

**Report No. 13.11 PLANNING - 26.2021.3.1 150 Lismore Road, Bangalow Submissions Report**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Sam Tarrant, Planner

5 **File No:** I2022/554

**Summary:**

10 This report presents the public exhibition outcomes for a planning proposal to rezone part of 150 Lismore Road, Bangalow from RU1 Primary Production to IN1 General Industrial and C3 Environmental Management.

The planning proposal was exhibited from 11 April to 11 May 2022. Six public submissions and six agency submissions were received.

15 A number of changes to the exhibited proposal are recommended including reducing the area of IN1 zoning and increasing the C3 zoning to provide a greater buffer to Maori Creek.

It is recommended that the amended planning proposal as attached to this report is adopted and submitted to DPIE for finalisation.

**NOTE TO COUNCILLORS:**

20 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

---

25 **RECOMMENDATION:**

30 **That Council adopts the amended planning proposal as attached to this report (Attachment 1 - #E2022/62680) to rezone part 150 Lismore Road, Bangalow to IN1 General Industrial and C3 Environmental Management, and forwards this to the Department of Planning, Industry and Environment for finalisation.**

**Attachments:**

1 26.2021.3.1 - Planning Proposal Post Exhibition Version, E2022/62680

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

- 2 26.2021.3.1 - Combined agency submissions, E2022/52801
- 3 26.2021.3.1 - Combined Public Submissions, E2022/44088
- 4 26.2021.3.1 - BCD and Applicant Flood Correspondence, E2022/67134
- 5 Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815

5

## Report

At the September 2021 Planning Meeting, Council received a report on a submitted planning proposal to rezone part of 150 Lismore Road, Bangalow from RU1 Primary Production to IN1 General Industrial and C3 Environmental Management.

- 5 The site is identified as an investigation area within Byron Business and Industrial Lands Strategy.

Council resolved **21-356** to proceed to public exhibition and consider a submissions report post exhibition with any recommended changes.

- 10 This report outlines the exhibition period, submissions received and recommended changes to the exhibited planning proposal.

The planning proposal was exhibited from 11 April to 11 May 2022. Notification was sent to adjoining landowners, relevant community groups and government agencies.

- 15 During exhibition, six public submissions were received including one submission that was received after exhibition had closed. In this case, the late submission has been included and considered with the other submissions.

The agency and public submissions have been summarised and addressed below. Copies of the submissions are attached to this report.

- 20 An extension to the gateway deadline was granted for this planning proposal due to the flood events delaying public exhibition and the changes recommended to the proposal from public exhibition. The gateway expires 13 November 2022.

## Agency submissions

**Department of Primary Industries Agriculture** – No objections

**Mining, Exploration and Geoscience** – No objections

- 25 **TransGrid** – No impact to TransGrid therefore no comment required

- 30 **Department of Primary Industries Fisheries** – Provides comments for Council's consideration. Notes that Maori Creek is a 4<sup>th</sup> order waterway and is considered Type 2 key fish habitat. Fisheries policy recommends a minimum buffer of 50m. Fisheries notes that Byron Creek, which is 500m downstream, is mapped as Type 1 key fish habitat and is mapped as potential habitat for the threatened species Southern Purple Spotted Gudgeon. DPI Fisheries recommends the C3 zone consistent with the Fisheries buffer policy.

- 35 The planning proposal has been updated to include a minimum 40m E3 zoned buffer from Maori Creek to the edge of the IN1 zoning with the buffer increasing to 70m at the southern portion of the lot. This is considered a suitable distance noting that there is currently very limited riparian vegetation and Byron DCP 2014, Chapter B1 Biodiversity

requires a vegetation management plan or biodiversity conservation management plan to be submitted with the subdivision development application, which will result in this area being re-vegetated.

**Transport for NSW** – Raises no objections and provided the following comments

- 5        - TfNSW are aware of feasibility studies undertaken by Byron Shire Council to consider transport-related uses of the corridor. The planning proposal should note this.
- 10       - The preliminary site investigation report supporting the planning proposal concludes negligible risk to human health. TfNSW is currently conducting environmental assessment for contamination along the rail corridor. TfNSW is not currently aware of contaminants in the rail corridor or on the common boundaries with the development site.

The use of this site for industrial purposes will not hinder any reactivation of the rail corridor. The planning proposal has been updated to reflect this.

- 15       **Biodiversity Conservation Division (BCD)** – During public exhibition BCD recommended an ecological assessment be made which included a survey to determine if Hairy Joint Grass was present on the site. The applicant provided an ecological assessment report and found no Hairy Joint Grass on site. A small soak area was identified on the site. BCD assessed this report and provided the following
- 20       recommendations.

- 25       - The soak area has high environmental value and should be zoned C2 Environmental Conservation including a 20m buffer
- A C3 Environmental Management zoned buffer for a distance of 20m should apply to both sides of Maori Creek
- The planning proposal should be updated to reflect the soak area and Maori Creek being included on the Biodiversity Values Map
- The flood impact study should be updated to provide details regarding the model calibration and utilise flood data from the February-March floods if available

- 30       BCD requested opportunity to review the proposal once updated with the above recommendations. The recommendations were addressed, and the amended planning proposal as presented in this report was sent to BCD who provided support for the proposal.

BCD sought clarification if data exists at the Binna Burra gauge for the February-March 2022 flood event to calibrate the flood model.

- 35       The applicants flood engineer confirmed there is data available from the February-March event at the Binna Burra gauge and that the peak is higher than the 2017 event. The inclusion of this recent event may improve model accuracy for larger events, although the model has been calibrated to a large event in 2017. The flood assessment report demonstrates an accurate relationship between the rating curve and the model predictions
- 40       indicating that the existing model is likely to provide an adequate representation for larger events than were previously modelled.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

Council does not have a recent adopted flood study model for this catchment, which places the onus on the applicant when preparing flood studies. The flood engineer notes that if the model was to be re-calibrated to include the 2022 event there would be a \$10-15k cost for the applicant and the work would take a minimum of 3 months to complete.

- 5 The additional time required to complete a model re-run would push the planning proposal past the gateway expiration. DPIE have stated in the gateway alteration letter that they are unlikely to support any further extension to the completion time frame for this planning proposal.

- 10 In addition, the most up to date flood information will be required at the development application stage to determine flood planning level on this site, which will utilise data from the 2022 event.

Furthermore the proposed industrial zoned area has been significantly reduced since the flood assessment was produced resulting in less fill required and the development area moving away from the lower lying areas adjacent to Maori Creek.

- 15 Given the demonstrated accuracy of the flood model, the reduction in proposed industrial land, further consideration at the development application stage and gateway time restraints, it is considered that the current model is acceptable to progress the rezoning.

- 20 No response was received from **Essential Energy, NRAR, TBLALC** or **Rous County Council**.

### Public submissions

Six submissions were received, one of which was accepted after exhibition had closed. The key points within the submissions have been summarised and staff have provided comment in the following table. The submissions are available in attachment 3.

Submission	Staff comment
An FSR of 0.75:1 is not the same as the adjoining estate as the DCP required a maximum building footprint of %50 of each allotment to minimise road parking.	<p>FSR is applied within the Byron LEP 2014. The adjoining industrial estate is mapped with a maximum FSR of 0.75:1 and a height limit of 9m. This forms the maximum building envelope permissible within the LEP.</p> <p>The DCP control referenced in this submission is taken from DCP 2010 Chapter B12. This DCP applies to land zoned under Byron LEP 1988 and does not apply to this site.</p>

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

Submission	Staff comment
<p>The flood impact assessment is now redundant due to the recent floods which covered half of the site.</p> <p>Green areas need to be retained to minimise impacts from flooding. The rezoning has potential to exacerbate flooding.</p>	<p>The flood study utilised the most up to date flood data available to model the flooding of the site and is likely to provide an adequate representation for larger events than were previously modelled. The report shows that the area to be rezoned for industrial use can be filled above the flood level without increasing off site flood impacts.</p> <p>The C3 zoned buffer has been significantly increased and will minimise the amount of fill required and limit industrial development to higher ground away from Maori Creek.</p>
<p>The rezoning will increase the size of the industrial estate considerably and increase traffic onto Lismore Road.</p> <p>The bulk and scale will cause amenity impacts and a significant increase in artificial light exposure from businesses.</p>	<p>The industrial zoned area has been reduced to provide a greater buffer to Maori Creek. Revegetation of the riparian area will reduce light spill from this development and the existing industrial area.</p> <p>The traffic assessment accompanying this proposal concludes that Lismore Road and turning lane is capable of facilitating this rezoning.</p>
<p>The proposal will have a visual impact as it is the gateway from the west of Bangalow and should be landscaped.</p> <p>There is an opportunity to landscape the area to mitigate visual impacts.</p>	<p>Part of the site is proposed to be zoned C3 Environmental Management. Planting of this area will be required at the development application stage.</p> <p>The site is small scale and directly adjoining an existing industrial estate. Future development of the site will be screened by the existing industrial estate and is unlikely to have a significant visual impact.</p>
<p>Is there any proof that additional industrial land is required in this area?</p>	<p>Direction 3: Long Term Supply (p.63) within the Business and Industrial Lands Strategy discusses the need for additional industrial land within the shire.</p> <p>Additional residential lands have come online over the last 5 years in Bangalow, including Clover Hill, The Meadows and Parrot Tree</p>

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

Submission	Staff comment
	Place creating additional demand for employment lands.
Byron Creek would be put at risk by having industrial use adjoining. The buffer is too small.	The buffer has been increased to a minimum of 40m and a 20m environmental zone on the eastern side. This area will require suitable plantings as part of the development application for subdivision.
Bangalow Progress Association supports the proposal and the inclusion of the C3 Environmental Buffer.	Noted.
Part of the adjoining industrial property is incorrectly zoned RU1 and should be corrected to IN1	<p>A small area on the eastern boundary of the existing industrial estate contains an RU1 zoning. This has carried over from a subdivision of the paper road which gave additional land to lots within the estate.</p> <p>This area should be rezoned IN1 for consistency, however this planning proposal has only considered the subject land at 150 Lismore Road. This inconsistency has been flagged to be corrected in a future LEP housekeeping planning proposal.</p>
Stormwater impacts on the adjoining properties should be considered with impacts from filling and planned revegetation.	<p>The flood study completed by BMT modelled the impact on flooding from filling the site and found no observable impacts to the existing industrial estate.</p> <p>Further assessment of stormwater and drainage is required at the development application stage.</p> <p>The details of revegetation within the C3 zone are not yet available and will be submitted and considered at the development application stage.</p> <p>The reduced IN1 zoned area will minimise the fill required.</p>

Submission	Staff comment
Concern regarding noise pollution from a large extension of the industrial estate. Currently noise impacts from the existing industrial estate.	<p>The area proposed for industrial land is over 400m from the closest residential zone.</p> <p>The area proposed for expansion is relatively small and is unlikely to significantly contribute to noise pollution.</p> <p>Conditions for hours of operation can be applied at the development application stage.</p>
The proposal is directly adjacent to neighbourhood streets and residential dwellings.	The area proposed for industrial land is over 400m from the closest residential zone. See above comments regarding noise impacts.
There is a possibility of the rail corridor being used as a rail trail in the future. This industrial estate provides a good opportunity to provide peripheral car parking to service the rail trail.	<p>This site has been identified within Byron Business and Industrial Strategy as an investigation site for industrial land.</p> <p>The rezoning will not hinder any future reactivation of the rail corridor.</p>

### **Changes to the exhibited planning proposal**

As a result of the comments received during public exhibition, a number of changes to the planning proposal are recommended including:

- 5       • Increase the C3 Environmental Management zoned buffer between Maori Creek and the IN1 land to a minimum of 40m.
- Include a 20m C3 Environmental Management buffer to the east of Maori creek
- Zone the 'soak area' identified in the Ecological Assessment to C3 Environmental Management
- 10      • Update the minimum lot size and floor space ratio map to reflect the change in zoning.
- Update the planning proposal to reference Maori Creek as being mapped on the Biodiversity Values map.
- Update the planning proposal to reflect the exhibition outcomes.

15      The updated minimum lot size and floor space ratio maps have not yet been produced. They will be updated to reflect the final adopted zone boundaries (Fig 1 below).

The changes are reflected within the post exhibition planning proposal contained in Attachment 1 (E2022/62680).

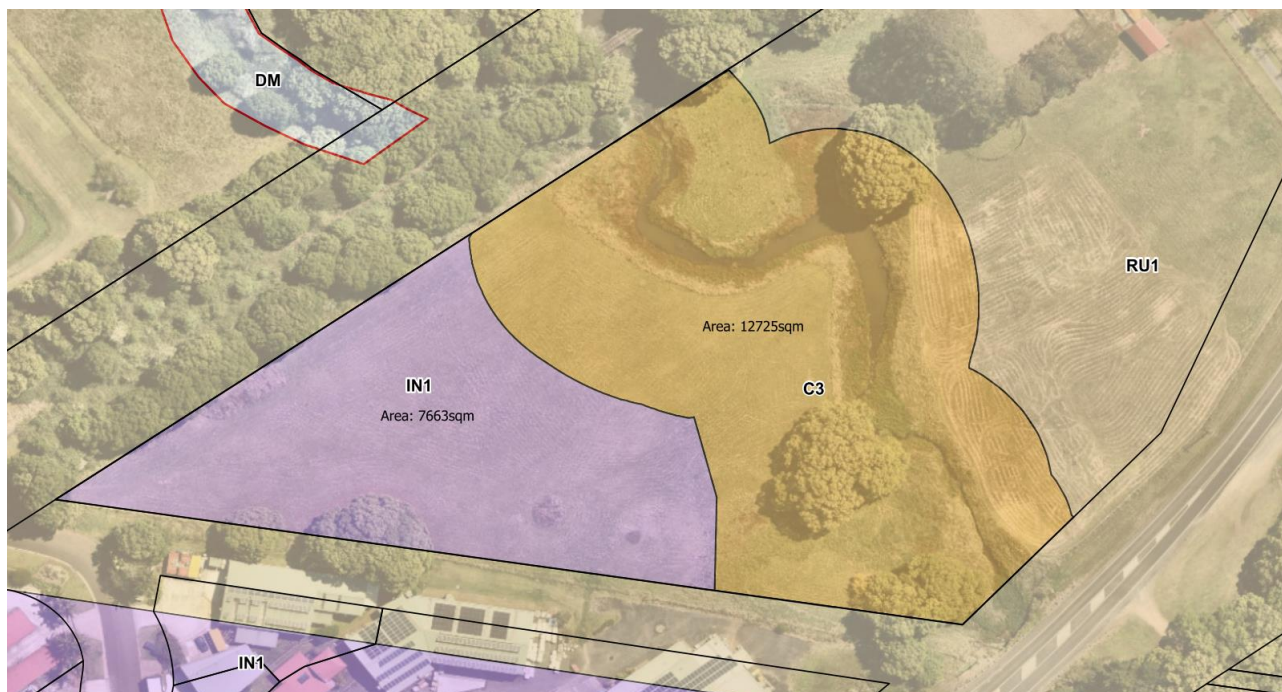


Figure 1: Updated land zoning map

## Next steps

- 5 It is recommended that Council adopt the planning proposal in Attachment 1 and forward it to the Department of Planning, Industry and Environment for finalisation.

The gateway for this proposal expires on 13 November 2022.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.5	Consider landowner planning investigations for possible new industrial and/or business park areas, as identified in the BILS.

**Recent Resolutions**

- **21-356** to proceed to public exhibition and receive a submissions report with any recommended changes.

**Legal/Statutory/Policy Considerations**

- 5 This planning proposal will amend Byron Local Environmental Plan 2014 in accordance with the relevant legislative requirements.

**Financial Considerations**

This is an applicant initiated planning proposal with all costs borne by the applicant.

**Consultation and Engagement**

- 10 As outlined within this report.