

Byron LEP 2014 - Tallowood Ridge, Mullumbimby

Proposal Title : **Byron LEP 2014 - Tallowood Ridge, Mullumbimby**

Proposal Summary : **The purpose of the planning proposal is to rezone lots 93 & 94 DP1216681, Tallowood Ridge, Mullumbimby. The subject site also includes an unmade road that traverses north-south through Lot 94 and one that abuts it immediately to the south, for the following:**

- 1. provide for additional residential development. More specifically the following zone changes have been proposed;**
 - * Approximately 5ha of R2 Low Density Residential to RU2 Rural Landscape,**
 - * Approximately 5ha of RU1 Primary Production to RU2 Rural Landscape,**
 - * Approximately 3ha of RU1 Primary Production to RE1 Public Recreation, and**
 - * Approximately 12ha of RU1 Primary Production and RU2 Rural Landscape to R2 Low Density Residential (with a potential yield of approximately 65 lots based on 9 lots per hectare).**
- 2. rezone other zones that apply to the site to reflect past approvals for sporting facilities (see above), and**
- 3. remove environmentally sensitive land from a residential zone. In this case, the planning proposal plans to rezone approximately 5ha of R2 Low Density Residential land to RU2 Rural Landscape (in the majority) in acknowledgement of it being riparian, flood affected or containing significant vegetation. The RU2 zoning is proposed until such time as suitable environmental zones are applied to the site.**

PP Number : **PP_2016_BYRON_005_00** Dop File No : **16/06890**

Proposal Details

Date Planning Proposal Received :	23-May-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 :
 Suburb : City : Postcode :
 Land Parcel : **Lots 93 & 94 DP 1216681, Tallowood Ridge Estate, Mullumbimby**

DoP Planning Officer 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) :	12.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	65
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 Agency's Code of Practice in relation to communication 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? : **Yes**

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

Supporting notes

Internal Supporting Notes : **The property description in the planning proposal has described the site as Lot 80 DP 1202269 Tallowood Ridge, Mullumbimby. Confirmation from Council has however indicated that this is an old property description and the correct one for the subject land is Lots 93 & 94 DP 1216681, Tallowood Ridge, Mullumbimby. The Planning proposal will need to be updated to reflect this prior to exhibition.**

It should be noted that the subject land is not identified as an Urban Release Area and is outside the Town and Village Growth Boundary in the Far North Coast Regional Strategy (FNCRS). It also mapped as containing regionally significant farmland in the Northern

Rivers Farmland Protection Project (NRFPP)

This proposal is also outside the areas identified for residential development in Council's Mullumbimby Settlement Strategy (MSS). Whilst still relevant, this strategy was developed in 2003, a more recent document, the Draft Byron Land Use Strategy is currently on exhibition and has made some recommendations relevant to the subject land.

A planning proposal for the same subject land (then described as Lot 57 DP 1190345 and Lots 1-3 DP 608876 - 59.10ha) was submitted to the Department in March 2014. The purpose of this planning proposal was to relocate an area of residential zoning currently approved for residential development to a more suitable, alternative location within the site for the purpose of providing statutory planning protection, care and management of that part of the land known to provide habitat for a number of animal species. A variety of concerns were raised by the Department due to a lack of adequate information relating to the potential impacts of the proposal on bushfire, flooding, biodiversity, agricultural land and water supply. Also of concern was the lack of justification for the proposal given the fact that the subject land is outside the Town and Village Growth Boundary in the FNCRS and is outside the areas identified for residential development in Council's MSS. The proposal also failed to address the lack of a public transport system to service the new residential area.

As a result of these concerns and discussions between Council and the Department, the planning proposal was withdrawn on 19 May 2014.

External Supporting
Notes :

Adequacy Assessment

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

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

Comment : The objective of the planning proposal is to rezone the subject land on the western edge of Mullumbimby to provide for additional residential development. Also to modify the Byron LEP 2014 zones that apply to the site to reflect past approvals for sporting facilities and to remove environmentally sensitive land from a residential zone.

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

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

Comment : The intentions of the Planning Proposal have been clearly articulated:
* permit additional residential development on the subject site,
* consolidate environmentally sensitive land (and some steep land) into a single rural zone (until an Environmental zone is applied to the land),
* allocate a public recreation zone to sports fields that are under construction, and
* allocate a rural zone to a riparian corridor that passes through the site.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

- 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
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils

- 4.2 Mine Subsidence and Unstable Land
- 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
- 6.2 Reserving Land for Public Purposes

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

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

d) Which SEPPs have the RPA identified?

**SEPP No 44—Koala Habitat Protection
SEPP No 71—Coastal Protection
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? **No**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Council has provided maps that clearly show the location of the subject land, current zoning and master plan provisions as well as proposed zonings, floor space ratio and minimum lot size provisions. These maps appear adequate for community consultation purposes.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Council does not consider the proposal to be low impact in nature and have therefore proposed a 28 day timeframe for community consultation. Council has also recommended the following agencies be consulted with;

- * NSW Rural Fire Service (S117D 4.4),**
- * OEH (significance of forested area in the south-west of the site), and**
- * DPI (agricultural land)**

It is also recommended that OEH (flooding) be consulted with in regards to the floodprone nature of the site.

Considering the complexity and potential community and state agency interest in the proposal, a 28 day timeframe is considered appropriate.

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

The Planning Proposal and accompanying documentation are considered to satisfy the adequacy criteria by:

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed by the LEP to achieve the outcomes;**

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3. Providing an adequate justification for the proposal;
4. Outlining a proposed community consultation program; and
5. Providing a project time line.

Council is not seeking an authorisation to exercise its plan making delegations for the reason that it is not consistent with the Far North Coast Regional Strategy (FNCRS). As the Planning Proposal is able to satisfy the sustainability criteria contained in the FNCRS for urban development outside the Town and Village Growth Boundary, it is considered that the planning proposal deals only with matters of local significance and therefore plan making delegations are able to be given in this instance.

The RPA has provided a project time line which estimates that the LEP can be made within a 6 month timeframe. This timeframe appears inadequate considering the complexity of the proposal and the potential community interest. To ensure an adequate period to complete the proposal, a 12 month time frame is recommended.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation
to Principal LEP :

The Byron LEP 2014 was published in March 2014. This planning proposal seeks to amend this LEP.

Assessment Criteria

Need for planning
proposal :

The planning proposal is not a result of any strategy, study or report but has arisen from Council's response to a vegetation mapping exercise that initially identified some of the residential zoned land as Koala habitat. The landowner was invited by Council to consider a boundary adjustment that would rezone the habitat areas to 7B Coastal Habitat (under Byron LEP 1988) in exchange for some areas of Rural 1A General Rural being zoned as Residential 2A. A planning proposal in this format was submitted to the Department in 2014 for consideration however was withdrawn in May 2014 due to a variety of Departmental concerns with the proposal and its lack of assessment in regards to the sustainability criteria required by the FNCRS for areas outside the Town and Village Growth Boundary. In June 2014, the Department wrote to Council specifically detailing the issues that would require additional information before a planning proposal of this nature could be further considered. In general, an amended planning proposal was to address;

- the sustainability criteria in the FNCRS,
- a clearer statement in regards to the amount of land being rezoned and the value of vegetation on the site,
- justification in regards to the planning proposal's inconsistency with the Mullumbimby Settlement Strategy (2003), and
- more detail and a greater focus on addressing (by way of MLS) the physical constraints of the site, in particular steep slopes, flood prone land and regionally significant agricultural land.

The current planning proposal submitted to the Department for consideration (detailed below) has been altered from the original 2014 proposal to address the issues listed above. These changes are as follows;

- the draft plan now proposes to amend Byron LEP 2014 and not Byron LEP 1988,
- sensitive fauna habitat in the south-west corner of the site has been removed from the proposal and remains a deferred matter under Byron LEP 1988,
- a buffer to protect the riparian zone and reduce landuse conflict between residential and rural has been incorporated in the form of an RU2 zone that traverses the site,
- approximately 5ha of R2 zoned land has been backzoned to RU2 in effect creating only a net increase of 7ha of residential land (the original proposal aimed to rezone 7.79ha of additional residential land, 1.95ha of additional rural residential land, have a reduced MLS over 22.76ha of existing residential land, and a reduced MLS from 40ha to 2 ha for the 7.68 ha of future environmentally zoned land),

- consideration has been given to steeper slopes and land instability with greater MLS's in these areas,
- The FNCRS sustainability criteria, s117's and relevant SEPP's have been assessed in greater detail, and
- The Mullumbimby Settlement Strategy whilst still applicable to the proposal, has been partially updated by the Draft Byron Land Use Strategy (2016) which has mapped the majority of the subject land as being in the most part a potential urban development area. This strategy has just finished public exhibition.

Specifically the planning proposal will involve the following zone changes;

* Approximately 5ha of R2 Low Density Residential to RU2 Rural Landscape with a MLS of 40ha & HOB of 9.0m - the purpose of this backzoning is to provide protection for forested areas and fauna habitat in the south and south-west of the subject land until an E zone is applied as well as acknowledging riparian and flood affected land elsewhere on the site.

* Approximately 5ha of RU1 Primary Production to RU2 Rural Landscape with a MLS of 40ha, HOB of 9.0m & no FSR requirements - the purpose of this is to create a riparian buffer that will protect the drainage channel as well as negating the direct rural-residential interface. One major issue with this proposed rezoning is that the majority of this RU1 land is mapped as regionally significant farmland under the Northern Rivers Farmland Protection Project. This issue is discussed in more detail later in the report.

* Approximately 3ha of RU1 Primary Production to RE1 Public Recreation with no MLS, FSR or HOB requirements - the purpose of this proposed rezoning is to reflect future landuse in the form of an existing approval for sporting fields (yet to be constructed) on the part of the subject land. Similar to above however, all of the land proposed to be rezoned to RE1 is mapped as regionally significant farmland under the Northern Rivers Farmland Protection Project.

* Approximately 12ha of RU1 Primary Production and RU2 Rural Landscape to R2 Low Density Residential with a potential yield of approximately 65 lots based on 9 lots per hectare. This zone will have a MLS of 400m2 & 1000m2 (to accommodate for steeper slopes in this part), HOB of 9.0m & a mix of FSR's at 0.5, 0.4 & 0.3. The planning proposal states the need for additional residential land to cater for the projected population growth in the region, the fact that Mullumbimby has limited available land for residential purposes due to physical and topographical constraints and that the existing Tallowood Ridge Estate has a future supply of only 4-5 years of residential zoned land based on current housing demand rates.

Consistency with
strategic planning
framework :

Northern Rivers Farmland Protection Project 2005 (NRFPP)

The subject land contains approximately 20ha of regionally significant farmland as identified in the NRFPP. It is proposed that .5ha of this significant farmland will be rezoned from RU1 Primary Production to R2 Low Density Residential. This small parcel of land is located on the south-western side of the waterway and as such is isolated from nearby RU1 Primary Production lands. In order to reduce the potential for landuse conflict, the planning proposal aims to rezone this small parcel the same as adjoining lands. Additionally, another 3ha of regionally significant farmland will be rezoned from RU1 Primary Production to RE1 Public Recreation to reflect an existing approval for sporting fields (yet to be constructed).

The NRFPP does state however that regionally significant farmland is not an absolute constraint to future strategic urban development and that councils can consider such land for future urban use if it satisfies the requirements of Part 4 of the plan. The planning proposal does not meet these requirements. Council was contacted about the possibility of not rezoning to RE1 the regionally significant farmland (RSF) portion of the site as sporting facilities are a permissible use on RU1 zoned land. As Council staff do not have delegation to modify the Planning Proposal, any reconfiguration of the proposed zoning plan would require a revised report back to the elected Council. For this reason Council staff elected to not amend the planning proposal.

Further discussion on this matter is contained under consideration of S117 Direction 5.3.

Mullumbimby Settlement Strategy 2003 (MSS)

The township of Mullumbimby has an adopted growth plan, the MSS, agreed by the then Director General. This strategy recognises that there is a limited land supply of land at Mullumbimby suitable for residential zoning due to infrastructure and topographical constraints. The Settlement Strategy suggests that future growth may be achieved by increasing density within the existing township. The subject land lies directly to the west of the existing township and if approved will create an extension (to the west) of an existing residential estate.

The 2003 strategy undertook an investigation of the development potential of this and other land around Mullumbimby, it identifies other investigation areas as being more suitable for residential development due to the constraints of this land.

Draft Byron Shire Rural Land Use Strategy 2016

This strategy is currently on exhibition and aims to provide a 20 year strategic framework to guide future land zoning, use and protection and/or development of rural environments, economies, communities and infrastructure. The subject land has been partly mapped (in regards to physical constraints) as being generally unconstrained land for the purpose of rural lifestyle living opportunities and/or potential urban development area.

Draft North Coast Regional Plan 2016 (dNCRP)

The proposal is not inconsistent with the directions and actions of the dNCRP. The proposal involves a relatively small increase in residential zoned land that will create an extension to an existing residential estate. The draft Regional Plan does contain interim Farmland and Urban Growth Area variation criteria that if satisfied, would allow farmland to be considered for other suitable uses. It is considered that the planning proposal satisfies these criteria (see also FNCRS sustainability criteria) and as such is not inconsistent with the dNCRP.

Far North Coast Regional Strategy 2006-31(FNCRS)

This strategy applies to the planning proposal however the majority of the subject land lies outside the Town and Village Growth Boundary areas. Only a small part of the subject land is identified within the existing urban footprint and no part is listed as a proposed future urban release area. The FNCRS does allow for urban growth outside of the Town and Village Growth Boundary (a greenfield site) in a non-coastal area as long as it satisfies the Sustainability Criteria in Appendix 1 of the strategy. The planning proposal has addressed the Sustainability Criteria as follows;

1. Infrastructure Provision - A potential development must have mechanisms in place to ensure utilities, transport, open space and communication are provided in a timely manner.

The planning proposal aims to rezone an additional 12ha of land for residential purposes however approximately 5ha of existing R2 Low Density Residential land will be backzoned to RU2 Rural Landscape. With a MLS of 400m² this will equate to approximately 65 additional lots. This proposed residential land will form an extension of an existing zoned residential area (Tallowood Ridge Estate) and therefore the provision of utilities, transport, open space and communication will not pose a problem.

In regards to consistency with s117 Directions, these are discussed in more detail further on in the report.

The planning proposal appears to satisfy infrastructure provision criteria.

2. Access - A development must be accessible by public transport and/or have efficient road access.

Whilst efficient road access is viable for the proposed development, a comprehensive public transport system is unable to be supplied at this stage, with the local school bus being the only form of public transport readily available. Mullumbimby is a small country town however and such circumstances are not unreasonable or out of the ordinary. As the estate becomes more developed, more public transport options may become viable. Despite this, the planning proposal appears to satisfy this criteria particularly as there will be no negative impact on existing subregional road, bus or rail, ferry or freight networks.

3. Housing Diversity - A development must be able to provide a range of housing choices to ensure a broad population can be housing.

The proposed development will contribute to the geographic spread of housing supply, including any targets established for aged, disabled or affordable housing. Based on population projections and dwelling approvals for Mullumbimby, the Buckley Vann Byron Shire Housing Needs Report (December 2015) estimates the need for approximately 25 dwellings per year over the next 5 years. The existing Tallowood Ridge Estate currently has approximately 110 residential lots remaining in its approved masterplan. This equates to 4-5 years supply. An additional 65 lots as proposed in the planning proposal will help to ensure a continued housing supply in a location that is a logical expansion of an existing residential area.

The planning proposal appears to satisfy the housing diversity criteria.

4. Employment Lands - Any development must provide regional/local employment opportunities to support the Far North Coast's expanding role in the wider regional and NSW economies.

The planning proposal does not aim to directly create any land zoned for employment purposes. It is anticipated however that a larger population base will help to reinforce the local Mullumbimby economy whilst creating a wide range of employment opportunities during the construction phase of the development.

Despite the planning proposal not being able to satisfy this criteria directly, the potential employment opportunities indirectly associated with such potential development will have a positive economic impact.

5. Avoidance of Risk - A development must avoid landuse conflicts and risks to human health and life.

Whilst the planning proposal involves the rezoning of land for residential purposes in an area that the Draft Byron Rural Landuse Strategy 2016 has mapped as being generally unconstrained land, the site does have some environmental or topographical constraints that will require detailed consideration during the development application stage. These issues are as follows;

* **flooding** - The planning proposal will rezone a small strip of land for residential purposes (approximately 1ha) that is floodprone in a 1 in a 20 year ARI event or greater. The area is mapped as Low Hazard Flood Fringe up to a 100 year ARI event and experiences low velocity and low depth up to a 100 year ARI event. It is proposed the land will be filled and used for residential lots and infrastructure purposes. No development will occur below the 1:100 flood level and a safe evacuation route is available in times of flooding as is required by the criteria. Consultation with OEH is however recommended.

* **Bushfire** - A Bushfire Hazard Report has identified that subject land as being affected by bushfire hazard from the remnant vegetation at its southern edge. A safe evacuation route as required by the criteria is available. Consultation with the NSW Rural Fire Service is recommended.

* **Contamination** - A Contamination Report has not found the subject land to contain any contamination from past use and that the site is generally suitable for residential purposes.

* **Steep slopes or erodible land** - The subject land does contain some steep and unstable land areas. The steepest land on the site will be retained in the RU2 Rural Landscape on the western edge of Lot 94. The MLS for this zone is 40ha. A smaller area of steep land with potential surface instability is also located to the north west of lot 94 and is contained within the R2 Low Density Residential zone. A MLS of 1000m² has been given to this area to reflect the need for larger lots on steeper slopes. The planning proposal has undertaken a Geotechnical Assessment and mapped areas on the subject site with slopes greater than 20%. These areas will have limited development potential. Further consideration will be given at the DA stage. In regards to the avoidance of lands with steep slopes and which are highly erodible, the planning proposal has considered these matters as per the sustainability criteria.

* **Avoidance of landuse conflict.**

The planning proposal will allocate a RU2 Rural Landscape zone to a riparian corridor that traverses the site. This area consists of land currently zoned RU2 Rural Landscape and RU1 Primary Production (and does contain some regionally significant farmland). The MLS for the proposed zone will remain at 40ha so there will be no intensification of use. It is anticipated that this riparian corridor will act as a natural buffer between residential and rural zoned land thereby meeting the criteria

6. Natural Resources - The development will not exceed natural resource limits and will minimise its environmental footprint.

It is not anticipated that the potential small increase in residential lots (65) will create a water demand that will impact negatively on environmental flows. The residential zoned land will be connected to Council's reticulated water and sewer system. It will also be supplied with electricity that is unlikely to place an unacceptable demand on overall energy supply. The land does not contain any known significant extractive or mining resources. The subject land does however contain approximately 20ha of regionally significant farmland. This is addressed elsewhere in this report.

7. Environmental Protection - to protect and enhance diversity, air quality, heritage and waterway health.

Regional mapping to support the FNCRS does not identify the subject land (or Tallwood Ridge Estate in general) as containing biodiversity areas of state or regional significance. The planning proposal has undertaken several ecological assessments. In accordance with SEPP 44, a survey of the site has determined that it does not contain potential Koala habitat. A Flora and Fauna Assessment has identified some small areas of regenerating lowland sub-tropical and dry rainforest which has ecological value as well as some significant flora species. The planning proposal seeks to protect fauna habitat and environmentally sensitive areas through the use of the RU2 Rural Landscape zone in the absence of 'Environmental' zones. In particular a riparian zone along either side of an existing drainage channel system will be zoned RU2 and will also act as a buffer between

rural and residential development and the Sclerophyll forest (which provides habitat for a range of fauna) in the south and south-west corner of the subject land will also be rezoned RU2.

It is unlikely that the potential development will have a detrimental impact on air quality due to the limited number of additional residential lots nor will water quality be compromised especially as the riparian corridor will segregate residential landuse from the waterways.

An Aboriginal Cultural Heritage Assessment of the site concluded that there is limited potential for encountering Aboriginal heritage on the subject land.

The planning proposal appears to satisfy environmental protection criteria.

8. Quality and Equity in Services - to ensure quality health, education, legal, recreational, cultural and community development and other government services are accessible.

The planning proposal aims to rezone approximately 12ha of land for the purpose of providing an additional 65 residential lots that will form an extension to an existing residential estate. Relevant infrastructure and services are currently available in adjoining developed areas and will be easily extended and readily accessible for the new area. The township of Mullumbimby is located approximately 2 km's to the east of the subject land and provides adequate educational, community, social and cultural facilities. Council will impose s94 contributions to the proposed development to also ensure continued future facilities of need.

It appears that the planning proposal satisfies the quality and equity in services criteria.

SEPPs

The planning proposal is considered to be consistent with all applicable SEPP's.

SEPP 44 – Koala Habitat Protection

An assessment against this SEPP has been undertaken and the ecologist has determined the site does not contain 'potential Koala Habitat' as defined in the SEPP.

SEPP 71 – Coastal Protection

The subject land is located approximately 7km's from the coast but only 100m from the eastern edge of the Brunswick River which is tidal at this point. It is not anticipated that the proposal will have any detrimental impact on the Brunswick River or potentially jeopardise the integrity of the Byron coastal area. Many of the relevant provisions of this SEPP are similar to and have been adequately addressed in the sustainability criteria detailed earlier in the report.

SEPP (Rural Lands) 2008

Considered under s117 direction 1.5 Rural Land below.

Section 117 Directions

The planning proposal is inconsistent with s117 Directions 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environment Protection zones, 3.1 Residential zones, 4.1 Acid Sulfate Soils, 4.2 Mine Subsidence and Unstable Land, 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 and 6.2 Reserving Land for Public Purposes.

The following Directions warrant consideration;

1.2 Rural Zones

This direction applies as the planning proposal aims to rezone rural land for the purpose of residential development. It is however considered that any inconsistency with this direction can be justified as minor significance as the planning proposal is consistent with the FNCRS in that it meets the sustainability criteria outlined in the strategy.

1.3 Mining, Petroleum Production and Extractive Industries

This direction applies as the planning proposal aims to rezone RU1 Primary Production zoned land to R2 Low Density Residential. This rezoning will in effect prohibit use of the land for mining or extractive industry. It is considered that any inconsistency with this direction is justified as being of minor significance as the proposed amendments are an extension of an existing residential zone, can be suitably justified under the sustainability criteria of the FNCRS, the Draft Byron Land Use Strategy, and no extractive material suitable for mining has been found on the site.

1.5 Rural Lands

This direction applies as land within an existing rural zone will be affected by the proposal. The proposal is considered to be consistent with this direction considered as the planning proposal will rezone land that is the subject of an approval for a sports ground and as such has not retained its intrinsic agricultural value and is consistent with the Rural Planning Principles in the Rural Lands SEPP (2008).

2.1 Environment Protection Zones

Despite the fact that the proposal does not propose any environmental protection zones, this direction is relevant to the proposal, however is considered to be inconsistent. The site does contain small areas of regenerating lowland sub-tropical and dry rainforest which has ecological value as well as some significant flora species. Koala habitat has also been ground truthed on specific parts of the site. Despite the clear need for an environmental zone to protect such environmentally sensitive areas, Council has chosen to address all Environment Protection zones consistently in a separate planning proposal. This approach is considered to be acceptable to ensure the criteria for Environment Protection zones is verified and applied consistently across the LGA. The inconsistency is considered to be of minor significance.

3.1 Residential Zones

Direction 3.1 is relevant to the planning proposal. The direction provides that a proposal must encourage housing that reduces the consumption of land on the urban fringe. The proposal extends the residential zone westward from the existing residential area of Mullumbimby. It is considered this inconsistency is of minor significance as the proposal will extend the residential area of Mullumbimby over largely unconstrained land that has been demonstrated to be consistent with the sustainability criteria of the FNCRS.

The direction also provides that a planning proposal must not contain provisions which reduce the permissible residential density of land. The planning proposal seeks to rezone approximately 5ha of R2 zoned land to RU2 Rural Landscape. This land constitutes steep land and land with vegetation of ecological significance. The residential zone is a historical anomaly. While the proposal will reduce the permissible residential potential of this land it compensates by rezoning 12 hectares of relatively unconstrained land from rural to residential. Therefore the permissible residential potential of the entire site receives a net increase and the inconsistency of the proposal with the direction is considered to be of minor significance and therefore justified in accordance with the terms of the direction.

3.4 Integrating Land Use and Transport

Council has determined that the planning proposal is consistent with this direction. However as indicated above, the land is bordered on three sides by land which is not zoned residential and is located on the fringe of an existing urban area. Despite this, a suitable and developed road network is/will be available for direct connectivity with existing residential land and the township of Mullumbimby. The subject land is not an isolated pocket of residential land that will negatively impact on the transport and living choices of its future residents. The planning proposal is therefore not considered to be inconsistent with this direction.

4.1 Acid Sulfate Soils

This direction applies as the subject land may be affected by acid sulfate soils. It is considered that the inconsistency with this direction is justified as being of minor

significance as Byron LEP 2014 contains appropriate provisions to address this issue at DA stage if required.

4.2 Mine Subsidence and Unstable Land

This direction applies as a Geotechnical Assessment of the subject land has found that it contains some limited areas of low risk slope instability. This particular area is located in the far north-western corner of the subject land and whilst will be rezoned from RU2 to R2, it will have a MLS of 1000m² to account for the slope. It is considered that any inconsistency with this direction is justified as a result of the Geotechnical Assessment Report accompanying the planning proposal.

4.3 Flood Prone Land

This direction requires that no flood prone land is changed from a rural zone to a residential zone unless the Secretary or her delegate is satisfied that the proposal is in accordance with a floodplain management plan, or is only of minor significance. There is no floodplain management plan for the Brunswick River which floods part of this site.

The planning proposal will rezone a small strip of land for residential purposes (approximately 1ha) that is floodprone in a 1 in a 20 year ARI event or greater. The area is mapped as Low Hazard Flood Fringe up to a 100 year ARI event and experiences low velocity and low depth up to a 100 year ARI event. It is proposed the land will be filled and used for residential lots and infrastructure purposes (approximately 15). No development will occur on a 1:100 floodplain.

A flood assessment of the site shows that much of the land prone to flooding is that which is currently zoned for residential purposes. As no further intensification of the site is proposed and Byron LEP 2014 contains provisions relating to development within a flood planning area, any inconsistency with section 117 direction 4.3 Flood Prone Land is considered to be of minor significance. Consultation with OEH is however recommended.

4.4 Planning for Bushfire Protection

The direction requires that Council consult with the Commissioner of the NSW Rural Fire Service. This consultation has not yet occurred which makes the s117 Direction 4.4 Planning for Bushfire Protection inconsistent with the direction.

It is considered that the planning proposal will not raise significant issues in regard to these amendments. If written advice is obtained from the Commissioner of the NSW Rural Fire Service and no objection has been raised to the progression of the proposal, then the inconsistency may be assessed as of minor significance.

The Council has indicated that it will consult with the NSW Rural Fire Service following Gateway Determination.

5.1 Implementation of Regional Strategies

This Direction applies to land where a particular regional strategy applies, in this case the FNCRS. The planning proposal is considered to be consistent with this direction, despite being located outside the town and village growth boundary as it has suitably satisfied the sustainability criteria outlined in the strategy.

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

Direction 5.3 is relevant to the planning proposal as approximately 20 hectares of the subject land is identified as regionally significant farmland (RSF) under the Northern Rivers Farmland Protection Project. The direction provides that a planning proposal must not rezone land identified as regionally significant farmland for urban purposes. The proposal seeks to rezone 0.5ha of regionally significant farmland to R2 Low Density Residential and 3 hectares to RE1 Public Recreation.

The direction provides that a proposal may be inconsistent with the direction if the proposal is consistent with the Far North Coast Regional Strategy and the Northern Rivers Farmland Protection Project – Final Recommendations, February 2005 (the NRFPP).

The NRFPP allows regionally significant farmland to be considered for future urban

development if the land satisfies all of seven criteria in Part 4 Section 4 of the NRPFP. The proposal cannot satisfy the first criteria in Part 4 Section 4 of the NRPFP as the land is not located on the fringe of the urban areas of Lismore, Murwillumbah, Kyogle, Casino or Ballina. The proposal can therefore not be consistent with the NRPFP and therefore the inconsistency of the proposal with the direction cannot be justified in accordance with the terms of the direction.

Nevertheless the 0.5 hectares of RSF to be rezoned residential is isolated from other rural land. This area of farmland adjoins a rural residential lot to the west and is separated from other farmland to the north and east by Clays Road and the approved sports fields.

The 3 ha of land to be zoned RE1 has been approved for use as sports fields in accordance with a previous development application for part of the Tallowood Estate. As this land is no longer used for agricultural purposes it is not necessary for it to be protected as farmland and therefore the proposal is not inconsistent with the objectives of the direction. While the inconsistency cannot be justified, it is considered that it is not necessary to be consistent with the direction in this instance.

6.2 Reserving Land for Public Purposes.

Approximately 3ha of the subject land will be rezoned from RU1 Primary Production to RE1 Public Recreation. The purpose of this rezoning is to reflect an existing approval for sporting grounds in the area. The direction requires that the agreement of the Secretary and the relevant authority is provided before the land is rezoned. The agreement of the relevant authority, in this case Council, is implicit in the planning proposal to rezone the land. It is considered that the agreement of the Secretary can be given as the proposal will increase the amount of land zoned for public recreation in Mullumbimby. If the Secretary agrees to the rezoning the the land the proposal is considered to be consistent with this direction.

Environmental social
economic impacts :

The FNCRS allows for urban growth outside of the Town and Village Growth Boundary (a greenfield site) in a non-coastal area as long as it satisfies the Sustainability Criteria in Appendix 1 of the strategy. The planning proposal has addressed in a satisfactory manner, the Sustainability Criteria which covers a broad spectrum of both topographical, locational, environmental, social and economic issues. It is considered therefore that the proposal will not create any detrimental impact on either the environment or the social and economic wellbeing of the local community or the region as a whole.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
Timeframe to make LEP :	12 months	Delegation :	RPA
Public Authority Consultation - s56(2)(d) :	NSW Aboriginal Land Council Office of Environment and Heritage NSW Department of Primary Industries - Agriculture NSW Department of Primary Industries - Forests NSW Rural Fire Service		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	Yes		
If no, provide reasons :			
Resubmission - s56(2)(b) :	No		
If Yes, reasons :			

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Identify any additional studies, if required. :

If Other, provide reasons :

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
PP_Byron LEP 2014_Tallowood Ridge Mullumbimby_Cover Letter.pdf	Proposal Covering Letter	Yes
Byron LEP 2014_Tallowood Ridge Planning Proposal.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 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
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.2 Mine Subsidence and Unstable Land
- 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
- 6.2 Reserving Land for Public Purposes

Additional Information :

It is recommended that:

1. The Planning Proposal be supported;
2. The Planning Proposal be exhibited for 28 days;
3. The Planning Proposal be completed within 12 months;
4. That the Planning Proposal be amended prior to exhibition to contain the correct property description of the subject land;
5. That the Secretary (or her delegate) note the current inconsistency with section 117 Direction 4.4 Planning for Bushfire Protection and that this inconsistency will need to be resolved prior to the proposal being finalised;
6. It is recommended that a delegate of the Secretary agree that the inconsistency of the proposal with S117 Directions 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 2.1 Environment Protection zones, 3.1 Residential zones, 4.1 Acid Sulfate Soils, 4.2 Mine Subsidence and Unstable Land, 4.3 Flood Prone Land, and 4.4

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Planning for Bushfire Protection, are justified in accordance with the terms of the directions;

7. That the Secretary's delegate agree to the rezoning of land for public recreation purposes in accordance with S117 Direction 6.2 Reserving Land for Public Purposes.

8. That consultation be undertaken with the following agencies:

- Office of Environment and Heritage
- NSW Rural Fire Service
- Local Aboriginal Land Council
- Department of Primary Industries - Agriculture

9. That an authorisation to exercise delegation be issued to Council.

Supporting Reasons :

The reasons for the recommendation are as follows;

1. The planning proposal meets the sustainability criteria for urban development outside the Town and Village Growth Boundary of the FNCRS, and
2. The inconsistencies of the proposal with the S117 Directions are of minor significance

Signature:



Printed Name:

Dave CARTER

Date:

26/5/16

Acting Team Leader
NHR Region

