

Planning Services

IRF19/3214

Gateway determination report

LGA	Byron
PPA	Byron Shire Council
NAME	Housekeeping Amendment 2019 – Minor Amendments and Corrections
NUMBER	PP_2019_BYRON_004_00
LEP TO BE AMENDED	Byron Local Environmental Plan (LEP) 2014
ADDRESS	Various land parcels within Byron LGA
DESCRIPTION	Various land parcels within Byron LGA
RECEIVED	28 May 2019
FILE NO.	EF19/17034
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal (**Attachment A**) seeks to undertake a housekeeping amendment to make 22 minor changes to the Byron Local Environmental Plan (LEP) 2014.

1.2 Site description

The proposal applies to the following lands across the LGA as identified in the planning proposal and associated mapping:

- Item 1 – Ewingsdale Road, Byron Bay (Cumbebin Swamp Nature Reserve)
- Item 2 – Main Arm Village
- Item 3 – Charlotte Street, Bangalow
- Item 4 – Brunswick Valley Way, Billinudgel (Billinudgel Nature Reserve)
- Item 5 – Lawson Street, Byron Bay
- Item 6 – Pacific Hwy corridor, Ocean Shores
- Item 7 – Wanganui Road, Wanganui (Nightcap National Park)
- Item 8 – 53-55 Granuaille Road, Bangalow
- Item 9 – 57-59 Granuaille Road, Bangalow
- Item 10 – Clover Hill Circuit, Bangalow

- Item 11 – 99 Stuart Street, Mullumbimby
- Item 12 – Brunswick Heads, Ocean Shores and Tallow Creek localities
- Item 13 – 24 Mullumbimby Street, Brunswick Heads
- Item 14 – 385 Myocum Road, Myocum
- Item 15 – 14 Kingsley Street, Byron Bay (St Pauls Anglican Church)
- Item 16 – 7 Lismore Road, Bangalow
- Item 17 – Mt Jerusalem National Park
- Item 18 – Hayter Street, Suffolk Park (T-Tree Lake Aboriginal Area)
- Item 19 – New Brighton Road, Ocean Shores (Marshall's Creek Nature Reserve)
- Item 20 – 4 Ashton Street, Bangalow (Bangalow Swimming Pool)
- Item 21 – Lighthouse Road, Byron Bay (Cape Byron Lighthouse)
- Item 22 – 46 Beech Drive, Suffolk Park

1.3 Existing planning controls

A range of land zonings and associated planning controls apply to the land as identified in the planning proposal and associated mapping.

This includes Deferred Matter (DM) lands under Byron LEP 2014. The DM land is the result of the former Minister for Planning's announcement of a review of the application of E zones and environmental overlays on the Far North Coast in September 2012. Lands proposed to be E2, E3 or E4 were subsequently identified as DM lands in Byron LEP 2014 pending completion of the review and remain zoned under Byron LEP 1988. The E Zone Review Final Recommendations Report was released in October 2015 and are currently being implemented under a staged planning proposal process by Council.

1.4 Summary of recommendation

The planning proposal should proceed subject to conditions. The planning proposal is supported as the minor corrections and amendments will ensure an accurate and current LEP for Byron Shire.

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal includes a clear statement confirming that it seeks to undertake various minor housekeeping amendments to correct issues in Byron LEP 2014.

2.2 Explanation of provisions

The explanation of provisions adequately addresses the intended changes to Byron LEP 2014. The planning proposal seeks to:

- correct minor anomalies to the land zoning maps which also include consequential changes to minimum lot size and floor space ratio maps;
- realign and make corrections to align lots with cadastral boundaries;

- rezone specific areas to align with gazetted National Park and Nature Reserve boundaries or DM land that has been confirmed as not satisfying the criteria for an environmental zone;
- make adjustments to heritage maps and listings to correct addresses, align with the State Heritage Register and align with cadastral boundaries; and
- update the Acid Sulfate Soils Map to correct issues for land at Brunswick Heads, Tallow Creek and Ocean Shores; and
- rezone and amend associated development standards for Lot 60 Beech Street, Suffolk Park, which has been purchased by Council from the Department of Education.

2.3 Mapping

The planning proposal includes current and proposed Land Zoning (LZN), Minimum Lot Size (MLS), Heritage (HER) and Floor Space Ratio (FSR) maps. These are considered suitable for exhibition purposes. It is noted that Item 22 (Lot 60 Beech Street, Suffolk Park) has not included minimum lot size or floor space ratio maps for the area being zoned R2 Low Density Residential. These maps should be included prior to exhibition.

Some of the amendments involve areas mapped as a Deferred Matter. An amendment to the Land Application Map (LAP) will be required to remove the deferred matter areas as part of the planning proposal. This map will be prepared after public exhibition, prior to the finalisation of the plan.

Amendments to the LZN, MLS, HER, FSR and LAP maps are to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

3. NEED FOR THE PLANNING PROPOSAL

A periodic review of the Byron LEP 2014 has highlighted the need for another round of general amendments to correct mapping and instrument anomalies. The last housekeeping amendment to the Byron LEP 2014 occurred in 2016. The new amendments are summarised below and shown on accompanying maps in Attachment 1 of the planning proposal.

Map Anomalies

Items 2, 3, 4, 6 and 10 relate to minor zoning issues due to irregularities with lot boundaries. These rezonings also include where necessary consequential amendment to minimum lot size and floor space ratio maps. These adjustments do not result in any significant increase or decrease in development potential in the subject lands and reflect the current and / or likely future land use.

Items 2, 3 and 10 include rezoning land that has been deferred from Byron LEP 2014. The land was deferred following the then Minister for Planning's announcement of a review of the application of E zones and environmental overlays on the Far North Coast in September 2012. The three areas are proposed to be rezoned from Deferred Matter to either RU2 Rural Landscape, R2 Low Density Residential or R3 Medium Density Residential as the land has now been assessed as not meeting the criteria to warrant consideration of an E zone. This is considered satisfactory.

Heritage Map Anomalies

Items 5, 8, 9, 11, 13, 14, 15, 16, 20 and 21 seek to update Schedule 5 Environmental Heritage and the associated maps to make adjustments for changes in cadastral boundaries and the State Heritage Register or to update various property descriptions.

E1 National Park and Nature Reserves Rezoning

Items 1, 7, 17, 18, and 19 relate to rezoning land that has now been gazetted as National Park or Nature Reserve. These areas are currently zoned Deferred Matter under Byron LEP 2014. These areas will be rezoned E1 National Parks and Nature Reserves in accordance with the SI LEP.

Acid Sulfate Soils

Item 12 relates to land which has inadvertently not had an Acid Sulfate Soil (ASS) map applied to land in the Brunswick Heads and Tallow Creek localities and also updating the data for a small area at Ocean Shores. This amendment will correct the maps to align with the ASS data.

Item 22 - Beech Drive, Suffolk Park

This rezoning follows a Council resolution to rezone the land from SP2 (Educational Establishment) to RE1 Public Recreation. This land has become surplus to the Education Department needs and has long been utilised for informal and formal sporting activities and wider community use. The rezoning of this land to RE1 will allow the land to continue to be used for public recreation purposes.

The proposal also seeks to rezone the adjoining road reserve from SP2 Infrastructure to R2 Low Density Residential (consistent with the other adjoining lands and the remainder of the road reserve). Prior to exhibition the proposal should be amended to clarify this matter and also to include associated minimum lot size maps and floor space ratios maps for the proposed R2 Low Density Area to align with the adjoining areas. This matter has been discussed with Council staff who have raised no objection.

The amendment to the instrument and maps is the most appropriate mechanism to achieve the objectives and intent of the proposal.

4. STRATEGIC ASSESSMENT

4.1 Regional

The proposal is not inconsistent with the North Coast Regional Plan 2036. The amendments are generally minor in nature and are updating the currency of the LEP to ensure an effective and local planning instrument. Prior to exhibition a number of references to the former Far North Coast Regional Strategy should also be updated to the North Coast Regional Plan 2036.

4.2 Local

The proposal is consistent with Council's adopted Community Strategic Plan 2022 as it ensures the LEP is continually updated to suit community and development industry needs.

4.3 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant section 9.1 Directions except for the following:

1.2 Rural Zones

The proposal is inconsistent with this Direction as Items 2, 3 and 6 rezone land from rural to residential. The inconsistency of the proposal with this Direction is considered to be of minor significance as the rezonings only involve minor adjustments to better align with the cadastral boundary and / or the current / likely future land use.

1.5 Rural Lands

The proposal is inconsistent with this Direction as a number of items affect land within an existing or proposed rural or environmental zone (and associated minimum lot sizes) and is unable to demonstrate compliance all the relevant planning principles including rural land fragmentation and supporting the operation and viability of future rural lands uses. The inconsistency of the proposal with this Direction is considered to be of minor significance as the rezonings only involve minor adjustments to better align with the cadastral boundary and / or the current / likely future land use.

Direction 2.1 Environmental Protection Zones

The proposal is inconsistent with this Direction as Item 4 reduces the current environmental protection standards by rezoning the subject land from E1 National Parks and Nature Reserves to RU2 Rural Landscape. The inconsistency of the proposal with this Direction is considered to be of minor significance as the land is in private ownership and only seeks to correct the current mapping error which mistakenly zoned the land E1 National Parks and Nature Reserves.

Direction 2.2 Coastal Management

The proposal is inconsistent with this Direction as it includes land mapped in the SEPP 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 that applies to the land. The inconsistency is considered to be of minor significance as the inclusion of provisions that give effect to these documents is beyond the scope of this planning proposal which primarily only seeks to undertake minor updates to the currency of the LEP.

Direction 4.3 Flood Prone

The proposal is inconsistent with this Direction as it rezones and increases the development potential of some small areas that are likely to be flood prone. The inconsistency of the proposal with this Direction is considered to be of minor significance as the rezonings only involve minor adjustments to better align with the cadastral boundary and / or the current / likely future land use and any potential flood issues can be appropriately considered and addressed at the development application stage.

Direction 4.4 Planning for Bushfire Protection

Direction 4.4 Planning for Bushfire Protection is relevant as the proposal applies to land that is bush fire prone. The direction provides that the RPA 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 inconsistency of the proposal with the Direction remains unresolved.

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

The proposal is inconsistent with this Direction as Items 2, 3 and 6 rezone areas of regionally significant farmland from 1A General Rural under Byron LEP 1988 to a residential zone. The inconsistency of the proposal is considered satisfactory as the changes are considered to be consistent with the North Coast Regional Plan 2036 and the associated Important Farmland Interim Variation Criteria (as the rezonings only involve minor adjustments to better align with the cadastral boundary and / or the current / likely future land use).

Direction 6.2 Reserving Land for Public Purposes

The proposal is inconsistent with this Direction as Item 22 reduces and creates zones or reservations of land identified for public purposes without the approval of the Secretary by rezoning the land from SP2 (Educational Establishment) to part RE1 Public Recreation and part R2 Low Density Residential. The inconsistency of the proposal with this Direction is considered to be of minor significance as the area to be rezoned has been identified as being surplus to the Department of Education's needs and has been purchased by Council to be used for informal / formal sporting activities and wider community use.

4.4 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with all applicable SEPPs.

It is however recommended that the current discussion regarding SEPP (Rural Lands) 2008 be updated prior to public exhibition to reflect the new SEPP (Primary Production and Rural Development) 2019.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social/ Economic

The planning proposal involves minor housekeeping matters and is unlikely to create any adverse social or economic impacts.

5.2 Environmental

The planning proposal involves minor housekeeping matters and is unlikely to create any adverse environmental impacts. As discussed above, the proposal applies to land that is potentially affected by flooding and bushfire, and land mapped under SEPP (Coastal Management) 2018. It is noted that the rezonings only involve minor zoning adjustments to better align with the cadastral boundary and / or the current / likely future land use and it is considered that any potential hazard issues can be appropriately considered and addressed at the development application stage. The proposal is also likely to have a positive environmental impact by updating the land zoned E1 National Parks and Nature Reserves to better reflect the current estate.

6. CONSULTATION

6.1 Community

The planning proposal indicates a 14 day public exhibition period. This proposal is consistent with the description of a low impact proposal in *A guide to preparing local*

environmental plans (Department of Planning and Environment 2018). This exhibition period is considered appropriate.

6.2 Agencies

It is recommended that the following agencies be consulted:

- NSW Rural Fire Service
- Office of Environment and Heritage

7. TIME FRAME

The planning proposal includes a project time line which suggests a completion time within 6 months. It is recommended that a 12 month period be granted to allow adequate time to consult with the relevant government agencies and finalise the proposal.

8. LOCAL PLAN-MAKING AUTHORITY

As the proposal deals with minor matters, it is recommended that Council be the local plan-making authority.

9. CONCLUSION

The preparation of the housekeeping planning proposal is supported as it:

- allows for minor map anomalies to be corrected;
- corrects various minor mapping anomalies;
- updates Schedule 5 Environmental Heritage and associated maps;
- updates the areas zoned E1 National Park and Nature Reserve;
- updates the acid sulfate soils map for land at Brunswick Heads, Tallow Creek and Ocean Shores; and
- rezones Lot 60 Beech Street, Suffolk Park, from SP2 Infrastructure to part RE1 Public Recreation and part R2 Low Density Residential and amends associated development standards.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Management, 4.3 Flood Prone Land, 5.3 Farmland of State and Regional Significance on the NSW Far North Coast and 6.2 Reserving Land for Public Purposes are of minor significance or justified; and
2. note that the consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection remains unresolved.

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 is to be amended prior to public exhibition to:
 - a) update the discussion on SEPP (Rural Lands) 2008 to SEPP (Primary Production and Rural Development) 2019;
 - b) update the references in the proposal to the Far North Coast Regional Strategy to the North Coast Regional Plan 2036;
 - c) clarify that Item 22 (Lot 60 Beech Street, Suffolk Park) seeks to zone the land part RE1 Public Recreation and part R2 Low Density Residential and amend associated minimum lot size and floor space ratio controls; and
 - d) update the mapping to include minimum lot size and floor space ratio maps for Item 22, for the area proposed to be zoned R2 Low Density Residential, to align with the surrounding lands.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities prior to public exhibition:
 - NSW Rural Fire Service (RFS)
 - Office of Environment and Heritage (OEH)
4. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



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