

Planning Services

Gateway Determination Report

LGA	Byron
RPA	Byron Shire Council
NAME	Byron LEP 2014 - Temporary Uses and Additional Permitted Uses
NUMBER	PP_2017_BYRON_001_00
LEP TO BE AMENDED	Byron Local Environmental Plan 2014
ADDRESS	Byron Bay Rail Corridor and Lawson Street South Car Park
DESCRIPTION	Part of Lot 4729 DP 1228104, Lot 1 DP 1001454 & Lot 3 DP 827049 and public land throughout the shire
RECEIVED	08/01/2018
FILE NO.	EF 17/13313
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.

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to amend the Byron Local Environmental Plan (LEP) 2014 by:

- amending Clause 2.8 Temporary use of land to increase the number of days allowed for temporary events over a 12 month period from 14 days to 52 days;
- incorporating two sites into Schedule 1 Additional Permitted Uses to permit markets and other temporary activities; and
- amending Schedule 2 Exempt Development to permit single temporary events and ceremonies as exempt development throughout the Byron Shire.

Site Description

The proposal applies to:

- Public land and appropriate outdoor areas throughout the Byron Shire;
- Lot 1 DP 1001454 and part of Lot 4729 DP 1228104 – Byron Rail Line and Station Precinct; and
- Lot 3 DP 827049 Lawson Street South Car Park.

Summary of Recommendation

The proposed amendment should proceed subject to a number of conditions. The planning proposal is supported as it gives certainty for the permissibility of markets (over a longer than 12 month period) within two keys sites within the Byron town centre, and strengthens the LEP to permit temporary events in public and other suitable locations for longer periods of time.

PROPOSAL

Objectives or Intended Outcomes

The statement of objectives describes the intention of the planning proposal. The proposal seeks to amend Clause 2.8 Temporary use of land, Schedule 1 Additional Permitted Uses and Schedule 2 Exempt Development in Byron LEP 2014 to incorporate the planning controls that align with the strategic direction of the Byron Bay Town Centre Masterplan.

Explanation of Provisions

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

- Amend Clause 2.8 Temporary use of land from a 14 day limit to a 52 day limit within a 12 month period;
- Amend Schedule 1 Additional Permitted Uses to include two areas of Byron town centre (parts of Byron Bay Rail Corridor and Lawson Street South Car Park) to permit markets and other temporary activities;
- Amend Schedule 2 Exempt Development to permit single Temporary Events and Ceremonies in various outdoor locations throughout the Byron Shire.

The Planning Proposal has specified how the amendments to the LEP instrument could be drafted, however Parliamentary Counsel Office (PCO) is responsible for drafting amendments to LEP's.

This section needs updating with a Plain English Explanation of Provisions and relocate the proposed clauses to an appendix.

The proposed Exempt Development clause does not specify in the planning proposal that it applies only to public land. It could be interpreted as including private land which is not Council's intention. A plain English explanation of the intent of the provisions is therefore required and the proposed clauses are included as an appendix to the planning proposal as an example of the provisions.

This information will need to be incorporated into the planning proposal prior to exhibition. A condition will be included to ensure the planning proposal is updated.

Mapping

The planning proposal includes a current and proposed Additional Permitted Uses (APU) map, which adequately reflects the proposed amendments. This map is suitable for exhibition purposes.

Amendments to the APU maps are to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is a direct result of the outcomes of the Byron Bay Town Centre Masterplan. The masterplan was adopted by Council in June 2016.

The masterplan developed strategic land use outcomes which require amendments to the LEP's planning controls to allow for the implementation of these outcomes.

One of the key priorities from the Byron Bay Town Centre Masterplan was to encourage the use of existing infrastructure (ie carparks) to be utilised for pedestrian movements and/or

markets, and small business type activities. Incorporating the Lawson Street South car park and the rail corridor into Schedule 1 to permit development, with consent, for the purpose of temporary activities such as weekday farmers markets and introduction stalls for small business, which has the potential to lead to more permanent employment opportunities within the CBD, allows for this key priority to be achieved.

A strategy is being developed to manage the heritage aspect of the rail corridor. Consultation with Office of Environment and Heritage (OEH) and Transport for NSW (TfNSW) is required to ensure that the temporary activities will not impact on the heritage significance of the site. This is further discussed in the consultation section of this report.

The amendment to the instrument and Additional Permitted Uses map is the most appropriate mechanism to achieve the objectives and intent of the proposal.

STRATEGIC ASSESSMENT

Regional

The proposal is consistent with the North Coast Regional Plan 2036 goal to provide a thriving, interconnected economy by developing employment opportunities through creative industries and promoting the growth of tourism. The proposal delivers on these directions by utilising the unused rail corridor for markets and introduction stalls, and the reinvigoration of open spaces for tourist and locals, within the Byron town centre.

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

Local

The planning proposal is not inconsistent with Council's Community Strategic Plan 2027 and the strategy's key themes are aligned with the Byron Bay Master Plan, which directly relates to the planning proposal. The Byron Bay and Suffolk Park Settlement Strategy 2002 directly relates to the planning proposal. One of the key constraints in the Strategy is the severance of the town centre by the railway line. The proposal seeks to rectify this issue by utilising the railway corridor's open space and the potential for additional crossing options for a more connected town centre.

Section 117(2) Ministerial Directions

The planning proposal is consistent with s117 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones, 1.3 Mining, Petroleum Production & Extractive Industries, 1.4 Oyster Aquaculture, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 3.4 Integrating Land Use and Transport, 4.3 Flood Prone Land, 5.3 Farmland of State & Regional Significance, 5.10 Implementation of Regional Plans, 6.1 Approval & Referral Requirements, 6.2 Reserving Land for Public Purposes and 6.3 Site Specific Provisions.

The planning proposal is inconsistent with the following:

Direction 2.3 Heritage Conservation

The proposal is inconsistent with this direction as the proposal enables additional land uses on land that contains a listed heritage item of State significance. The inconsistency is of minor significance as Council and Transport for NSW are currently negotiating an Infrastructure Licence to allow mixed uses within the rail corridor and this license gives consideration to the heritage significance of the land. The inconsistency is therefore considered to be justified in accordance with the terms of the direction.

This licence is to be finalised prior to community consultation and placed on exhibition with the planning proposal.

Direction 4.1 Acid Sulfate Soils (ASS)

The proposal is inconsistent with this direction as the subject land on which additional land uses are being permitted contains Class 3 Acid Sulfate Soils and is not supported by an acid sulfate soil study. The inconsistency is considered to be of minor significance as acid sulfate soil provisions are already included in the Byron LEP 2014 which require consideration of acid sulfate soils at development application stage. The inconsistency is considered to be justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection

This direction is applicable to the proposal as the change to Schedule 2 Exempt Development includes all land within the shire, some of which could be bushfire prone.

Consultation with the Rural Fire Service is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

State Environmental Planning Policies

The proposal is consistent with the relevant SEPPs. Further consideration regarding applicable SEPPs is discussed below.

SEPP 14 – Coastal Wetlands

The southern end of the study site is mapped as SEPP 14 – Coastal Wetlands. The mapping is limited to the southern end of Lot 4729 DP 1228104. The planning proposal only deals with the part of the lot not affected by the wetland. Council may request Parliamentary Counsel to draft the LEP to specify the boundaries of the lot to ensure that the mapped SEPP 14 wetland portion of Lot 4729 DP 1228104 is excluded from the LEP amendment. The planning proposal is considered consistent with the aims and objectives of SEPP 14 – Coastal Wetlands.

SEPP 71 – Coastal Protection

The site is located in the coastal zone. The planning proposal gives consideration to the aims and matter for consideration in SEPP 71. It is considered consistent with the policy and no further assessment is required.

SITE SPECIFIC ASSESSMENT

Social

No adverse social issues are expected due to the extensive community consultation that has already occurred during the preparation of the Byron Bay Town Centre Masterplan, which has created key priorities that this planning proposal is seeking to implement. The community has had the opportunity to provide input into the masterplan that will shape how the town centre will evolve now and into the future.

Environmental

The planning proposal involves minor matters and is therefore unlikely to create any major environmental negative impacts.

SEPP 14 Wetlands do occur within close proximity to the rail infrastructure however, the proposal will not affect mapped SEPP 14 wetlands.

Byron Shire contains bushfire prone land. Consultation with the NSW Rural Fire Service will be undertaken as part of the community consultation process.

Economic

Positive economic benefits are expected from the proposal, providing additional employment opportunities and local trading opportunities such as markets on the edge of the existing town centre.

An Infrastructure Licence is being negotiated between Council and Transport for NSW, as owners of the rail infrastructure. This license will allow for single mixed uses within the rail corridor, facilitate pedestrian movement across the rail areas, while maintaining the present rail infrastructure and its heritage status. This licence is to be finalised prior to community consultation.

CONSULTATION

Community

The planning proposal has indicated a 28 day community consultation period. This is considered acceptable.

Agencies

As some of the land has been identified as bushfire prone and to satisfy s117 Direction regarding bushfire, referral to the NSW Rural Fire Service (RFS) will be required as part of the consultation process. Consultation with RFS is required after a Gateway Determination is issued and before public exhibition.

The Byron Bay Railway Station and Yard Group is part of the subject site that is proposing to permit additional uses on the site. These uses may have varied impacts on the 'heritage significance' of the item which is rated as 'high'. As the proposal indicates, referral to OEHL is required as part of the consultation process. Consultation with OEHL is required after a Gateway Determination is issued and before public exhibition.

Preliminary consultation has occurred with Transport for NSW (TfNSW), as the owner of the rail line and corridor, during the preparation of the planning proposal. Council and TfNSW are currently negotiating an Infrastructure Licence to allow mixed uses within the rail corridor and endorsement from both parties is expected early 2018. This licence is to be finalised prior to community consultation and placed on exhibition with the planning proposal. Further consultation is required with TfNSW after a Gateway Determination is issued and before public exhibition.

The planning proposal indicated that a preliminary Aboriginal heritage search had been completed and no sites had been identified. To ensure that Aboriginal heritage is given appropriate consideration consultation with the appropriate Local Aboriginal Land Council is required as part of the consultation process post Gateway.

TIMEFRAME

The planning proposal includes a project time line which suggests a completion time within 6 months. It is recommended that a 6 month period be accepted.

DELEGATION

Byron Council has indicated that it will not seek delegation for this proposal. Council wish to ensure complete transparency and independence in the process of dealing with land in its ownership and therefore request the Department retain delegation.

The Department will liaise with Parliamentary Counsel's Office directly when drafting the amendment. Council will be consulted with each draft to ensure that the LEP amendment achieves the objectives and satisfies Council's requirements for implementing the Town Centre Masterplan actions.

CONCLUSION

The preparation of the planning proposal is supported as it:

- applies appropriate actions in accordance with Council's approved masterplan;
- provides more opportunity for temporary use of land;
- gives certainty for the permissibility of markets within two keys sites within the Byron town centre; and
- strengthens the LEP to permit temporary events in public and other suitable locations for longer periods of time.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. **Agree** that any inconsistency with section 117 Directions 2.3 Heritage Conservation and 4.1 Acid sulfate soils are justified in accordance with the terms of the Directions; and
2. **Notes** that the consistency with Section 117 Directions 4.4 Planning for Bushfire Protection is unresolved and will require justification.

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

1. The planning proposal is to be updated prior to community consultation to:
 - a) Replace Figure 1 - Subject land map, with a more detailed higher resolution map; and
 - b) Provide a Plain English Explanation of Provisions and include the proposed clauses as an appendix.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - Office of Environment and Heritage;
 - Transport for NSW; and
 - Appropriate Local Aboriginal Lands Councils.
4. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.

5. Council has not been granted authorisation to exercise delegation to make the plan.



23/1/2018

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