

## Planning and Assessment

IRF21/86

### Gateway determination report

<b>LGA</b>	Byron Shire Council
<b>PPA</b>	Byron
<b>NAME</b>	E Zone Implementation Program Stage 3
<b>NUMBER</b>	PP-2020-3915
<b>LEP TO BE AMENDED</b>	Byron Local Environment Plan 2014
<b>ADDRESS</b>	2206 properties throughout the Local Government Area
<b>RECEIVED</b>	7 December 2020
<b>FILE NO.</b>	IRF21/86
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

Byron Shire Council is undertaking an environmental zone program to implement the Northern Councils E Zone Review Final Recommendations Report and incorporate the majority of deferred land into the Byron Local Environment Plan (LEP) 2014.

Stages one and two have been completed and this planning proposal is the third stage of the implementation program and applies to:

- sites where further agreed outcomes between landowners and Council have been reached to apply an environmental zone;
- deferred matter areas meeting the criteria for an environmental zoning (in part or all) and where;
  - landowner agreement could not be reached; or
  - there has been no response from the landowner;
- deferred matter areas that do not meet the criteria for an E Zone; and
- some non-deferred matter areas to apply an environmental zone.

### 1.2 Site description

The planning proposal applies to 2,206 lots or part lots within the Byron local government area (LGA). Figure 1 illustrates the location of the sites subject to the planning proposal and Appendix 5 of the proposal includes a detailed list of each property.

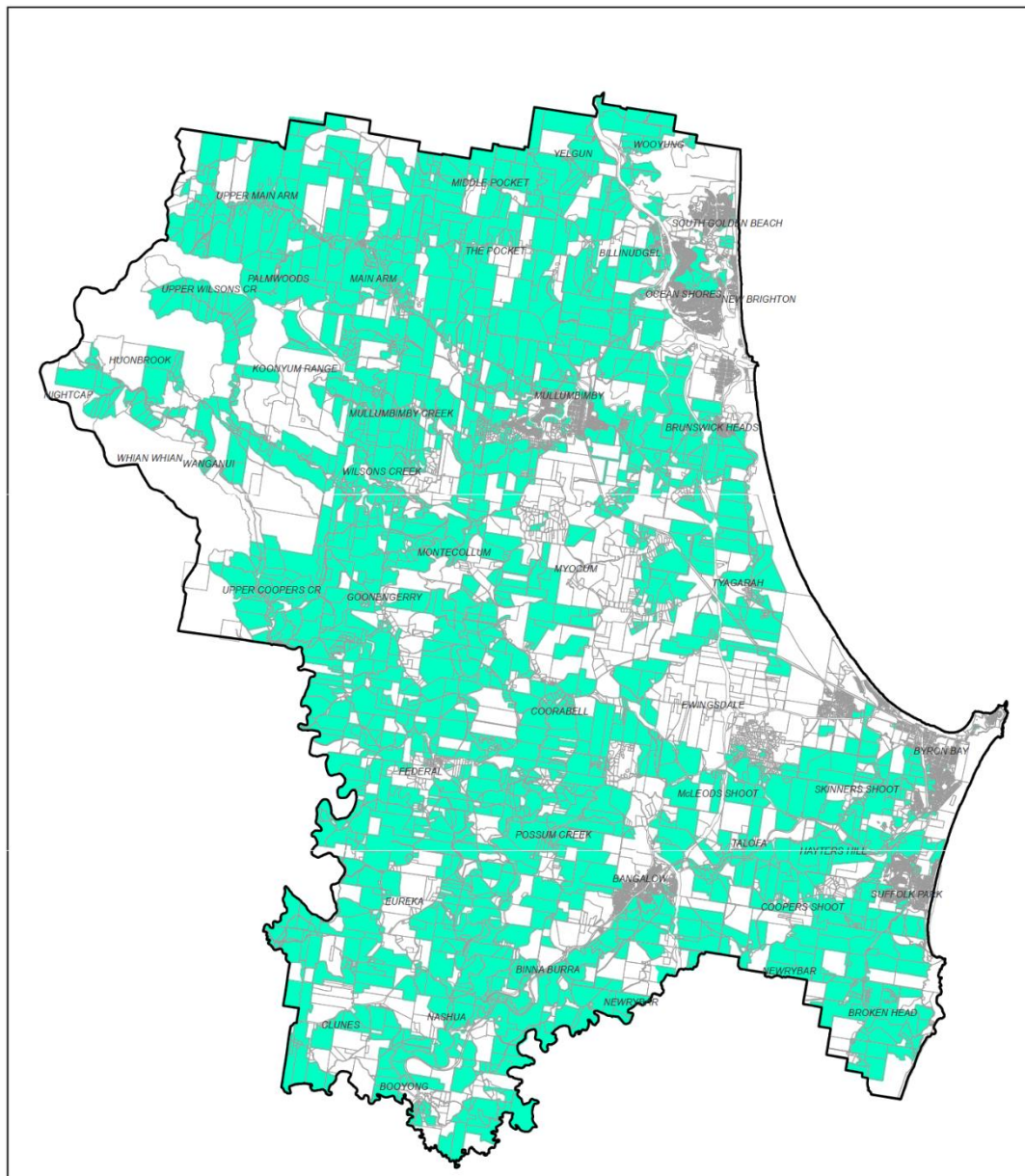


Figure 1 – Location of the 2,206 sites

### 1.3 Existing planning controls

The proposal includes land that is currently deferred from Byron LEP 2014 (and is subject to the provisions of Byron LEP 1988) and also non-deferred land which is subject to the provision 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.

### 1.4 Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions as:

- integration of the deferred subject land into Byron LEP 2014 will update the planning controls for the subject land and provide greater certainty to the landowners and the community; and
- the proposal will implement the Final Recommendations of the Northern Council's E Zone Review.

## 2. PROPOSAL

### 2.1 Objectives or intended outcomes

The objectives of the proposal are to:

- apply environmental zones to land in the Byron LGA consistent with the criteria for environmental zones in the Northern Councils E Zone Review Final 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 Northern Councils E Zone Review Final Recommendations.

### 2.2 Explanation of provisions

The proposal will be implemented by:

- amending the land application map to incorporate the land under the Byron LEP 2014; and
- amending the Byron LEP 2014 to apply the identified zonings and associated minimum lot size, height of building, floor space ratio, acid sulfate soil, drinking water catchment and multiple occupancy and community title provisions.

### 2.3 Mapping

The planning proposal includes maps that show all the affected properties along with the existing and proposed zones. The planning proposal also contains maps showing the consequential changes to other LEP maps resulting from the inclusion of the subject land into the LEP. Table 1 details the maps that are proposed to be amended as part of this planning proposal.

Table 1 – Maps proposed to be amended as part of this planning proposal

Map Type	Map Sheet
Land Application Map	LAP_001
Land Zoning Map	LZN_001B, LZN_002A, LZN_002B, LZN_002BA, LZN_002C, LZN_002CA, LZN_002D, LZN_002DA, LZN_003A, LZN_003B, LZN_003CA, LZN_003CB, LZN_003CC, LZN_003CD, LZN_003D
Height of Building Map	Whole of LGA map shown in planning proposal. Recommended condition of gateway to include HOB maps in planning proposal.
Floor Space Ratio Map	FSR_002BA, FSR_002CA, FSR_002DA, FSR_003CC, FSR_003CD
Lot Size Map	LSZ_001A, LSZ_001B, LSZ_002A, LSZ_002B, LSZ_002BA, LSZ_002C, LSZ_002CA, LSZ_002D, LSZ_002DA, LSZ_003A, LSZ_003B, LSZ_003C, LSZ_003CA, LSZ_003CB, LSZ_003CC, LSZ_003CD, LSZ_003D
Acid Sulfate Soils Map	ASS_002, ASS_002CA, ASS_003, ASS_003CC, ASS_003CD

Multiple Occupancy and Community Title Map	MOCT_002A
Drinking Water Catchment Map	DWC_001B, DWC_002B, DWC_003A, DWC_003B, DWC_003C

While the maps are adequate for public consultation and to show the intent of the planning proposal, it is noted that the maps will need to be revised prior to finalisation to ensure that all proposed planning controls are clearly labelled and to comply with the Department's standard technical mapping requirements.

Council has also indicated that it intends to provide additional detail to landowners during the public exhibition process, which is likely to include a map at a scale that shows each property and aerial photography. An online mapping tool will also be available to landowners and the wider community to provide better resolution and clarity. This approach has been used for the Stage 1 and 2 planning proposals and is considered to be appropriate.

### **3. NEED FOR THE PLANNING PROPOSAL**

The planning proposal has arisen from the finalisation of the Northern Councils E Zone Review. In September 2012, the then Minister for Planning announced a review of the application of E Zones and environmental overlays on the Far North Coast. Land that had been proposed for an E Zone was deferred from the Byron LEP 2014 until completion of the review.

The Northern Councils E Zone Review Final Recommendations Report was released in October 2015. This planning proposal seeks to incorporate into the Byron LEP 2014 some of the land that was deferred from the LEP. The planning proposal is the best means of incorporating the deferred land into the Byron LEP 2014 and applying appropriate zones, development standards and other planning controls. The consistency of the proposal with the Final Recommendations is addressed in the 'Strategic Assessment' section of this report.

The planning proposal includes amendments to 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.

#### Height of building

The proposed changes to the height of building map to include the currently deferred land in the Byron LEP 2014 will apply a 9m maximum building height to the affected land. This is considered to be appropriate as it is consistent with the 9m building height that applies throughout most of the LGA.

#### Minimum lot size

The proposed change to the lot size map applies a minimum lot size (MLS) to the land being incorporated into the Byron LEP 2014. The proposed MLS is generally consistent with the MLS of surrounding land. The proposed MLS is also consistent with the MLS used for other similar land in the LGA which is in the same zone. The proposed MLS changes are considered to be appropriate.

### Floor space ratio

The proposal includes multiple sites which are having a residential zone applied and require a floor space ratio consistent with other residential zoned land in the LGA.

The proposed floor space ratios are consistent with the floor space ratios applied to other residential zoned land with similar characteristics in the LGA and are considered to be appropriate.

### Acid sulfate soils

Extensive areas of the eastern portion of the Byron LGA contain acid sulfate soils. The application of acid sulfate soil mapping to the subject lands is considered to be appropriate.

### Drinking water catchment

A large area of the land in the west and south-west of the Byron LGA is in an identified drinking water catchment. The inclusion of properties within this area on the LEP drinking water catchment map is considered to be appropriate.

### Multiple occupancy and community title

The proposal will amend the Multiple Occupancy and Community Title Map (MO and CT Map) to include two sites which had previously been identified for multiple occupancy development. The sites are already partly mapped on the current MO and CT Map with the exception of the areas that were deferred from the Byron LEP 2014.

The proposed inclusion of the deferred land into Byron LEP 2014 necessitates these changes to the MO and CT Map. The proposal will not result in new opportunities for multiple occupancy developments on new sites. This is considered to be appropriate.

### Special purpose zones

It is proposed to apply a SP2 Infrastructure or SP3 Tourist zone to some sites. This is consistent with the other parts of those sites that are already within Byron LEP 2014 and reflects the current use of the land. The proposed SP zones are considered to be appropriate.

## **4. STRATEGIC ASSESSMENT**

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### **4.1 State**

The proposal will apply appropriate zones to the land in accordance with the Northern Councils E Zone Review Final Recommendations.

### Northern Councils E Zone Review Final Recommendations

The application of the proposed E2 and E3 zones to the subject land is consistent with the Northern Councils E Zone Review Final Recommendations. This consistency is detailed in **Attachment E**. A summary of the key aspects of the final recommendations follows:

- the planning proposal applies to 2,206 lots or part lots;
- 1164 lots will have rural, residential or special purpose zones applied to the land consistent with the primary use of the land;
- 1042 lots will have an E2 Environmental Conservation or E3 Environmental Management zone applied;



- of the 1042 lots having an environmental zone applied it is understood that:
  - 854 lots will be partly zoned environmental and will have the remainder zoned either rural, residential or another zone under Byron LEP 2014;
  - 8 lots will be partly zoned environmental and will have the remainder zoned either rural, residential or another zone under Byron LEP 2014 or remain deferred land 7(D) under the Byron LEP 1988;
  - 148 lots will be zoned entirely E2 Environmental Conservation;
  - 18 lots will be zoned entirely E2 Environmental Conservation and E3 Environmental Management; and
  - 15 lots will be zoned entirely E3 Environmental Management.

The proposed zones have been determined following an extensive community engagement process, which ran for 16 weeks between 9 October 2017 and late January 2018. Notification letters were sent to all potentially affected E Zone landowners requesting feedback in early October 2017, with follow-up letters sent in March 2018 and June 2019. Council wrote to all landholders that it had identified as having land with environmental values, regardless of whether this land was deferred from Byron LEP 2014.

Council also:

- 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.

In this regard and the 2,206 properties within the proposal, it is noted that community engagement process has resulted in:

- zone not agreed between landowner and Council: 39
- zone agreed to between Council and Landowner: 454
- R2 like for like: 52
- R5 like for like: 180
- no response or no confirmation required / received: 1481

The land subject to this proposal therefore comprises sites where the landowner has agreed to the proposed zone (as of November 2020), has disagreed with the proposed zone (39 properties) or has not indicated to Council that they object to the zone proposed to be applied to their land during the preliminary consultation.

#### *Primary use of land*

The planning proposal confirms that Council has determined the primary use by considering the land characteristics using aerial photography, visual inspections by Council staff and other property information (e.g. farmland rating) available to Council.

For land with 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: Applies to land zoned 7(a), 7(b), 7(j) and 7(k) under the Byron LEP 1988 as identified under the E Zone Review Final Recommendations; contains attributes that meet the criteria for an E2 or E3 zone or where commercial agricultural activities are not carried out and such areas are actively or passively managed for environmental purposes;
- Agriculture: Applies to 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; and
- Other: Remaining areas not covered by the above categories.

Further assessment of primary land use was also undertaken in consultation with landowners.

It is considered that Council's approach to identify the primary use of the land is appropriate. It is also noted private land may be zoned E2 or E3 despite the primary use and also being inconsistent with the criteria, but only if it is consistent with a negotiated development outcome (master plan, rezoning, development consent, designated offset areas) or at the landowner's request.

Landowners will be given the opportunity to review this information during the public exhibition period and may make a submission to Council should they have concerns with the identified primary use or zoning of their properties.

#### *E Zone criteria*

Where an E Zone is proposed, Council has confirmed that the land contains attributes that meet the criteria for an E2 or E3 Zone set out in the Final Recommendations. Of the 2206 lots which are the subject of the planning proposal, 1221 lots contain attributes that meet the criteria for an E Zone. Not all the lots containing vegetation attributes that meet the criteria are proposed to have an E Zone applied, as the zoning has also been based on the primary use of the land, which in some instances is rural.

Council has verified the attributes of the land that meet the E2 or E3 criteria using one or a combination 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. The field work underpinning these reports is not more than five years old; and
- a review of current (not more than five years old) high-resolution digital aerial photography that has been verified by one of the above verification techniques.

It is considered that Council's approach to identify and verify the site attributes that meet the criteria for an E2 or E3 zone is consistent with the Final Recommendations report.

#### *Existing environmental zones*

Land zoned either 7(a) Environmental Protection (Wetlands), 7(b) Environmental Protection (Coastal Habitat), 7(j) Environmental Protection (Scientific) or 7(k) Environmental Protection (Habitat) under the Byron LEP 1988 has been assessed and where the E zone criteria are verified, an E2 or E3 zone has been applied without the need for a primary use test in accordance with the Final

Recommendations Report. Not all land which is zoned one of the above '7' zones has had an E zone applied to it, as it was not demonstrated that an E Zone criteria had been met. This approach is also consistent with the Final Recommendations.

#### *E4 Zoned Land*

The planning proposal applies to land which was originally proposed to be zoned E4 Environmental Living in the draft Byron LEP 2014 however was deferred from the LEP as a result of the Northern Councils E Zone Review.

The Final Recommendations state that: *"Byron Shire Council is to prepare a planning proposal to apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP."*

The majority of the lots that were proposed to be zoned E4 in the draft LEP are proposed to be zoned either R2 or R5 by the planning proposal. This is considered to be appropriate.

There are two properties (59 Cemetery Road, Byron Bay, and 228 Broken Head Road, Suffolk Park) that were proposed to be zoned part E4 in the draft LEP which are now proposed to have a very small area zoned part E3 by this planning proposal (Figure 2 and 3).

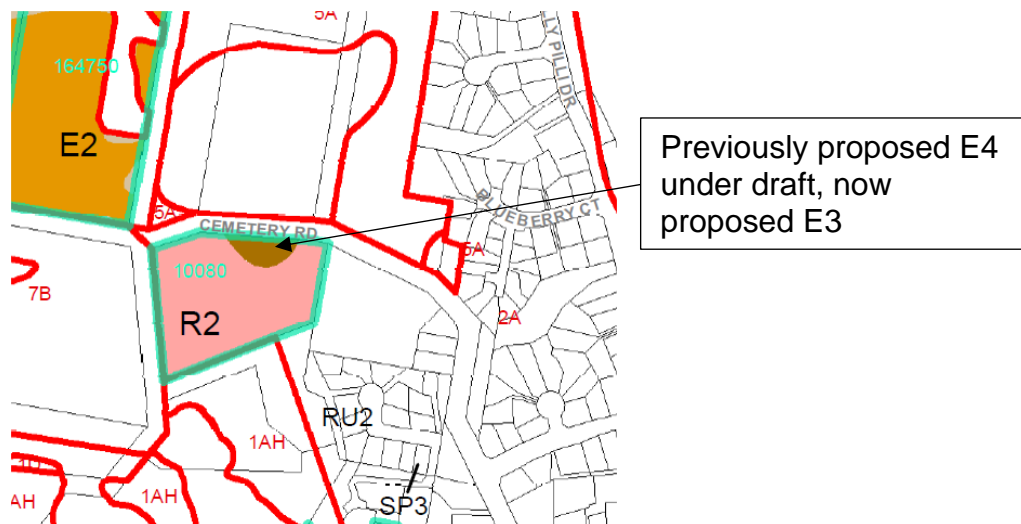


Figure 2 – 59 Cemetery Road, Byron Bay: Proposed E4 and current PP rezoning







Figure 4 – Proposed zone at 2 Chumbee Ave, Ocean Shores.

It is considered that Council's approach is acceptable in this instance. It is considered that the rezoning of sites originally proposed to be E4 to either residential and/or environmental is generally consistent with the recommendations as an appropriate zone has been applied based on the E Zone criteria and primary use of the land. The landowners will also have the opportunity to review and comment again on the proposed zoning during public exhibition.

#### *Mapped planning controls*

The planning proposal amends the drinking water catchment map in Byron LEP 2014 to include some of the subject land. The application of the drinking water catchment map is consistent with the approach to other land in the catchment which is already subject to the Byron LEP 2014, and is consistent with the Final Recommendations (number 12) which permits the application of a mapped planning control for matters of public health and safety such as drinking water catchments.

#### *Requirement to confirm zone and primary land use*

Landowners will have an opportunity to make a submission to Council on the proposed zonings during the public exhibition period for the planning proposal. It is recommended that the Gateway determination contain a condition requiring each landowner to be notified in writing of the public exhibition arrangements and advised that an independent review of the proposed zone for their property can be undertaken by the Department should they disagree with Council's assessment once Council has resolved to send the final planning proposal to the Department to be made.

## **4.2 Regional / District**

### *North Coast Regional Plan 2036*

The proposal does not release new areas of urban land outside the growth area boundaries or on land subject to natural hazards. The proposal does not rezone important farmland to an urban zone except where that farmland may have already been zoned for rural residential purposes and the zoning of the land is being converted to the R5 Large Lot Residential zone.

The proposal applies zones to deferred land consistent with the Northern Councils E Zone Review Final Recommendations as discussed previously in this report. In

many instances, this results in the application of a zone similar to the existing zone for the land.

It is noted that the planning 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. While Council has advised these zones reflect the nature of the land, it is recommended that consistency with the Regional Plan remain unresolved until consultation with the Department of Primary Industries and landowners has occurred, as it would not normally be considered appropriate to zone state and regional significant farmland for environmental purposes.

#### **4.3 Local**

The proposal is consistent with Council's Department approved Byron Rural Land Use Strategy 2017 and confirms that it applies environmental zones consistent with the Northern Councils E Zone Review, which was a requirement of the strategy approval.

The proposal is also consistent with the Byron Shire Local Strategic Planning Statement as it is working towards achieving Planning Priority 1, "Protect and enhance our biodiversity, ecosystems and ecology" and Sustainable Action 1, "Review and update LEP and DCP to reflect HEV vegetation and implement E Zones according to state government requirements".

#### **4.4 Section 9.1 Ministerial Directions**

The planning proposal is consistent with all 9.1 Directions except for the following:

##### *Direction 1.2 Rural Zone*

The proposal is inconsistent with this Direction as it rezones numerous properties from rural (1A, 1D) to an urban zone (R2, R5, SP3).

It is noted that these changes affect only a small portion of each lot to reflect the primary use of the land and/or to correct a historical zoning anomaly.

The proposal is also inconsistent with this Direction as it rezones 182 properties from 1(c) Small Holdings to R5 Large Lot Residential. While this change of zoning is a rezoning from a rural zone to a residential zone, the proposed R5 Zone is the Standard Instrument LEP equivalent of former rural-residential zones such as the 1(c) zone in the Byron LEP 1988. The R5 Zone best reflects the current use of the land for rural-residential purposes.

It is considered that the inconsistency of the proposal is likely to be of minor significance, however given the volume of properties subject to the proposal, it is recommended that this inconsistency remains unresolved until consultation with the Department of Primary Industries is undertaken to confirm the suitability of the proposal.

##### *Direction 1.3 Mining, Petroleum Production and Extractive Industries*

This Direction provides that a planning proposal authority (PPA) must consult with the Director General of the Department of Primary Industries to identify potential extractive industries in the vicinity of the proposal and consider issues that may lead to land-use conflict between the extractive industry and the proposed land use.

Appendix 2 of the planning proposal details 83 properties where the proposed E2 or E3 Zone is in close proximity to an identified resource and will encroach on the

identified “transition area” surrounding the resource. An additional 7 sites are within an ‘identified resource’ area.

Council has identified the need to consult with the relevant state agency, and until this consultation has been undertaken the inconsistency remains unresolved.

#### *Direction 1.5 Rural Lands*

This Direction applies to a planning proposal which affects land or changes the minimum lot size of land within a rural or environmental protection zone. The Direction requires that the proposal must consider or be consistent with or do certain matters as listed in clauses 4 and 5 of the Direction. Some of these requirements include:

- identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage and the importance of water resources;
- minimise the fragmentation of rural land; and
- support farmers in exercising their right to farm.

The proposal is inconsistent with this Direction as it is unable to satisfy all of the requirements of the Direction when applying appropriate zones to land in accordance with the requirements of the Northern Councils E Zone Review Final Recommendations. The proposal does not specifically promote opportunities for rural economic activities over all the subject land nor does it specifically include provisions to support farmers in exercising their right to farm.

It is considered that the inconsistency of the proposal is likely to be of minor significance, however given the volume of properties subject to the proposal, it is recommended that this inconsistency remains unresolved until consultation with the Department of Primary Industries is undertaken to confirm the suitability of the proposal, particularly as some areas of state and regionally significant farmland are proposed to be zoned for environmental purposes.

#### *Direction 2.1 Environment Protection Zones*

This Direction provides that a planning proposal must contain provisions that facilitate the conservation of environmentally sensitive areas and not reduce the environmental protection standards that apply to the land.

The proposal seeks to apply E2 and E3 Zones to land that contains native vegetation that meets the criteria for an E Zone under the Northern Councils E Zone Review Final Recommendations. It is therefore considered that the proposal is consistent with this aspect of the Direction.

The proposal however also rezones small areas of land currently zoned environmental protection to either a rural or urban zone. These rezonings from an environmental protection zone (a ‘7’ zone) to a rural or residential zone reduces the environmental protection standards for the land. As the changes are proposed in order to comply with the Northern Councils E Zone Review Final Recommendations, this inconsistency is considered to be of minor significance.

It is noted that three properties described in Table 2 below have a current environmental protection zone, an identified primary land use of “ENV” in the



proposal and have an identified E Zone criteria, however an E Zone has not been proposed.

Table 2 – Three subject properties with no environmental zones

Parcel No	Street Address	Primary Use	Current Zone/s	Proposed Zone	E Zone Criteria met
94240	44 Ti Tree Road, Byron Bay	Env/ Rural Living	1A, 7A	RU2	SEPP14
240048	Jones Road, Wooyung	Env/ Rural Living	1B1, 7K	RU1	L1
241929	54 Jones Road, Wooyung	Env	7K	RU1	L1

Council provided additional justification and rationale for these proposed zonings:

- 44 Ti Tree Road, Byron Bay (Figure 5)

An E Zone has not applied due to the small area and modified condition of vegetation. It is noted that the most intact vegetation is already captured by 'Coastal Wetlands' mapping in the Coastal Management SEPP, thus any future development in this area would require an EIS. Notwithstanding this, Council has confirmed that it has no objection to changing the area captured by 'Coastal Wetlands' mapping to an E2 Zone. As table 5.1 notes that the E Zone criteria met is "SEPP 14", it is recommended that a condition be imposed to reflect Council's agreement to amend the zoning of this property.



Figure 5: 44 Ti Tree Road, Byron Bay

- Jones Road, Wooyung (Figure 6)

An E Zone has not been applied due to the small area and highly modified condition of vegetation. Notwithstanding this, it is noted that the ownership of this land has recently transferred to NPWS. Due to the transfer in ownership it is recommended

that the site be zoned E1. This outcome was agreed to by Council and a condition is recommended.



Figure 6 – Jones Road, Wooyung

- 54 Jones Road, Wooyung (Figure 7)

The area of total vegetated area is less than 900m<sup>2</sup>, is highly disturbed and includes roads. There is no connectivity to the west. An E Zone has therefore not been applied due to the small area and modified condition of the vegetation. The proposed RU1 Zone is consistent with surrounding area. This approach is considered satisfactory subject to consultation with the NSW Biodiversity and Conservation Divisions.



Figure 7: 54 Jones Road, Wooyung

It is recommended that the proposal's overall consistency with this Direction remain unresolved until consultation with the NSW Biodiversity and Conservation Division is undertaken to confirm the suitability of the proposal.

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

This Direction provides that where a planning proposal proposes an E2 or E3 zone or an overlay and associated clause, the proposal must be consistent with the Northern Council E Zones Review Final Recommendations. As discussed previously



in this report, Council has prepared the planning proposal to be consistent with the Final Recommendations, subject to compliance with the Gateway conditions.

As compliance with the Final Recommendations requires formal consultation with the landowners and the opportunity for an independent review, it is considered that the consistency of the proposal with this Direction cannot be finalised at this stage. It is considered necessary to reassess the consistency of the proposal with the Direction after public exhibition has been undertaken and Council has had the opportunity to assess submissions made by landowners relating to the proposed E2 and E3 zones applying to their land.

#### *Direction 3.1 Residential Zones*

The proposal is inconsistent with this Direction as it will reduce the permissible residential density of land by rezoning parts of numerous properties from urban/residential/deferred matter to part environmental protection. It is considered that the inconsistency of the proposal with the Direction is of minor significance as the rezonings are in accordance with the Northern Councils E Zone Review.

#### *Direction 4.1 Acid Sulfate Soils*

The proposal is inconsistent with this Direction as some intensification of land uses on some of the subject land may be possible and the proposal is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as Byron LEP 2014 already contains appropriate provisions that will allow this issue to be appropriately addressed at the development application stage.

#### *Direction 4.3 Flood Prone Land*

The proposal is inconsistent with this Direction as it affects flood prone land and does not specifically include provisions that give 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 additional development being potentially permitted on flood prone land. It is recommended that the inconsistency remain unresolved until after consultation with the NSW Biodiversity and Conversation Division and that Council amend the proposal to identify the potential inconsistency.

#### *Direction 4.4 Planning for Bushfire Protection*

Many of the subject properties are identified as being bushfire prone. Consultation with the NSW Rural Fire Service is required after a Gateway determination is issued by the Direction. Until this consultation has occurred, the consistency of the proposal with this Direction remains unresolved.

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

The planning proposal includes the rezoning of state and regionally significant farmland to an environmental zone (E2 or E3). Specifically, the proposal includes the rezoning of approximately 65ha of state significant farmland (nearly all on the outer fringe) and approximately 1800ha of regionally significant farmland. Council noted that areas of significant farmland being rezoned are too constrained for rural activities and/or primary production uses and have satisfied the criteria for applying an environmental zone.

The planning proposal does not include specific details of the properties where the significant/important farmland is being rezoned to an environmental zone. It is

recommended that the Gateway determination be conditioned prior to consultation to ensure Table 5.1 of the planning proposal is amended to include a new column to indicate whether the property is identified as state and/or regionally significant farmland. It is also recommended that Department of Primary Industries be consulted with regarding the rezoning of important farmland to an environmental zone.

It is recommended that the consistency with this Direction remain unresolved until after consultation with the Department of Primary Industries.

#### *5.10 Implementation of Regional Plans*

The proposal is potentially inconsistent with this Direction as further information and consultation is required as discussed above in Section 4.2. Until consultation with the Department of Primary Industries has been undertaken to confirm the suitability of the proposed rezoning, consistency of the proposal with this Direction remains unresolved.

#### **4.5 State environmental planning policies (SEPPs)**

The proposal will affect land that is subject to several State Environmental Planning Policies (SEPPs). The proposal is not considered to be inconsistent with the provisions in any SEPPs.

### **5. SITE-SPECIFIC ASSESSMENT**

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#### **5.1 Social**

The proposal is not expected to have any significant adverse social impacts. The proposed zones appear to reflect the attributes and current uses of the land. The integration of the subject land into Byron LEP 2014 will simplify the planning controls for the land and provide landowners with greater certainty of the land uses that are permitted on their land.

As the Northern Councils E Zone Review Final Recommendations identifies that Aboriginal culturally significant lands as criteria for the application of an E Zone, it is recommended that the Local Aboriginal Land Council be consulted as part of the process to review the sites being rezoned.

#### **5.2 Environmental**

The proposal is not expected to have an adverse impact on critical habitat or threatened species, populations or ecological communities or their habitats. The zones proposed for the subject land reflect the attributes and current primary uses of the land. The proposed zones will not result in a significant increase beyond their current use or in development potential for land containing significant native vegetation.

The planning proposal noted that a high level assessment was carried out in accordance with the Contaminated Land Planning Guidelines. The assessment found that a more detailed contamination assessment was not warranted at this stage. If further development or intensification of land uses were proposed in the future a specific contamination investigation should be carried out. This is considered satisfactory.

#### **5.3 Economic**

The proposal is not expected to have any significant negative economic impacts. The proposed zones generally reflect the attributes and current uses of the land and

do not result in significant changes to the development potential of the land, nor do they identify existing rural land for urban purposes. The integration of the subject land into Byron LEP 2014 will simplify the planning controls for the land and provide landowners with greater certainty of the land uses that are permitted on their land.

#### **5.4 Infrastructure**

The proposal is not expected to create a need for additional public infrastructure. It seeks to include deferred land into the Byron LEP 2014 and apply zones and other mapped planning controls as necessary to reflect the current primary use of the land or the environmental attributes.

The proposed zoning will not result in a significant increase in the development potential of the land that would require additional infrastructure as the proposed zones will be similar to either the existing zones or current uses of the land. Should future development proposals require additional infrastructure requirements, these can be appropriately addressed at the development application stage.

### **6. CONSULTATION**

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#### **6.1 Community**

The planning proposal does not nominate a public exhibition period but notes that community consultation will be in accordance with the requirements of the Gateway determination and affected landowners will be notified in writing.

Council has conducted preliminary consultation with the community to determine whether landowners object to the zones proposed for their land. Council has advised that the proposal includes properties where the landowner has not responded to communications and where an agreement could not be reached between the landowner and Council.

Formal public exhibition will be required by the Gateway determination to ensure landowners have full and current information on the zones proposed for their land.

In accordance with *A guide to preparing local environmental plans*, it is considered that the planning proposal is not low impact as it applies to a large number of land parcels that have been deferred from Byron LEP 2014 for some time. A 28-day exhibition period is therefore recommended.

Consistent with the former Secretary's letter to Byron Council of 1 March 2016, which specified notification requirements for affected land owners, it is also recommended that all owners whose land is proposed to have an E Zone applied to it be notified in writing of the proposal and the public exhibition arrangements. Landowners are also to be notified in writing when Council has considered any submissions to the proposal and has resolved to forward the proposal to the Minister for finalisation. This letter should also advise that landholders will have 28 days to request an independent review of the zone proposed for their land by the Department.

#### **6.2 Agencies**

It is recommended that Council should consult with the following State agencies/organisations:

- 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.

## **7. TIME FRAME**

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The planning proposal includes a project timeline. To ensure an adequate time to complete the exhibition and reporting of the planning proposal, and for any reviews of proposed zones that the Department may need to undertake, a time frame of 12 months is recommended.

## **8. LOCAL PLAN-MAKING AUTHORITY**

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Council has requested that the Department retain plan-making functions for this proposal. Consistent with the former Secretary's letter to Byron Council of 1 March 2016 which specified plan making delegation arrangements, an authorisation to act as the local plan-making authority is not to be issued where a planning proposal seeks to apply an E zone to land. This is to ensure a consistent approach to the finalisation of zoning decisions consistent with the E Zone Review Final Recommendations Report. It is recommended that Council not be authorised to act as the local plan-making authority in this instance.

## **9. CONCLUSION**

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It is recommended that the planning proposal proceed subject to conditions as:

- integration of the deferred subject land into Byron LEP 2014 will update the planning controls for the subject land and provide greater certainty to the landowners and the community; and
- the proposal will implement the Final Recommendations of the Northern Council's E Zone Review.

## **10. RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 3.1 Residential Zones and 4.1 Acid Sulfate Soils are minor or justified; and
2. note that the consistency with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 1.3 Mining, Petroleum Production and Extractive Industries, 2.1 Environmental Protection Zone, 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 are unresolved and will require justification.

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

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. 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.

3. 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.
4. Consultation is required with the following public authorities:
  - 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.
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
6. 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.
7. Prior to public exhibition the planning proposal is to be amended as follows:
  - (a) Appendix 1 be amended to note that Direction 4.3 Flood Prone Land does apply to the planning proposal affects a number of flood prone properties;
  - (b) An E2 Zone is to be applied to 44 Ti Tree Road, Byron Bay (property ID: 94240) over the area of the site mapped as 'Coastal Wetland' under the Coastal Management SEPP;
  - (c) An E1 Zone is to be applied to Jones Road, Wooyung (property ID 240028); 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); and
    - iv. include a new column to indicate whether the property is identified as state and/or regionally significant farmland.



5/2/21

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8/2/2021

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