor is located within the coastal strip. However, the proposal does not provide for any substantial changes to the existing corridor infrastructure.
3. PROVIDE GREAT PLACES TO LIVE AND WORK IN A UNIQUE ENVIRONMENT Making cities and centres the focus of housing diversity, jobs and activities makes communities more vibrant and active, reduces pressure on the environment, and makes it easier for residents to travel to work and access services.	The planning proposal contributes to creating great places to work. The service operates between Sunrise and Arts & Industrial Estate and the town centre and is used by local residents for daily commuter trips and by visitors.

Q4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The planning proposal is consistent with a number of Council's strategic plans, including the Byron Bay Town Centre Masterplan. A key objective of the masterplan aims to reduce vehicle traffic in the Byron town centre and promote people over cars. Facilitating the use of the rail corridor to provide a connection to the Arts and Industrial Estate, Sunrise and the town centre further reduces the need for vehicle traffic in the town centre.

Council's Community Strategic Plan (CSP) is a document that sets out the collective vision for the next 10 years and highlights our priorities and aspirations. It is a collective document that is facilitated by Council in collaboration with the community and other partners. The CSP identifies 5 community objectives to achieve the collective vision. This planning proposal is consistent with the community objectives in the CSP as demonstrated in the below table.

Community Objective	Consistency
We have infrastructure, transport and services that meet our expectations	This planning proposal helps to enable the solar train that provides alternative and sustainable transport options for travel between Sunrise, the Arts and Industry Estate and Byron Bay town centre
We cultivate and celebrate our diverse cultures, lifestyle and sense of community	The solar train is a world first and establishes Byron Shire as an example of an energy efficient transport mode.
We protect and enhance our natural environment	There is unlikely to be any negative impacts to the natural environment as a result of this proposal. Providing sustainable travel options helps reduce carbon emissions.
We manage growth and change responsibly	No growth is facilitated through this planning proposal. Providing alternative transport options helps to reduce congestion issues and provide easy access for residents and visitors in the town centre
We have community led decision making which is open inclusive	This planning proposal will be exhibited for a minimum of 28 days allowing the community to participate in the progression of any LEP amendment.

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The State Environmental Planning Policies relevant to this Planning Proposal are as follows

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP Coastal Management 2018	<p>The Coastal Management SEPP applies to majority of the subject land. The land is mapped in proximity to coastal wetlands and littoral rainforest. However, it is anticipated that the works associated with the continued operation of the railway corridor will not result in significant impacts to the coastal wetlands or littoral rainforest.</p> <p>The proposed use of the corridor will not impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest.</p> <p>The corridor is cleared and the operation of the rail service is confined to the existing tracks.</p> <p>The use of the corridor does not impact on the quantity or quality of surface and groundwater flows to and from the adjacent coastal wetland or littoral rainforest.</p> <p>It is anticipated that the works associated with the continued operation of the railway corridor will not result in significant impacts.</p>
SEPP Infrastructure 2007	<p>The Infrastructure SEPP provides for certain works associated with railways to be undertaken with and without development consent, primarily where they are undertaken by, or on behalf of a public authority. The provisions of the Infrastructure SEPP enable maintenance, repair etc. without</p>

	<p>consent only where they are undertaking by or on behalf of a public authority.</p> <p>As highlighted above, the Byron Bay Railroad Company operates under a Licence issued by Transport for NSW, but it is not a public authority.</p> <p>The proposed Schedule 1 clause will allow the continued maintenance of the rail facilities, which would otherwise require development consent.</p>
SEPP 55 Remediation of Land	Rezoning the subject site will not facilitate any new works within the corridor. Therefore, no further contamination studies are required.

Q6. Is the planning proposal consistent with the applicable Ministerial Directions (s.9.1 directions)?

Consistency with the Local Planning Directions is assessed in the following table.

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
1. Employment and Resources			
1.1 Business and Industrial Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary)	This planning proposal does not apply to a business or industrial zone.	Not Applicable
1.2 Rural Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). The objective of this direction is to protect the agricultural production value of rural land. Under this direction a planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.	This planning proposal does not apply to any rural zones.	Not Applicable
1.3 Mining, Petroleum Production and Extractive Industries	Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	Not Applicable	Not Applicable
1.4 Oyster Aquaculture	Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:	Not Applicable	Not Applicable

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<ul style="list-style-type: none"> (a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or (b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses. 		
1.5 Rural Lands	<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> (a) protect the agricultural production value of rural land; (b) facilitate the orderly and economic development of rural lands for rural and related purposes. <p>Applies when:</p> <ul style="list-style-type: none"> (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone. <p>A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.</p>	This planning proposal does not apply to any rural zones.	Not Applicable
2. Environment and Heritage			
2.1 Environment	The objective of this direction is to protect and	This planning proposal does not affect any	Not Applicable

<i>S9.1 Direction</i>	<i>Application</i>	<i>Relevance to this planning proposal</i>	<i>Consistency</i>
Protection Zones	<p>conserve environmentally sensitive areas. A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”.</p>	Environmental Protection Zones	
2.2 Coastal Protection Zones	<p>This direction applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> (a) the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas; (b) the NSW Coastal Management Manual and associated Toolkit; (c) NSW Coastal Design Guidelines 2003; and (d) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the 	This planning proposal will not enable increased development or more intensive land use on the land.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.</p> <p>A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:</p> <ul style="list-style-type: none"> (a) within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018; or (b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken: <ul style="list-style-type: none"> (i) by or on behalf of the planning proposal authority and the planning proposal authority, or (ii) by or on behalf of a public authority and provided to the planning proposal authority. <p>A planning proposal for a Local Environmental Plan may propose to amend the following maps, including increasing or decreasing the land within these maps, under the State Environmental Planning Policy (Coastal Management) 2018:</p> <ul style="list-style-type: none"> (a) Coastal wetlands and littoral rainforests area map; (b) Coastal vulnerability area map; (c) Coastal environment area map; and (d) Coastal use area map <p>Such a planning proposal must be supported by evidence in a relevant Coastal Management Program that has been certified by the Minister, or</p>		

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	by a Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016.		
2.3 Heritage Conservation	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people. 	While the subject site is not mapped as a heritage item or conservation area under the BLEP14, the proposal will allow for the continued use of the old railway, helping to preserve and promote the historic use of the rail corridor in Byron Bay.	Consistent
2.4 Recreation Vehicle Areas	<p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the Recreation Vehicles Act 1983):</p> <ul style="list-style-type: none"> (a) where the land is within an environmental protection zone, 	Not Applicable	Not Applicable

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<ul style="list-style-type: none"> (b) where the land comprises a beach or a dune adjacent to or adjoining a beach, (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration: <ul style="list-style-type: none"> (i) the provisions of the guidelines entitled Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September, 1985, and (ii) the provisions of the guidelines entitled Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985 		
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	<p>This direction applies when a relevant planning authority prepares a planning proposal:</p> <ul style="list-style-type: none"> (a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone; (b) that introduces or alters an overlay and associated clause. 	The proposal will not impact on any areas of ecological significance.	Consistent
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones	<p>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <ul style="list-style-type: none"> (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary), 	A small portion of the subject site is zoned 7(f2) Urban Coastal Land which overflows from the adjoining urban coastal housing adjacent to the rail corridor. The zoning change only applies to the rail corridor which is currently utilised by the solar train. Due to the minor urban zoning and the continued	Justifiably Inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(b) any other zone in which significant residential development is permitted or proposed to be permitted.</p> <p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <ul style="list-style-type: none"> (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. <p>A planning proposal must, in relation to land to which this direction applies:</p> <ul style="list-style-type: none"> (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land 	use of the subject site, the proposed SP2 zoning will not have any negative impacts on available residential land.	
3.2 Caravan Parks and Manufactured Home Estates	<p>In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate 	Not applicable	Not Applicable

<i>S9.1 Direction</i>	<i>Application</i>	<i>Relevance to this planning proposal</i>	<i>Consistency</i>
	<p>zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park</p> <p>In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located, (b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the Community Land Development Act 1989 be permissible with consent. 		
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent.	Not Applicable	Not Applicable
3.4 Integrating Land Use and Transport	This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:	A small section of the subject site is currently zoned 7(f2) Urban Coastal Land. There is no housing or development in the rail corridor other than rail infrastructure. This planning proposal will enable integrated transport within close proximity to residential land	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	(a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).		
3.5 Development Near Regulated Airports and Defence Airfields	This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.	Not Applicable	Not Applicable
3.6 Shooting Ranges	This direction applies when a relevant planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range. A planning proposal must not seek to rezone land adjacent to and/ or adjoining an existing shooting range that has the effect of: (a) permitting more intensive land uses than those which are permitted under the existing zone; or (b) permitting land uses that are incompatible with the noise emitted by the existing shooting range.	Not Applicable	Not Applicable
4. Hazard and Risk			
4.1 Acid Sulfate Soils	This direction applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps. A relevant planning authority must not prepare a planning proposal that proposes an intensification	Any disturbance of potential acid sulfate soils will address the relevant provisions of BLEP14. The planning proposal will not result in the intensification of the land. An amendment to the Acid Sulfate Soils Map in BLEP14 will be required as the land will no longer be deferred matter.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director General prior to undertaking community consultation in satisfaction of section 57 of the Act.		
4.2 Mine Subsidence and Unstable Land	This direction applies to land that: (a) is within a Mine Subsidence District proclaimed pursuant to section 15 of the Mine Subsidence Compensation Act 1961, or (b) has been identified as unstable land. This direction applies when a relevant planning authority prepares a planning proposal that permits development on land that: (a) is within a mine subsidence district, or (b) has been identified as unstable in a study, strategy or other assessment	Not Applicable	Not Applicable
4.3 Flood Prone Land	This direction applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).	The subject site is mapped as flood prone land. As the zone changes reflect the existing zoning and uses of the site from the BLEP88 it is considered appropriate to rezone the site to SP2 Infrastructure.	Justifiably Inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p> <p>A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. <p>A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p> <p>For the purposes of a planning proposal, a relevant planning authority must not determine a</p>		

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).		
4.4 Planning for Bushfire Protection	<p>This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made, A planning proposal must:</p> <ul style="list-style-type: none"> (a) have regard to Planning for Bushfire Protection 2006, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. <p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> (a) provide an Asset Protection Zone (APZ) 	<p>This planning proposal applies to land that is mapped as bushfire prone land; however the proposal will not result in any residential zoning or intensification of the land.</p> <p>Consultation with NSW RFS will occur after the Gateway determination.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>incorporating at a minimum:</p> <ul style="list-style-type: none"> (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road, <p>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,</p> <ul style="list-style-type: none"> (c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks, (d) contain provisions for adequate water supply for firefighting purposes, (e) minimise the perimeter of the area of land interfacing the hazard which may be developed, (f) introduce controls on the placement of combustible materials in the Inner Protection Area. 		
5. Regional Planning			

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
5.1 Implementation of Regional Strategies	This direction applies to land to which the following regional strategies apply: (a) South Coast Regional Strategy (excluding land in the Shoalhaven LGA) (b) Sydney–Canberra Corridor Regional Strategy	Not Applicable	Not Applicable
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	Not Applicable	Not Applicable
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	This applies to Byron Shire Council except within areas contained within the “urban growth area” mapped in the North Coast Regional Plan 2036. A planning proposal must not: (a) rezone land identified as “State Significant Farmland” for urban or rural residential purposes. (b) rezone land identified as “Regionally Significant Farmland” for urban or rural residential purposes. (c) rezone land identified as “significant non-contiguous farmland” for urban or rural residential purposes.	The subject site is not mapped as important farmland under the North Coast Regional Plan 2036	Consistent
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	This Direction applies when a relevant planning authority prepares a planning proposal for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway. A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that: (a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway;	Not Applicable	Not Applicable

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(b) development with frontage to the Pacific Highway must consider impact the development has on the safety and efficiency of the highway; and</p> <p>(c) for the purposes of this paragraph, “within town” means areas which, prior to the draft local environmental plan, have an urban zone (e.g.: “village”, “residential”, “tourist”, “commercial”, “industrial”, etc.) and where the Pacific Highway speed limit is less than 80km/hour.</p> <p>A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that:</p> <p>(a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction;</p> <p>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and</p> <p>(c) for the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (e.g.: “village”, “residential”, “tourist”, “commercial”, “industrial”, etc.) or are in areas where the Pacific Highway speed limit is 80km/hour or greater.</p>		
5.5 – 5.8 Revoked	-	-	-
5.9 North West Rail Link Corridor	Not Applicable	Not Applicable	Not Applicable

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
Strategy			
5.10 Implementation of Regional Plans	Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.	The consistency of this planning proposal with the North Coast Regional Plan is addressed in Section B above.	Consistent
6. Local Plan Making			
6.1 Approval and Referral Requirements	<p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: <ul style="list-style-type: none"> (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and (c) not identify development as designated development unless the relevant planning authority: <ul style="list-style-type: none"> (i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and 	General arrangements with respect to development approval are embodied in the amendments proposed, however it is unlikely that any approvals will be needed from Ministers or public authorities.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency
	(ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.		
6.2 Reserving Land for Public Purposes	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General).	Not Applicable	Not Applicable
6.3 Site Specific Provisions	<p>This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already 	The planning proposal seeks to apply the SP2 Zone to the rail corridor, which is consistent with the zoning of the existing rail corridor in the town centre. The Schedule 1 provisions proposed do not impose any development standards and allows for the continued use of the rail corridor as per BLEP88.	Consistent

<i>S9.1 Direction</i>	<i>Application</i>	<i>Relevance to this planning proposal</i>	<i>Consistency</i>
	<p>contained in the principal environmental planning instrument being amended.</p> <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>		

Section C Environmental, social and economic impact

Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

It is unlikely that any critical habitat or ecological impacts will occur as a result of this planning proposal. The site will continue to be used for its current use as a railway for the solar train.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed

It is unlikely that there will be any environmental effects as a result of this planning proposal. Promoting alternative, sustainable transport options helps to reduce the emissions released as a result of private vehicle travel.

Q9. Has the planning proposal adequately addressed any social and economic effects?

As mentioned earlier, this planning proposal will allow for the continued use of the rail corridor for rail transport. This will have a positive social and economic impact for the Shire as the solar train provides an alternative transport option and connects the Byron Bay town centre with Elements Resort and the Arts and Industrial Estate.

Section D State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

Yes, the solar train currently operates on existing rail infrastructure. This proposal will allow for the continued upkeep of this infrastructure.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Byron Bay Railroad Company currently has a lease from Transport for NSW to use the subject site for the solar train and has been in operation for a number of years. Transport for NSW has provided consent for the submission of this planning proposal and will provide comments during the formal exhibition.

At this stage, no other state or public agencies have been consulted. Consultation will occur in line with the Gateway determination. It is unlikely that any agencies will contest this proposal.

Part 4 Mapping

Amendments will be required to the following Byron LEP 2014 map sheets:

Land Zoning Map - Sheet LZN_003CC

Additional Permitted Uses Map - Sheet APU_003CC

Land Application Map - Sheet LAP_001

Acid Sulfate Soils Map - Sheet ASS_003CC

The Zoning map is attached in Appendix 1.

Part 5 Community consultation

Community consultation will be conducted in accordance with the Gateway determination.

Notification of the exhibited planning proposal will include:

- a newspaper advertisement that circulates in the Byron LGA
- updates to Council's website
- notification to relevant State agencies

Part 6 Project timeline

The proposed timeline for the completion of the Planning Proposal is as follows:

Plan making step	Estimated completion
Gateway Determination	January 2020
Agency Consultation	February 2020
Public Exhibition Period	February 2020
Submissions Assessment	April 2020
Submission of endorsed LEP amendment to Parliamentary Counsel for drafting (delegated authority)	May 2020
Council to make the LEP amendment (delegated authority)	June 2020
LEP amendment notification	June 2020

Conclusion

This Planning Proposal seeks an amendment to BLEP14 to apply the SP2 Infrastructure Zone to the existing rail corridor and a Schedule 1 amendment to ensure the permissibility of any maintenance work required for the continued operation of the rail service.

The Planning Proposal for the rail corridor between Bayshore Drive and Lawson Street Byron Bay is a product of many factors. Those factors include:

- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for infrastructure provision;
- strong demand for increased affordable transport opportunities within Byron Shire; and
- the opportunity to apply a consistent zoning to the existing rail corridor within which train services operate.

The proposal presents an appropriate amendment to BLEP14 which is consistent with local, State and Regional planning strategic directions.

Appendix 1

Proposed Zoning

