



Our ref: DOC21/386588-4

Mr Mark Arnold
General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Attention: Sam Tarrant (Planner)
starrant@byron.nsw.gov.au

Planning Proposal – 158 Jonson Street, Byron Bay

Dear Mr Arnold

Thank you for the opportunity to comment on the planning proposal for 158 Jonson Street, Byron Bay proposing to rezone the subject site from SP2 Infrastructure (Rail corridor) to part SP2 Infrastructure (Car park), part E2 Environmental Conservation and part E3 Environmental Management under *Byron Local Environmental Plan 2014*.

Based on the information provided, we have reviewed the planning proposal against our records and do not believe that there are any identified impacts on items listed on the State Heritage Register. In relation to historic archaeology, if the proponent has not already undertaken their own investigation to assess the likelihood of 'relics' and any subsequent management required under the *Heritage Act 1977*, they should do so.

Heritage NSW's Aboriginal Cultural Heritage team may provide separate comments on the planning proposal in relation to Aboriginal cultural heritage considerations under the *National Parks and Wildlife Act 1974*.

Prior to finalisation of the proposal, Council should be satisfied that all necessary due diligence and heritage assessments have been undertaken and that any impacts have been sufficiently addressed. Council's assessment should include, but not be limited to, a search of the State Heritage Inventory (<https://www.heritage.nsw.gov.au/search-for-heritage/search-for-nsw-heritage/>).

If you have any questions please contact Andreana Kennedy, Senior Heritage Policy Office, Strategic Relationships & Planning at Heritage NSW, Department of Premier and Cabinet by phone on 02 8289 6692 or via email at andreana.kennedy@environment.nsw.gov.au.

Yours sincerely

Rochelle Johnston
Manager, Heritage Act Programs
Heritage NSW
As delegate of the Heritage Council of NSW
31 May 2021



8 JUNE 2021

File No: NTH20/00043/03

Your Ref: PP_2020_BYRON_007_00

The General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Attention: Sam Tarrant

Dear Sir,

RE: Planning proposal to rezone 158 Jonson Street Byron Bay from SP2 (rail corridor) to a mix of SP2 (carpark), E2 and E3 Zones - Lot 51 DP 844054 and Part Lot 4729 DP 1228104

I refer to your email dated 12 May 2021 requesting comment from Transport for NSW (TfNSW) in relation to the abovementioned planning proposal.

Roles and Responsibilities

The key interests of TfNSW are the safety and efficiency of the transport network, the needs of our customers and the integration of land use and transport in accordance with Future Transport Strategy 2056.

Transport for NSW Response

TfNSW understands that the planning proposal is intended to rezone a part of the disused rail line or allow the land to be used as a car park. This Agency previously reviewed the proposal as part of SEARs 1515

We have reviewed the planning proposal and raise no objection provided that Council gives consideration to the Department of Planning's LEP Practice Note Zoning for infrastructure in LEPs Ref. no PN 10-001 which is available at <https://www.planning.nsw.gov.au/-/media/Files/DPE/Practice-notes/zoning-for-infrastructure-in-LEPs-2010-12-14.pdf>

If you have any further enquiries regarding the above comments please do not hesitate to contact Cheryl Sisson, Development Services Case Officer or the undersigned on (02) 6640 1362 or via email at: development.northern@transport.nsw.gov.au

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Matt Adams'.

for Matt Adams
Team Leader, Development Services
Community and Place | Region North
Regional & Outer Metropolitan
Transport for NSW



Our Ref: DOC21/393596
Your Ref: E2021/65787 PP26.2020.5.1

General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2450

Attention: Mr Sam Tarrant

Dear Mr Arnold

RE: Planning Proposal – 158 Jonson Street, Byron Bay

Thank you for your letter dated 11 May 2021 about the proposed rezoning of land at 158 Jonson Street, Byron Bay, seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment, Energy and Science Group of the Department of Planning, Industry and Environment. I appreciate the opportunity to provide input and apologies for the delay on responding.

We have reviewed the documents supplied, including the Planning Proposal prepared by the Byron Shire Council dated October 2020, and the accompanying ecological assessment prepared by PLANIT Consulting, dated September 2020.

The findings of our review, along with recommendations for the resolution of several issues are discussed in detail in **Attachment 1** to this letter.

In general, the BCD supports the Planning Proposal, whilst noting the provision of biodiversity credits for future development and the preparation and implementation of a vegetation and rehabilitation management plan for the land proposed to be zoned E2 and E3 should be secured as part of the Planning Proposal.

In summary, the BCD recommends that prior to finalising the Planning Proposal:

1. The number and type of biodiversity credits required to offset the loss of vegetation resulting from development to be facilitated by the zoning changes should be determined by applying Stage 1 of the BAM to those areas of confirmed HEV, as well as areas subject to indirect impacts, and then entering that data into the BAM-Calculator.
2. A Planning Agreement between the landholder and the Byron Shire Council should be prepared and executed as part of the Planning Proposal to specify that:
 - a. the total number of biodiversity credits to be retired should be no less than the quantum calculated at recommendation 1 above, unless the future development application for the land triggers entry into the Biodiversity Offsets Scheme, and the biodiversity credits required by the Scheme are greater than those required by the Planning Agreement.

- b. a vegetation rehabilitation and management plan will be:
- i. prepared for the land proposed to be rezoned to E2 – Environmental Conservation and E3 – Environmental Management; and
 - ii. lodged with the first development application for the Carpark; and
 - iii. implemented in perpetuity as part of the development consent for the carpark.

If you have any questions about this advice, please do not hesitate to contact Ms Nicky Owner, Senior Conservation Planning Officer, at nicky.owner@environment.nsw.gov.au or 6659 8254.

Yours sincerely



5 July 2021

NICKY OWNER
A/Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Enclosure: Attachment 1: Detailed BCD Comments – Planning Proposal – 158 Jonson Street, Byron Bay

Attachment 1: Detailed BCD Comments – Planning Proposal – 158 Jonson Street, Byron Bay.

The Biodiversity and Conservation Division (BCD) has reviewed the Planning Proposal prepared by the Byron Shire Council dated October 2020, and the accompanying ecological assessment prepared by PLANIT Consulting, dated September 2020 and we provide the following comments.

Background and the Planning Proposal

We understand the Planning Proposal seeks to rezone 158 Jonson Street, Byron Bay, from SP2 (Rail Corridor) to part SP2 (Car Park), part E2 (Environmental Conservation) and part E3 (Environmental management), as shown in Figure 1 below. The total area of land subject to the PP, henceforth referred to as the 'planning area', is approximately 0.38ha.

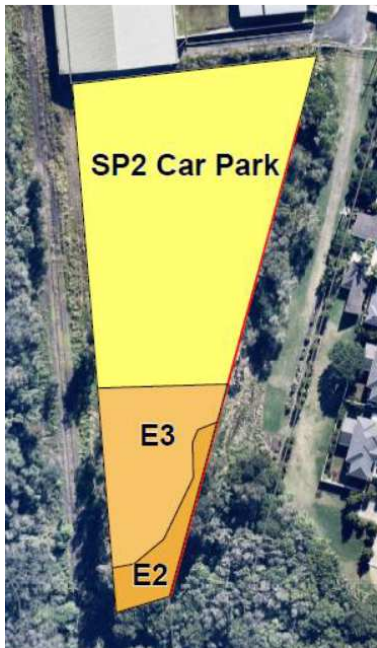


Figure 1 – The Planning Proposal.

The planning area is illustrated on Figure 2 below. It contains an area of coastal wetland (represented by the solid blue polygons), mapped in accordance with State Environmental Planning Policy (SEPP) Coastal Management) 2018, along with the associated coastal wetland proximity areas (represented by the blue hatching).



Figure 2 – Aerial photograph of the planning area overlain with SEPP Coastal Wetland mapping

We note that the image of the site represented in Figure 2 does not reflect the extent of vegetation now existing within the planning area. Our investigations indicate that the planning area was extensively cleared between May 2016 and May 2017.

We trust the council examined the permissibility of the identified clearing event, prior to proceeding with the preparation, application for the gateway determination and public exhibition of the Planning Proposal.

For flooding, we note the area proposed to be zoned SP2 Carpark is predominantly outside the area affected by the 1:100 year flood event as shown in Figure 7 of the Planning Proposal. We have no further comments on this aspect of the Planning Proposal.

Strategic Biodiversity Planning Framework

The ecological assessment that accompanies the Planning Proposal has predominantly examined the proposed rezoning of the site in the context of the Biodiversity Offset Scheme (BOS). Rather than assessing the proposal using the BOS, the Planning Proposal should demonstrate consistency with the strategic planning framework including the North Coast Regional Plan 2036 (NCRP). Action 2.1 under Direction 2 of the NCRP requires development to be focussed to areas of least biodiversity sensitivity in the region and the implementation of the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of high environmental value (HEV).

HEV Identification.

Based on the information presented in the Planning Proposal, the site is known to contain patches of vegetation comprising a threatened ecological community. This vegetation has been classified as 'Paperbark Swamp Forest of the Coastal Lowlands of the NSW North Coast Bioregion (PCT 1064)'. Threatened ecological communities are recognised within the NCRP as HEV.

In addition, as identified previously in Figure 2 above, the planning area contains a coastal wetland along with a coastal wetland proximity area, as mapped in accordance with SEPP – Coastal Management. Coastal wetlands and their proximity areas are also considered by the NCRP as HEV.

Zoning of areas of HEV

As set out in the NCRP, the use of land containing HEV should not be intensified. Such areas should instead be better protected through the application of an appropriate zone, ideally one that has strong conservation objectives and limited permissible land uses, along with an appropriate minimum lot size so that the land cannot be further subdivided.

While the BCD does not generally support the rezoning of HEV where it will result in the loss of these important areas, given the limited extent of the proposed clearing to be enabled by the rezoning, and the disturbed nature of the wetland proximity area over which development is proposed, it may, in this restricted instance, have sufficient planning merit to allow the rezoning to proceed.

The areas of HEV in the south comprising the coastal wetland and part of the wetland proximity area are proposed to be zoned E2 and E3 respectively and the BCD supports this aspect of the Planning Proposal.

The BCD notes the architectural plans contained at Attachment 1 of the PLANIT Consulting Ecological Assessment show that the carpark construction extends into the proposed E3 – Environmental Management zone. We understand, however, that the proposed E3 zone will preclude this from occurring as the carpark will be restricted to the proposed SP2 zone.

Future Development Impacts

The Planning Proposal will facilitate the development of a carpark in the SP2 zone that will result in the clearing of the remaining threatened ecological community in that zone. As indicated in the ecological report, this clearing will not trigger the BOS at the development application stage.

It is appropriate though that the biodiversity impacts to be enabled by the rezoning are offset at the Planning Proposal stage by calculating the biodiversity credits for these impacts and securing the provision of these credits at the development application stage via a Planning Agreement.

Vegetation Management Plan

The Planning Proposal indicates the area of E3 land will provide an offset for the rezoning. Although this will not be a formal offset, the land will need to be revegetated and should be subject to a vegetation management plan (VMP). The VMP should be prepared at the development application stage but the requirement for the VMP to accompany the DA should be secured as part of the Planning Proposal via a planning agreement.

BCD Recommendations:

The BCD recommends that prior to finalising the Planning Proposal:

3. The number and type of biodiversity credits required to offset the loss of vegetation resulting from development to be facilitated by the zoning changes should be determined by applying Stage 1 of the BAM to those areas of confirmed HEV, as well as areas subject to indirect impacts, and then entering that data into the BAM-Calculator.
4. A Planning Agreement between the landholder and the Byron Shire Council should be prepared and executed as part of the Planning Proposal to specify that:
 - c. the total number of biodiversity credits to be retired should be no less than the quantum calculated at recommendation 1 above, unless the future development application for the land triggers entry into the Biodiversity Offsets Scheme, and the biodiversity credits required by the Scheme are greater than those required by the Planning Agreement.
 - d. a vegetation rehabilitation and management plan will be:
 - iv. prepared for the land proposed to be rezoned to E2 – Environmental Conservation and E3 – Environmental Management; and
 - v. lodged with the first development application for the Carpark; and
 - vi. implemented in perpetuity as part of the development consent for the carpark.