



Planning,
Industry &
Environment

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Gateway determination report – PP-2021-3615

To rezone part of 150 Lismore Road, Bangalow (Lot 4 DP 635505) to IN1 General Industrial and E3 Environmental Management

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal (no appendix) 16 September Planning Meeting
Council Resolution 26.2021.3.1
Appendix A – Flood Impact Assessment
Appendix B – Stormwater Management Plan
Appendix C – Preliminary Contamination Site Investigation
Appendix D – Traffic Impact Assessment
Appendix E – Road Safety Audit

Appendix F – AHIMS Search Results

Cultural Heritage Report

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Byron Shire
PPA	Byron Shire Council
NAME	150 Lismore Road, Bangalow
NUMBER	PP-2021-3615
LEP TO BE AMENDED	Byron Local Environmental Plan 2014
ADDRESS	150 Lismore Road, Bangalow
DESCRIPTION	Lot 4 DP 635505
RECEIVED	23/09/2021
FILE NO.	IRF21/ 3883
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to rezone part of 150 Lismore Road, Bangalow (Lot 4 DP 635505) from RU1 Primary Production to part IN1 General Industrial and part E3 Environmental Management and amend the floor space ratio and minimum lot size map for the part of the lot proposed to be zoned IN1 General Industrial, to facilitate future subdivision of the land for the purposes of an industrial estate.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Byron Shire LEP 2014 to facilitate the following controls on part of Lot 4 DP 635505:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU1 Primary Production	IN1 General Industrial E3 Environment Management
Minimum lot size	40ha	1000m ²
Floor space ratio	-	0.75:1

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The site is located at 150 Lismore Road, Bangalow, legally described as Lot 4 DP 635505. The site is located on the urban fringe of Bangalow, approximately 1.7km to the south west of the Bangalow Post Office (**Figure 1**).

The site is an irregular shaped lot, bounded by Lismore Road, Dudgeons Lane and the Casino-Murwillumbah Branch Line (a disused railway corridor) (**Figure 2**). The site is identified as Biophysical Strategic Agricultural Land (BSAL) (**Figure 3**) and is traversed by Maori Creek, which separates the south western portion of the Lot from the wider north eastern portion of the Lot.

Maori Creek is mapped as key fish habitat (**Figure 4**) and part of the land in proximity of Maori Creek is identified as flood prone (**Figure 5**). The presence of Maori Creek on the subject site requires consultation with Natural Resource Access Regulator (NRAR) in relation to the proposal.

The site is zone RU1 Primary Production and is surrounded by existing RU1 Primary Production zones to the north, east and west. To the south of the site, adjacent to Dudgeons Road, is an existing IN1 General Industrial zone and to the north of the site lies an R2 Low Density Residential zone (**Figure 6**).

The planning area, subject of this rezoning, relates to a section of the site, separated from the remainder of the lot by Maori Creek, adjoining the existing Bangalow Industrial Estate (**Figure 7**).

The planning area is a largely cleared section of grassland, with scattered trees. According to Council's report, this section of the site has been recently used for light agricultural purposes, such as grazing cattle, however the report outlines that the planning area is an isolated parcel of agricultural land, due to the geographical location, bounded by two roads, the disused railway line and Maori Creek. This is discussed in further detail in the body of this report.

Access to the site will continue to be provided from Dudgeons Lane and Council have indicated that all essential services are available to the site via an extension of existing services supporting the Bangalow Industrial Area, situated to the south west of the planning area.



Figure 1 Site context in relation to Bangalow Post Office (source: Six Maps)



Figure 2 Site context (source: Six Maps)

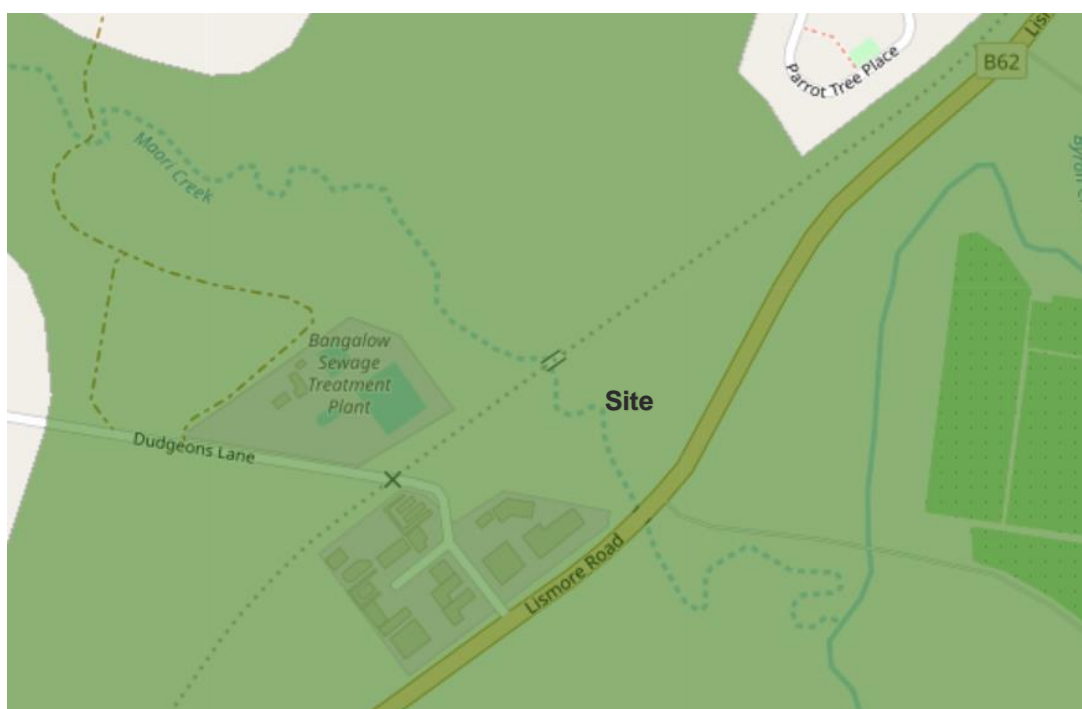


Figure 3 Biophysical Strategic Agricultural Land (source: North Coast Regional Plan 2036)



Figure 4 Flood prone land mapping (source: Council's Planning Proposal Report)



Figure 5 Key fish habitat (source: Council's Planning Proposal Report)

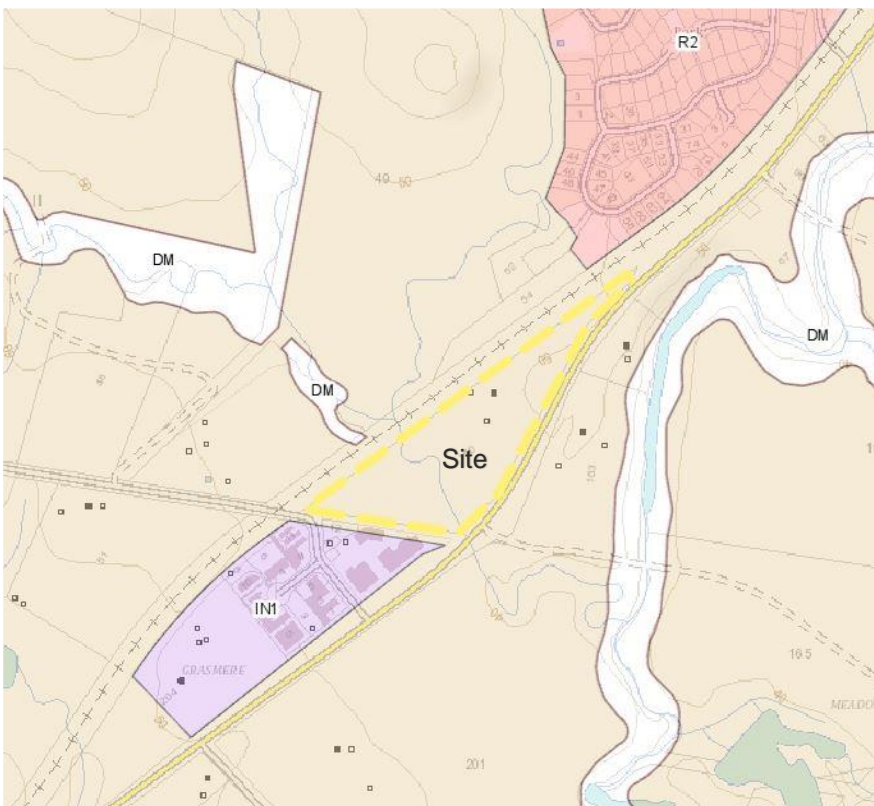


Figure 6 Surrounding zoning (source: NSW Government Spatial Viewer)



Figure 7 Planning area (source: Council's Planning Proposal Report)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the land zoning, lot size and floor space ratio maps, which are suitable for community consultation. All final maps will need to be prepared to the Department's Standard Technical Requirements prior to the plan being finalised.



Figure 8 Current zoning map



Figure 9 Proposed zoning map



Figure 10 Current lot size map

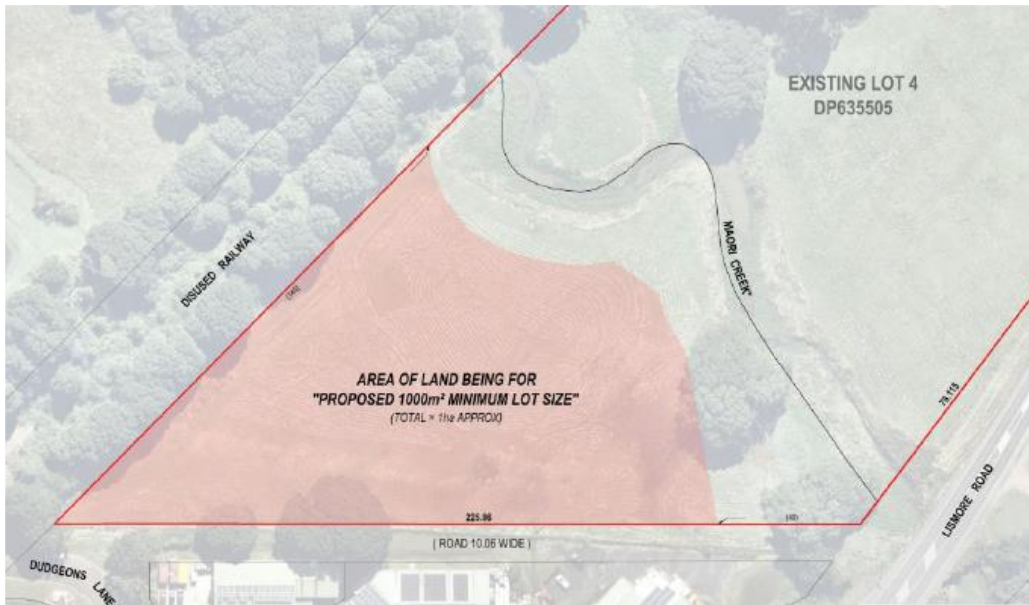


Figure 11 Proposed lot size map



Figure 12 Existing floor space ratio map



Figure 13 Proposed floor space ratio map

2 Need for the planning proposal

The planning proposal is the result of the Byron Shire Local Strategic Planning Statement and the Byron Shire Business and Industrial Lands Strategy (B&ILS), a Department endorsed strategy.

Both documents are discussed in further detail under section 3 of this report.

There is no other way of achieving the intended objectives of the proposal. Further subdivision of the land to facilitate an industrial estate cannot be achieved pursuant to the existing controls.

3 Strategic assessment

3.1 State

Northern Councils E Zone Review Final Recommendations Report

The final recommendations report sets out clear criteria and methodologies for the application of E zones. This was further supported by a section 9.1 Direction requiring councils to be consistent with the adopted recommendations and the directive from the Secretary on 1 March 2016 providing further guidance on how to apply the final recommendations.

It is noted that the landowner has agreed to apply an E zone to this land.

An assessment of the planning proposal against the final recommendations report is attached (**Appendix A**).

3.2 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2036.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Action 1.1	<p><i>Focus future urban development to mapped urban growth areas</i></p> <p>The site is not currently mapped in an urban growth area, however, it is identified in the Byron Shire B&ILS, a Department endorsed strategy. The Byron Shire B&ILS is discussed in further detail under section 3.2 of this report.</p> <p>As the proposal is located outside the mapped urban growth area, Council have addressed the Urban Growth Area Variation Principles in accordance with the requirements of the Regional Plan.</p> <p>Council cite the following reasons to support the variation to the urban growth area including:</p> <ul style="list-style-type: none"> - Location – adjoins existing Bangalow Industrial Estate; - Access to existing infrastructure – all services are available to the site via an extension to existing arrangements on adjoining Bangalow Industrial Estate; - The site is not mapped as high environmental value or heritage value; - It is unlikely that land use conflicts will occur as a result of this proposal as the site is isolated from the residue parcel by Maori Creek, is isolated from other farmland by the disused railway line and Lismore Road and adjoins an existing industrial area; - The proposal has been informed by a Flood Impact Assessment (FIA) which has established the location of the proposed IN1 General Industrial zone and is reflective of the scenarios within the study; - An E3 Environmental Management zone is proposed to be applied to the flood affected area to provide a flood buffer; - An Aboriginal Heritage report has been prepared which identifies that impact to Aboriginal cultural heritage as a result of the proposal is unlikely; - The site contains no listed European Heritage items; and - The site is not located in a coastal area and is not subject to coastal processes. <p>It should be noted that a key consideration of the variation principles is that the variation should avoid areas mapped as important farmland, unless consistent with the interim variation criteria prior to finalising the farmland mapping review. The land is mapped as important farmland, and to support the rezoning, Council have prepared an assessment against the Important Farmland Interim Variation Criteria.</p> <p>Council cite the following reasons to support the variation, in regard to important farmland, and support the rezoning proposal:</p> <ul style="list-style-type: none"> - The land is constrained by Maori Creek, the existing industrial estate, Lismore Road and the disused railway line; - Access is gained to the parcel from Dudgeons Lane, resulting in the planning area being isolated from the residue parcel and impractical for use as an agricultural parcel and not capable of supporting sustainable agricultural production; - The area of land proposed for rezoning is 1.1ha, which will have a minimal impact on the availability of agricultural land;

	<ul style="list-style-type: none"> - Minimal potential for land use conflict due to the distance between the proposal and the closest residential receiver; - Noise attenuation measures can be managed at the development application stage; - The industrial use will not impact upon agricultural production, due to the lands constraints and isolation (as previously mentioned); - All essential services can be provided to the land; and - Impacts on Maori Creek can be managed appropriately as can any resulting risk from flooding. <p>The Department is satisfied that adequate consideration has been given to the requirements of the Regional Plan in relation to the variation to the urban growth area. The proposal is supported by a Department endorsed strategy, which identifies the planning area as an investigation area for industrial expansion. Notwithstanding, further discussion in relation to the consistency with this plan has been discussed in greater detail under section 3.2 of this report.</p>
Action 2.1	<p><i>Focus development to areas of least biodiversity sensitivity in the region and implement the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of high environmental value</i></p> <p>The planning area is not identified as having high environmental value and the site itself is largely cleared grassland with scattered trees.</p> <p>An E3 Environmental Management zone is proposed to provide a buffer to identified key fish habitat along Maori Creek, as well as correspond to the flood extent on the land under two developed scenarios.</p> <p>The proposal is considered consistent with this action.</p>
Action 2.2	<p><i>Ensure local plans manage marine environments, water catchment areas and groundwater sources to avoid potential development impacts.</i></p> <p>The proposal is supported by a Stormwater Management Plan (SMP), which developed and assessed a conceptual stormwater quality and quantity system for the land and the proposed use, known in the report as the Bangalow Industrial Estate extension. The SMP considers the impact on local water catchments. The plan concludes that:</p> <ul style="list-style-type: none"> • the outcomes of the MUSIC modelling indicate that the stormwater objectives will be achieved for the development; • the inclusion of the new industrial area did not significantly increase the peak flows downstream from the site and a detention basin is not recommended in the current design; • Council's stormwater management targets for water quality can be achieved, subject to confirmation of assumptions and further design to integrate solutions into the overall civil design; and • stormwater quantity management was not required on the basis of the small additional contribution of peak flow from the site into Byron Creek, which generates the highest peak flood levels in the area. <p>An E3 Environmental Management zone is proposed to provide a buffer to identified key fish habitat along Maori Creek, as well as correspond to the flood extent on the land.</p> <p>The proposal is considered consistent with this action.</p>

Action 3.1	<p><i>Reduce the risk from natural hazards including the projected effects of climate change, by identifying, avoiding, and managing vulnerable areas and hazards</i></p> <p>The planning area is identified as flood prone and a Flood Impact Assessment (FIA) has been submitted in support of the application.</p> <p>As the site is flood prone, filling of the site would be required to raise ground levels above the 1% AEP (or 1 in 100 year/100 year Average Recurrence Interval) + freeboard, in order to meet Council's flood planning level and increase the amount of developable area.</p> <p>The report addresses relevant flood requirements for development, as outlined in Byron Shire LEP 2014 and Development Control Plans related to flooding. These generally relate to building requirements, such as floor levels, requirements for emergency management, and requiring development does not cause offsite impacts as a result of filling and or the placement of infrastructure.</p> <p>The assessment was undertaken for two fill scenarios in the hydraulic model. The FIA found that results for peak flood level impact for two developed scenarios do not exceed +/- 0.01m for all events (1%, 5% and 20% AEP) and that the likelihood of any substantive risk of contribution to cumulative impact is considered unlikely.</p> <p>According to the planning proposal report prepared by Council, the area proposed to be zoned IN1 General Industrial is reflective of the development scenarios within the flood study. The application of the E3 Environmental Management zone will act as a flood buffer to the IN1 General Industrial zone.</p> <p>The site is not identified as being subject to any other natural hazards.</p> <p>The proposal is therefore considered consistent with this Action.</p>
Action 6.5	<p><i>Promote and enable an appropriate mix of land uses and prevent the encroachment of sensitive uses on employment land through local planning controls.</i></p> <p>The proposal outlines the intention to rezone land within part of the site to IN1 General Industrial and E3 Environmental Management. The part of the site proposed for rezoning is located adjacent to the Bangalow Industrial Estate and is bounded by a disused railway line, Lismore Road and Maori Creek. The planning area is disconnected from the residue parcel due to separation between the two sections of the lot as a result of Maori Creek. Any agricultural use of the residue parcel or adjoining land appears to be provided an adequate buffer from the proposed IN1 General Industrial use. Notwithstanding, as discussed in detail in later sections of this report, an Agricultural Capability Assessment (ACA) is required to support the proposal, as an outcome of the Byron Shire B&ILS. Therefore, it is considered that any outstanding issues relating to land use conflict between the proposed IN1 General Industrial zone and surrounding agricultural land can be addressed by this report, prior to community consultation.</p> <p>In relation to impact to residential neighbours, the closest residential receiver is approximately 160 metres away and any arising noise impacts can be addressed at the development application stage.</p> <p>Therefore, in relation to residential receivers, the proposal is considered consistent with this Action for the purposes of a rezoning assessment and further consideration can be given to noise amelioration (if required) as part of the development application stage.</p> <p>In relation to agricultural uses, the ACA required as part of the Gateway Determination will provide further certainty in relation to the impact to surrounding</p>

	land and consistency with this Action will be determined, prior to community consultation.
Action 6.6	<p><i>Deliver an adequate supply of employment land through local growth management strategies and local environmental plans to support jobs growth.</i></p> <p>The site is identified as “Area 7” in the Byron Shire B&ILS as an investigation area for expansion of the existing Bangalow Industrial Estate. The Byron Shire B&ILS is a conditionally endorsed strategy. The proposal is considered consistent with this Action of the Regional Plan.</p> <p>This planning proposal seeks to rationalise the extension of the industrial land under the Byron Shire LEP. The Byron Shire B&ILS is discussed in further detail under section 3.2 of this report.</p>
Action 9.1	<p><i>Enhance the competitive value of the region by encouraging business and employment activities that leverage major inter-regional transport connections, such as the Pacific Highway, to South East Queensland and the Hunter.</i></p> <p>The proposal leverages an important inter-regional transport connection, given the Lot is situated alongside Lismore Road, which provides access through Lismore to the Bruxner Highway and through Bangalow to the Pacific Highway.</p> <p>The Regional Plan identifies the Lismore to Bangalow road network as an important corridor, requiring connectivity improvements and consistent management to be identified in a corridor strategy to ensure the safety and importance of the road is maintained.</p> <p>The draft Lismore to Bangalow Corridor Strategy 2016 identifies that traffic volumes along the Lismore to Bangalow Road corridor are approximately 7,000 vehicles per day in rural sections, demonstrating the important link the road plays between coastal and hinterland communities.</p> <p>Given the importance of the road network, access is proposed to be maintained in accordance existing arrangements, with Dudgeons Lane providing access to the estate. A Traffic Impact Assessment (TIA) and Road Safety Audit (RSA) have been prepared to demonstrate the impact of the proposal on the existing road network and any mitigation, if required.</p> <p>The TIA concluded that the proposed future subdivision should be approved with respect to traffic engineering matters. It should be noted that no subdivision works are proposed as part of this rezoning proposal, however the proposed subdivision could be supported to proceed to the development application stage as a result of the controls proposed, pursuant to this proposal.</p> <p>Additionally, the RSA made a number of suggestions in relation to additional signage, yellow lines and no parking signs, to improve safety along this road network in proximity of the turn onto Dudgeons Lane. Again, as no physical works are proposed as part of the rezoning proposal, this would need to be pursued at a future development stage.</p> <p>Given the identified significance of the corridor, it is appropriate that the proposal be referred to Transport for NSW for review and comment as part of the agency consultation process.</p>

Action 16.2	<i>Ensure Aboriginal communities are engaged throughout the preparation of local growth management strategies and local environment plans.</i>
Action 18.2	<p><i>Undertake Aboriginal cultural heritage assessments to inform the design of planning and development proposals so that impacts to Aboriginal cultural heritage are minimised and appropriate heritage management mechanisms are identified.</i></p> <p>The proposal is supported by an Aboriginal cultural heritage assessment, which has been prepared by the Tweed Byron Local Aboriginal Land Council and was informed by a site visit.</p> <p>The assessment found that the site has an agricultural history and the scope of works related to the rezoning presents a low risk to harm of Aboriginal cultural heritage.</p> <p>Notwithstanding, in order to ensure engagement with Aboriginal communities throughout the preparation of the local environmental plan, it is considered appropriate that the Local Aboriginal Land Council be given an opportunity to comment on the proposal as part of the agency consultation process.</p> <p>Additionally, further consultation with Aboriginal community members and traditional owners in relation to the proposal can be undertaken during the community consultation stage in accordance with Council's Community Strategic Plan, which is discussed in further detail under section 5.1.</p>
Action 21.2	<p><i>Maximise the cost-effective and efficient use of infrastructure by directing development towards existing infrastructure or promoting the co-location of new infrastructure.</i></p> <p>The proposal is considered consistent with this Action as Council have indicated that all essential services are available to the site, as existing services can be extended from the Bangalow Industrial Estate to the planning area. This is considered to maximise the cost-effective and efficient use of infrastructure, as the proposed development is directed toward existing services.</p> <p>The proposal is therefore considered consistent with this Action.</p>
Local Government Narrative	<p><i>Identify additional urban and employment investigation areas to secure future housing and employment land supply.</i></p> <p>The proposal is supported by the Byron Shire B&ILS, which supports the industrial zone applied to the Bangalow Industrial Estate to be extended to the adjoining planning area, subject of this proposal.</p> <p>Consistency with this study is discussed in further detail under section 3.2, however given the proposal is supported by a conditionally endorsed strategy, the investigation area has been identified to secure future employment land supply, despite not currently a mapped urban growth area.</p> <p><i>Protect important farmland at Eureka, Federal, Bangalow, Goonengerry, Coorabell, Tyagarah, Mullumbimby, Nashua and Billinudgel to support the agribusiness sector</i></p> <p>The proposal outlines a request to rezone important farmland from RU1 Primary Production to General Industrial. In consideration of this and in accordance with Action 1.1 and the Urban Growth Area Variation Principles, Council have addressed the Important Farmland Interim Variation Criteria to support the proposal. Further discussion in relation to the agricultural capability of the land is discussed under Section 3.2.</p>

3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is considered broadly consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>Action TA6 of the Byron Shire LSPS outlines the intention to finalise the Byron Shire B&ILS.</p> <p>The Byron Shire B&ILS was conditionally endorsed by the Department on 29 September 2020. A further revision of the strategy was provided to the Department by Council on 22 October 2020 and the Department issued an additional letter of endorsement on 11 November 2020.</p> <p>This action of the LSPS is relevant to the proposal as the Byron Shire B&ILS is the supporting strategy for this planning proposal and the rezoning of the planning area. This is discussed in greater detail below.</p>
Byron Shire Business and Industrial Lands Strategy 2020	<p>The planning area is identified in the Byron Shire B&ILS 2020 as Investigation Area 7. The site is identified as having a number of strengths/advantages, including:</p> <ul style="list-style-type: none"> - Being in single ownership; - Adjoining the existing Bangalow Industrial Estate; - Accessible from the existing Bangalow Industrial Estate; - Adjacent to a disused railway corridor; - Will result in minimal visual impact due to relatively flat topography and presence of existing industrial estate; and - Has multi direction access. <p>The study however specifically identifies the following key issues and further investigations that must be addressed as part of any future proposal on the land:</p> <ol style="list-style-type: none"> 1. Distance from Pacific Highway and access via Bangalow Village; 2. Aboriginal cultural heritage sensitivities; 3. Riparian buffer, flooding and stormwater drainage; 4. Important farmland classification – requiring detailed assessment of agricultural capability and impact on surrounding land as part of any planning proposal consistent with <i>Environmental Planning and Assessment Act 1979</i> Section 9.1 Direction 5.3: Farmland of State & Regional Significance on the NSW Far North Coast; 5. Traffic flow implications for Lismore Road; 6. Gateway to Bangalow landscaping to enhance visual amenity; and 7. Investigations to ensure that any proposed development is consistent with relevant State and regional planning provisions this may include the

management of areas of high environmental value, flooding and heritage/cultural significance.

It is noted that the planning proposal is supported by a number of reports/studies, to demonstrate consideration of the above matters, these include:

- FIA which addresses dot points 3 and 7;
- Cultural Heritage Report and AHIMS Search Results which addresses dot points 2 and 7;
- SMP which addresses dot points 3 and 7;
- TIA which addresses dot point 5; and
- RSA which addresses dot point 5.

Point 6 can be adequately addressed at a future development stage and is not relevant to a rezoning assessment.

It is considered that despite the requirements of the study in relation to dot point 1 and dot point 4, information addressing these key issues remains outstanding.

The TIA and RSA do not address the impact of the proposal in relation to the extension of the industrial area on Bangalow Village and the distance from the Pacific Highway. This is of particular importance given the TIA identifies that, assuming a 2% compound rate continues for the next 12 years (10 years following completion of the development), Lismore Road will carry approximately 10,300 vehicles per day past the site in 2033. The contribution of the proposal in relation to this increase and any associated impacts on Bangalow Village should be identified at the rezoning stage.

Additionally, no ACA has been submitted to support the proposal and address the requirements of section 9.1 Ministerial Direction 5.3 Farmland of State & Regional Significance on the NSW Far North Coast (which is discussed in further detail under section 3.3), nor the requirements as stipulated in Council's own strategy and reiterated in the Department's endorsement letter dated 11 November 2021. For the proposal to be in accordance with the strategy, both matters will need to be addressed, prior to proceeding to consultation.

3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.2 Rural Zones	No - Justifiably Inconsistent	<p>This Direction is relevant to the proposal as the planning proposal will affect land within an existing or proposed rural zone.</p> <p>The proposal is inconsistent with the Direction as the planning proposal rezones land from a rural zone to an industrial zone.</p> <p>The planning proposal is justifiably inconsistent with this Direction as the provisions of the</p>

		<p>planning proposal that are inconsistent are justified by the Byron Shire B&ILS which:</p> <ul style="list-style-type: none"> - gives consideration to the objectives of this direction, - identifies the land which is the subject of the planning proposal; and - is endorsed by the Secretary of the Department of Planning, Industry and Environment.
1.3 Mining, Petroleum Production and Extractive Industries	No - Justifiably Inconsistent	<p>This Direction is relevant to the proposal as the planning proposal has the effect of:</p> <ul style="list-style-type: none"> - prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or - restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development. <p>The planning proposal will prohibit extractive industries, currently permissible under the RU1 Primary Production zone, when it is rezoned to IN1 General Industrial.</p> <p>The inconsistency is considered to be of minor significance as the land is highly unlikely to be suitable for extractive industries, given it adjoins an existing watercourse and is an isolated and small, 1.1ha parcel, in close proximity to existing urban area, including existing industrial and residential zones.</p> <p>It is however recommended that Council consult with NSW Mining, Exploration and Geoscience to confirm the suitability of the proposal.</p>
1.5 Rural Lands	No	<p>This Direction is relevant to the proposal as the planning proposal will affect land within an existing or proposed rural or environment protection zone.</p> <p>Whilst the proposal is justified by a strategy, the strategy outlines that further work is required to justify the rezoning, particularly as the land is identified as important farmland in the North Coast Regional Plan.</p> <p>As no ACA has been submitted in support of the application in line with the recommendations of the Byron Shire B&ILS, it cannot be determined at this stage if the proposal is consistent with Direction as no consideration has been given to the objectives</p>

		<p>of this Direction, without the preparation of the ACA and the inconsistency with this Direction is considered to remain outstanding.</p> <p>Therefore, it is recommended that an ACA be prepared, prior to consultation. Additionally, it is recommended that the Department of Primary Industries – Agriculture is consulted as part of the agency consultation process.</p>
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Yes	<p>This Direction is relevant to the proposal as the proposal is located within the Byron Shire Local Government Area and introduces an E3 Environmental Management zone on the planning area.</p> <p>A proposal that introduces an E3 Environmental Management zone must apply the proposed zone consistent with the Northern Councils E Zone Review Final Recommendations.</p> <p>Appendix A to this report is a checklist, which demonstrates consistency with the Northern Councils E Zone Review Final Recommendations.</p> <p>Based on the attached assessment, the proposal is considered consistent with the requirements of this Direction.</p> <p>Council has advised that the landowner has agreed to the application of the E3 zone. However, consistent with the recommendations of the E Zone Review, it is recommended that Council notify any landowner whose land is proposed to have an E Zone applied in writing of the planning proposal and consultation arrangements.</p> <p>Additionally, it is recommended that when Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, the landowners whose land will be subject to an E zone must be notified in writing of Council's decision and advised that they have 28 days to notify the Department if they would like the Chief Planner to review the proposed zoning of their property.</p>

3.4 Integrating
Land Use and
Transport

No

This Direction is relevant to the proposal as the proposal will create a zone relating to urban land, including land zoned for industrial purposes.

Council have indicated that the planning proposal is partly consistent with this Direction as:

- the site is located adjacent to the existing industrial area in Bangalow;
- the traffic assessment concludes that the current road infrastructure is suitable for the rezoning and resulting development;
- the industrial area is located approximately 1600m from the town centre;
- there are currently no footpaths linked to the industrial area with vehicles likely to be the predominant mode of transport;

It is the Department's opinion that the proposal is inconsistent with this Direction as:

- the site is not located in an area that adjoins the existing Bangalow Urban footprint and is located 1600m from the town centre. The rezoning is located adjacent to the existing Bangalow Industrial Estate, which is an isolated parcel, leading to accessibility issues and car dependence;
- the TIA has not addressed the wider impact of the proposal, particularly in relation to the proximity of the site to the Pacific Highway and the impact of the proposal on the Bangalow Village (as is required in the Byron Shire B&ILS).

The proposal is supported by a TIA and a RSA. Both focus on the immediate impacts of the development on the road network, specifically Dudgeons Lane and Lismore Road and required improvements to improve safety and level of service.

The inconsistency with this Direction is considered to remain outstanding, until the TIA is updated to consider the impacts of the proposal, including the distance from the Pacific Highway and impact on Bangalow Village, in accordance with Council's Byron Shire B&ILS. Transport for NSW should also be consulted on the proposal in order for the proposal to satisfy consistency with this Direction.

4.3 Flood Prone Land	No – Justifiably Inconsistent	<p>This Direction is relevant to the proposal as the planning proposal alters a zone that effects flood prone land.</p> <p>Part of the site along Maori Creek is mapped as flood prone.</p> <p>The planning proposal is inconsistent with the Direction as a planning proposal rezones land within a flood planning area from Rural to an Industrial zone.</p> <p>Notwithstanding, the proposal is considered justifiably inconsistent as the proposal is supported by a FIA, which concludes that filling of the site would be required to raise ground levels above the 1% AEP + freeboard, in order to meet Council's flood planning level and increase the amount of developable area. This would need to be undertaken as part of future site works.</p> <p>An assessment was undertaken for two fill scenarios in the hydraulic model. The FIA found that results for peak flood level impact for two developed scenarios do not exceed +/- 0.01m for all events (1%, 5% and 20% AEP) and that the likelihood of any substantive risk of contribution to cumulative impact is considered unlikely.</p> <p>According to the planning proposal report prepared by Council, the area proposed to be zoned IN1 General Industrial is reflective of the development scenarios within the flood study. The application of the E3 Environmental Management zone will act as a flood buffer to the IN1 General Industrial zone.</p> <p>Therefore, whilst the proposal affects flood prone land, the provisions of the planning proposal that are inconsistent are considered to be of minor significance.</p> <p>It should be noted that, given the proposed zoning is General Industrial and higher risk uses could be permissible on the land by virtue of the zoning, Council will need to satisfy itself as part of future applications that the proposed use can be managed in a way that protects impacts to downstream users in the event of a flood above the 1% AEP + freeboard.</p> <p>Notwithstanding the demonstrated minor significance in accordance with the Direction, given the land is flood prone, it is appropriate the Biodiversity Conservation Division be consulted on the proposal as part of the agency consultation process.</p>
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5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	<p>This Direction is relevant to the proposal as the planning proposal affects land mapped as regionally significant farmland.</p> <p>Where this Direction applies, a planning proposal must not rezone regionally significant farmland for urban or rural residential purposes.</p> <p>The proposal outlines a request to rezone the land to industrial, an urban zone.</p> <p>The planning proposal may be inconsistent with this Direction, where the proposal can demonstrate it is consistent with the North Coast Regional Plan 2036.</p> <p>As discussed under section 3.1 and Table 4. The proposal is considered broadly consistent with the North Coast Regional Plan 2036. Notwithstanding, as mentioned in section 3.2 and Table 6, the proposal is currently inconsistent with Council's own strategy and an ACA is required to be prepared to support the proposal, in accordance with the Byron Shire B&ILS.</p> <p>Therefore, it is recommended that an ACA be prepared, prior to consultation. Additionally, it is recommended that the Department of Primary Industries – Agriculture is consulted as part of the agency consultation process.</p>
5.10 Implementation of Regional Plans	No – justifiably inconsistent	<p>This Direction is relevant to the proposal as the planning proposal affects land to which a Regional Plan has been released by the Minister for Planning.</p> <p>The planning proposal is inconsistent with this Direction as there is a minor inconsistency with the planning proposal and Action 6.5.</p> <p>As mentioned in the discussion under section 3.1, Table 4, an ACA is required to support the proposal, as an outcome of the Byron Shire B&ILS. Therefore, it is considered that any outstanding issues relating to any arising land use conflict between the proposed IN1 General Industrial zone and surrounding agricultural land can be addressed by this report, prior to community consultation.</p> <p>The ACA is required as part of the Gateway Determination will provide further certainty in relation to the impact to surrounding land.</p> <p>It is inappropriate to determine whether the inconsistency with this Direction has been resolved until the ACA has been prepared and provided to the Department, in accordance with</p>

the recommended conditions contained in the Gateway Determination.

3.5 State environmental planning policies (SEPPs)

The planning proposal is considered consistent with all relevant SEPPs. However, it is noted that SEPP (Primary Production and Rural Development) 2019 does not apply to the land, as the land is not identified as State significant agricultural land, per schedule 1 of the SEPP.

4 Site-specific assessment

4.1 Environmental

The planning area is not identified as having high environmental value and the site itself is largely cleared grassland with scattered trees. The site has not been identified as having biodiversity and ecological sensitivities by the supporting Byron Shire B&ILS.

An E3 Environmental Management zone is proposed to provide a buffer to identified key fish habitat along Maori Creek. Additionally, a SMP considers the impact of the proposal on local water catchments. The plan concludes that stormwater quality targets can be achieved.

Additionally, a supporting FIA concludes that filling of the site to raise ground levels above the 1% AEP + freeboard would be required in order to meet Council's flood planning level and increase the amount of developable area, which would be undertaken as part of future site works.

The assessment undertaken for two fill scenarios in the hydraulic model found that results for peak flood level impact for two developed scenarios do not exceed +/- 0.01m for all events (1%, 5% and 20% AEP) and that the likelihood of any substantive risk of contribution to cumulative impact unlikely.

The area proposed to be zoned IN1 General Industrial is reflective of the development scenarios within the flood study. The application of the E3 Environmental Management zone will act as a flood buffer to the IN1 General Industrial zone.

As previously mentioned, given the proposed IN1 zoning and potential for higher risk uses to be permissible on the land by virtue of the zoning, Council will need to satisfy itself as part of future development applications that the proposed use can be managed in a way that protects impacts to downstream users, in the event of a flood above the 1% AEP + freeboard.

It is proposed that the E3 Environmental Management zone be revegetated at the subdivision stage, in accordance with Byron Shire Development Control Plan 2014, B1 Biodiversity Chapter. A Biodiversity Conservation Management Plan will be required at this stage of the development.

The proposal is supported by a Preliminary Contamination Site Investigation, which notes that, whilst the site has been used for agricultural purposes for over the past 100 years, these have likely been low intensity uses, such as grazing. The report notes that no intensive agricultural uses are known to have occurred on the site and no historical structures are known to have existed.

Notwithstanding the findings of the desktop assessment, 21 samples were collected for laboratory analysis for heavy metals and Organochlorine pesticides, to determine whether any contamination was present on the site. Results from these samples found that soil contamination of the planning area has not occurred by Lead or Arsenic nor by any of the Organochlorine pesticides. Based on

the findings, the Investigation Report concludes that the planning area would not represent a significant risk of harm to end users of the proposed rezoning proposal.

Therefore, the environmental impacts of the proposal are considered to be minor and can be managed throughout the life of the proposal.

4.2 Social and economic

The proposal will facilitate the extension of an existing industrial area, on an area of land identified “Area 7” in the Byron Shire B&ILS. The Byron Shire B&ILS identifies that the area for the proposed extension has positive attributes/strengths, which makes it appropriate for consideration of the rezoning. These are discussed in detail under section 3.2, Table 6 of this report.

Additionally, the strategy outlines a number of matters which require resolution/further investigation as part of a planning proposal. As discussed in section 3.2, Table 6, it is considered there are two outstanding matters that require further justification at the rezoning stage, in accordance with Council’s conditionally endorsed strategy and to demonstrate that the proposal will contribute a positive economic and social impact.

The proposal is located on Lismore Road, a strategically important arterial road that links the Pacific Highway at Bangalow to the Bruxner Highway in Lismore. The road, as previously discussed, supports a high volume of cars weekly. The proposal is located to the south west of the Pacific Motorway Bangalow Exit Ramp. Byron Street dissects Bangalow Village in a south-westerly direction, before the interchange to Lismore Road, toward the site. Vehicles leaving the subject site and accessing the Pacific Motorway will navigate through Bangalow Village. Similarly, vehicles accessing the site from the Pacific Motorway will also travel through Bangalow Village.

The centre of Bangalow Village is identified as a Heritage Conservation Area, with a number of Heritage Items identified along Byron Street.

The Byron Shire B&ILS identifies that further consideration is required in relation to the distance from the Pacific Highway and access via Bangalow Village. The TIA and RSA focus on the immediate impacts of the development on the road network, specifically maintaining a satisfactory level of service to Lismore Road, intersection capacity, subdivision access on Dudgeons Lane and required improvements to safety.

Whilst these matters are considered important in relation to the economic impacts of the development, it is considered appropriate that, in accordance with Council’s Strategy, further investigations be undertaken in relation to any arising social impacts relating to the distance from the Pacific Highway and access via Bangalow Village, to ensure the proposed increase in traffic will not result in negative impacts to the surrounding area. Additionally, it is recommended that Transport for NSW be consulted on the proposal, given the significance of Lismore Road and review the studies prepared to support the proposal.

The proposal is supported by a Cultural Heritage Report, prepared by the Tweed Byron LALC, which found that the site has an agricultural history and the scope of works related to the rezoning presents a low risk to harm of Aboriginal cultural heritage. It is considered that there is a minimal likelihood of impact to Aboriginal cultural heritage, however consultation with the Tweed Byron LALC is recommended as part of agency consultation.

Noise impacts in relation to the proposal can be managed at the development application stage, given the closest residential receiver is located approximately 160 metres to the north east.

Finally, the proposal is not supported by an ACA, which is a requirement of Council’s Byron Shire B&ILS as the land is classified as important farmland and the impact of the planning proposal on surrounding land is recognised to require further investigation.

Council have indicated this was not provided as the minimal long-term agricultural capability of the site is evident, due to the scale, location and isolation of the site.

It is noted that the planning proposal provides assessment against the Urban Growth Area Variation Principles and the Important Farmland Interim Variation Criteria. However, this criterion fulfills a specific purpose for the consideration of the site to vary the urban growth area and is site specific in this regard. An ACA is required in order to establish the wider implications of the proposed rezoning in relation to the site and the surrounding existing important farmland.

The significance of the ACA to support the outcomes of the proposed rezoning is reiterated in Departmental correspondence to Council, dated 11 November 2020, which reiterates that a detailed assessment of agricultural capability and impact on surrounding land will be required as part of any planning proposal for the Bangalow investigation area, consistent with section 9.1 Ministerial Direction 5.3 Farmland of State and Regional Significance on the NSW Far North Coast.

Land use conflict and impact upon surrounding agricultural land will be addressed prior to community consultation through the preparation of the ACA.

As such, until such time as a supporting ACA is prepared in relation to the application, the economic impacts that may arise as a result of the proposal remain outstanding.

Therefore, it is recommended that an ACA be prepared, prior to community consultation. The planning proposal is to be amended to take into account any findings of the supporting ACA. Additionally, during agency consultation, the amended planning proposal is to be provided to DPI – Agriculture for review and comment.

4.3 Infrastructure

Access to the site will continue to be provided from Dudgeons Lane and Council have indicated that all essential services are available to the site via an extension of existing services supporting the Bangalow Industrial Area, situated to the south west of the planning area.

Additionally, clause 6.6 Essential services requires that development consent not be granted to development unless the consent authority is satisfied that essential services are available or adequate arrangements have been made to make them available, when required.

In this regard, it is considered that essential services will be made available to service the proposed IN1 General Industrial zone.

As the proposal is located outside the existing urban growth area, it is appropriate that consultation be undertaken with Essential Energy and Transgrid, to ensure adequate supply in the network to support the proposal.

Further, as the regional water supply authority for Byron (excluding Mullumbimby), Rous County Council should also be consulted on the proposal to confirm capacity.

5 Consultation

5.1 Community

Council has not outlined a proposed community consultation period in the planning proposal package, outlining that consultation will be undertaken in accordance with the Gateway Determination.

It is considered that, as the proposal requires the preparation of an ACA and update of the TIA post-Gateway and prior to community consultation, in order to achieve the requirements of the Byron Shire B&ILS, the proposal cannot yet be considered to be consistent with the strategic planning framework and cannot be considered a low impact proposal.

As the proposal is not a low impact proposal, the Gateway Determination specifies that the proposal must be exhibited for a period of 28 days.

5.2 Agencies

Council has nominated the following public agencies to be consulted about the planning proposal:

- Department of Primary Industries – Agriculture
- Department of Primary Industries – Fisheries
- Arakwal

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- Transport for NSW (TfNSW)
- Environment, Energy and Science Group - Biodiversity Conservation Division (BCD)
- Department of Primary Industries – Agriculture (DPI – Agriculture)
- Department of Primary Industries – Fisheries (DPI – Fisheries)
- NSW Mining, Exploration and Geoscience
- Tweed Byron Local Aboriginal Land Council (Tweed Byron LALC)
- Natural Resource Access Regulator (NRAR)
- Essential Energy
- Transgrid
- Rous County Council

In relation to the notification of the Bundjalung of Byron Bay-Arakwal People as traditional owners, it is recommended that Council undertake notification in accordance with the Community Strategic Plan (as required) during the 28 day community consultation period.

6 Timeframe

Council proposes a six month time frame to complete the LEP.

The Department recommends a time frame of nine months to ensure it is completed in line with its commitment to reduce processing times.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

As the proposal seeks rezoning of part of the site from RU1 Primary Production to E3 Environmental Management, the Department recommends that Council not be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The planning proposal is consistent with the North Coast Regional Plan 2036.
- The planning proposal is supported by the Byron Shire Business and Industrial Lands Strategy 2020, an endorsed local strategy.
- Potential impacts arising from the proposal, such as flooding, impact on the road network, Aboriginal cultural heritage, noise, and protection of key fish habitat have been identified in supporting studies and can be appropriately managed.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Prepare an Agricultural Capability Assessment in accordance with the Byron Shire Business and Industrial Lands Strategy 2020 and in accordance with the conditional endorsement provided by the Department to the Strategy, and to address inconsistencies with section 9.1 Ministerial Directions 1.5 Rural Lands and 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
- Amend the Traffic Impact Assessment to consider the impact of the proposal in relation to the distance from the Pacific Highway and access via Bangalow Village

9 Recommendation


It is recommended the delegate of the Secretary:

- **note** that the consistency with 9.1 Directions 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries, 4.3 Flood Prone Land are justified in accordance with the terms of the Direction. No further approval is required in relation to these Directions; and
- **agree** that the consistency with section 9.1 Directions 1.5 Rural Lands, 3.4 Integrating Land Use and Transport and 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 the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
 - Prepare an Agricultural Capability Assessment in accordance with the Byron Shire Business and Industrial Lands Strategy 2020; and
 - Amend the Traffic Impact Assessment to consider the impact of the proposal in relation to the distance from the Pacific Highway and access via Bangalow Village.
2. Prior to community consultation, the planning proposal is to be revised to address condition 1 and forwarded to the Department for review and approval.
3. Consultation is required with the following public authorities:
 - Transport for NSW (TfNSW)
 - Environment, Energy and Science Group - Biodiversity Conservation Division (BCD)
 - Department of Primary Industries – Agriculture (DPI – Agriculture)
 - Department of Primary Industries – Fisheries (DPI – Fisheries)
 - NSW Mining, Exploration and Geoscience
 - Tweed Byron Local Aboriginal Land Council (Tweed Byron LALC)
 - Natural Resource Access Regulator (NRAR)
 - Essential Energy
 - Transgrid
 - Rous County Council
4. The planning proposal should be made available for community consultation for a minimum of 28 days.
5. Consistent with the recommendations of the E Zone Review, Council must ensure that any landowner whose land is proposed to have an E zone applied is notified in writing of the planning proposal and consultation arrangements.

6. When Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, the landowners whose land will be subject to an E zone must be notified in writing of Council's decision and advised that they have 28 days to notify the Department if they would like the Chief Planner to review the proposed zoning of their property.
7. The timeframe for completing the LEP is to be nine months from the date of the Gateway determination.
8. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



08/10/2021

(Signature)_____
(Date)

Lucy Walker

Specialist Planning Officer, Local and Regional Planning, Northern Region



13/10/2021

(Signature)_____
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