



Department of Planning and Environment

IRF22/73

## Gateway determination report – PP-2021-7395

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To introduce an affordable housing contribution clause  
to the Byron LEP 2014

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Attachment A - Planning Proposal
Attachment B – Gateway Determination
Attachment C – Letter to Council
Attachment D- Draft Byron Affordable Housing Contribution Scheme (AHCS)

# 1 Planning proposal

## 1.1 Overview

**Table 2 - Planning proposal details**

<b>LGA</b>	<b>Byron Shire</b>
<b>PPA</b>	Byron Shire Council
<b>NAME</b>	Affordable Housing Contribution Scheme
<b>NUMBER</b>	PP-2021-7395
<b>LEP TO BE AMENDED</b>	Byron Local Environmental Plan (LEP) 2014
<b>ADDRESS</b>	Various lots located at Byron Bay, Mullumbimby and Bangalow
<b>DESCRIPTION</b>	Various (refer to Planning proposal maps and AHCS)
<b>RECEIVED</b>	16/12/2021
<b>FILE NO.</b>	IRF22/73
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The Byron Shire Affordable Housing Contribution Policy (AHCP) was adopted by Council in August 2020 and sets a framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire Local Government Area (LGA) acquired through a planning agreement or delivered through an affordable housing contribution scheme pursuant to State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

This planning proposal (**Attachment A**) provides a framework to levy affordable housing contributions when land is being developed in accordance with the draft Byron Affordable Housing Contribution Scheme (AHCS) (**Attachment D**).

The objectives of the planning proposal are to:

- include Affordable Housing Contribution Scheme Maps in the Byron LEP 2014. The proposed maps will identify areas where contributions will be levied if the land is rezoned to permit residential development; and
- introduce local planning controls applicable to land identified on the proposed Affordable Housing Contribution Scheme Maps. Where viable, the planning controls seek to secure a portion of residential development for affordable housing.

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

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Byron LEP 2014 as follows:

- include a new clause that will require new residential development in certain mapped locations to make an affordable housing contribution in accordance with the AHCS;
- introduce new maps, being Affordable Housing Contribution Scheme Maps, to identify the land to which the new clause will apply; and
- amend clause 6.7(2)(b) Affordable Housing in Residential and Business Zones to enable a levy to be imposed in accordance with the AHCS.

It is important to note that proposal aims to enable contributions for affordable housing to be levied in the future if a land parcel identified in the draft AHCS is rezoned. The planning proposal does not seek to amend the zone or any other development standard applying to the land identified in the draft AHCS. Any change to the zone or other development standards will be subject to a separate planning proposal which is supported by strategic merit and site-specific investigations. It is considered appropriate therefore that the proposed AHCS maps are not included in this LEP amendment. Whilst it is important that the planning proposal and AHCS retain the mapping for illustration/exhibition purposes, they should not form part of Byron LEP 2014 until the subject land is rezoned under a future planning proposal to avoid any community confusion regarding the development potential of the land. It is recommended that the Gateway determination be conditioned accordingly.

Clause 6.7(2)(b) of the Byron LEP 2014 states that development consent must not be granted for the purposes of residential accommodation or to the subdivision of any land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone B2 Local Centre or Zone B4 Mixed Use unless the consent authority has considered the need for imposing conditions relating to providing, maintaining or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users. Council seek to amend the wording of this clause to ensure there is consistency between existing clause 6.7 and the proposed new AHCS clause.

Council was questioned about the need to amend clause 6.7(2)(b). Council advised that it was proposed to amend this clause because they had not yet undertaken a full analysis on whether there might be some application for the clause outside the mapped areas where the new contributions levy could apply. Council agree that the inclusion of reference to a AHCS levy is not appropriate at this stage as the current contribution plan does not apply to the areas where clause 6.7 applies. As such, Council support a condition to be imposed on the Gateway determination to require the proposal is updated to remove this component. In the future, Council will then undertake a separate review into the possible amendment or removal of clause 6.7.

It is also noted that the draft AHCS states that affordable rental housing created under the scheme is prohibited from the purpose of being used by the owner or tenant of the dwelling for short term rental accommodation (STRA). It is not considered appropriate that STRA is controlled through the AHCS, and it is recommended that both the draft AHCS and planning proposal are updated to remove this content prior to consultation. Instead, Council may wish to consider how STRA in any future affordable housing can be managed through an arrangement/agreement with the relevant Community Housing Providers.

## 1.4 Site description and surrounding area

The planning proposal seeks to amend the Byron LEP 2014 to include a new local provision that will enable Council to levy an affordable housing contribution on new development in certain locations (Table 3). The proposed new clause and accompanying map will identify where and how the affordable housing contribution will apply.

This clause applies to development on any land shown on the proposed Affordable Housing Contribution Scheme Maps. The currently proposed Affordable Housing Contribution Scheme Maps contain two categories of land being Tier 1 and Tier 2 (Figures 1, 2 and 3). The Tiers have been determined based on agency feedback received on the Byron Shire Residential Strategy (Residential Strategy), which is intended to provide the strategic justification for the rezoning of the land contained in the draft AHCS.

Tier 1 comprises land that subject to strategic merit and site specific investigations may be suitable to progress to a planning proposal to rezone.

It is noted that the proposed planning proposal for Lot 22 DP 1073165, 156 Stuart Street, Mullumbimby was subject to an independent peer review on behalf of the Planning Delivery Unit. Although this land has been included in the Tier 1 category, the independent peer review identified that significant additional work must be undertaken by Council to support and progress the proposal to the Gateway determination stage.

Tier 2 comprises land which is subject to future consideration and resolution of outstanding matters being:

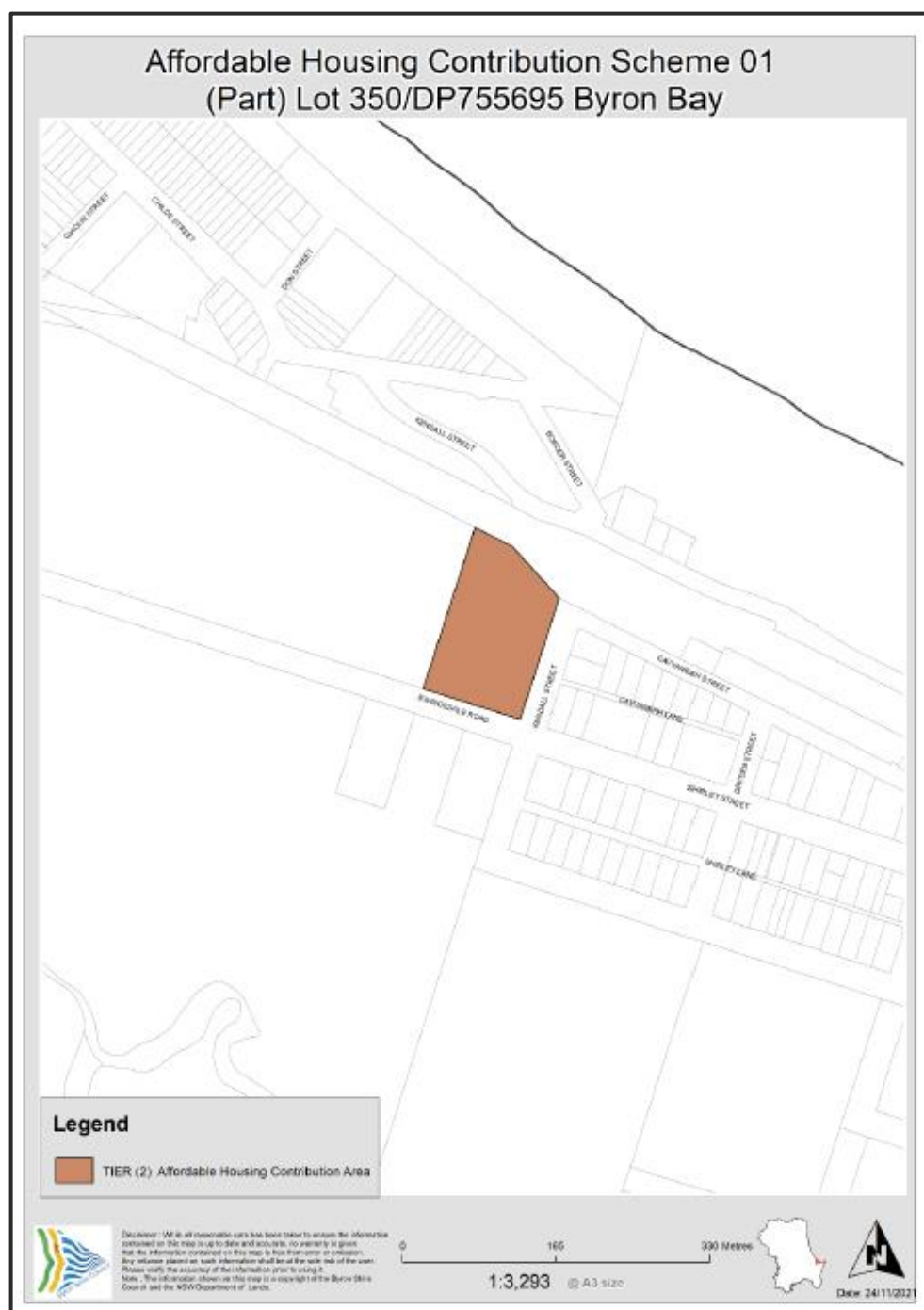
- The Department of Primary Industries (Agriculture) has objected to the inclusion of Lot 1 DP 1032298, 1B Anne Street, Mullumbimby and part Lot 2 DP 1032298, 75 New City Road, Mullumbimby as they do not consider that the land meets the North Coast Regional Plan 2036 Important Farmland Interim Variation Criteria. Further, they do not accept that the land represents a “minor rounding off” in accordance with the Farmland Protection Project Final Recommendations.
- The NSW Biodiversity and Conservation Division has recommended that a precautionary approach is taken to potential coastal hazard risks on part Lot 350 DP 755695 Ewingsdale Road, Byron Bay, until Council has completed a review and update of the 2013 coastal hazard definition work. Council has indicated that they have commenced work to provide an updated coastal hazard assessment as part of their Coastal Management Program.

**Table 3 – Land to which the draft AHCS applies**

Affordable Housing Contribution Scheme Map Affordable Contribution Area	Parcel location	Lot details	Tier
Byron Bay	Ewingsdale Road	Part Lot 350 DP 755695	2
Mullumbimby	1B Ann Street	Lot 1 DP 1032298	2
Mullumbimby	75 New City Road	Part of Lot 2 DP 1032298	2
Mullumbimby	156 Stuart Street	Part of Lot 22 DP 1073165	1
Mullumbimby	1660 Coolamon Scenic Drive	Lot 31 DP 1266932	1
Mullumbimby	1660 Coolamon Scenic Drive	Lot 1 DP 1209362	1
Mullumbimby	1632 Coolamon Scenic Drive	Lot 1 DP 748729	1

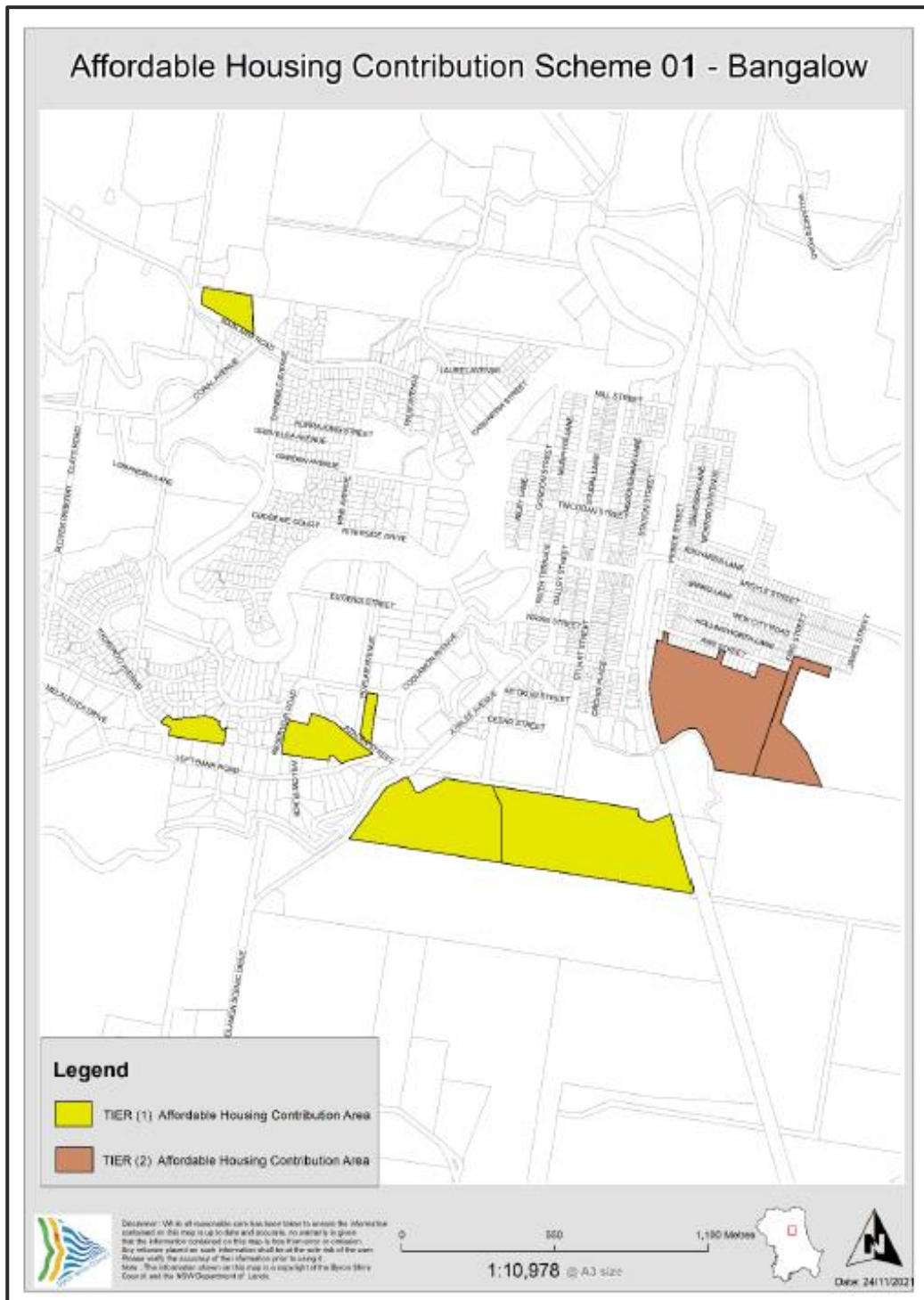
Mullumbimby	1634 Coolamon Scenic Drive	Lot 2 DP 748729	1
Mullumbimby	3 Poplar Street	Part of Lot 76 DP 755722	1
Mullumbimby	3 Poplar Street	Part of Lot 77 DP 755722	1
Mullumbimby	71 Main Arm Road	Part Lot 1 DP 1222185	1
Mullumbimby	1 Azalea Street	Part of Lot 188, Lot 1 DP 1159861 and Lot 138 DP 755722	1
Mullumbimby	Tuckaroo Avenue	Part of Lot 32 DP 1169053	1
Bangalow	16 Ballina Road	Lot 1 DP614715	1
Bangalow	14 Ballina Road	Lot 3 DP702168	1
Bangalow	2 Ballina Road	Lot 1 DP1125857	1
Bangalow	2 Ballina Road	Lots 23 DP6478	1
Bangalow	4 Ballina Road	Lots 24 DP6478	1
Bangalow	4 Ballina Road	Lots 25 DP6478	1
Bangalow	6 Ballina Road	Lot 7 DP111819	1
Bangalow	6 Ballina Road	Lot 1 DP301392	1
Bangalow	8 Ballina Road	Lot 1 DP371410	1
Bangalow	10 Ballina Road	Lot 1 DP974496	1
Bangalow	12 Ballina Road	Lot 1 DP931195	1
Bangalow	3 Ballina Road	Lot 23 DP1070522	1
Bangalow	5 Ballina Road	Lot 1 DP 1069720	1
Bangalow	Ballina Road	Lot 2 DP233797	1
Bangalow	7 Ballina Road	Lot 2 DP313475	1
Bangalow	9 Ballina Road	Lot 1 DP233797	1
Bangalow	11 Ballina Road	Lot 1 DP961064	1
Bangalow	13 Ballina Road	Lot 1 DP613935	1
Bangalow	15 Ballina Road	Lot 1 DP1086364	1
Bangalow	31 Ballina Road	Part of Lot 2 DP 1260751	1

Bangalow	32 Satinash Crescent	Lot 182 DP1000507	1
Bangalow	26 Satinash Crescent	Lot 348 DP 755695	1
Bangalow	68 Rankin Drive	Lot 11 DP807867	1
Bangalow	68 Rankin Drive	Part of Lot 261 DP 1262316	1
Bangalow	57 Rankin Drive	Part of Lot 262 DP 1262316	1



**Figure 1 - Bangalow draft AHCS area (source: Planning proposal)**





**Figure 2 – Mullumbimby (incorrectly title Bangalow) draft AHCS area (source: Planning proposal)**



**Figure 3 - Bangalow draft AHCS area (source: Planning proposal)**

## 1.5 Mapping

The planning proposal seeks to include new maps in the Byron LEP 2014, being Affordable Housing Contribution Scheme Maps to identify land to which the affordable housing contribution clause will apply.

As detailed in Section 1.3 of this report, it is not considered appropriate that the proposed AHCS maps form part of this LEP amendment and their retention within the documents is recommended for illustration/exhibition purposes only. The Gateway determination is conditioned accordingly.

It is also noted that the map relating to Mullumbimby (Figure 2) has been incorrectly titled as Bangalow and will need to be updated prior to public exhibition. This same map is also incorrectly titled in the draft AHCS which accompanies the planning proposal. This will also require updating prior to exhibition.

Once the above changes have been made, it is considered that the maps are suitable for community consultation.

## 1.6 Background

Byron Shire Council has indicated that they have undertaken extensive research and a needs assessment over a period of time in relation to affordable housing. They suggest that their analysis has consistently found that there is substantial and growing unmet affordable housing need in the community that cannot be met without intervention. The draft AHCS aims to enable the direct creation of affordable housing through government funding of social housing.

The draft AHCS identifies that housing stress among all relevant income groups in the Byron Shire LGA is far higher than average with:

- 85% of very low-income renting households in the LGA compared with 77% for Rest of NSW;
- 80% of low income renting households in the LGA compared with 59% for Rest of NSW; and
- 71% of moderate income renting households in the LGA compared with 31% for Rest of NSW.

Section 7.32 of the Environmental Planning and Assessment Act 1979 (the Act) allows Council to levy contributions for affordable housing if a State Environmental Planning Policy (SEPP) identifies a need for affordable housing in the LGA. In February 2019, State Environmental Planning Policy No. 70 - Affordable Housing (Revised Schemes) (SEPP 70) was amended to apply to all councils across NSW. The provisions of SEPP 70 have now been consolidated into Part 2 of the Housing SEPP.

Following the amendment to SEPP 70, Council resolved on the 11 April 2019, to investigate and develop an affordable housing contributions scheme and its associated local environmental plan amendment under the SEPP.

The Byron Shire Affordable Housing Contribution Policy and accompanying Affordable Housing Contribution Procedure were adopted by Council on 13 August 2020. These documents set out Council's affordable housing contributions framework, including a framework by which Council will enter into Planning Agreements where affordable housing contributions form part of the agreement.

The policy considers three mechanisms for affordable housing contributions. These are:

- clause 6.7 of the Byron LEP 2014 which enables the consent authority to impose conditions relating to providing, maintaining or retaining affordable housing;

- planning agreements which enable Council to negotiate the terms for affordable housing contributions as set out in Council's Affordable Housing Contribution Procedure; and
- a SEPP which allows for an AHCS for lands that undergo an upzoning.

The Residential Strategy was adopted by Council in December 2020 and it is intended to provide the strategic justification for the rezoning of the land contained in the draft AHCS.

However, it is important to note that the Residential Strategy has not been endorsed by the Department and was subject to an independent peer review on behalf of the Planning Delivery Unit. The peer review recommended that a number of changes be undertaken to the Residential Strategy by Council prior to endorsement by the Department. At this time, Council has not requested endorsement of an updated strategy.

## 2 Need for the planning proposal

Council has advised that the planning proposal is the result of Council's Local Strategic Planning Statement (LSPS) and Residential Strategy. Neither the LSPS nor Residential Strategy are Department endorsed documents.

The planning proposal provides a framework for the application of affordable housing contributions when land is being developed and aims to meet the substantial and growing need for affordable housing in the community.

The planning proposal is the only means by which the proposed clause and AHCS maps can be inserted into the Byron LEP 2014.

## 3 Strategic assessment

### 3.1 Regional Plan

The relevant regional plan for this planning proposal is the North Coast Regional Plan (NCRP).

The following table provides an assessment of the planning proposal against relevant aspects of the NCRP.

**Table 4 – Regional Plan assessment**

Regional Plan Objectives	Justification
Direction 23 – Increase housing diversity and choice	The planning proposal is consistent with this Direction as it will enable Council to pursue affordable housing opportunities. It will also assist to deliver housing diversity and choice, particularly within the rental sector.
Direction 25 – Deliver more opportunities for affordable housing	The planning proposal is consistent with this Direction as it can help deliver affordable housing. It will also assist in achieving Action 25.1 by contributing to the delivery of more opportunities for affordable housing, enabling a greater variety of housing types and incentivising private investment in affordable housing.

Local Government Narrative	The planning proposal is consistent with the narrative for the Byron LGA which focuses on the uniqueness of the area and the need to create opportunities for strengthening the economy, providing additional housing and housing choice whilst protecting important farmland and areas of high biodiversity value.
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## 3.2 Local

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

**Table 5 - Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The planning proposal is consistent with the relevant priorities and actions of Council's LSPS. In particular:</p> <p>Priority 3 – Support housing diversity and affordability with housing growth in the right locations.</p> <ul style="list-style-type: none"> <li>• Action 7 – Finalise draft Byron Shire Residential Strategy and implement relevant priority actions; and</li> <li>• Action 9 - Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock.</li> </ul>
Byron Shire Residential Strategy (Residential Strategy)	<p>The Residential Strategy is a Council adopted strategy which aims to guide residential development in the urban areas of Bangalow, Brunswick Heads, Byron Bay, Mullumbimby, New Brighton, Ocean Shores, South Golden Beach, Suffolk Park and Sunrise.</p> <p>The Residential Strategy recognises the increasing and changing pressures of social, economic and environmental factors on housing and liveability in Byron Shire, seeks to improve housing choice, diversity and equity and prioritises low cost and social housing ahead of other housing considerations.</p> <p>In particular, Action 17 seeks to investigate applying a SEPP 70 affordable housing contribution scheme over new release areas within the urban growth investigation areas as shown on Strategy Maps. All land identified on the draft AHCS maps is mapped within the Residential Strategy as investigation areas for residential development subject to further site specific studies and rezoning.</p> <p>The Residential Strategy considers affordable housing supply and demand. The analysis supporting the Residential Strategy identifies limited opportunities for the market to meet the demand for affordable housing in the LGA and significant underlying demand for affordable housing. The analysis concluded that there is a gap between the current needs and supply of rental accommodation for very low, low, and moderate income households and so the collecting of affordable housing contributions by Council, where the development remains viable, is warranted.</p> <p>The proposal is not inconsistent with the Residential Strategy. However, as discussed in section 1.6 of this report, the Residential Strategy has not been endorsed by the Department and was subject to an independent peer review arranged by the Department's Planning Delivery Unit. The peer review identified a number of changes for the Residential Strategy, which were to be</p>



	<p>incorporated for endorsement by the Department. At this time, Council has not requested endorsement of an updated strategy.</p> <p>As the matters identified for review in the independent peer review do not directly relate to the draft AHCS and the proposal aims only to enable contributions for affordable housing to be levied if / when land identified in the draft AHCS is rezoned, it is considered reasonable to progress the planning proposal to the Gateway determination stage, allowing Council to engage with their community in relation to the proposal.</p>
Byron Shire Affordable Housing Contribution Policy (AHCP)	<p>The AHCP is a Council adopted Policy which sets the framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire acquired through a planning agreement or delivered through a SEPP. The Policy was adopted by Council on 13 August 2020.</p> <p>Council has indicated that the planning proposal and draft AHCS are in accordance with the AHCP.</p>
Draft Byron Affordable Housing Contribution Scheme 2021 (AHCS)	<p>The draft AHCS accompanying the planning proposal has been developed in accordance with section 1.3(d) and Division 7.2 of the Act and the AHCP.</p> <p>The objectives of the draft AHCS are to:</p> <ul style="list-style-type: none"> <li>• facilitate the provision of affordable housing options within the LGA to meet the needs of very low, low and moderate income households so as to promote diversity, equity, liveability and sustainability; and</li> <li>• set out how, where and at what rate development contributions will be collected by Council to provide fairness, certainty and transparency for the local community, developers and other stakeholders.</li> </ul> <p>The draft AHCS applies to all residential development within the areas shown on the maps contained within the document, including development and subdivision for residential lots by torrens title subdivision, strata subdivision for residential lots, multi dwelling housing, residential flat buildings, dual occupancy, community title, co-operatives, company title or by another arrangement facilitating residential development.</p> <p>The draft AHCS does not apply to development where an affordable housing contribution has previously been applied or to public housing as defined in section 3 of the Housing Act 2001 or community housing as defined in section 3 of the Housing Act 2001.</p> <p>In accordance with the draft AHCS, a developer may provide land, affordable housing dwellings on-site, affordable housing dwellings in another location within the LGA, or pay an equivalent monetary contribution to allow affordable housing dwellings to be built or purchased elsewhere in the LGA. However, Council prefers that contributions are provided in the form of land within the development to which the contribution applies and that the form of contribution (in-lieu or in-kind) is entirely at the discretion of Council.</p> <p>Determining which option is most appropriate in the context of a proposed development will be negotiated between the applicant and Council at development application stage and the agreement reached will be included as a condition of development consent.</p> <p>The proposed contribution rates are set out below.</p> <ul style="list-style-type: none"> <li>• on-site: 20% of the area of residential lots in the development must be provided as an affordable housing contribution;</li> <li>• monetary: 20% of the area of residential lots in the development must be provided as an affordable housing contribution monetised;</li> </ul>

	<ul style="list-style-type: none"> <li>other in-kind (dwellings): 20% of the area of residential lots in the development must be provided as an affordable housing contribution, as in-kind (dwellings) of equivalent value; and</li> <li>combined: 20% of the area of residential lots in the development must be provided as an affordable housing contribution, in kind and monetised.</li> </ul> <p>The draft AHCS also includes a requirement for an annual review to assess the effectiveness of the scheme and any impacts it may be having on housing supply, delivery and affordability.</p>
Guidelines for an Affordable Housing Contribution Scheme (the Guidelines)	<p>The Department's Guidelines for an Affordable Housing Contribution Scheme (the Guidelines) advises councils on what they should include in an affordable housing contribution scheme to satisfy the legislative requirements, and how to develop an affordable housing contribution scheme under Section 7.32(1)(c) of the Act. The Guidelines require that an affordable housing contribution scheme sets out how, where, and at what rate development contributions can be collected by Council for affordable housing.</p> <p>The Department's Housing Policy team has provided guidance to Council in relation to the preparation of the draft AHCS. The planning proposal was referred to the Housing Policy team for comment following lodgement, and they have advised that they consider that the draft AHCS satisfies the requirements of Guidelines and raise no objection to it proceeding for a Gateway determination.</p>

### 3.3 Section 9.1 Ministerial Directions

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

**Table 6 - 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.5 Rural Lands	No - Justifiably inconsistent	The proposal is inconsistent with this Direction as it affects land within a rural zone and is unable to satisfy all the requirements of the Direction. The inconsistency is considered to be of minor significance as the planning proposal will not rezone or alter the development standards that apply to any land identified in the draft AHCS. All sites identified in the draft AHCS will require further site-specific investigation to justify their suitability for rezoning through the planning proposal process.
2.1 Environment Protection Zones	No - Justifiably inconsistent	The proposal is inconsistent with this Direction as affects land with areas of mapped high environmental value and the planning proposal does not include provisions that facilitate the protection and conservation of environmentally sensitive areas. The inconsistency is considered to be of minor significance as the planning proposal will not rezone or alter the development standards that apply to any land

		identified in the draft AHCS. All sites identified in the draft AHCS will require further site-specific investigation to justify their suitability for rezoning through the planning proposal process.
2.2 Coastal Management	No - Justifiably inconsistent	The proposal is inconsistent with this Direction as it affects land that is in a coastal zone and is unable to satisfy all of the requirements of the Direction. The inconsistency is considered to be of minor significance as the planning proposal will not rezone or alter the development standards that apply to any land identified in the draft AHCS. All sites identified in the draft AHCS will require further site-specific investigation to justify their suitability for rezoning through the planning proposal process.
2.3 Heritage Conservation	No - Justifiably inconsistent	The proposal is inconsistent with this Direction as it may apply to land that contains Aboriginal objects, Aboriginal places or items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance and the planning proposal does not contain provisions that facilitate their conservation. The inconsistency is considered to be of minor significance as the planning proposal will not rezone or alter the development standards that apply to any land identified in the draft AHCS. All sites identified in the draft AHCS will require further site-specific investigation to justify their suitability for rezoning through the planning proposal process.
4.3 Flooding	No - Justifiably inconsistent	The proposal is inconsistent with this Direction as the planning proposal applies to land mapped as being subject to flooding and is unable to satisfy all of the requirements of the Direction. The inconsistency is considered to be of minor significance as the planning proposal will not rezone or alter the development standards that apply to any land identified in the draft AHCS. All sites identified in the draft AHCS will require further site-specific investigation to justify their suitability for rezoning through the planning proposal process.
4.4 Planning for Bushfire Protection	No	The proposal is inconsistent with this Direction as it applies as land mapped as bushfire prone land, or is in proximity to land mapped as bushfire prone land. The Direction provides that



		the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination is issued. Until this consultation has occurred, the consistency of the proposal with the Direction remains unresolved.
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### 3.4 State environmental planning policies (SEPPs)

The planning proposal is considered to be consistent with all relevant SEPPs. Of particular relevance are the following SEPP's.

**Table 7 - Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Housing State Environmental Planning Policy (Housing SEPP) – Part 2 previously SEPP 70 - Affordable Housing (Revised Schemes)	<p>The Act allows for the collection of contributions for affordable housing where a need for affordable housing is identified in a planning instrument and where:</p> <ul style="list-style-type: none"> <li>the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or</li> <li>the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or</li> <li>the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or</li> <li>the regulations so provide.</li> </ul>	Yes	<p>The planning proposal contains provisions to require new development on land shown on the maps in the draft AHCS to contribute towards affordable housing.</p> <p>The Guidelines nominate that dedicated land should be held for affordable housing in perpetuity. The draft AHCS requires Council to establish an affordable housing implementation and delivery program. The draft AHCS provides a framework to an affordable housing implementation and delivery program.</p> <p>As discussed in section 1.6 of this report, the planning proposal was reviewed by the Housing Policy team and it is considered that the draft AHCS addresses the requirements of the Guidelines.</p>

## 4 Site-specific assessment

### 4.1 Environmental

The areas mapped within the draft AHCS have been categorised into two tiers based on their known site and strategic attributes. However, it is unlikely that the planning proposal will result in any negative environmental impacts as the proposal does not seek to rezone or change the current development standards applicable to the land.

Each land parcel will be subject to site specific investigations to determine whether it is appropriate for them to progress to a planning proposal for rezoning in the future.

### 4.2 Social and economic

Council suggest that the planning proposal will result in the following social and economic benefits for the LGA:

- assists to address the rental availability and affordability crisis through government funding of social housing;
- provides greater clarity for the community about the affordable rental housing planned in their area; and
- ensures there is certainty and transparency for developers about how affordable rental housing contributions will be determined, and the contribution rate that will be applied.

The draft ACHS confirms that all the currently proposed sites to be levied (on 2019 values) have a profit viability of between 46-75% that can clearly accommodate the proposed contribution without affecting the economic viability, affordability, development or supply of land in the area. This analysis is considered adequate to allow consultation and broader review by the community.

### 4.3 Infrastructure

The planning proposal will not directly result in the need for either state or local infrastructure upgrades as the proposal does not seek to rezone or change the current development standards applicable to the land. The need for additional local or state infrastructure will be assessed under any future planning proposal/s for rezoning of the land.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period of 28 days. In accordance with the LEP Making Guidelines (Department of Planning and Environment, December 2021) the exhibition timeframe for a complex planning proposal is 30 working days.

An exhibition period of 30 working days has been included as a condition on the Gateway determination.

Council has also nominated that they intend to undertake targeted consultation during the exhibition period with:

- affected landowners where possible;
- key community groups; and
- local community housing providers.

## 5.2 Agencies

Council has stated that it intends to consult with the Arakwal Local Aboriginal Land Council. It is recommended that in addition to the Arakwal Local Aboriginal Land Council, that the following agencies are consulted:

- NSW Rural Fire Service
- NSW Housing and Property

In accordance with the LEP Making Guidelines (Department of Planning and Environment, December 2021) the timeframe for agency consultation on a complex planning proposal is 40 working days.

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP from the date of the Gateway determination.

The Department supports a time frame of 6 months to ensure it is completed in line with its commitment to reduce processing times, and a condition has been imposed on the Gateway determination to this effect. It is also recommended that the Gateway determination include conditions requiring council to exhibit and report on the proposal by specified milestone dates.

In accordance with the LEP Making Guidelines (Department of Planning and Environment, December 2021) the timeframe for completion of a complex planning proposal is 300 working days following receipt of a referral for a Gateway determination. Council's proposed timeframe is within the target set by the LEP Making Guidelines for finalisation of a complex planning proposal.

As Council has nominated a period of 6 months to complete the LEP from the issue of a Gateway determination, the benchmark timeframes nominated to exhibit, report on and complete the LEP have been calculated as a percentage of the maximum benchmark timeframes.

## 7 Local plan-making authority

Council is not seeking to exercise its functions as a Local Plan-Making authority for this planning proposal.

As the planning proposal has the potential to be contentious and is the first time an affordable housing contribution scheme has been undertaken by a regional Council, 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:

- it is not inconsistent with the NCRP and will assist in delivering key Directions 23 and 25 which aim to increase housing diversity and choice and deliver more opportunities for affordable housing;
- it is consistent with the LSPS, in particular Planning Priority 3 – Support housing diversity and affordability with housing growth in the right locations and will deliver Action 9 which is to investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock;
- it is consistent with the Department's Guideline for Developing an Affordable Housing Contribution Scheme, and the Council adopted Affordable Housing Contribution Policy; and
- it may assist in addressing the shortage of affordable rental accommodation within the Byron Shire LGA.

Based on the assessment outlined in this report, the proposal must be updated before consultation is undertaken to ensure all maps are correctly titled.

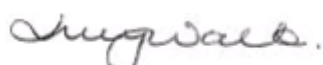
## 9 Recommendation

It is recommended the delegate of the Secretary:

- **Agree** that any inconsistencies with section 9.1 Directions 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Management, 2.3 Heritage Conservation and 4.3 Flooding are minor or justified; and
- **Note** that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is 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. Prior to exhibition, the planning proposal and associated draft Affordable Housing Contribution Scheme are to be updated to:
  - a. remove all references to the prohibition of short-term rental accommodation in affordable rental housing created under the scheme;
  - b. remove the proposed amendments to Byron LEP 2014 clause 6.7 Affordable Housing in Residential and Business Zones;
  - c. identify that the Affordable Housing Contribution Scheme Maps will be adopted and updated as part of subsequent LEP amendments for individual land parcels at the associated rezoning stage, and are included within the planning proposal only for illustration/exhibition purposes; and
  - d. ensure all related maps are correctly titled.
2. Consultation is required with the following public authorities:
  - NSW Rural Fire Service
  - NSW Housing and Property
3. The planning proposal should be made available for community consultation for a minimum of 30 working days.
4. The planning proposal must be exhibited within one month from the date of the Gateway determination.
5. The planning proposal must be reported to council for a final recommendation four months from the date of the Gateway determination.
6. The timeframe for completing the LEP is to be six months from the date of the Gateway determination.
7. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



11/02/2022

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(Signature)

\_\_\_\_\_  
(Date)

Lucy Walker

Specialist Planner, Local and Regional Planning, Northern Region



16/2/2022

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(Signature)

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(Date)

Jeremy Gray

Director, Northern Region



18/2/2022

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(Signature)

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(Date)

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