

## Planning and Assessment

IRF19/7545

### Gateway determination report

<b>LGA</b>	Byron Shire
<b>PPA</b>	To zone the rail corridor ay Byron Bay between Bayshore Drive and Lawson Street SP2 Infrastructure, identify rail transport works as an additional permitted use without consent on the land and identify the land on the Acid Sulfate Soils and Land Application maps under the Byron LEP 2014
<b>NAME</b>	Byron Bay railway
<b>NUMBER</b>	PP_BYRON_2019_006_00
<b>LEP TO BE AMENDED</b>	Byron Local Environmental Plan 2014
<b>DESCRIPTION</b>	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
<b>RECEIVED</b>	2 December 2019
<b>FILE NO.</b>	IRF19/7545
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The Byron Bay Railroad Company currently hold a licence to operate railway activities in the rail corridor. They operate a solar-powered train transporting passengers from Lawson Street in the Byron Bay town centre to the North Beach precinct and Byron Arts Estate.

The planning proposal aims to reflect the ongoing use of the land for rail transport and allow the rail operators to undertake certain rail undertakings by amending the Byron Local Environmental Plan (LEP) 2014 to:

- zone the rail corridor between Bayshore Drive and Lawson Street SP2 Infrastructure (Rail Corridor) from zones W1 Natural Waterways (Belongil Creek rail bridge), 5(a) Special Uses (Bayshore Drive to Kendall Street) and 7(f2) Urban Coastal Land (Kendall Street to Lawson Street); and
- nominate that certain railway undertakings may be undertaken in the rail corridor between Bayshore Drive and Lawson Street as an additional permitted use without consent.

As the majority of the land is currently Deferred Matter under the Byron LEP 2014, consequential changes to the Land Application and Acid Sulfate Soils Maps also need to be undertaken.

## **1.2 Site description**

The planning proposal relates to land within the corridor containing the North Coast Rail Line, located between Bayshore Drive and Lawson Street in Byron Bay (Figures 1 and 2).

The railway corridor to which this planning proposal relates contains the following properties:

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

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

The majority of this section of the rail corridor is a Deferred Matter under Byron LEP 2014 and is currently zoned 5(a) Special Uses (Bayshore Drive to Kendall Street) and 7(f2) Urban Coastal Land (Kendall Street to Lawson Street) under the Byron LEP 1988.

A short section of the corridor, consisting of the rail bridge over Belongil Creek is zoned W1 Natural Waterway, and another short section adjacent to Lawson Street in the town centre is already zoned SP2 Infrastructure.

The track is 3km long and links the Byron Town Centre with the North Beach precinct and Byron Arts Estate.

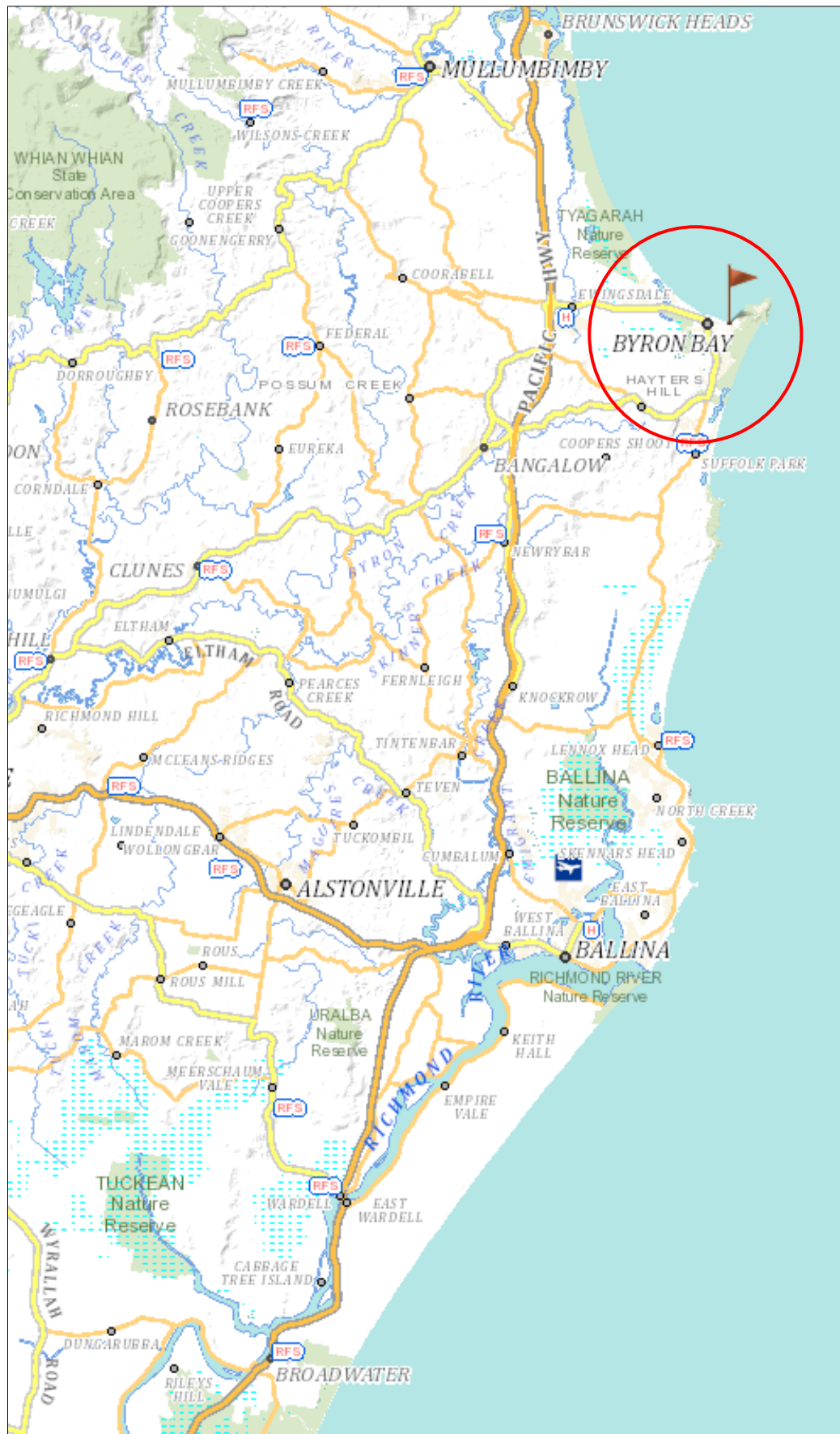


Figure 1: Locality Map (Source: SixMaps)

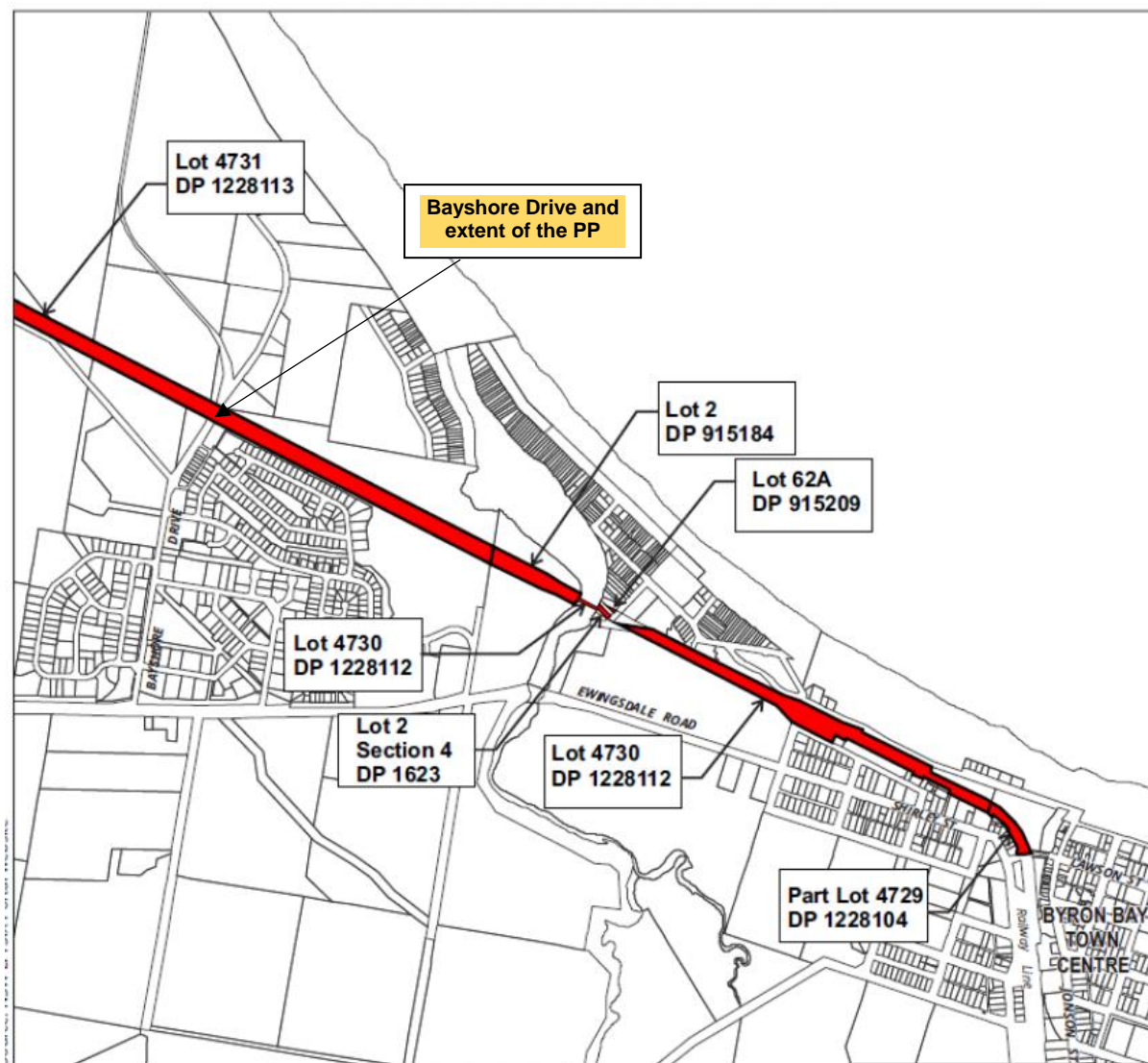


Figure 2: Site Plan (Source: Planning Proposal)

### 1.3 Existing planning controls

The majority of the land is a Deferred Matter under the Byron LEP 2014, except for 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 (Rail Corridor) (Figure 3).



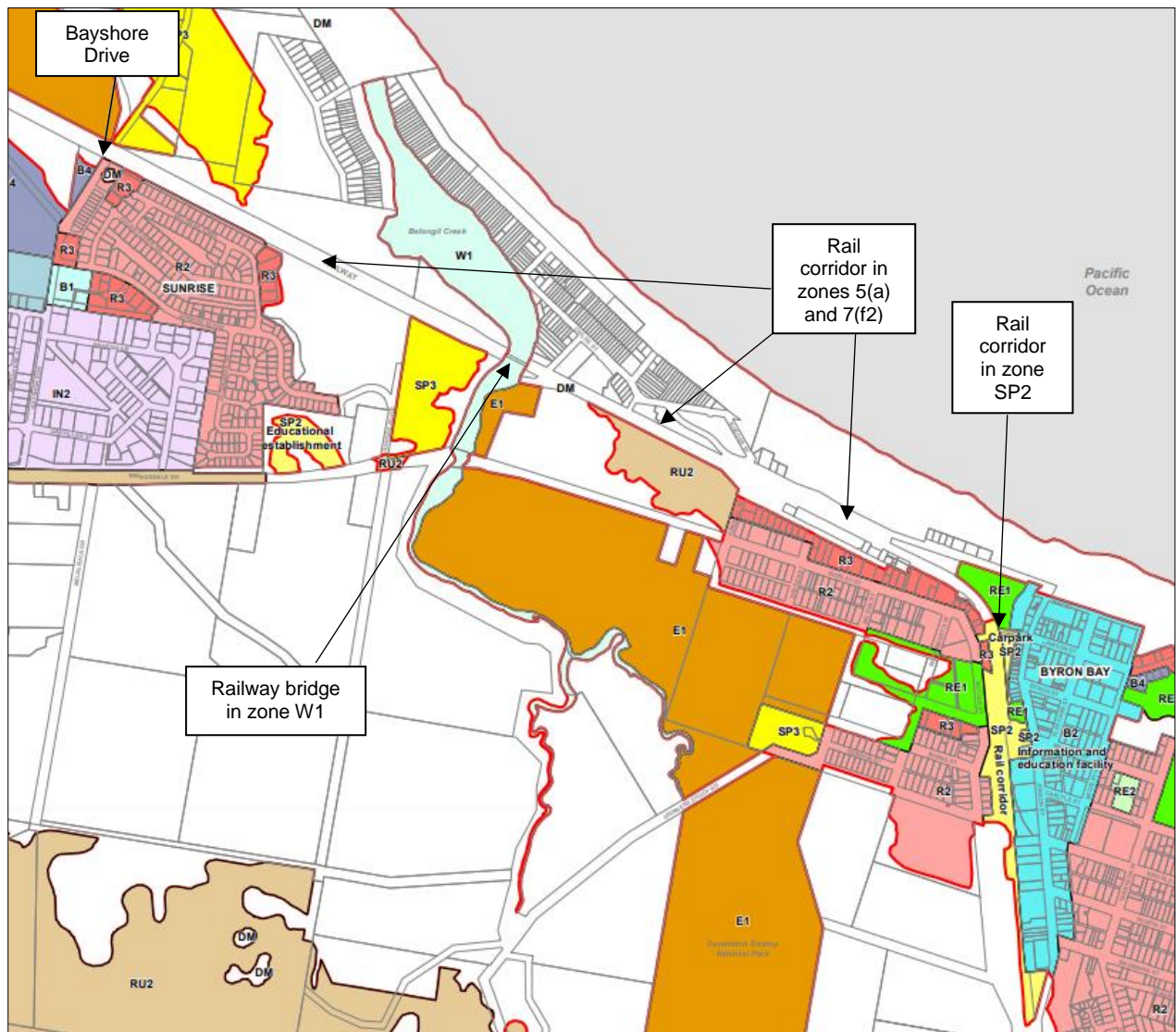


Figure 3: Extract of Byron LEP 2014 Zoning Map (Source: NSW Legislation website)

## 1.4 Surrounding area

The planning proposal relates to land within the corridor containing the North Coast Rail Line, located between Bayshore Drive and Lawson Street in Byron Bay.

Lawson Street is located at the eastern end of the rail corridor and forms part of the Byron Bay town centre within zone B2 Local Centre. The town centre comprises a variety of commercial, residential and tourist land uses.

The Byron Bay railway station is located to the south of Lawson Street and the rail corridor in this location is already zoned SP2 Infrastructure. Schedule 1 of the Byron LEP 2014 permits the use of this land for a range of community uses.

To the north of the corridor between Lawson Street and Belongil Creek, the corridor adjoins the Byron Beach Reserve, being Belongil Beach and Main Beach. There is also established residential development adjoining the rail corridor and beach reserve. This land is a Deferred Matter under the Byron LEP 2014 and zoned 7(f2) Urban Coastal Lands pursuant to the Byron LEP 1988.

To the south of the corridor between Lawson Street and Belongil Creek there is established residential development within the R2 Low Density Residential and R3 Medium Density Residential zones and the Cumbebin Swamp Nature Reserve.

To the north of the corridor between Belongil Creek and Bayside Drive, the railway corridor adjoins the Elements of Byron Resort and Spa which is within an area zoned SP3 Tourist.

To the south of the corridor between Belongil Creek and Bayside Drive is the Byron Bay Tourist Village in zone SP3 Tourist, established residential development within zone R2 Low Density Residential and wetlands in zone 7(a) Wetlands pursuant to the Byron LEP 1988.

The railway corridor to the west of Bayside Drive is also a Deferred Matter under the Byron LEP 2014. It is not in operation at this time, but it is noted that Council has commissioned a report to investigate the feasibility of reactivating the Byron Shire rail corridor from Bangalow to Yelgun for multi-use transport applications. The part of the corridor subject to the planning proposal is within the investigation area.

### **1.5 Summary of recommendation**

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

- the planning proposal is not contrary to the E zone final recommendations;
- the planning proposal will incorporate land into the Byron LEP 2014 which has been a Deferred Matter;
- the planning proposal is consistent with the North Coast Regional Plan 2036;
- the planning proposal responds to the actions and objectives of the Byron Shire Community Strategic Plan 2028; and
- the planning proposal facilitates the ongoing operation of a privately operated rail service and ensures that network infrastructure is not sterilised.

It is recommended that this planning proposal be supported with conditions.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The objectives of this planning proposal are to amend the Byron LEP 2014 to:

- zone the rail corridor in Byron Bay between Bayshore Drive and Lawson Street SP2 Infrastructure from zones W1 Natural Waterways (Belongil Creek rail bridge), 5(a) Special Uses (Bayshore Drive to Kendall Street) and 7(f2) Urban Coastal Land (Kendall Street to Lawson Street); and
- identify certain railway undertakings to be undertaken in the rail corridor between Bayshore Drive and Lawson Street as an additional permitted use without consent.

As the majority of the land is currently Deferred Matter under the Byron LEP 2014, consequential changes to the Land Application and Acid Sulfate Soils Maps also need to be undertaken.

The objectives and intended outcomes of the planning proposal are adequately described and do not require amendment prior to community consultation.

## **2.2 Explanation of provisions**

The amendments proposed to the Byron LEP 2014 are adequately expressed and the intended outcomes are to:

- amend the Land Application Map to introduce the rail corridor between Bayshore Drive and Lawson Street;
- amend the Land Zoning Map to introduce Zone SP2 Infrastructure to the rail corridor between Bayshore Drive and Lawson Street;
- amend Schedule 1 Additional Permitted Uses to permit railway undertakings to be carried out without consent by the rail operator within the rail corridor between Bayshore Drive and Lawson Street;
- amend the Additional Permitted Uses Map to align with the proposed changes to Schedule 1 Additional Permitted Uses; and
- amend the Acid Sulfate Soils Map to nominate the soil classifications applicable to the rail corridor between Bayshore Drive and Lawson Street.

## **2.3 Mapping**

Council has nominated that amendments are required to the following maps:

- Land Zoning Map;
- Additional Permitted Uses Map;
- Land Application Map; and
- Acid Sulfate Soils Map

A proposed Land Zoning Map is the only map that was submitted with the planning proposal (Figure 4). Prior to consultation it is recommended that the proposal be amended to include all relevant existing LEP maps and the proposed LEP maps. These maps will also need to be prepared to the Department's Standard Technical Requirements prior to the plan being finalised.

The map named Subject Land in part 1.3 of the planning proposal (Figure 2) should also be amended to accurately reflect the site boundaries and align with the proposed zoning map contained in Appendix 1 (Figure 4). In this regard, the planning proposal relates only to the rail corridor between Bayside Drive and Lawson Street. However, the Subject Land map illustrates that the land extends beyond Bayside Drive to the north-west encompassing all of Lot 4731 DP 1228112.

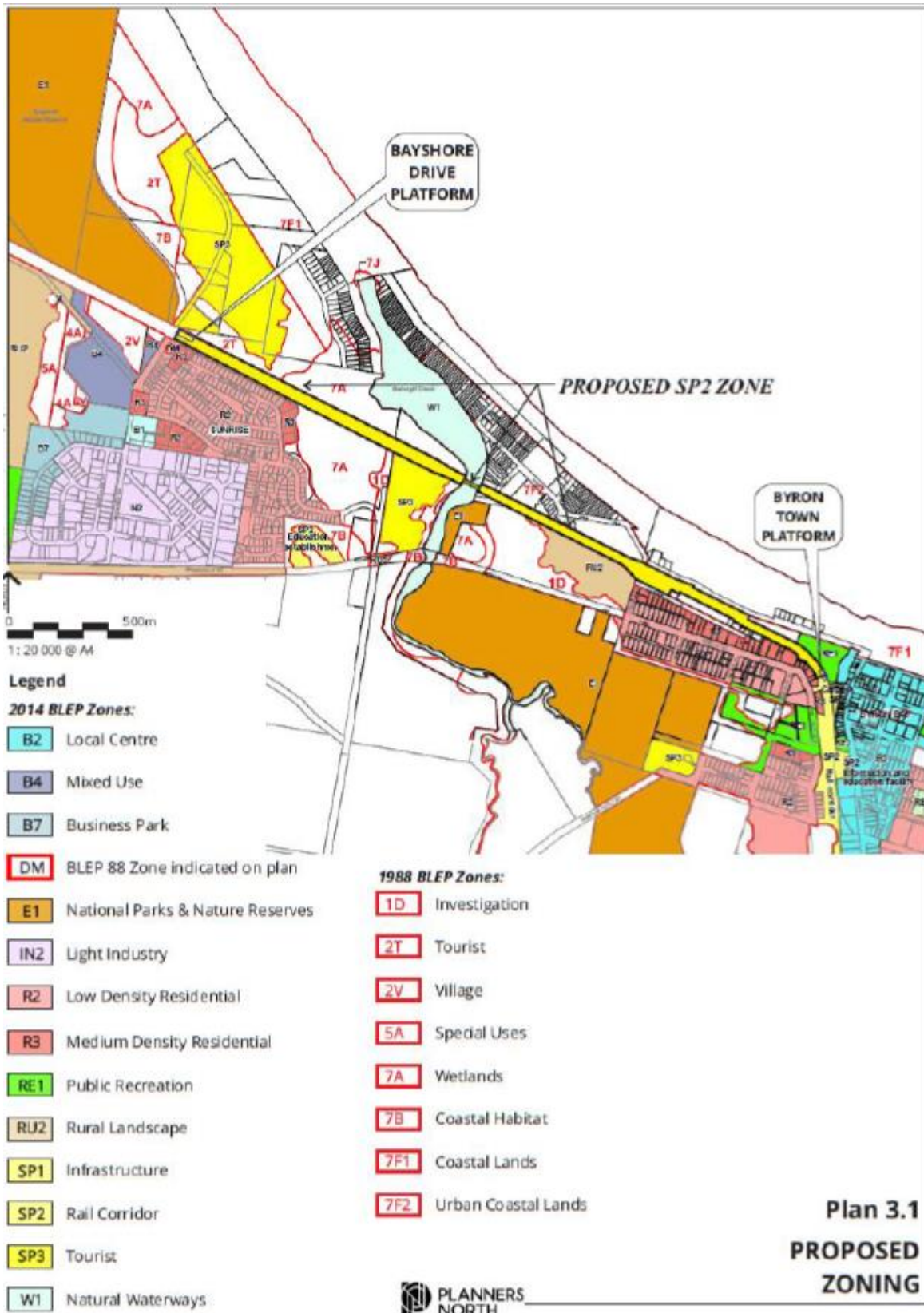


Figure 4: Proposed Zone Map (Source: Planning Proposal)



### 3. NEED FOR THE PLANNING PROPOSAL

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The planning proposal is neither the result of a strategy nor a study. It has been initiated by the Byron Bay Rail Company.

State Environmental Planning Policy (Infrastructure) 2007 allows nominated railway and railway infrastructure facilities 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.

The Byron LEP 1988 currently allows public authorities to carry out rail transport undertakings in the form of those specified by Schedule 12. It is proposed to introduce this clause into Schedule 1 of the Byron LEP 2014 with a minor amendment to allow rail transport works to be undertaken by any person without consent in that part of the rail corridor identified as an additional permitted use.

These amendments recognise the current land use through introduction of the SP2 zone and ensures that network infrastructure can be maintained in an operable condition by the Byron Bay Rail Company. In this instance, the proposed amendments are considered to be an acceptable means of achieving the intended outcomes as:

- the SP2 zone has been applied to other areas under the Byron LEP 2014 and it is not considered appropriate that railway undertakings be permitted across the entire zone by non-public authorities without consent;
- the rail corridor adjoins multiple zones, including land that is a Deferred Matter under the Byron LEP 2014. Therefore, applying an adjoining zone to the rail corridor other than SP2 Infrastructure, consistent with the rail corridor in the Byron Bay town centre, is neither logical nor practical; and
- the zoning reflects the primary use of the land which is consistent with the E zone final recommendations.

It is considered that the proposal is appropriate and the best means for achieving the intended outcomes.

### 4. STRATEGIC ASSESSMENT

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#### 4.1 State

The planning proposal does not contain any matters of State or regional significance.

#### 4.2 Regional / District

The North Coast North Coast Regional Plan 2036 is relevant as follows:

##### *Direction 8: Promote the growth of tourism*

This Direction recognises that Byron Bay is a prime tourism development area. The solar-powered train links the Byron Bay town centre with the North Beach precinct, the location of Elements of Byron Resort and Spa, and the Byron Arts Estate. The planning proposal is consistent with Action 8.3 which aims to facilitate land uses that support tourism and visitor accommodation by offering a unique and alternative form of transport between key sites in Byron Bay.

##### *Direction 10: Facilitate air, rail and public transport infrastructure*

This Direction identifies that the North Coast's air, rail and public transport systems

are major economic assets that will help to underpin economic growth. The planning proposal is consistent with Action 10.3 which is to protect the North Coast Rail Line to ensure network opportunities are not sterilised by incompatible land uses or land fragmentation. The introduction of zone SP2 Infrastructure facilitates the continued use of the railway and the proposed amendment to Schedule 1 ensures that the infrastructure can be maintained in an operable condition.

The proposal is also consistent with the applicable Byron Local Government Narratives.

#### **4.3 Local**

Council has indicated that the planning proposal is consistent with the following objectives of the Community Strategic Plan 2028:

- “Community Objective 1: We have infrastructure, transport and services which meet our expectations” because the planning proposal facilitates an alternative and sustainable transport option.
- “Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community” because the solar train is a world first and an example of an energy efficient transport mode.
- “Community Objective 3: We protect and enhance our natural environment” because the train is a sustainable transport option.

The planning proposal is also consistent with the Byron Bay Town Centre Masterplan. The Masterplan was adopted by Council in June 2016 but has not been endorsed by the Department.

One of the key objectives of the Masterplan is to reduce the dominance of parking in the town centre. Facilitating the use of the rail corridor to provide connection between the Byron Bay town centre and the North Beach precinct and Byron Arts Precinct reduces vehicle traffic in the town centre.

#### **4.4 Section 9.1 Ministerial Directions**

The planning proposal is consistent with the relevant Ministerial Directions, except for those discussed below:

##### *Direction 2.1 Environment Protection Zones*

The planning proposal is inconsistent with this Direction as the environmental protection standards that apply to land in the W1 Natural Waterway and 7(f2) Urban Coastal Lands will be reduced when the land is rezoned to SP2 Infrastructure. The inconsistency is considered to be of minor significance as the planning proposal will not facilitate a change of land use and only seeks to facilitate the on-going operation of the existing railway corridor.

##### *Direction 2.2 Coastal Management*

The planning proposal is inconsistent with this Direction as it includes land mapped in the State Environmental Planning Policy (Coastal Management) 2018 and does not include provisions which give effect to the objectives of the Coastal Management Act 2016, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan. The inconsistency is considered to be of minor significance as the planning proposal will not facilitate a change of land use.

### *Direction 3.1 Residential Zones*

The planning proposal is inconsistent with this Direction as it will rezone land from 7(f2) Urban Coastal Land to SP2 Infrastructure and does not encourage housing that will broaden the choice of building types available in the housing market or be of good design. The inconsistency is considered to be of minor significance as the land is highly unlikely to be suitable for housing given that it is an active rail corridor.

### *Direction 3.2 Caravan Parks and Manufactured Home Estates*

The planning proposal is inconsistent with this Direction as it will rezone land from 7(f2) Urban Coastal Land to SP2 Infrastructure and does not retain provisions that permit development for the purposes of a caravan park to be carried out on the land. The inconsistency is considered to be of minor significance as the land is highly unlikely to be suitable for caravan parks given that it is an active rail corridor.

### *Direction 4.3 Flood Prone Land*

The planning proposal is inconsistent with this Direction as it does not 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). It also rezones land within the flood planning areas from environment and special uses to SP2 Infrastructure. The inconsistency is considered to be of minor significance as the proposal will not facilitate a change of land use or further development and only seeks to facilitate the on-going operation of the existing railway corridor.

### *Direction 4.4 Planning for Bushfire Protection*

The planning proposal is potentially inconsistent with this Direction as it applies to land that is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS is required after a Gateway Determination is issued. Until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

### *Direction 6.2 Reserving Land for Public Purposes*

The planning proposal is inconsistent with this Direction as it creates a zoning (SP2 Infrastructure) for public purposes without the approval of the relevant public authority and the Secretary of the Department of Planning, Industry and Environment. This inconsistency is considered to be of minor significance as the majority of the corridor is already zoned 5(a) Special Uses and is an existing railway corridor.

## **4.5 State environmental planning policies (SEPPs)**

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

## **5. SITE-SPECIFIC ASSESSMENT**

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### **5.1 Social**

The planning proposal facilitates the continued use of the rail corridor and ensures that railway infrastructure is maintained in an operable condition for the solar-powered train. No negative social impacts as a consequence of the planning proposal are anticipated.

### **5.2 Environmental**

The Belongil Creek Flood Study (12 November 2009) identifies the 1 in 100-year

flood event affects the rail corridor between Belongil Creek and Bayshore Drive. The affected area is primarily a floodway, with some periphery flood storage.

As the planning proposal only seeks to facilitate the existing use, and the land will continue to be used for rail transport, the planning proposal will not have any detrimental impacts to the environment as a consequence of flooding.

The planning proposal seeks to rezone certain areas from W1 Natural Waterways and 7(f2) Urban Coastal Lands to SP2 Infrastructure. The planning proposal will change the environmental protection standards that apply to these portions of the land. It is noted however, the planning proposal will not facilitate a change of use, and by nominating that development is permitted without consent, the environmental impact of any work must still be considered before work is carried out under Part 5 of the *Environmental Planning and Assessment Act 1979*. As such, no negative impacts on the environment due to a change in the LEP provisions is anticipated.

### **5.3 Economic**

The Byron Bay Railroad Company is a not-for-profit company. As a not-for-profit company, all revenue is re-invested in the organisation's rail assets. The company holds a non-exclusive licence from Transport for NSW to use the rail corridor and rail infrastructure and are required to maintain both these state-owned assets at their own cost.

It is anticipated that the planning proposal will have positive economic impacts for the local economy by recognising and facilitating the current land use and enabling the Byron Bay Rail Company to carry out certain minor works without the costs incurred with the requirement for development consent.

### **5.4 Infrastructure**

The provision and funding of State infrastructure is not necessary for this proposal.

The infrastructure requirements relevant to the proposal are directly associated with the ongoing operation of the rail corridor.

In this regard, the planning proposal will facilitate the carrying out of railway undertakings including any development required in connection with the movement of traffic by rail such as the construction, reconstruction, alteration, maintenance and repair of ways, works and plant, but will exclude:

- the construction of new railways, railway stations and bridges over roads; and
- 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
- the formation or alteration of any means of access to a road; and
- the erection, reconstruction and alteration of buildings for purposes other than railway purposes where such buildings have direct access to a public place.

This will enable the Byron Bay Railroad Company, who currently hold a licence to operate railway activities in the rail corridor, to maintain the infrastructure that they lease without development consent. As the work primarily facilitates maintenance and repairs, the planning proposal will not have any detrimental impacts or unreasonable demands on infrastructure.



## **6. CONSULTATION**

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### **6.1 Community**

Council has indicated that community consultation will be undertaken in accordance with the Gateway determination and exhibition will include an advertisement in a newspaper that circulates in the Byron LGA, updates on Council's website and consultation with the relevant agencies.

In accordance with *LEPs, A guide to preparing local environmental plans* (Department of Planning and Environment, 2018), a 28-day public exhibition period is considered to be an appropriate timeframe for the planning proposal.

### **6.2 Agencies**

Council has nominated that consultation will be undertaken with the NSW Rural Fire Service in accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection.

It is also recommended that consultation be undertaken with the Department of Primary Industries (Fisheries) and the Division of Biodiversity and Conservation, because it is proposed to rezone the railway bridge over Belongil Creek and with Transport for NSW as the owner of the rail corridor.

## **7. TIME FRAME**

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Council has nominated a timeframe of 6 months to complete the planning proposal. It is recommended that a 9 month timeframe be provided to Council to ensure an adequate period to finalise the planning proposal.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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The planning proposal is consistent or justifiably inconsistent with the State, regional and local planning framework and deals only with matters of local significance. Council has requested to be the plan making authority and it is considered appropriate that Council be provided with this authorisation.

## **9. CONCLUSION**

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

- the planning proposal is not contrary to the E zone final recommendations;
- the planning proposal will incorporate land into the Byron LEP 2014 which has been a Deferred Matter;
- the planning proposal is consistent with the North Coast Regional Plan 2036;
- the planning proposal responds to the objectives of the Byron Shire Community Strategic Plan 2028; and
- the planning proposal facilitates the ongoing operation of a rail service and ensures that network infrastructure is not sterilised.

It is recommended that this planning proposal be supported with conditions.

## 10. RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.1 Environmental Protection Zones, 2.2 Coastal Management, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 4.3 Flood Prone Land and 6.2 Reserving Land for Public Purposes are minor or justified; and
2. note that the consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
  - Department of Planning, Industry and Environment - Primary Industries (Fisheries)
  - Department of Planning, Industry and Environment - Biodiversity and Conservation Division
  - NSW Rural Fire Service
  - Transport for NSW
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority
5. Prior to community consultation the proposal is to be amended to include:
  - (a) the existing Land Zoning Maps;
  - (b) the proposed Land Application Map;
  - (c) the existing and proposed Additional Permitted Uses Map;
  - (d) the existing and proposed Acid Sulfate Soils Map; and
  - (e) an amended Subject Land map that identifies the area affected by the proposal to be between Bayside Drive and Lawson Street.



12/12/19

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13-12-2019

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