



*Planning Proposal – Byron Local  
Environmental Plan 2014*

**» Environmental Zone  
Implementation Program – Stage 3**



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# 1. Introduction and Background

## 1.1. Summary of Planning Proposal

This planning proposal seeks to integrate land identified as “deferred matters” into Byron Local Environmental Plan (LEP) 2014, and includes the application of environmental zones to certain “non-Deferred Matter” areas already included in LEP 2014. Appropriate zones are proposed having regard for legislative requirements, the NSW Department of Planning and Environment’s Northern Councils E Zone Review Final Recommendations Report (2015), the associated s9.1 Ministerial Direction 2.5 and Councils resolutions of 17 November 2016 and 22 March 2018.

This planning proposal is **Stage 3** of a staged program to integrate the majority of deferred matters into the Byron LEP 2014, with exception of Coastal 7(f1) and 7(f2) zones which will be considered under a separate process in consultation with the State Government. Stage 3 includes Deferred Matter areas that do not meet the criteria for an environmental zoning (excluding LEP 1988 7(d) zoned land), as well as early agreements reached between landowners and Council staff on how environmental zones and non-environmental zones will be applied to certain land in Byron Shire.

## 1.2. Project Background

Byron Shire Council engaged in the preparation of a comprehensive local environmental plan (LEP) under the State Government’s Standard LEP Instrument program between 2006 and 2014. This planning process was underpinned by a comprehensive and sustained community engagement program and considerable and careful deliberation by the elected Council and staff over a prolonged period.

Council received authorisation to exhibit a new draft Plan in August 2012. Prior to Council’s draft plan being exhibited, the then Minister for Planning, the Hon. Brad Hazzard made a decision to initiate a review of environmental protection zones in five local government areas on the Far North Coast. This included Byron Shire.

The consequence of the Minister’s decision was that Council’s Byron LEP 2014 was only partly made, with areas identified as having environmental values excluded from the plan. These ‘deferred matter’ areas remain subject to the provisions of the Byron LEP 1988 (being the instrument the new plan was to replace).

The ‘Northern Councils E Zone Review Final Recommendations Report’ was published in October 2015. Council subsequently resolved to proceed with a ‘staged’ program to amend Byron LEP 2014 in order to implement the Finals Recommendations Report. Stage 1 has already received the Department of Planning and Environment’s approval to proceed to exhibition. This planning proposal represents **Stage 3** of Council’s E Zone Implementation program

### 1.3. Land to Which the Planning Proposal Applies

This planning proposal (Stage 3 of Council's E zone implementation program) relates to Deferred Matter areas that do not meet the criteria for an environmental zoning (excluding LEP 1988 7(d) zoned land), as well as early agreements reached between landowners and Council staff on how environmental zones and non-environmental zones will be applied to certain land in Byron Shire. The latter includes both 'Deferred Matter' and 'Non-Deferred Matter' areas identified in Byron LEP 2014. Stage 3 incorporates 2,206 land parcels.

The subject lands are located throughout the shire as depicted in Figure 1 below.

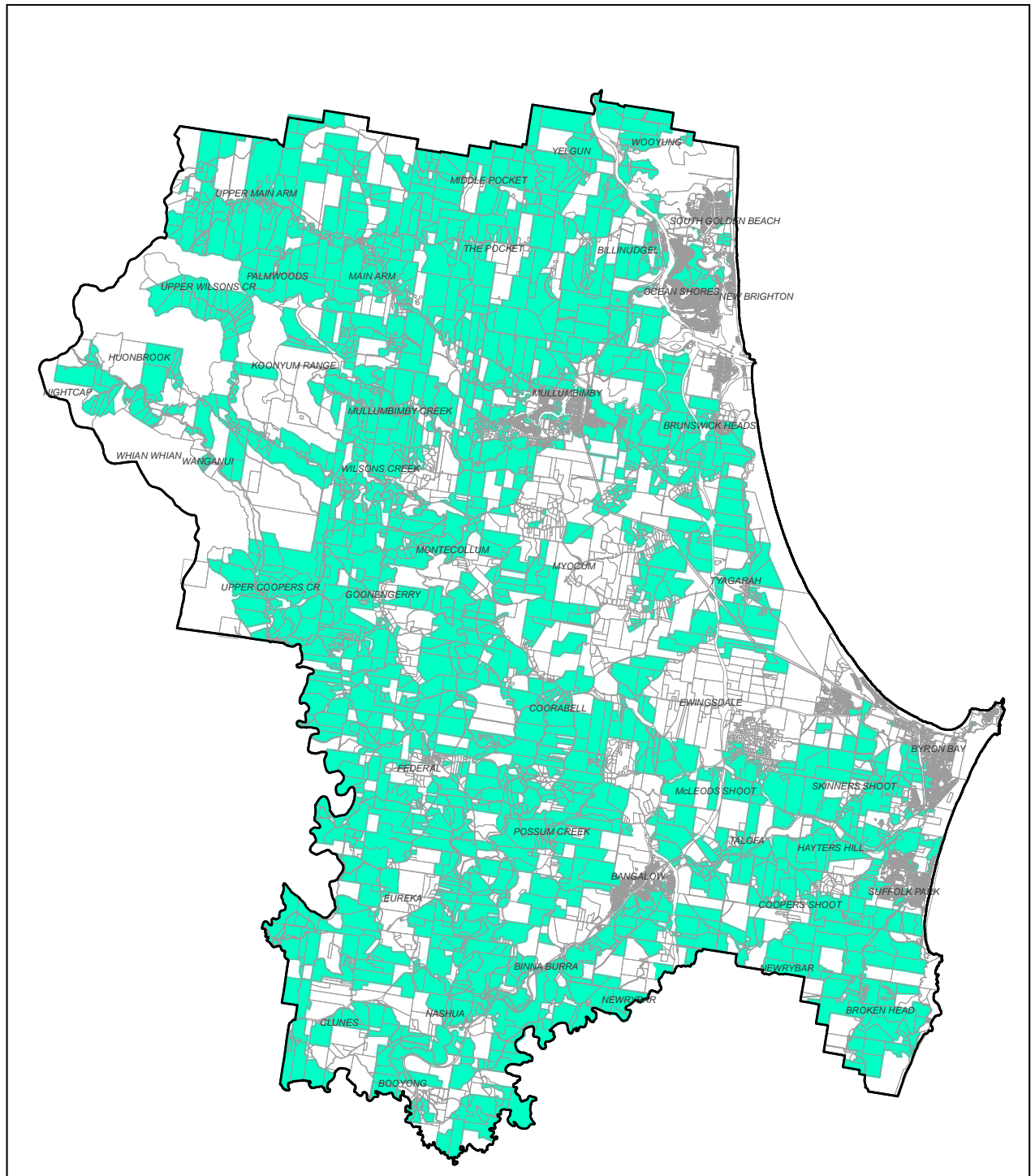


Figure 1: Map showing affected land parcels – Byron Shire



## 1.4. Council Decisions

The process for implementing the Northern Councils E Zone Review Final Recommendations Report was initially considered at Council's 17 November 2016 Ordinary Meeting. At that meeting Council resolved as follows [*Resolution 16-576*]:

1. *That Council endorse the following process for amending Byron Local Environmental Plan (LEP) 2014 in order to implement the Northern Councils E Zone Review Final Recommendations Report:*
  - a) *accept the Department of Planning and Environment's offer of \$40,000 together with a conditional 30 June 2017 deadline for lodgement of a planning proposal;*
  - b) *prepare and exhibit a draft planning proposal that includes the proposed zoning and supporting methodology for a minimum period of 6 weeks (following the completion of Shire wide vegetation mapping);*
  - c) *invite submissions from affected landowners to determine: (i) primary land use; (ii) agreement or disagreement with proposed zoning; and (iii) alternative zoning (where applicable);*
  - d) *finalise the planning proposal for those sites where there is agreement with the proposed or alternative zoning; and*
  - e) *resolve the zoning of outstanding sites in a subsequent planning proposal.*
2. *That Council write to the Department of Planning and Environment (DPE) reaffirming Council's long standing position that a separate coastal hazard zone is required in Byron Local Environmental Plan 2014, as the current Standard Instrument LEP does not provide a suitable replacement for our current 7(f1) Coastal Land and 7(f2) Urban Coastal Land Zones and therefore appropriate alternatives such as 'E5 Coastal Hazard' and/or 'E6 Coastal Living' need to be provided. (Hunter/Spooner)*

In relation to item '1.(a)' above, DPE subsequently advised that it could not support Council's endorsed process for implementing the E Zone review recommendations for purposes of the \$40,000 funding offer. This resulted in a revised implementation plan based on funds sourced internally.

Council considered a further report on the E zone review process at its 22 March 2018 Ordinary Meeting. The purpose of the report was to provide an update on

- recent engagement with affected landowners;
- the proposed staging of planning proposals (based on the high volume of responses received) to enable an efficient and effective Gateway lodgement process with DPE.

At that meeting Council resolved the following [*Resolution 18-188*]:

1. *Note that land currently zoned under LEP 2014 (i.e. not Deferred Matter land) where the landowner received an E Zone notification letter but did not request an E Zone designation, will be excluded from further consideration under the E Zone review process.*
2. *Prepare Planning Proposal #1: (PP1) reflecting early agreements reached between landowners and Council staff on how environmental zones are to be applied and submit to the Department of Planning & Environment for Gateway determination.*
3. *Prepare Planning Proposal #2: (PP2) for:*
  - (i) *Deferred Matter areas that do not meet the criteria for an environmental zoning and will have a suitable rural zone applied (excluding LEP 1988 7(d) zoned land); or*
  - (ii) *Deferred Matter areas that currently have a residential, rural residential, commercial or industrial zoning in LEP 1988 that will transition to an equivalent LEP 2014 zone; or*
  - (iii) *reflecting further agreements reached between landowner and Council staff on how environmental zones are to be applied;**and submit to the Department of Planning & Environment for Gateway determination.*

4. *Endorse the introduction of a new LEP 2014 zone, RU6 Transition, to be applied to land currently zoned 7(d) Scenic Escarpment LEP 1988 that does not meet the criteria for an environmental zoning.*
5. *Subject to Council's endorsement of the proposed RU6 Transition Zone, prepare and undertake an informal exhibition of the related RU6 provisions for feedback from affected land owners who have not already agreed to this zone, and report the outcomes back to Council.*
6. *Receive a report on draft Planning Proposal #3: (PP3) for:*
  - (i) *Parcels where there is no agreement reached between the landowner and Council staff on proposed environmental zone/s; or*
  - (ii) *Deferred Matter areas that meet the criteria for an environmental zoning (in part or all) and where there has been no response from the landowner; or*
  - (iii) *remaining LEP 1988 7(d) zoned land to be zoned RU6 Transition (subject to Council endorsement).*

*as soon as practical after Council's adoption of Planning Proposal #2.*
7. *Note that a further report on the use of mapped overlays as mechanism to protect environmental values will be provided to Council upon finalisation of the E zone Planning Proposals identified in Table 2.*
8. *Consider the allocation of \$50,000 as part of the forward budget process 2018/19 (alongside other Council program and budget priorities) to support a staged planning proposal program supported by robust community engagement to better inform the final E Zone Planning Proposal/s.*

A visual overview of the staged planning proposal program is presented in section 1.7 below.

## 1.5. Gateway Determination

[To be completed following Gateway determination]

## 1.6. E Zone Implementation: Context and Application

The application of environmental zones (E zones) in Byron Shire must be consistent with the *Northern Councils E Zone Review Final Recommendations Report* prepared by the Department of Planning and Environment. This report is supported by Section 9.1 Ministerial Direction 2.5 to ensure the application of E zones and mapped planning controls are consistent with the final recommendations report.

Council's application of E zones to 'deferred' and 'non-deferred' land is informed by the following key elements of the *Final Recommendations Report*.

### (i) Primary use of land

The *Final Recommendations Report* defines "**primary use**" of the land as the main use for which the land has been used for the last two (2) years.

For land that Council has verified as consistent with the vegetation criteria for an environmental zone, an E2 or E3 zone will generally be applied if the primary use of the land is confirmed to be environmental conservation (E2) or environmental management (E3).

The primary use of the land may vary across a particular property depending on the characteristics of the land. This means that land which is currently zoned rural could continue to have a rural zone, but may have parts of that land which have attributes that meet the criteria for an E2 or E3 zone mapped accordingly.

It is not necessary to determine the primary use of land already within an existing environmental zone such as 7(a), 7(b), 7(j) and 7(k) under the Byron LEP 1988.

For purposes of this planning proposal, the primary land use has been assessed by Council in consultation with affected landowners (where applicable).

## **(ii) Verifying the E zone criteria**

An E zone or other mapped planning controls can be applied to land where the presence of attributes that meet the criteria have been verified by using one or a combination of the following:

- Biodiversity field inspections and ground surveys conducted by an appropriately qualified person.
- Flora and fauna reports conducted by a suitably qualified person (field work must be less than five years old).
- Review of current (not more than five years old) high resolution digital aerial photography verified by another one of these verification techniques.
- Aboriginal heritage field inspections and ground surveys conducted by an appropriately qualified person or someone with extensive field experience.
- Cultural heritage reports conducted by a suitably qualified person and in accordance with current guidelines.
- Consultation with Aboriginal cultural knowledge holders in relation to culturally significant lands in accordance with current guidelines.

It is not mandatory to apply an E zone if the land has been verified to meet the criteria.

## **(iii) Transferring previous environmental protection (7) zones**

Land that is currently zoned *7(a) Wetlands Zone*, *7(b) Coastal Habitat Zone*, *7(j) Scientific Zone* or *7(k) Habitat Zone* under the Byron LEP 1988 may be transferred to an E2 or E3 zone once the attributes of the land have been verified against the criteria.

As mentioned above, it is not necessary to determine the primary use of land already within an existing environmental zone such as 7(a), 7(b), 7(j) and 7(k) under the Byron LEP 1988.

## **(iv) Voluntarily revegetated land**

Land that has been voluntarily revegetated will not have an E2 or E3 zone applied to it without the landowner's agreement, unless the revegetation was undertaken with grant funding that required ongoing protection of the vegetation.

However, the landowner's agreement is not required if a Vegetation Overlay Map is applied to this revegetated land to identify matters that need to be considered when assessing future development applications on this land.

## **(v) Public and private land inconsistent with the criteria**

Public land may be zoned E2 or E3, despite being inconsistent with the criteria, if the primary use of the land is environmental conservation or environmental management.

Private land may be zoned E2 or E3, despite being inconsistent with the criteria, if it is consistent with a negotiated development outcome (eg master plan, rezoning, development consent or designated offset areas) or with the agreement of the landowner.

## **(vi) Zoning of State and regionally significant farmland**

When zoning State or regionally significant farmland, council must have regard for the primary use of the land before applying an E zone or a rural zone. Notwithstanding this, the primary use of land principle does not apply to land currently zoned for environmental protection.



**(vii) Application of multiple zones to a single property (split zoned lots)**

More than one zone can be applied to properties where the characteristics of different areas of the land reflect different uses of the land.

**(viii) Mapped planning controls and associated clauses**

Land that has been verified to meet the criteria for an E2 or E3 zone, where the primary use of the land is not environmental conservation or environmental management, may be included in a mapped planning control (also known as an “overlay”) such as a Vegetation Overlay Map.

In the case of vegetation overlay map, this will not duplicate E2 or E3 zones.

NOTE: Council will consider the use of Vegetation and/or Riparian Overlay maps in subsequent stages of the E zone implementation program .

**(ix) Scenic protection and aesthetic values**

Council is not permitted to use scenic or aesthetic values as an attribute for the application of an E zone or mapped planning controls.

**(x) Permissibility of agriculture in E zones**

*Extensive agriculture* is to be listed as permissible with consent in the E2 zone and permissible without consent in the E3 zone.

The E3 zone can encompass areas where extensive agriculture occurs, such as understorey grazing or flood refuge.

**(xi) Application of the E4 zone in Byron Council**

Byron Shire Council is to prepare a planning proposal to apply a suitable residential zone to that land where an E4 zone was originally proposed under draft Byron LEP 2012.

## 1.7. E Zone Implementation Program and Staging Overview

Council at its 22 March 2018 Ordinary Meeting adopted a staged 'planning proposal' program to amend Byron LEP 2014 to implement the Department's 'Northern Councils E Zone Review Final Recommendations Report'. The staging, which has since been revised, is shown in Figure 2 below.

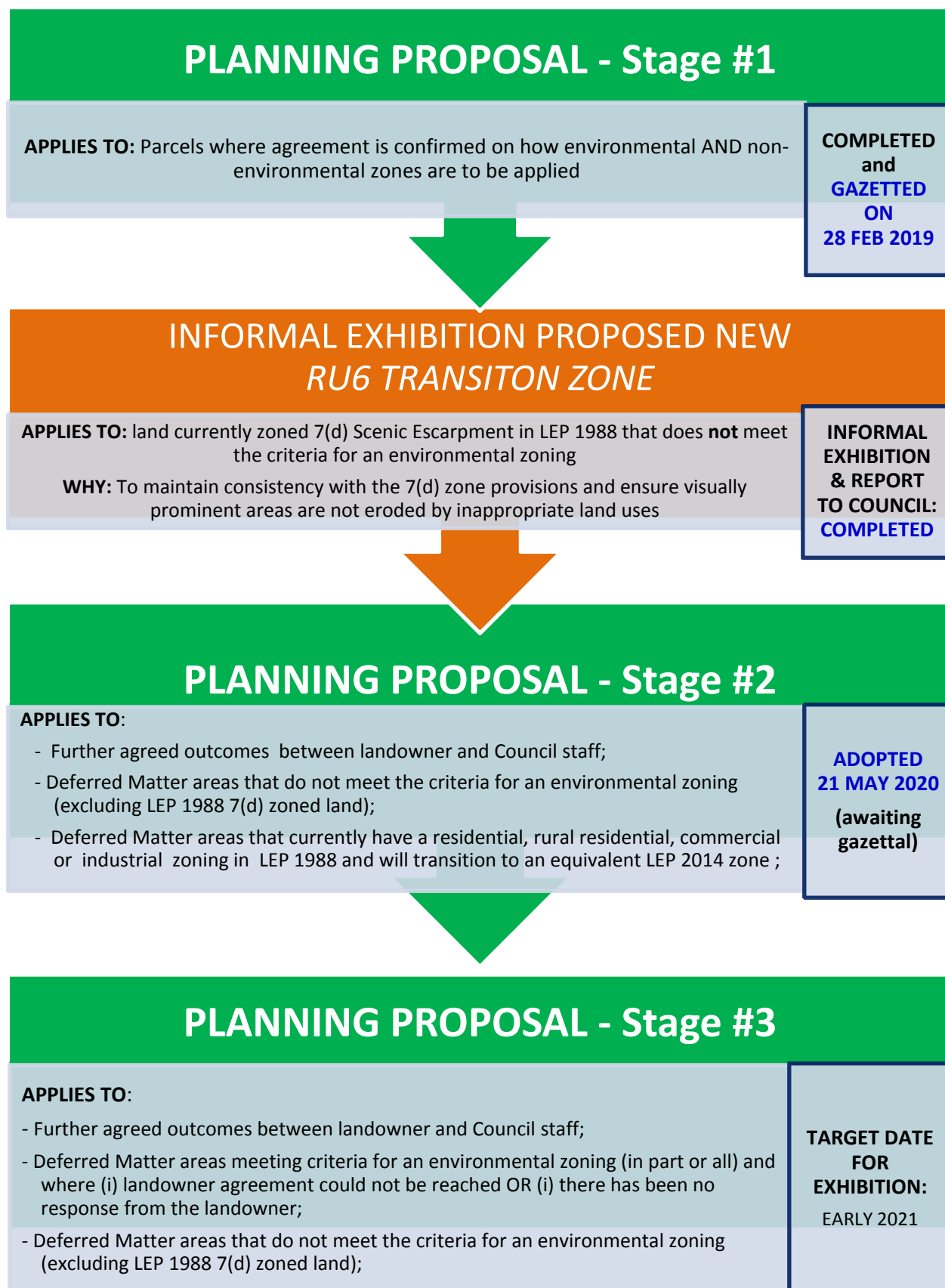


Figure 2: Staging Program to apply environmental and other zones on certain land in Byron LEP 2014

## 2. Objectives & Intended Outcomes

The overarching objective of this planning proposal is to implement Stage 3 of the E Zone implementation program (as shown in Figure 2 above). In addition to applying further agreed outcomes between landowner and Council staff, Stage 3 captures Deferred Matter areas meeting criteria for an environmental zoning (in part or all) where (i) landowner agreement could not be reached OR (ii) there has been no response received from the landowner, as well as Deferred Matter areas that do not meet the criteria for an environmental zoning (excluding LEP 1988 7(d) zoned land).

It is intended to achieve the Stage 3 implementation through the following means:

- Apply environmental protection zones to land identified as meeting the criteria set out under the Northern Councils E Zone Review Final Recommendations Report.
- Apply residential, rural and special uses zones to other land that does not meet the criteria for application of environmental protection zones as set out under the Northern Councils E Zone Review Final Recommendations Report.
- Apply the following consequential mapping to the subject land: Height of Building; Minimum Lot Size; Floor Space Ratio; Acid Sulfate Soil; Drinking Water Catchment; and Multiple Occupancy and Community Title.
- Adjust the Land Application Map to incorporate the land under the Byron LEP 2014.

## 3. Explanation of Provisions

### 3.1. E2 and E3 Zone Land Use Provisions

Environmental zones ('E zones') are designed to recognise and protect land that has important environmental value. An overview of the existing E2 and E3 zones for Byron Shire, as introduced the Stage 1 planning proposal, is provided below.

#### *E2 Environmental Conservation*

The E2 zone primarily applies to areas of high ecological, scientific or cultural value that should be protected for environmental conservation purposes, whilst allowing a limited range of land uses that are compatible with the environmental values of such areas. Examples of high ecological or scientific values in Byron Shire include: littoral rainforest, coastal wetlands, endangered ecological communities, threatened species habitat and over-cleared vegetation communities. The E2 zone has been applied to these and other suitable areas that meet the set criteria in the *Final Recommendations Report*.

The E2 zone provides for a limited range of permissible land uses recognizing: (i) its targeted application to areas of high ecological or scientific value; and (ii) current land use permissibilities in the 7(a), 7(b), 7(j) and 7(k) zones under the Byron LEP 1988.

The current E2 zone provisions in Byron LEP 2014 are as follows.

<b>Zone E2</b>	<b>Environmental Conservation</b>
<b>1</b>	<b>Objectives of zone</b>
	<ul style="list-style-type: none"> <li>To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</li> <li>To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</li> </ul>
<b>2</b>	<b>Permitted without consent</b>
	Environmental protection works.
<b>3</b>	<b>Permitted with consent</b>
	Environmental facilities; Extensive agriculture; Oyster aquaculture; Recreation areas; Roads.
<b>4</b>	<b>Prohibited</b>
	Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential accommodation; Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

### ***E3 Environmental Management***

The E3 zone provides for the recognition, management and protection of environmental values whilst providing for a range of land uses compatible with those values. This may include land containing riparian / estuarine vegetation, or rare, endangered, and vulnerable forest ecosystems, bushfire asset protection zones or where established agricultural activities occur within vegetated areas that meet the E2 criteria. This zone allows for a wider range of land use activities that are compatible with these attributes.

The current E3 zone provisions in Byron LEP 2014 are as follows.

#### **Zone E3 Environmental Management**

##### **1 Objectives of zone**

- To protect, manage and restore areas with special ecological, scientific, or cultural values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To encourage passive recreation, environmental education and an understanding of natural systems where these activities will not have a detrimental effect on land within the zone.

##### **2 Permitted without consent**

Extensive agriculture; Environmental protection works; Home-based child care; Home occupations.

##### **3 Permitted with consent**

Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Community facilities; Dual occupancies; Dwelling houses; Eco-tourist facilities; Emergency services facilities; Environmental facilities; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Home businesses; Home industries; Horticulture; Jetties; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Roads; Tank-based aquaculture; Veterinary hospitals; Wharf or boating facilities.

##### **4 Prohibited**

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.



### 3.2. Application of E Zones

The application of E zones to land in the shire is based on the Department of Planning and Environment's Northern Councils E Zone Final Recommendations Report and the associated s9.1 Ministerial Direction (2.5) under the *Environmental Planning and Assessment Act 1979*. Land proposed to be zoned E2 or E3 must contain one or more of the criteria listed in tables 1 and 2 of the Department's *Final Recommendations Report* (as reproduced below) and where applicable, be based on the primary land use.

**Table 1: Criteria for Application of Environmental Zones**

Criteria	Description
<b>E2 Environmental Conservation</b>	
SEPP 26 Littoral Rainforests.	Land mapped as littoral rainforest in accordance with the statewide policy for littoral rainforest protection ( <i>State Environmental Planning Policy 26 – Littoral Rainforests</i> ).
SEPP 14 Coastal Wetlands.	Land mapped as coastal wetlands in accordance with the statewide policy for coastal wetland protection ( <i>State Environmental Planning Policy 14 – Coastal Wetlands</i> ).
Endangered Ecological Communities (EECs) listed under the <i>Threatened Species Conservation Act 1995</i> and/ or the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .	Land containing vegetation communities listed as Endangered Ecological Communities under the <i>Threatened Species Conservation Act 1995</i> (TSC) <sup>1</sup> and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC) <sup>2</sup> . The <i>Far North Coast Regional Conservation Plan</i> <sup>3</sup> lists the following vegetation communities as examples of EECs that currently exist on the Far North Coast: <i>Byron Bay Dwarf Graminoid Heath Community, Coastal Cypress Pine Forest, Coastal Saltmarsh, Freshwater Wetlands in Coastal Floodplains, Littoral Rainforest, Lowland Rainforest on Floodplains, Subtropical Coastal Floodplain Forest, Swamp Oak Floodplain Forest, Swamp Sclerophyll Forest on Coastal Floodplains, Themeda grassland on Seacliffs and Coastal Headlands, White Gum Yellow Gum Blakely's Red Gum Woodland, and White Gum Moist Forest.</i>
Key Threatened Species Habitat.	This criterion includes: <ul style="list-style-type: none"> <li>• old-growth forests where the overstorey or canopy trees are in the late mature stage of growth<sup>4</sup>;</li> <li>• areas of predicted high conservation value for forest fauna assemblages, refugia, endemic forest fauna or endemic invertebrates<sup>5</sup>, and</li> <li>• habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present<sup>6</sup>.</li> </ul>
Over-cleared vegetation communities.	Land comprising: <ol style="list-style-type: none"> <li>1. over-cleared vegetation communities, where more than 70% of the original (pre 1750) extent of the native vegetation type has been cleared<sup>7</sup> and</li> <li>2. native vegetation in over-cleared Mitchell landscapes<sup>8</sup>.</li> </ol> The <i>Far North Coast Regional Conservation Plan</i> lists the following as examples of: <ul style="list-style-type: none"> <li>• Over-cleared vegetation communities on the Far North Coast<sup>9</sup>: <ul style="list-style-type: none"> <li>– Rainforests, Wet sclerophyll forests (shrubby and grassy subformations), Dry sclerophyll forests (shrubby and shrub/grass subformations), Grassy woodlands, Grasslands (Themeda australis sod tussock), Heathlands, Forested wetlands, Freshwater wetlands, Saline wetlands; and</li> </ul> </li> <li>• Over-cleared Mitchell landscapes<sup>9</sup>: <ul style="list-style-type: none"> <li>– Byron–Tweed Alluvial Plains, Byron–Tweed Coastal Barriers, Clarence–Richmond Alluvial Plains and Upper Clarence Channels and</li> </ul> </li> </ul>
Culturally significant lands.	Areas of culturally significant lands such as Aboriginal object sites, Aboriginal places of heritage significance, and other significant objects identified by the local Aboriginal community <sup>10</sup> .

Criteria	Description
<b>E3 Environmental Management</b>	
Riparian and estuarine	Land comprising riparian and estuarine vegetation on waterfront land, defined under the NSW Water
Rare, Endangered and	Land comprising areas of rare, endangered and vulnerable forest ecosystems as defined by the Joint
Native vegetation on coastal foreshores.	Native vegetation on land with frontage, or adjoining or adjacent to, a beach, estuary, coastal lake, headland, cliff or rock platform.

- 1 threatened/communities/nsw-act
- 2 <http://www.environment.nsw.gov.au/threatenedspeciesapp/default.aspx?keywords>
- 3 Far North Coast Regional Conservation Plan, NSW Environment Climate Change and Water, 2010, p24
- 4 <http://www.epa.nsw.gov.au/resources/pnfr/OGRFreviewFieldIdent.pdf>
- 5 Scotts, D 2003, Key Habitats and Corridors for Forest
- 6 Fauna: A Landscape Framework for Conservation in North- east New South Wales, NPWS Occasional Paper no. 32,
- 7 National Parks and Wildlife Service, Sydney, NSW.
- 8 NSW Office of Environment and Heritage 'Threatened Species Profiles Database' <http://www.bionet.nsw.gov.au>
- 9 Keith, DA 2006, Ocean Shores to Desert Dunes the Native Vegetation of New South Wales and the ACT, Department of Environment and Climate Change, Hurstville.
- 10 Mitchell, PB 2002, 'NSW Ecosystems Study: Background and Methodology', report prepared for National Parks and Wildlife Service, Hurstville, NSW and Far North Coast Regional Conservation Plan, NSW Environment Climate Change and Water, 2010, p27.
- 11 Far North Coast Regional Conservation Plan, NSW Environment Climate Change and Water, 2010, p26
- 12 Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW, NSW Department of Environment, Climate Change & Water (2011)

Verification of site attributes that meet the E2 or E3 criteria has been undertaken by one or more of the following techniques:

- biodiversity field inspections and ground surveys conducted by an appropriately qualified person;
- supporting flora and fauna reports conducted by a suitably qualified person and guided by the *Draft Framework for Biodiversity Assessment*, NSW Office of Environment and Heritage (2014) and the *Draft Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities*, NSW Department of Environment and Conservation (2004). Note: the field work underpinning such reports is not more than five years old.
- review of current (not more than five years old) high resolution digital aerial photography that has been verified by another one of the above verification techniques.

This planning proposal includes a small number proposed E2/E3 areas which do not meet the above criteria but are part of an agreed outcome with the landowner. This is consistent with the Department's Final Recommendations Report which indicates that *'private land may be zoned E2 or E3 despite being inconsistent with the criteria, only if it is consistent with a negotiated development outcome (master plan, rezoning, development consent, designated offset areas) or at the request of the landowner'*.

#### Primary Use of Land

With respect to the primary use of land, Council has considered the characteristics of land and zoning application having regard to aerial photography, visual inspections undertaken and other property information (eg. farmland rating) available to Council. For land containing attributes that meet the criteria for an E2 or E3 zone, an initial assessment of primary land use was undertaken using Council records to identify the following land use categories:

- *Environmental*: generally applies to land: currently zoned 7(a), 7(b), 7(j) and 7(k) under the Byron LEP 1988; containing attributes that meet the criteria for an E2 or E3 zone; and where commercial agricultural activities are not carried out. Such areas can be actively or passively managed for environmental purposes.

**It is not necessary to determine the primary use of land already within an existing environmental zone such as 7(a), 7(b), 7(j) and 7(k) under the Byron LEP 1988.**

- *Agriculture*: applies to that part of land used for commercial agricultural activities including intensive livestock agriculture, intensive plant agriculture and extensive agriculture (e.g. grazing). This mainly includes land with a current commercial farmland rating or land assessed as being eligible for such a rating.
- *Other*: remaining areas not covered by the above categories.

Where applicable, further assessment of primary land use has been undertaken in consultation with those landowners included in this planning proposal.

### 3.3. Application of Rural Zones

The Byron LEP 2014 contains two rural zones applicable to land used for agricultural purposes as well as areas identified for future investigation and areas of extractive and mineral resources. An overview of the two rural zones is provided below.

The *RU1 Primary Production* zone provides for the identification and management of land suitable for most kinds of primary production. It is suitable for application to higher quality farmland that supports a variety of agricultural activity including extensive agriculture, horticulture and intensive livestock agriculture.

The *RU2 Rural Landscape* zone provides for the management of rural land that also may be suitable for primary production, but has landscape values or is identified as having some agricultural limitations. It is generally suitable for application to rural areas not identified for inclusion in the RU1 zone or an environmental protection zone.

The methodology for the application of rural zones in LEP 2014 was generally based on one or more of the following considerations: conversion of existing Byron LEP 1988 rural zones; cadastral boundaries; and data and mapping relating to agricultural classification and significance produced by the NSW Department of Primary Industries and the NSW Department of Planning and Environment.

Where the characteristics of the land warrant the application of a rural zone, such zones have been applied in this planning proposal based on the predominant surrounding rural zone(s) for consistency.

### 3.4. Application of Residential Zones

The application of a residential zone to land that does not meet the criteria for an E2 or E3 zone is confined to areas that are largely or wholly within an existing residential zone. This relates to the application of the *R2 Low Density Residential Zone* or *R5 Large Lot Residential Zone* in the planning proposal.

### 3.5. Application of Special Purpose (SP) Zones

The intent of the SP2 Infrastructure zone is to provide for specific uses (including ancillary or some other compatible uses) on identified sites to support the provision and retention of key infrastructure. Such sites are highly unlikely to be used for a different purpose in the future. The zone also serves to identify the location of such uses clearly to the community.

It is proposed to apply the SP2 zone over that part of Lot 100 DP 1054375 (Parcel No. 238912) already largely zoned for the purpose of an educational establishment (5(a) under

BLEP 1988) and that does not meet the criteria for an E2 or E3 zone.

The 'SP3 Tourist' zone is generally used where tourism is considered the primary focus of a particular location. The proposal seeks to apply the *SP3 Tourist Zone* over part of Lot 9 DP 708338 (Parcel No. 111720) and Lot 1 DP 1250102 (Parcel No. 269554) in Byron Bay, both of which already adjoin a much larger SP3 Zone under Byron LEP 2014 and do not meet the criteria for an E2 or E3 zone.

### 3.6. Application of Recreation (RE) Zones

The RE1 Public Recreation and RE2 Private Recreation zones have been applied to land already containing a much larger area of either zone and/or where this land use was determined to be the primary purpose.

### 3.7. 'Multiple Occupancy and Community Title' maps

These maps relate to land that would have been originally identified (partly or wholly) on the LEP 2014 'Multiple Occupancy and Community Title Map', but were deferred pending the outcome of the state government's review of environmental zones for all Far North Coast councils. The MOCT map is referred to in the following clauses of Byron LEP 2014:

- *4.1B Minimum subdivision lot size for multiple occupancy or rural community title developments*
- *4.2B Maximum number of dwelling houses or dual occupancies on multiple occupancy or rural landsharing community developments of.*

Lands identified on the MOCT maps currently have the opportunity to seek development consent for these forms of rural settlement.

This planning proposal identifies two (2) sites for inclusion on the MOCT maps. The maps are contained in Appendix 5.

## 4. Justification

### 4.1. Section A – Need for the Planning Proposal

**Q1 Is the planning proposal a result of any strategic study or report?**

Yes, the Northern Councils E Zone Review Final Recommendations Report published by the Department of Planning and Environment in October 2015. This report outlines the criteria for the application of environmental zones (“E” zones) to deferred matters previously identified as an E zone but excluded from the new plan (Byron LEP 2014).

The planning proposal is also informed by Council’s Shire wide vegetation mapping review (2015-17) and primary land use assessment.

**Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

Yes. A planning proposal is the appropriate and only mechanism to integrate deferred matters into the Byron LEP 2014.

### 4.2. Section B – Relationship to Strategic Planning Framework

**Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?**

The proposal is consistent with the North Coast Regional Plan 2036 which provides an overarching framework to guide subsequent and more detailed land use plans, development proposals and infrastructure funding decisions for the next 20 years.

**Q4 Is the planning proposal consistent with a council’s local strategy or other local strategic plan?**

The planning proposal is consistent with the overall vision of Council’s Community Strategic Plan and a key objective of the community” to protect and enhance our natural environment”.

The proposal is also consistent with the framework and relevant actions contained in Council’s *Draft Biodiversity Conservation Strategy 2020 - 2030* and *Rural Land Use Strategy 2017*.

**Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?**

The proposal is considered to be generally consistent with applicable State Environmental Planning Policies (SEPPs) — namely the relevant aims contained in *SEPP (Vegetation in Non-Rural Areas) 2017*, *SEPP Koala Habitat Protection (2019)* and *SEPP (Coastal Management) 2018*.

It is also consistent with the requirements of *SEPP 55 – Remediation of Land* as follows:



***Remediation of Land (SEPP 55)***

The SEPP 55 provisions relating to planning proposals have now been replaced by Section 9.1 Direction '2.6', which is addressed in Appendix 1.

**Q6 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?**

The proposal is consistent with the relevant Section 9.1 Directions, with exception of direction 1.3. A Section 9.1 Direction checklist for the planning proposal is contained in Appendix 1.

**4.3. Section C – Environmental, Social and Economic Impact**

**Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

The amendments contained in this proposal are not expected to impact adversely on critical habitats, threatened species, populations or ecological communities or their habitats.

**Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

No significant adverse environmental impacts are likely to arise as a result of the planning proposal.

**Q9 Has the planning proposal adequately addressed any social and economic effects?**

The proposal will facilitate the provision of a more efficient and effective land use planning framework. The proposed zonings in Stage 3 will provide land owners with certainty around the permissible land uses on their land. In addition, the integration of 'Deferred Matter' land into the Byron LEP 2014 will simplify the planning controls for future development proponents. For these reasons the social and economic impacts associated with the proposal are considered to be positive.

**4.4. Section D – State and Commonwealth Interests**

**Q10 Is there adequate public infrastructure for the planning proposal?**

The planning proposal does not create the need for any additional public infrastructure.

**Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?**

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

## 5. Mapping Overview

The planning proposal will necessitate updates to the following Byron LEP 2014 maps:

- Land Zoning Map;
- Lot Size Map;
- Floor Space Ratio Map;
- Height of Buildings Map;
- Acid Sulfate Soil Map;
- Drinking Water Catchment Map;
- Multiple Occupancy and Community Title Map; and
- Land Application Map

## 6. Community Consultation

A robust and transparent engagement program with affected land owners to verify existing vegetation and primary use of the land has been underway since mid-October 2017. This has ensured the most up-to-date information is used to inform the rezoning of land to an environmental, rural or urban zone. Details of this engagement are contained in Appendix 3 of this Planning Proposal.

The proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. This includes any required consultation with public authorities under section 3.34 of the Act and/or to comply with the requirements of relevant S9.1 Directions. Affected landowners also will be notified in writing of the proposal and the community consultation arrangements prior to the public exhibition period.

## 7. Project Timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	Jan/Feb 2021
Government Agency Consultation	Feb/Mar 2021
Public Exhibition Period	Mar/April 2021
Public Hearing	N/A
Submissions Assessment	April/May 2021
RPA Assessment of Planning Proposal and Exhibition Outcomes	June 2021
Submission of Endorsed LEP to DP&I for Finalisation	August 2021
RPA Decision to Make the LEP Amendment (if delegated)	N/A <sup>#</sup>
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	N/A <sup>#</sup>

<sup>#</sup> Council is not proposing to exercise plan finalisation functions under delegation.