



Mr Mark Arnold
General Manager
Byron Shire Council
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Dear Mr Arnold

Planning proposal PP-2020-3915 to amend Byron Local Environmental Plan 2014

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) and additional information received on 20 January 2021 in respect of the planning proposal for stage three of Council's environmental zones implementation program.

As delegate of the Minister for Planning and Public Spaces, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistencies with section 9.1 Directions 3.1 Residential Zones and 4.1 Acid Sulfate Soils are justified in accordance with the terms of the Direction. No further approval is required in relation to these Directions.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of section 9.1 Directions 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.3 Farmland of State and Regional Significance on the NSW Far North Coast and 5.10 Implementation of Regional Plans. Council should ensure this occurs prior to the plan being made.

Given the nature of the planning proposal, Council will not be authorised to be the local plan-making authority to make this plan. Consistent with the Secretary's letter of 1 March 2016, delegation for planning matters that relate to the implementation of the Northern Councils E Zone Review Final Recommendations will remain with the Department.

The amending local environmental plan (LEP) is to be finalised within 12 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning, Industry and Environment to draft and finalise the LEP should be made eight weeks prior to the projected publication date.

The state government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Mr Craig Diss to assist you. Mr Diss can be contacted on 5778 1485.

Yours sincerely



8/2/2021

Monica Gibson

Executive Director

Local and Regional Planning

Department of Planning, Industry and Environment

Encl: Gateway determination



Gateway Determination

Planning proposal (Department Ref: PP-2020-3915): *Stage three of Council's environmental zone implementation program and incorporate certain land into the Byron Local Environment Plan 2014*

I, the Executive Director, Local and Regional Planning at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Byron Local Environmental Plan (LEP) 2014 to undertake stage three of Council's environmental zone implementation program and incorporate certain land into the LEP should proceed subject to the following conditions:

1. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**;
 - (b) As part of the public exhibition process, Council is to ensure that any landowner whose land is proposed to have an E zone applied to it is to be notified in writing of the planning proposal and the public exhibition arrangements; and
 - (c) When Council has considered the submissions received during the public exhibition period and has endorsed the final planning proposal, landowners whose land will be subject to an E Zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department to request the Department review the proposed zoning of their property.
2. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - NSW Rural Fire Service;
 - NSW Biodiversity and Conservation Division;
 - NSW Department of Primary Industries;
 - the Local Aboriginal Land Council; and
 - NSW Division of Resources and Geoscience.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
4. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan. Consistent with the Secretary's letter of 1 March 2016, delegation for planning matters that relate to the implementation of the Northern Councils E Zone Review Final Recommendations will remain with the Department.
5. Prior to public exhibition the planning proposal is to be amended as follows:
 - (a) Appendix 1 be altered to note that Direction 4.3 Flood Prone Land does apply to the planning proposal;
 - (b) 44 Ti Tree Road, Byron Bay (property ID: 94240) be altered to include an E2 zone over the area of the site mapped as 'Coastal Wetland' under the Coastal Management SEPP;
 - (c) Jones Road, Wooyung (property ID 240028) be altered to be zoned E1 National Parks and Nature Reserves; and
 - (d) Amend Table 5.1 in the planning proposal as follows:
 - i. include a new column to describe each property's complete zoning;
 - ii. update the primary land use of 228 Broken Head Road, Suffolk Park to reflect an Env/Urban instead of Urban Res
 - iii. updated to reflect the proposed R2 zone for 2 Chumbee Ave, Ocean Shores (Property ID: 267760);
 - iv. include a new column to indicate whether the property is identified as state and/or regionally significant farmland.
6. Prior to the plan being finalised the maps in Appendix 5 of the planning proposal are to be amended to ensure all polygons which depict proposed zones and development controls are labelled clearly and correctly and include the individual Height of Building maps in planning proposal.
7. The time frame for completing the LEP is to be 12 months following the date of the Gateway determination.

Dated 8th day of February 2021.



Monica Gibson
Executive Director
Local and Regional Planning
Department of Planning, Industry and
Environment
Delegate of the Minister for Planning
and Public Spaces