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Plan finalisation report – PP-2020-3915

Stage 3 Environmental Zone Review

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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A reference to an Environment Protection zone E1, E2, E3 or E4 within this document should be taken to be a reference to a Conservation zone C1, C2, C3 or C4. For further information please see Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021.

1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Byron Local Environmental Plan 2014 (Amendment No. 34) proposes to incorporate various deferred matter land into the Byron LEP 2014 consistent with the Northern Councils E Zone Review Final Recommendations Report (E Zone Review). This is Stage Three of implementation of the E Zone Review Final Recommendations Report for deferred matter land. Stages One and Two have already been completed.

The original proposal applied to 2,206 properties and affected 2,172 landowners.

The proposal sought to apply:

- A rural, residential or special purpose zone applied to land, consistent with the primary use of the land to 1164 lots,
- An environmental zone, or part environmental zone, to 1042 lots.

Where a part environmental zone was applied, the remainder of the lot would be zoned either a rural, residential or special purpose zone, or remain deferred matter land.

Council have sought to apply proposed zones pursuant to the requirements of the E Zone Review (**Attachment A**).

Figure 1 demonstrates the breakdown of zones at the time of Gateway determination. The figure is split into two categories, E Zones and Non-E Zones as the E Zone Review applies only to land proposed to have an environmental zone applied.

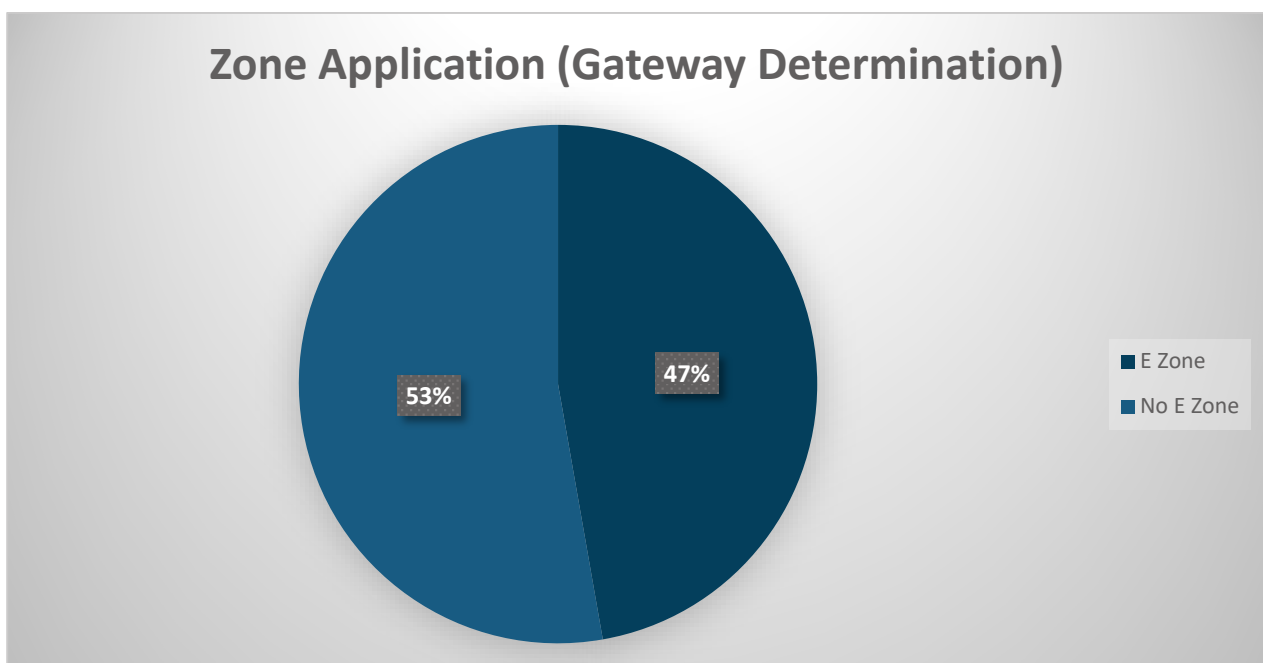


Figure 1 Application of Zones at the time of Gateway Determination

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment B) applies to various land that are currently deferred from Byron LEP 2014 (and is subject to the provisions of Byron LEP 1988) and also some non-deferred land which is subject to the provisions of the Byron LEP 2014. The deferred land is zoned a mixture of rural, environmental protection, rural residential, tourism and special uses zones under the Byron LEP 1988.
Type	District
Council / LGA	Byron Shire Council
LGA	Byron LGA

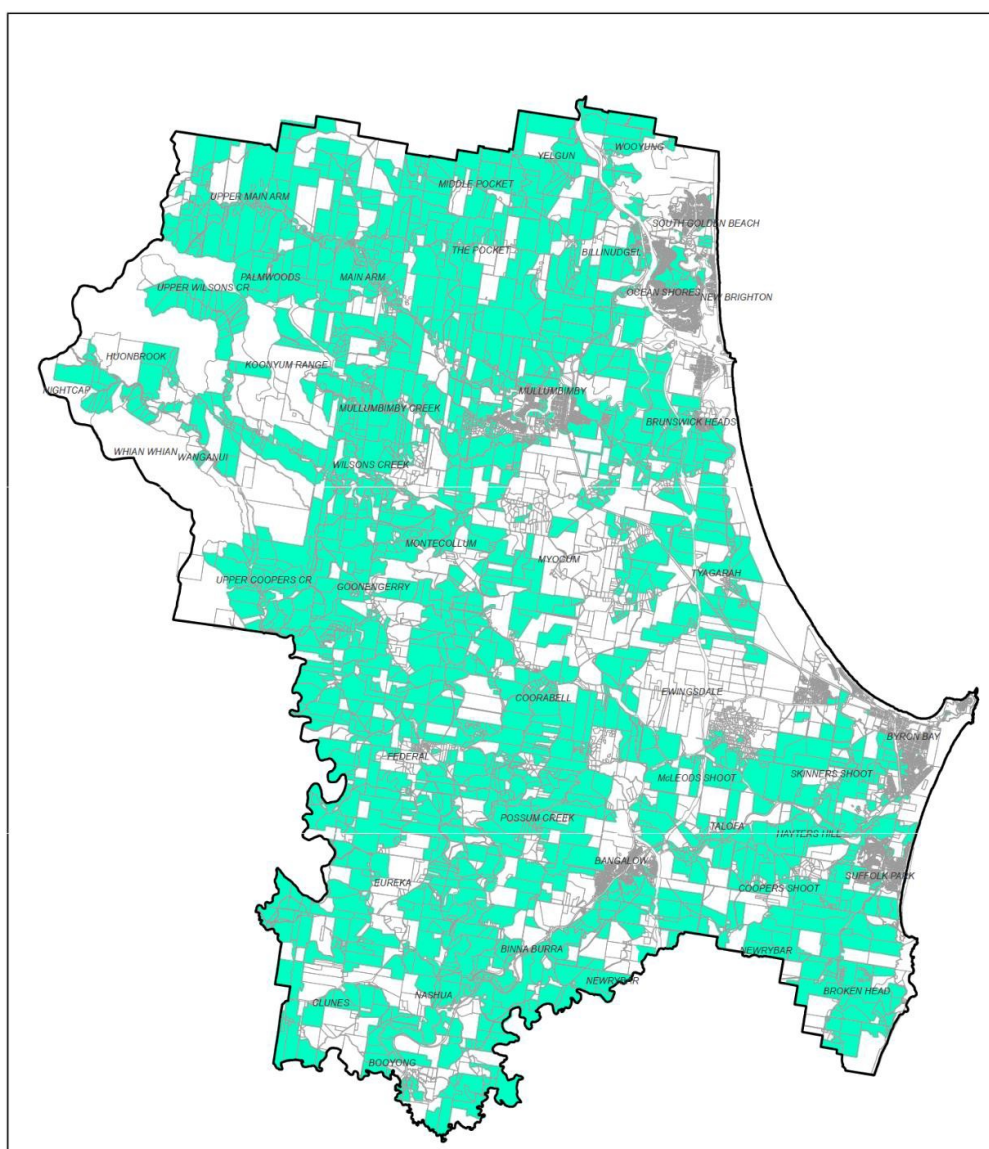


Figure 2 Subject site

1.1.3 Purpose of plan

The purpose of the plan is to:

- apply environmental zones to land in the Byron LGA consistent with the criteria for environmental zones in the E Zone Review recommendations or where the zone has been agreed to by Council and the landowner,
- apply rural, residential and other non-environmental zones to land in the Byron LGA where the land does not meet the criteria for an environmental zone in the E Zone Review recommendations,

As a result of the proposed amendments, the planning proposal will amend the land application, land zoning, height of building, minimum lot size, floor space ratio, acid sulfate soil, drinking water catchment and multiple occupancy and community title mapping contained in Byron LEP 2014.

1.1.4 State electorate and local member

The site falls within the Ballina state electorate. Tamara Smith MP is the State Member.

The site falls within the Richmond federal electorate. Justine Elliot MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 8/02/2021 (**Attachment C**) determined that the proposal should proceed subject to conditions. Council has not met all the Gateway determination conditions. This is summarised below:

- Condition 5(a) required that Appendix 1 be altered to note that Direction 4.3 Flood Prone Land does apply to the planning proposal. Based on the post-Exhibition proposal provided by Council to the Department on 17 February 2022, this amendment to the planning proposal was not undertaken.
- Condition 6 required 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 the planning proposal. The proposal demonstrates a Height of Building map at the LGA scale, however individual Height of Building maps do not appear in the post-Exhibition proposal provided by Council to the Department on 17 February 2022.

Notwithstanding, the requirements of the Gateway determination that have not been met are considered minor as:

- The Department's Gateway determination report and associated correspondence identified the inconsistency and required consultation with the Biodiversity Conservation Division, to address the inconsistency. This is discussed in further detail under section 4.1.2 of this report, however notably, the inconsistency is considered to be minor.
- The planning proposal contained the LGA wide Height of Building map as part of the exhibition process, so captured that the changes to the mapping were proposed. No submissions received raised major issues with the proposed change to the Height of Building maps. Technical mapping has since been provided to the Department's ePlanning

Team who have reviewed the maps and outlined satisfaction with the detail in accordance with the planning proposal.

Whilst it is the Department's preference that Council comply with all conditions of the Gateway determination, it is considered that non-compliance with these conditions are minor and has been resolved as part of other processes undertaken as part of the wider Gateway determination process. Additionally, Council do not have delegation to make the plan and the Department is therefore appointed as the local plan-making authority.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 8/08/2022. Council provided the finalisation package, in accordance with the LEP Making Guidelines, on 17 February 2022.

3 Public exhibition and post-exhibition changes

3.1 Council's pre-Gateway determination process (2017-2019)

In accordance with a letter signed by the Secretary of the Department of Planning and Environment and addressed to General Manager of Byron Shire Council, dated 1 March 2016, Council commenced liaison with landholders early in the rezoning process, where a E Zone was proposed to be applied to private land.

Council undertook consultation to determine the proposed zones sought as part of PP-2020-3615, prior to the issuing of the Gateway determination on 08/02/2021.

For 16 weeks, from 9 October 2017 to late January 2018, Council wrote to all affected E Zone landowners requesting feedback. Follow up letters were sent in March 2018 and June 2019. Additionally, Council wrote to all landowners that it had identified as having land with environmental values, regardless of whether the land was deferred from Byron LEP 2014.

In addition, Council:

- held three targeted stakeholder meetings to explain and pilot-test the process,
- used its website, public media and Facebook, and provided supporting material including interactive mapping on its website, and
- held one-on-one meetings in its office and in the field and responded to phone and email enquiries.

Following this process, Council identified the zones proposed as part of PP-2020-3915 and exhibited as part of this proposal. The breakdown of properties is as follows:

- Total properties with all or part of an E Zone proposed: 1042
Comprising:
 - Zone not agreed between landowner and Council: 39
 - Zone agreed to between Council and Landowner: 454
 - No response received: 549
- Total properties with no E Zone proposed: 1164

It should be noted that the policy establishes that an E zone can only be applied to land which does not meet the criteria if it is public land, or where there is landowner agreement.

For the purposes of assessing the proposal and submissions received, it is taken that:

- No response to the formal engagement process, where no registered objection to the proposal has been received, represents in-principal landowner agreement to the proposed zone. This category will be known as “agreed” throughout the remainder of this report.
- A registered objection to the proposal, where Council have determined that they have reached agreement on the zone/s proposed with the landowner through the process of consultation. This category will be known as “agreed following consultation” throughout the remainder of this report.
- A registered objection to the proposal, where Council have determined that they have not reached agreement on the zone/s proposed with the landowner through consultation. This category will be known as “not agreed” throughout the remainder of this report.

3.2 Council’s post-Gateway determination engagement process (2021)

The Gateway determination required an exhibition period of 28 days. The proposal was publicly exhibited by Council for 124 days, from 29/03/2021 to 30/07/2021. The exhibition was undertaken in stages, due to the large number of properties proposed for rezoning under PP-2020-2915 and to ensure staff could manage enquiries.

Council reported a total of 335 submissions received during exhibition.

Submissions were received for properties where both E zones and non-E zones were proposed.

Council acknowledges that of the 549 properties where no submission had been received during the pre-lodgement process, 215 properties had still not responded during the Gateway determination engagement process. These are incorporated under the “agreed” category identified in section 3.1.

No public meeting was held following public exhibition.

In addition, the Gateway determination required Council to notify, in writing, landowners whose land will be subject to an E Zone and advised they had 28 days to notify the Department to request a review of the proposed zoning of their property. This is discussed in greater detail below.

For the purposes of assessing agreement with landowners on specific land parcels, Section 3.3 outlines data relative to properties, based on parcel number. The reason for this is that in some cases, a single submission relates to a number of parcel numbers and therefore reference to a single submission does not accurately reflect agreement on each affected parcel.

Review of the data to parcel numbers has been undertaken instead of against more commonly used Lot and DP as the total number of affected properties (2,206 properties) has been calculated based on parcel numbers rather than Lot and DP, according to Table 5.1 of Council’s planning proposal. Therefore, addressing properties by way of parcel numbers provides a more accurate reflection of the number of submissions received from affected properties. As such, a reference to a property throughout this report should be interpreted as a reference to a parcel number.

Further, submissions are categorised between E zone and non-E zone properties under Section 3.3. This is because agreement is only required for properties where an E zone is proposed pursuant to the E Zone Review.

3.3 Submissions during exhibition

3.3.1 Submissions supporting the proposal (E Zone Properties)

As discussed earlier in this report, Council undertook extensive consultation with landowners, prior to the issuing of a Gateway determination, in accordance with the E Zone Review.

Based on this, and the categorisation outlined under section 3.1, a total of 935 properties (**Attachment D**), where an E Zone is proposed, are considered to have agreed to the application of an E zone. This is comprised of:

- 755 properties agreed (see **Attachment D**),
- 180 properties agreed following consultation (see **Attachment D and E** for analysis).

It should be noted that two properties, where specific owner agreement was reached regarding the E zone applied to the land, related to changes to previously zoned E zone properties under Byron LEP 2014 Amendment No. 23 (Stage 2 Planning Proposal - PP_2019_BYRON_002_00). These properties were:

- 272 Mafeking Road, Goonengerry (Parcel No. 47120), and
- Coopers Lane, Main Arm (Parcel No. 15720).

These parcels were not originally considered as part of the proposal, however, given the written request for the amendments and agreement to the amendments by the owner, these properties were included as part of the proposal (see Table 1(d) of **Attachment E** for analysis). This is considered appropriate.

3.3.2 Submissions objecting to and/or raising issues about the proposal (E Zone Properties)

Landowner agreement was not reached for total of 44 properties, where an E Zone is proposed.

Attachment F provides a detailed analysis, outlining landowner reasons for not agreeing and Council's response to these reasons.

A submission was received from Community Alliance for Byron Shire (CABS), which does not relate to a specific parcel. This submission and Council's response is summarised below:

Issue raised	Response
Parts of Cape Byron Marine Park are not being zoned to W1 Natural Waterways, where applicable on certain properties in this planning proposal.	In response to this submission, Council updated properties in the proposal that contain Cape Byron Marine Park to include gazetted W1 Natural Waterways zone, except where infrastructure overlaps with the proposed W1 zone. These changes are captured in Table 1(a) of Attachment 1 (Items 107, 144, 192)
Council is upzoning wide swathes of the Shire by applying new zones that allow a greater range of permissible land uses compared to LEP 1988 environmental zones.	Council summarise that CABS position is that any land currently zoned 6(a), 6(b), 7(a), 7(b), 7(d), 7(f1), 7(f2), 7(j), 7(k), 8(a) in LEP 1988 should only be zoned <i>E1 National Parks</i> , <i>E2 Environmental Conservation</i> or <i>W1 Natural Waterways</i> . or the existing zoning under the Byron LEP 1988 should remain in place. This approach was however noted by Council to be inconsistent with the E Zone Review Final Recommendations.

3.3.3 Submissions supporting the proposal (Non-E Zone Properties)

A total of 1179 properties, where no E Zone was proposed, did not object to the proposed zoning. This was comprised of the following:

- 1119 properties agreed (see **Attachment G**),
- 60 properties agreed following consultation (see **Attachment G and E** for analysis).

3.3.4 Submissions objecting to and/or raising issues about the proposal (Non-E Zone Properties)

There were five properties where no E zone was proposed and where landowner agreement was not reached.

The reasons for objection in relation to the five properties are tabled in **Attachment F**.

It is noted that 64 Corkwood Crescent, Suffolk Park (Property No. 26736) requested a review of the zone proposed as part of the independent review process (summarised under section 3.5.3). The Department's Agile Planning and Programs team that co-ordinated the independent review determined the property was not eligible for review as:

- no E Zone was being proposed; and
- Council had deferred the site and all other 7D land from the final plan where agreement with the owner could not be reached.

3.4 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the following agencies:

- NSW Rural Fire Service (RFS),
- Biodiversity Conservation Division (BCD),
- Department of Primary Industries (DPI),
- Local Aboriginal Land Council (LALC), and
- Division of Resources and Geoscience.

Agencies listed below in Table 4 provided formal comment:

Table 2 Advice from public authorities

Agency	Advice raised	Response
BCD	BCD indicated in its response that application of E Zones across the shire has been well implemented under the requirements of the E Zone Review. The submission went into further detail regarding specific requirements of the E Zone Review that Council were to ensure the planning proposal complied with, prior to finalisation. The full submission can be read at Attachment P .	Council has outlined that the process undertaken is substantially consistent with the requirements highlighted by BCDs submission and as required by the E Zone Review. Primarily, Council have sought to reach agreed outcomes with landowners when applying both environmental and non-environmental zones on private land, which is considered an integral component of the E Zone Review policy. Where outcomes are not agreed, this is summarised within the body of this report.

Agency	Advice raised	Response
		It is considered that there are no outstanding matters as a result of this submission.
RFS	RFS raised no concern with the proposal, stating only that future residential subdivision and dwelling opportunities are to comply with Planning for Bushfire Protection guidelines.	Noted. Consideration can be given to this at future development stages, where applicable.

No formal written submission was received from DPI – Agriculture or Division of Resources and Geoscience.

Additionally, no formal written submission was received from NSW Local Land Services or the Local Aboriginal Land Council, however, Council sought to engage with these groups through verbal discussions.

During meetings with representatives from LLS and Tweed Byron LALC (TBLALC), it was determined that land owned or subject to a native title claim by TBALC should be deferred from this proposal. This approach was also applied for properties owned by Jali LALC and two properties (10 Ironbark Ave, Byron Bay and Lot 438 DP 729107, Bangalow Road, Byron Bay) owned by Bundjalung of Byron Bay Aboriginal Corporation (Arakwal).

Therefore, the following properties have been deferred from the proposal:

- 1, 3 and 9 New Brighton Road, New Brighton (Property Nos. 59590, 59600 and 59620); and
- 146 & 162 Tweed Street, Brunswick Heads (Property Nos. 181550, 183900 and 240704).

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

3.5 Post-exhibition changes

3.5.1 Council resolved changes

At Council's Ordinary Meeting on 7/11/2021, Council resolved to proceed with the planning proposal. A number of changes were proposed to the proposal, and these are identified in Council documentation submitted as part of the finalisation package (**Attachments E and F**).

3.5.2 Deferred Properties (Council)

As a result of the exhibition process, Council identified a number of properties where:

- following exhibition and a site visit by Council's ecologist, no changes were required to the existing zone as the land did not demonstrate the ecological values required for the proposed environmental zone and therefore these properties were "removed" from this planning proposal; or
- following exhibition and discussions with landholders, further work was required to reach agreement with landowners on the zone proposed and these properties were "deferred" from this proposal, with the intention to resolve outstanding matters and revisit the zone applied as part of a future planning proposal. This includes any land zoned 7D where agreement could not be reached between Council and the landowner.

Deferred or removed properties as a result of Council's recommended amendments are outlined at **Attachment E and H**.

Two properties were included as part of the proposal, which were originally subject to the Stage 2 Planning Proposal and summarised in section 3.3.1 above. The properties included as part of the proposal post-Exhibition included:

- 272 Mafeking Road, Goonengerry (Property No. 47120), and
- Coopers Lane, Main Arm (Property No. 15720).

Additionally, a number of changes were made to the proposal in response to submissions received, to facilitate agreement with landholders (resulting in the agreed following consultation category outlined above in section 3.3.1) and where agreement could still not be agreed with landholders on the zone proposed (resulting in the not agreed category outlined above in section 3.3.2). These changes are summarised in Tables 1(a), (b) and (c) of Attachment 1 and Attachment 2 of the Council Finalisation Package.

The post exhibition changes by Council has achieved landowner agreement for 96 per cent of properties where an E Zone has been proposed. Additionally, 99.5 per cent of properties where no E Zone has been proposed also support the proposal.

These changes are not considered to require further consultation as they have been made as a result of the application of the E Zone Policy and in response to submissions received from landowners as part of the exhibition process.

3.5.3 Independent Review (Agile Planning and Programs)

In accordance with condition 1(c) of the Gateway determination, Council were required to notify owners whose land will be subject to an E Zone, following consideration of submissions during the public exhibition period and endorsement of the final planning proposal. Affected landowners were given 28 days to notify the Department that they would like an independent review of the proposed zoning of their property prior to the plan being finalised and made.

This condition was included on the Gateway determination to ensure that the requirements of the E Zone Review Frequently Asked Questions (FAQ). The FAQ states that, if a landowner does not agree that their land meets the primary use or validation criteria for an E Zone as recommended by Council, the NSW Chief Planner will undertake an independent review, based on assessment of the evidence provided by Council and the landholder.

In the absence of a 'Chief Planner' role within the Department of Planning and Environment at present, the Department's Agile Planning and Programs (APP) team has undertaken the independent review. Additionally, those recommendations were peer reviewed by MacroPlan (in particular the former NSW Chief Planning, Mr Gary White). This peer review indicated that the APP recommendations were consistent with the requirements of the e Zone Review.

A total of 31 review requests were received, with two of these being determined to be ineligible for review. These included:

- 64 Corkwood Crescent, Suffolk Park – as previously explained, no E Zone was proposed on the land; and
- 160 Koonyum Range Road, Wilsons Creek – the review request was lodged by a neighbour, rather than the landowner, which was determined to be outside the parameters of the review. As this is a property identified as "agreed following consultation" and the landowner themselves have not requested a review on the proposed zone, it is considered that the zone/s resolved to be applied by Council is appropriate and no further consideration as to the zone/s is required.

Of the 29 sites (comprising 38 parcels) eligible for review, the APP team recommended that the zone proposed by Council be applied to seven sites (comprising 12 parcels). The sites supported to be rezoned by the APP team are outlined in **Attachment I**.

Of the remaining 22 sites (comprising 26 parcels) eligible for review, the APP team recommended that these sites be deferred as insufficient information was available to ensure compliance with the E Zone Review. The sites recommended for deferral are outlined in **Attachment J**.

The supporting APP report and reasons for the above recommendations are included at **Attachment K and L**.

It should be noted that, in accordance with the E Zone Review, the Independent Review relates specifically to environmental zones comprising either E2 Environmental Conservation or E3 Environmental Management. Pursuant to the E Zone Review, it is considered that the review is not relevant to land or part sites where a non-E Zone is proposed.

Therefore, in accordance with the E Zone Review, and taking into account the Independent Review recommendations, it is recommended that the Minister's delegate determine that only part of the properties where an E Zone is proposed and identified in **Attachment J** should be deferred. Any part of the property not subject of an E Zone identified in **Attachment J** should be finalised and rezoned as agreed between Council and the landowner as part of this proposal.

3.5.4 The Department's recommended changes

Following the receipt of the final revised planning proposal from Council, and the recommendations provided by the Independent Review, the Department has made further changes to the proposal.

Specifically, these relate to "Not Agreed" properties, not the subject of the Independent Review process. In accordance with E Zone Review, it is recommended that an additional 14 sites or part sites (comprising 19 parcels) be deferred where an E Zone is proposed. The sites or part sites where an E Zone is proposed that are to be deferred is outlined in **Attachment J**. The reasons for the Department's Northern Region team's decision to defer certain properties generally relate to a lack of information to confirm consistency with the E Zone Review and are outlined in **Attachment N**.

Of the remaining "Not Agreed" properties, not the subject of the Independent Review process and where an E Zone is proposed, seven (comprising 11 parcels) have been recommended to be rezoned, in accordance with Council's resolution (**Attachment M**).

3.5.5 Justification for post-exhibition changes

It is considered that the post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- Are a reasonable response to comments provided by public authorities;
- Are consistent with the implementation of the E Zone Review; and
- Do not alter the intent of the planning proposal and are minor amendments to the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment C**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement, including multiple stages of consultation conducted by Council, as well as an independent review by the Department for requested sites.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment O**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 3 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 4 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Consistency with North Coast Regional Plan 2036

The Gateway determination report outlined that the proposal includes the rezoning of some state and regionally significant farmland to an environmental zone (E2 or E3), which is potentially inconsistent with Action 11.1 of the Regional Plan. It was recommended that this inconsistency remain outstanding until consultation had been undertaken with DPI – Agriculture. DPI – Agriculture provided no response to Council's consultation and no formal objection was registered.

In the absence of a formal comment from Department of Primary Industries – Agriculture (DPI-Agriculture), it is considered that Council has applied zones to a majority of the affected sites in accordance with the E Zone Review. Where the primary use of the land has been demonstrated to

be agriculture through consultation, Council have amended proposed zones to reflect this land use. Additionally, where compliance with the policy has not been strictly applied to relevant properties subject of an E Zone, the Department has recommended deferral to allow additional time to resolve outstanding issues. Therefore, it is considered that the proposal is consistent with the Regional Plan..

4.1.2 Consistency with Section 9.1 Directions

The cover letter of the Gateway determination for the planning proposal advised that Council would need the agreement of the Secretary to justify inconsistency with 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 (as they were numbered at the time of issuing the Gateway determination).

Direction 1.2 Rural Zones

The proposal was identified at the Gateway stage to be inconsistent with this direction primarily as it sought to rezone some rural land to either R2, R5 or SP3. While this inconsistency was considered likely to be minor due to the nature of the rezonings, consultation was recommended with DPI – Agriculture to confirm the suitability of the proposal. Council has confirmed that consultation with DPI – Agriculture was undertaken with no response was received.

In the absence of any formal comment from Department of Primary Industries – Agriculture, it is considered that Council has generally applied zones to a majority of the affected sites in accordance with the E Zone Review. Where the primary use of the land has been demonstrated to be agriculture through consultation, Council has amended proposed zones to reflect this land use. Where compliance with the policy has not been strictly applied to relevant properties subject of an E Zone, the Department has recommended deferral to allow additional time to resolve outstanding issues.

Direction 1.3 Mining, Petroleum Production and Extractive Industries

In order to satisfy the requirements of this Direction, the Department's Assessment Report identified that consultation was required with the Division of Resources and Geoscience. Council confirmed that this consultation was undertaken but no response was received. In the absence of a submission from the Division of Resources and Geoscience it is taken that there is no objection to the planning proposal proceeding.

The inconsistency with this Direction is considered to be of minor significance, given much of the land to be rezoned has attributes that would make mining or extractive resources unlikely.

Direction 1.5 Rural Lands

The proposal was identified at the Gateway stage to be inconsistent with this direction as it did not include provisions to support farmers in their right to farm or promote opportunities for rural economic activities. While this inconsistency was considered likely to be minor, consultation was recommended with DPI – Agriculture to confirm the suitability of the proposal. Council has confirmed that consultation with DPI – Agriculture was undertaken with no response was received.

In the absence of any formal comment from Department of Primary Industries – Agriculture the inconsistency with the direction is considered to be of minor significance.

Direction 2.1 Environmental Protection Zones

The proposal was identified at the Gateway stage to be inconsistent with this direction as it sought to rezone some existing environmental lands to either a rural or urban zone for consistency with the E Zone Review. While this inconsistency was considered likely to be minor, consultation was recommended with the NSW Biodiversity and Conservation Division (BCD) to confirm the suitability of the proposal. Council has confirmed that consultation with BCD was undertaken and no objection was raised. The inconsistency with the direction is therefore considered to be of minor significance.

Direction 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs

It was identified at the Gateway stage that consistency with this direction could not be determined until consultation was undertaken.

As discussed above, it is considered that the proposal is consistent with this direction subject to changes made by Council throughout the proposal and the implementation of the recommendations made as a result of the independent review process and the Northern Region team's assessment.

Direction 4.3 Flood Prone Land

The proposal was identified at the Gateway stage to be inconsistent with this direction as it affected flood prone land and did not specifically include provisions that gave effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 and may result in some very minor additional development potential on flood prone land. While this inconsistency was considered likely to be minor, consultation was recommended with the NSW Biodiversity and Conservation Division (BCD) to confirm the suitability of the proposal. Council has confirmed that consultation with BCD was undertaken with no objection was raised. The inconsistency with the direction is therefore considered to be of minor significance.

Direction 4.4 Planning for Bushfire Protection

In order to satisfy the requirements of this direction consultation was required with the Commissioner of the RFS.

Council has consulted the RFS in relation to the planning proposal. The inconsistency with the direction is justified as Council has received written advice from the RFS (Attachment P) outlining that future residential subdivision and dwelling opportunities are to comply with Planning for Bushfire Protection guidelines.

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

In order to satisfy the requirements of this Direction, the Department's Assessment Report identified that consultation was required with the DPI – Agriculture. Council, in the Council Report dated 4 November 2021, confirmed that this consultation was undertaken, however no response was received.

In the absence of a formal comment from Department of Primary Industries – Agriculture (DPI-Agriculture), it is considered that Council have applied zones to a majority of the affected sites in accordance with the E Zone Review. Where the primary use of the land has been demonstrated to

be agriculture through consultation, Council have amended proposed zones to reflect this land use. Additionally, where compliance with the policy has not been strictly applied to relevant properties subject of an E Zone, the Department has recommended deferral to allow additional time to resolve outstanding issues.

On review of the final zones applied, there is no remaining inconsistency as the proposal does not rezone land that is identified as State or Regionally Significant Farmland for urban or rural residential purposes. There are nine sites where urban zones are proposed and part of the site is identified as having regionally significant farmland (Attachment Q), however the proposed urban zones are not located within the identified area of significant farmland.

Therefore, the inconsistency with this Direction is considered to be resolved.

Direction 5.10 Implementation of Regional Plans

As discussed above, it is considered that final proposal as recommendation for amendment by the Department is consistent with the regional plan.

4.2 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 5 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	50 maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment R)</i>.</p> <p>Council provided a response on 17/10/2022 that it had reviewed the draft LEP. Council provided comments on the numbering of Acid Sulfate Soils Maps which it queried the number changes to the map sheet number, as the maps Council had prepared were numbered differently (Attachment S).</p> <p>The Department reviewed Council's comments, however concluded that the change to the map sheet number was as a result of recommended changes by the Department outlined in the body of this report. As no other comments or concerns were raised by Council in relation to the draft LEP it is concluded that the plan should be made.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Additionally, Council requested that the LEP outline a delayed commencement date of 30 November 2022. This is to support Council to receive and process the mapping data prepared by the ePlanning Team and to manage staffing impacts internally at Council (**Attachment T**).

Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP, with the recommended changes outlined above, under clause 3.36(2)(a) of the Act because:

- The draft LEP, with recommended changes, has met the requirements of the Northern Councils E Zone Review Final Recommendations Report,
- The draft LEP, with recommended changes, is not inconsistent with the North Coast Regional Plan 2036,
- The proposals inconsistencies with outstanding section 9.1 Ministerial Directions have either been resolved or are considered of minor significance,
- The elements of the Gateway determination that have not been met are minor and have been addressed through other processes of the Gateway process.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



27/10/2022

Jeremy Gray

Director, Northern Region



8 November 2022

Malcolm McDonald

Executive Director, Local and Regional Planning

Assessment officer

Ella Wilkinson

Senior Planner, Northern Region

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Attachments

Attachment	Document
A	Northern Councils E Zone Review Final Recommendations Report
B	Council's Planning Proposal
C	Gateway determination
D	Agreed properties (Department Prepared Document)
E	Summary of Proposed E Zone Mapping Changes Arising from Stage 3 Exhibition (Council Prepared Document)
F	Not Agreed Properties - Summary Table and Supporting Information (Council Prepared Document)
G	Submission supporting the proposal non-E-Zone properties (Department Prepared Document)
H	Council Deferred or Removed Properties (Department Prepared Document)
I	APP Team Recommendation – Rezone (Department Prepared Document)
J	Sites recommended for deferral of E Zone land (Department Prepared Document)
K	Independent Review Report
L	Independent Review Reasons
M	Not Agreed Properties to be Rezoned (Department Prepared Document)
N	Reasons for Decision Not Agreed Properties (Department Prepared Document)
O	Gateway Determination Report
P	Agency Submissions
Q	Regionally Significant Farmland
R	Consultation with Council under clause 3.36
S	Council's Response under clause 3.36
T	Council's Request for delayed commencement of LEP
U	Gateway Alteration (15 February 2021)
V	Gateway Alteration (20 February 2022)
Maps	LEP Maps

Attachment	Document
LEP	LEP Instrument
Council	Letter to Council advising of decision