



IRF23/1404

Plan finalisation report – PP-2021-3615

To rezone part of 150 Lismore Road, Bangalow (Lot 4 DP 635505) to E4 General Industrial and C3 Environmental Management

May 2023

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Plan finalisation report – PP-2021-3615

Subtitle: To rezone part of 150 Lismore Road, Bangalow (Lot 4 DP 635505) to E4 General Industrial and C3 Environmental Management

© State of New South Wales through Department of Planning and Environment 2023 You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing [May 23]and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

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

Contents

1	Introduction.....	2
1.1	Overview.....	2
1.1.1	Name of draft LEP	2
1.1.2	Site description	3
1.1.3	Purpose of plan.....	4
1.1.4	State electorate and local member.....	4
2	Gateway determination and alterations	5
3	Public exhibition and post-exhibition changes	5
3.1	Submissions during exhibition.....	5
3.1.1	Community Submissions	5
3.2	Advice from agencies.....	6
3.3	Post-exhibition changes.....	9
3.3.1	Council resolved changes	9
3.3.2	Justification for post-exhibition changes.....	10
4	Department's assessment.....	10
4.1	Detailed assessment.....	11
4.1.1	Consistency with Section 9.1 Directions	11
4.1.2	Environmental Impacts	13
5	Post-assessment consultation	14
6	Recommendation.....	14
	Attachments	15

1 Introduction

Overview

1.1.1 Name of draft LEP

Byron Local Environmental Plan 2014 (Map Amendment No.5) seeks to rezone part of 150 Lismore Road, Bangalow (Lot 4 DP 635505) from RU1 Primary Production to part E4 General Industrial and part C3 Environmental Management and amend associated development controls applying to part of the land to be rezoned.

Employment Zone Reform and Conservation Zones Name Change

It should be noted that the original proposal sought to rezone the planning area to part IN1 General Industrial and part E3 Environmental Management. In accordance with Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021 which renamed environmental zones to conservation zones, the reference to the E3 Environmental Management zone has been updated to C3 Environmental Management.

Similarly, in accordance with the Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2022 which introduced the Employment Zone Reforms and repealed existing business and industrial land use zones, the former IN1 General Industrial zone has been translated to the new equivalent E4 General Industrial zone.

As these processes were undertaken outside of the planning proposal and represent an administrative change in regard to the name reference of both zones, to avoid confusion this report will refer to E4 General Industrial and C3 Environmental Management zones only.

Department's Interim Approach to Rezoning (December 2022)

The planning proposal was deemed to meet the criteria for categorisation as a High Flood Risk (Tier 3) proposal, consistent with the Department's Interim Approach to Rezoning (the interim approach) prepared following consideration of the NSW 2022 Flood Inquiry (the Inquiry) recommendations. The proposal was referred to the Department's Flood Advisory Panel (FAP) on 9 January 2023.

On 5 May 2023, the FAP provided recommendations that outlined that the proposal was appropriate to proceed (**Attachment I**). These recommendations have been incorporated into the final recommendations for this amendment and are discussed in greater detail under section 3.3.2 of this report.

Change to Planning Area

The following report details the matters raised throughout the life of this proposal and how these matters have sought to be resolved.

Figures 1 and 2 demonstrate the subject site and original planning area subject to the Gateway determination report.

As a result of submissions, the planning area has been extended slightly to the northeast side of Maori Creek, in order to apply a C3 Environmental Management zone as a buffer along this side of the creek line. This is discussed in greater detail under sections 3.2 and 3.3.1 of the report.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at 150 Lismore Road, Bangalow (Lot 4 DP 635505)
Type	Site
Council / LGA	Byron Shire Council
LGA	Byron Shire LGA



Figure 1 Subject site



Figure 2 Planning area

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	RU1 Primary Production	Part E4 General Industrial Part C3 Environmental Management
Minimum Lot Size	40ha	Part 1000m ² (E4 Zone) Part 40ha (C3 Zone)
Floor Space Ratio	-	Part 0.75:1 (E4 Zone)

1.1.4 State electorate and local member

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

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

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

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

It is understood that there have been meetings and communications with registered lobbyists with respect to this proposal. Mr Michael Teoh – CT Group acted on behalf of the Applicant for this proposal and dealt directly with the Flood Advisory Panel.

2 Gateway determination and alterations

The Gateway determination issued on 13/10/2021 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

The Gateway determination was altered on 1/07/2022 to extend the timeframe to complete the LEP to 13 November 2023 (**Attachment C**).

Council submitted the finalisation package to the Department 8 September 2022, which met the date outlined in the Gateway determination.

The Department further extended the timeframe on 18/11/22 to require completion of the LEP by 30 April 2023 (**Attachment D**). The delay in finalising this proposal arose as a result of the Flood Advisory Panel process that was required to be undertaken.

Given Council met the original LEP timeframe with its submission to the Department in September 2022, it is considered appropriate that the Department as the Minister's delegate finalise the planning proposal even after the completion date identified on the Gateway determination.

The Department's Active Management Meeting timeframe currently requires this proposal to be completed by 30 June 2023.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 11/04/2022 to 11/05/2022.

A total of six community submissions were received. The matters raised are summarised in **Attachment E** and under section 3.1.1 below.

Council also consulted with all agencies required by the Gateway determination. Submissions were received from DPI – Agriculture, Mining, Exploration and Geoscience, Transgrid, DPI – Fisheries and the Biodiversity Conservation Division and are summarised below.

Submissions during exhibition

3.1.1 Community Submissions

The primary issues raised in community submissions related to:

- Alignment of zone boundaries and development controls between the adjoining industrial land and the planning area;
- Flooding;
- Traffic impacts;
- Amenity impacts (visual impact, bulk and scale of proposed buildings, artificial light exposure, noise impacts);
- Demonstrated need for additional industrial land in Bangalow area;
- Environmental buffers;
- Stormwater impacts; and
- Opportunities to support adjoining railway corridor.

It is considered that a number of issues, including flooding, traffic impacts and environmental buffers that have been raised in community submissions are also addressed by agency submissions and are discussed further below. Councils' response to these issues are summarised under Table 4, to avoid repetition.

In relation to matters not covered in Table 4, Council has provided a summary of its response to concerns raised as part of these submissions in **Attachment E**. This includes:

- Alignment of zone boundaries,
- Amenity impacts,
- Demonstrated need to additional industrial land in Bangalow area,
- Stormwater impacts, and
- Alternate zones/uses for the site to support adjoining rail trail.

In regard to amenity impacts, the proposal has strategic merit in that it is supported by the North Coast Regional Plan 2041 and is identified in Council's Department approved local strategy. The local strategy identifies the need for this site in order to provide appropriate land for employment purposes. Council further noted that the rezoning of the proposal would not hinder future reactivation of the adjoining rail corridor and that any potential amenity impacts can be adequately addressed at the development stage.

The proposal will extend the existing industrial area located to the southeast and applies consistent development controls to the planning area as part of this proposal. The impact is therefore considered minimal when viewed from the existing and strategic context. It is noted that matters such as visual impact and bulk and scale of any future development can be adequately addressed at the development application stage.

Similarly, Council has provided an appropriate buffer between Maori Creek and the industrial zone. Further consideration of stormwater impacts can be addressed at the development application stage.

In relation to zone boundaries, one submission outlined an anomaly in the zone on the adjoining property and asked that this be rectified by this planning proposal. Council noted this submission but indicated this was outside the scope of the planning proposal. Council indicated this would be resolved as part of a future housekeeping planning proposal.

Councils' response to these matters is consider satisfactory.

Advice from agencies

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

- Transport for NSW
- Biodiversity and Conservation Division
- Department of Primary Industries – Agriculture
- Department of Primary Industries – Fisheries
- NSW Mining, Exploration and Geoscience
- Tweed Byron Local Aboriginal Land Council
- Natural Resources Access Regulator
- Essential Energy
- Transgrid
- Rous County Council.

Agencies listed below in Table 4 provided the following feedback. Agencies not listed in Table 4 did not respond to the request for comment on this proposal. Agency submissions are outlined in **Attachment F**.

Table 3 Advice from public authorities

Agency	Advice raised	Council response
Transport for NSW	<p>TfNSW raised no objection to the proposal, but provided the following comments:</p> <ul style="list-style-type: none"> Feasibility studies undertaken by Byron Shire Council to consider transport-related uses of the corridor. The planning proposal should note this. The preliminary site investigations report concludes negligible risk to human health. There is ongoing environmental assessment for contamination on the rail corridor, however TfNSW is not aware of contaminants in the rail corridor or on the common boundary with the development site. 	<p>The planning proposal has been updated, where relevant to reflect the submission as provided by TfNSW.</p>
Environment & Heritage Group - Biodiversity Conservation Division	<p>BCD requested Council prepare an ecological assessment, which included a survey to determine if Hairy Joint Grass was present on the site.</p> <p>An ecological assessment report was provided by the Applicant and submitted to BCD for review. No hairy joint grass was identified on site, however a small soak area was identified.</p> <p>BCD did not object to the proposal, but provided additional recommendations, including:</p> <ul style="list-style-type: none"> Zoning of the soak area to C2 Environmental Conservation, including a 20m buffer. 	<p>Council made the following changes to address the above recommendations:</p> <ul style="list-style-type: none"> A minimum 40m C3 zoned buffer to Maori Creek from the proposed E4 General Industrial zone, A 20m C3 buffer on the western side of the creek, Application of C3 zone for the soak area. <p>Council advised that the soak area did not meet the definition for an endangered ecological community (EEC) wetland definition and that the C3 zone was appropriate.</p>

Agency	Advice raised	Council response
	<ul style="list-style-type: none"> A C3 Environmental Management buffer with a distance of 20m be applied to both side of Maori Creek. Update the planning proposal to reflect the soak area and Maori Creek be included on the Biodiversity Values Map. 	<p>BCD requested opportunity to review the proposal updated with the above recommendations.</p> <p>Following this, Council report that BCD provided its support for the proposal proceeding based on the proposed amendments.</p>
Environment & Heritage Group – Biodiversity Conservation Division - Flooding	<p>BCD did not object to the proposal, however requested Council review and update the flood impact assessment to provide details regarding the model calibration that has been used to inform the flood modelling reliability and performance.</p> <p>The submission went on to request that if flood data is available from the February-March 2022 flood for Byron Creek at Bangalow, it is recommended that this data be used for model verification purposes.</p> <p>Following updates to the planning proposal (outlined above) BCD provided additional comment in its second submission, seeking clarification if data exists for the Binna Burra gauge for the February-March 2022 event to calibrate the flood model.</p>	<p>Council indicated that there is data available for the event/s referenced and that the peak is higher than the 2017 event, however that the accuracy could not be confirmed.</p> <p>Council justified that the model used to inform the flood impact assessment was already calibrated to a large event, being the 2017 event and that recalibration of the flood model to include the more recent events would be at considerable cost and take an additional period of time to complete, which would fall outside the time of the Gateway determination.</p> <p>As such, Council did not pursue recalibration of the data, as recommended by BCD.</p> <p>Consideration of flooding is further addressed under section 4.1.2.</p>
DPI – Agriculture	No objection was raised to the proposal.	No further action required.
TransGrid	No objection was raised to the proposal.	No further action required.
Mining, Exploration and Geoscience	No objection was raised to the proposal.	No further action required.
DPI - Fisheries	DPI – Fisheries did not object to the proposal, however noted that Maori Creek is a fourth order watercourse and is considered Type 2 key fish habitat.	Council noted that a minimum buffer of 40m has been provided from Maori Creek to the edge of the E4 General Industrial zone.

Agency	Advice raised	Council response
	<p>Fisheries policy outlines that a minimum buffer of 50m is recommended.</p> <p>Byron Creek, 500m downstream, is identified as Type 1 key fish habitat and potential habitat for the Southern Purple Spotted Gudgeon.</p> <p>It was recommended that the minimum buffer policy be applied.</p>	<p>A 50m buffer would likely have a significant impact on the viable use of this site for General Industrial purposes and it is noted that this is a recommendation only.</p> <p>Notwithstanding, Council proposed to increase the buffer to 70m at the southern portion of the lot where the soak zone is located. This will be zoned C3 and is in response to this and BCDs submissions.</p> <p>The approach is considered acceptable as it will provide appropriate buffers depending upon the significance of the different sections of the waterway, while still maintaining the viability of the site for the proposed industrial use.</p> <p>Further consideration will be required at the development application stage in regard to stormwater management, run-off and revegetation of the C3 zone.</p>

Post-exhibition changes

3.1.2 Council resolved changes

At Council's Ordinary Meeting on 25/08/2022, Council resolved to proceed with the planning proposal with the following post-exhibition changes:

- Increase the C3 Environmental Management zone buffer between Maori Creek and the E4 General Industrial zoned land to a minimum of 40m;
- Include a 20m C3 Environmental Management buffer to the east of Maori Creek (slightly increasing the planning area);
- Zone the 'soak area' identified in the ecological assessment to C3 Environmental Management;
- Update the minimum lot size and floor space ratio map to reflect the changes to the zones proposed on site;
- Update the planning proposal to reference Maori Creek as being mapped on the Biodiversity Values map; and
- Update the planning proposal to reflect the outcomes of the exhibition, detailed above.

The proposal as amended by Council is considered to resolve issues raised as a result of community and agency submissions and is satisfactory to proceed.

3.1.3 Justification for post-exhibition changes

The Department notes that the post-exhibition changes are as a result of responding to matters raised in submissions and are justified and do not warrant re-exhibition. It is considered that the post-exhibition changes:

- Are a reasonable response to comments provided by the public authorities and the community;
- Confirm that biodiversity, amenity and stormwater management matters can be adequately addressed further at the development stage; and
- Do not alter the intent of the planning proposal and are minor amendments to the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified). It should be noted this reassessment considers bushfire and flooding impacts, which were not considered relevant as part of the original Gateway determination but have become relevant through the life of this proposal.

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

- is consistent with the North Coast Regional Plan 2036 (as was relevant at the time);
- is consistent Council's Department approved Byron Shire Business and Industrial Lands Strategy 2020; and
- potential impacts arising from the proposal, including flooding, impact on road network, Aboriginal cultural heritage, noise and protection of key fish habitat have been adequately addressed.

Since the assessment of the proposal at the Gateway determination, the North Coast Regional Plan 2041 has been released and is now the relevant regional plan. Further discussion of the consistency of the proposal with this plan is contained under section 4.1.1.

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

Table 4 Summary of strategic assessment

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

	Consistent with Gateway determination report Assessment	
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 5 Summary of site-specific assessment

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

Detailed assessment

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

4.1.1 Consistency with Section 9.1 Directions

4.1.1.1 Section 9.1 Directions at Gateway Determination

Inconsistencies with Directions 1.2 Rural Zones, 1.3 Mining, Petroleum Production and Extractive Industries and 4.3 Flood Prone Land were agreed to by the Secretary's delegate at Gateway. The following discussion outlines the other section 9.1 Directions that were identified as being potentially inconsistent and were unresolved as part of the Gateway determination.

1.1 Implementation of Regional Plans (formerly 5.10 Implementation of Regional Plans)

The Gateway determination report considered the North Coast Regional Plan 2036, which was the relevant plan at the time. Since the issuing of the Gateway determination, the North Coast Regional Plan 2041 has been released.

It was noted that the proposal had a potential minor inconsistency with the North Coast Regional Plan 2036 as an Agricultural Capability Assessment had not been prepared to support the proposal. Further work has been undertaken by Council to prepare the Agricultural Capability Assessment (consistent with the requirements of the approved Byron Shire Business and Industrial Lands Strategy) which DPI – Agriculture have reviewed and confirmed that they have no objection to the proposal proceeding.

It is further noted that the land, following release of the 2041 Plan, is now identified within the Bangalow urban growth area.

It is therefore considered that the proposal is consistent with the regional plan and the proposal's potential inconsistency with this Direction has been resolved.

5.1 Integrating Land Use and Transport (formerly 3.4 Integrating Land Use and Transport)

This proposal was considered to be potentially inconsistent with the Direction as:

- The site is not located in an area that adjoins the existing Bangalow urban footprint and is located a distance from the town centre. The rezoning is located adjacent to the existing Bangalow Industrial Estate, which is an isolated parcel, and could lead to accessibility issues and car dependence; and

- The Traffic Impact Assessment did not address 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 Business and Industrial Lands Strategy).

The consistency of the proposal was to remain outstanding until Council prepared an updated Traffic Impact Assessment and consulted with Transport for NSW. Council prepared the required study and undertook consultation with Transport for NSW.

No objection was raised to the proposal by Transport for NSW. The proposal is therefore considered to be resolved and justified by a strategy approved by the Planning Secretary which:

- Gives consideration to the objectives of this direction; and
- Identifies the land which is the subject of the planning proposal.

9.2 Rural Lands (formerly 1.5 Rural Lands)

The proposal was considered to be potentially inconsistent with the Direction as the supporting Byron Shire Business and Industrial Lands Strategy outlined further work was required to justify the rezoning, particularly as the land is identified as important farmland in the North Coast Regional Plan.

The consistency of the proposal was to remain outstanding until Council prepared an Agricultural Capability Assessment and consulted with the Department of Primary Industries – Agriculture. Council prepared the required study and submitted this to the DPI – Agriculture.

No objection was raised to the proposal by DPI – Agriculture. The proposal is therefore considered to be resolved and justified by a strategy approved by the Planning Secretary which:

- Gives consideration to the objectives of this direction, and
- Identifies the land which is the subject of the planning proposal.

9.4 Farmland of State and Regional Significance on the NSW Far North Coast (formerly 5.3 Farmland of State and Regional Significance on the NSW Far North Coast)

The proposal was considered to be potentially inconsistent with the Direction as it sought to rezone regionally significant farmland for an urban purpose. The proposal may however be inconsistent with this Direction, where the proposal can demonstrate it is consistent with the North Coast Regional Plan 2041.

The proposal has been considered in regard to the North Coast Regional Plan 2036, and as discussed above, the North Coast Regional Plan 2041. Council was required by the Gateway determination to prepare an Agricultural Capability Assessment and to consult with the Department of Primary Industries – Agriculture. Council prepared the required study and submitted this to the DPI – Agriculture who have raised no objection to the proposal proceeding.

The proposal is therefore considered to be consistent with the North Coast Regional Plan 2041 and therefore this Direction.

4.1.1.2 Section 9.1 Directions at Finalisation Stage

4.3 Planning for Bushfire Protection

The planning proposal was not identified as being inconsistent with this Direction at the Gateway determination stage as it was not mapped as being bushfire prone at that time.

The bushfire prone land map for Byron Shire was however amended on 12 July 2022 after the issue of the Gateway determination to map the land as being bushfire prone. As such, this mapping resulted in the proposal becoming inconsistent with this Direction.

Written advice from the NSW RFS on 26 May 2023 confirmed that they have no objection to the proposal proceeding.

The inconsistency of the proposal with this Direction is therefore considered to be justified in accordance with the requirements of the Direction.

3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs

This Direction requires the application of a C3 Environmental Management zone to be consistent with the Northern Councils E Zone Review – Final Recommendations Report.

The proposal is consistent with this Direction as the landowner had agreed to the proposed C3 zone on the land. Council has provided written evidence dated 9 September 2021 (following the Council resolution) that agreement to the proposed zoning on the land was still provided by the Applicant (**Attachment H**).

4.1.2 Environmental Impacts

The impacts of the proposal are considered to remain consistent with the assessment undertaken for the issuing of the Gateway determination, with the exception of flooding:

Department's Interim Approach to Rezoning (December 2022)

The planning proposal was submitted, and Gateway determination issued in September 2021, prior to the major flood events of 2022 and release of the findings of the Independent Flood Inquiry. As such, the planning framework and consideration of flood impacts on the land has evolved and changed following the issuing of the Gateway determination and during the life of this proposal.

In December 2022, the Department released the Interim Criteria for flood affected properties in response to the NSW 2022 Flood Inquiry. The Department reviewed the proposal and determined it met a number of criteria that categorised it as a High Flood Risk (Tier 3) planning proposal. The proposal was subsequently referred to the Flood Advisory Panel (FAP) in late 2022 for consideration and advice as to how to proceed.

The FAP provided advice dated 5 May 2023, which outlined that the project is a logical extension of the existing industrial area and recommended that the project proceed, subject to appropriate consideration of individual applications by the relevant development consent authority.

The FAP provided a number of recommendations for future development applications that will need to be considered by the consent authority at the development stage. The advice is attached to this report (**Attachment I**).

The FAP specifically outlined that clause 5.22, which is proposed to be included as part of an Explanation of Intended Effect (EIE) led by the Department's flood policy team, would provide an opportunity to consider sensitive or hazardous land uses on the site at the development assessment stage. It was confirmed with the policy team handling this process that the likely timeframe for completion of the State Environmental Planning Policy Amendment to insert clause 5.22 into the councils that opted in and outlined in the EIE, which includes Byron LEP 2014, would be end of July 2023, subject to Ministerial approval.

It should also be noted that in the interim period, clause 6.4 of the Byron LEP 2014 provides consideration for land between the 1 in 100 average recurrent interval flood event plus 0.5m freeboard and the probable maximum flood for some sensitive uses. Further, clause 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* requires a consent authority to take into consideration any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority.

As such, it is considered that the future inclusion of clause 5.22 will be facilitated through a SEPP amendment and will apply to the Byron LEP 2014, in accordance with the recommendations of the FAP. Further, there are adequate controls within the planning legislation that would facilitate consideration by the consent authority at the development stage, where a development application is lodged prior to this amendment being finalised.

It is also noted that the FAP has confirmed that their recommendations were informed through consultation of a number of NSW government agencies and Technical Advisory Group. As such, the FAP did not consider that the proposal or the additional information provided by the Applicant directly to the Panel in support of the proposal required resubmission to BCD Flooding for consideration.

Based on the recommendations of the panel, it is considered flooding impacts have been addressed and that the proposal can proceed noting that consent authorities should take into consideration the recommendations of the FAP when assessing any future development on the land.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 6 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Three maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment J)</i>.</p> <p>Council confirmed on 13/06/2023 that it approved the draft and that the plan should be made (Attachment K).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended the delegate of the Secretary:

- **agree** that any potential inconsistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is justified; and
- **note** that the potential inconsistency with all other section 9.1 Directions have been resolved.

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

- The draft LEP has strategic merit being consistent with the North Coast Regional Plan 2041.
- The draft LEP has strategic merit being consistent with the Byron Shire Business and Industrial Lands Strategy, an endorsed local strategy.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



14/6/23

Craig Diss

Manager, Northern Region



14/6/2023

Jeremy Gray

Director, Northern Region

Assessment officer

Ella Wilkinson

Senior Planner, Northern Region

Attachments

Attachment	Document
A	Planning Proposal (Post Exhibition Version)
B	Gateway determination – 13 October 2021
C	Alteration of Gateway determination - 1 July 2022
D	Alteration of Gateway determination – 18 November 2022
E	Council Submissions Report
F	Agency Submissions
G	Gateway determination report
H	Landowner Agreement (Post Council Resolution)
I	Flood Advisory Panel Report
J	Consultation with Council on the terms of draft instrument under clause 3.36(1)
K	Council confirmation that it approves the draft LEP
Maps	Draft LEP Maps
LEP	Draft LEP Instrument
Council	Letter to Council advising of decision

