



IRF 24/1359

## Gateway determination report – PP-2021-7471

Rezone land at 66 The Saddle Road, Brunswick Heads (part of Lot 2 DP 1159910), amend associated development standards and introduce a local provision to facilitate a work / live precinct (50 homes, 150 jobs)

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# Acknowledgment of Country

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

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

Relevant reports and plans
Planning Proposal – BILS Area 5, Gulgan North prepared by Planners North & Balanced Advice, September 2023 updated June 2024 (noted on page 29)
Byron Shire Council Staff Report No. 13.9, 26 October 2023 – Gulgan North Planning Proposal – BILS Area 5
Byron Shire Council Resolution 23-490, 26 October 2023
Ecological Assessment Report prepared by Bower Ecology Pty Ltd, Version 1 dated 28 September 2023
Hairy-joint Grass Survey prepared by Bower Ecology Pty Ltd dated 6 March 2024
Traffic Impact Study prepared by Ingen Consulting, Revision I dated 20 April 2023
Civil engineering report prepared by Ingen Consulting, Revision B dated 23 December 2021
Preliminary Site Investigation prepared by Contaminated Site Investigation Australia Pty Ltd, dated 15 July 2021
Cattle Dip Exclusion Zone Assessment prepared by Contaminated Site Investigation Australia Pty Ltd, dated 18 November 2021
Agricultural Assessment prepared by Allen and Associates, undated
Land Use Conflict Risk Assessment prepared by Tim Fitzroy & Associates, dated 20 December 2021
Bushfire Protection Assessment prepared by Travers Bushfire & Ecology, dated 22 December 2021
Aboriginal Cultural Heritage Assessment Report prepared by Everick Heritage, dated 21 January 2024 and letter from Everick Heritage dated 30 January 2024 confirming ACHAR consultation

# 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>	Rezone land at 66 The Saddle Road, Brunswick Heads (part of Lot 2 DP 1159910), amend associated development standards and introduce a local provision to facilitate a work / live precinct 50 homes, 150 jobs
<b>NUMBER</b>	PP-2021-7471
<b>LEP TO BE AMENDED</b>	Byron LEP 2014
<b>ADDRESS</b>	66 The Saddle Road, Brunswick Heads
<b>DESCRIPTION</b>	Part Lot 2 DP 1159910
<b>RECEIVED</b>	18/06/2024
<b>FILE NO.</b>	IRF24/1359
<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 planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The intended outcome is to facilitate future development of the land for employment and industrial purposes, in accordance with the Byron Shire Business and Industrial Lands Strategy and the North Coast Regional Plan 2041, and to preserve high environmental value areas.

The planning proposal also introduces a work / live clause for the land to be zoned E3 Productivity Support where subservient to a type of work, use or industry permitted in the E3 zone. There are no new residential land use terms proposed.

The intention is that the residential component will not exceed 50 per cent of the permitted work, use or industry component and must be used by the proprietor, a lessee, the proprietor or lessee's employees, or that person's household.

It is recommended that the planning proposal not contain a draft proposed work / live clause and instead simply reference the objectives and intended outcomes of the amendment in plain English. Parliamentary Counsel will be responsible for drafting the proposed work / live clause at the

finalisation stage. The planning proposal is to be amended prior to community consultation to remove the example clause detailed in Section B.1 of Appendix B.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Byron LEP 2014 per the changes below:

**Table 3 Current and proposed controls**

Control	Current	Proposed
Zone	RU2 Rural Landscape DM Deferred Matter (1(a) General Rural under Byron LEP 1988)	E3 Productivity Support E4 General Industrial C2 Environmental Conservation C3 Environmental Management
Minimum lot size	40 hectares	2,000m <sup>2</sup> 5 hectares 10 hectares
Maximum height of the building	9m	11.5m
Floor space ratio	Nil	0.9:1
Number of dwellings	0	50
Number of jobs	0	150
Work / live clause and associated map	Nil	Facilitate a work / live precinct on E3 zoned land

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

It is noted that the site analysis plan within the proposal identifies Precincts A, B and C however the explanation of provisions only refers to Precincts A and B. The explanation of provisions is to be amended prior to consultation to also reference Precinct C.

## 1.4 Site description and surrounding area

The subject land is Lot 2 DP 1159910, 66 The Saddle Road, Brunswick Heads (Figures 1 and 2). The site has an area of 52 hectares and is located between Mullumbimby and Brunswick Heads, being 3km south-west of the Brunswick Heads central business district.

The allotment is irregular in shape and is intersected by The Saddle Road, Gulgan Road and the Pacific Motorway. The planning area is located to the west of the Pacific Motorway and is bound by The Saddle Road to the north and Gulgan Road to the south. Access to the site can be obtained directly from Gulgan Road, which is an existing public transport route and in proximity to direct northbound and southbound ingress and egress to the Pacific Motorway.

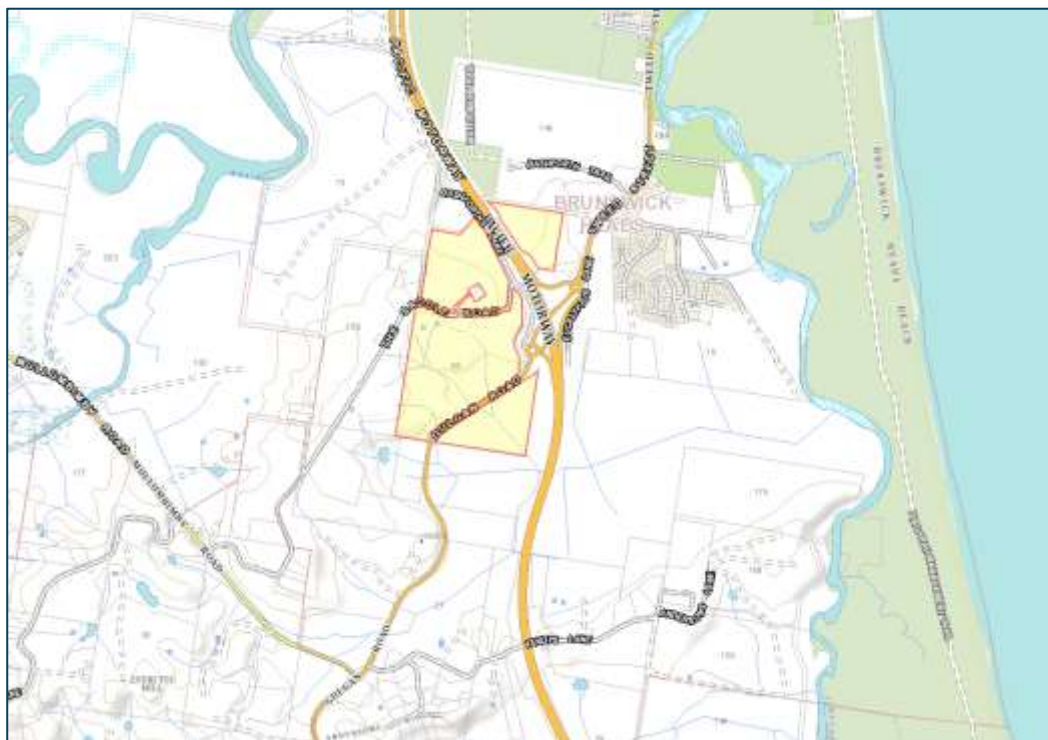
The site was historically utilised as a dairy farm with associated infrastructure comprising a homestead, sheds, dairy bails, piggery buildings and a windmill. A capped and disused former cattle dip site is also present on the land as well as a constructed farm dam and minor drainage lines. The site is currently used for cattle grazing on unimproved pastures.

Vegetation on the property includes isolated patches of rainforest, small areas of swamp sclerophyll and floodplain forest and freshwater wetlands.

Surrounding land uses include general rural (grazing) on land zoned RU2 Rural Landscape, vegetated land that is primarily zoned C2 Environmental Conservation and isolated lifestyle lots.

Figure 3 illustrates the planning area as relevant to this proposal. Area 'A' in the northern portion of the site comprises approximately 5 hectares and is proposed to be rezoned to E3 with a corresponding work / live local provision. Area 'B' and 'C' in the southern portion of the site comprises 1.8 hectares and is proposed to be rezoned to E4 General Industrial and is split on either side of the Rous Water Main leaving a corridor for a future access road. The Area D residue will remain part rural and part conservation (with expanded C Zones).

The precinct areas are distinctly different in topography. Area A is elevated, roughly between 30m and 40m AHD while Area B and C is lower, with elevations between 4m AHD and 6m AHD.



**Figure 1 - Cadastral image of the subject site, Lot 2 DP 1159910 (Source: Six Maps)**





Figure 2 - Aerial image of the subject site, Lot 2 DP 1159910 (Source: Six Maps)

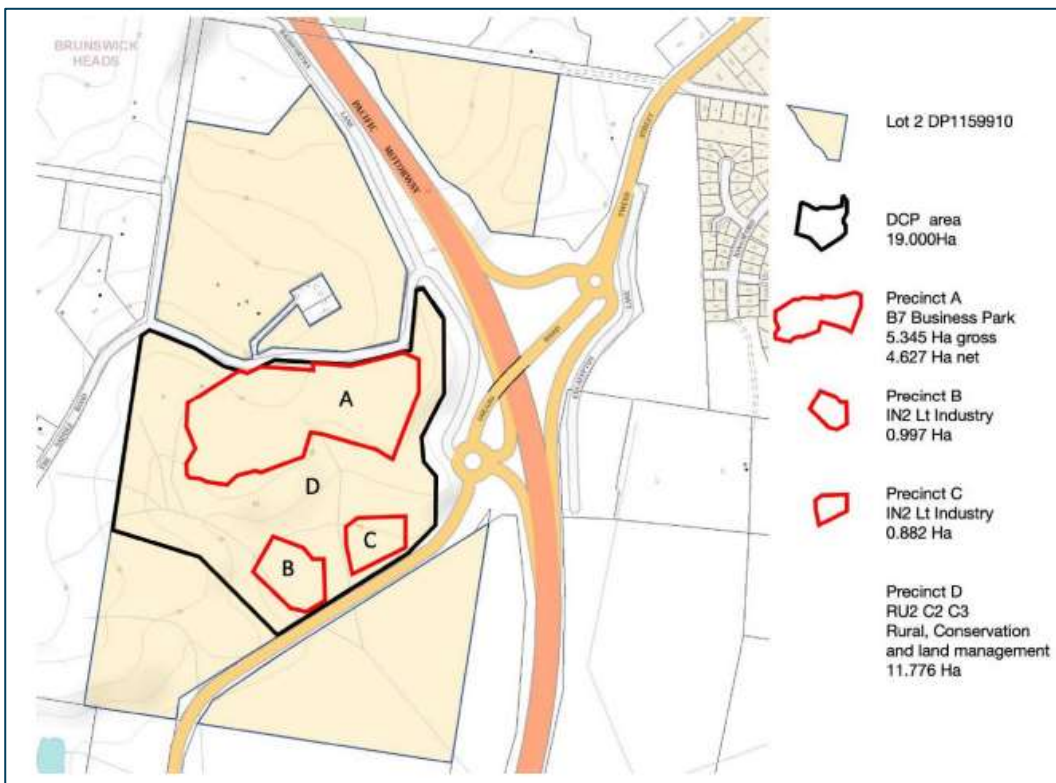


Figure 3 - Development precincts, Lot 2 DP 1159910 (Source: Council report)



## 1.5 Mapping

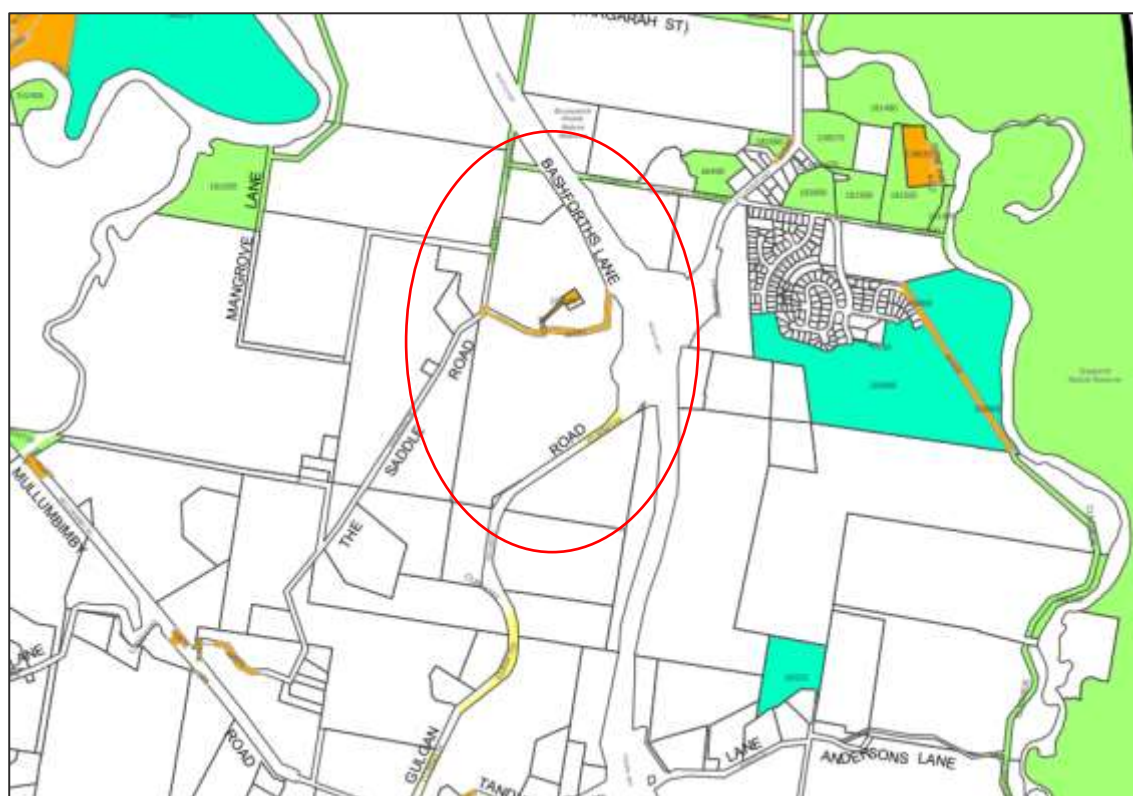
The planning proposal includes mapping showing the proposed changes to the land zoning, minimum lot size, height of buildings and floor space ratio maps which are suitable for community consultation.

It is noted that the Deferred Lands on Gulgan Road and The Saddle Road are included as part of Byron Shire Council's C Zone Stage 4 implementation (PP-2024-1194) (Figure 4). It is considered appropriate that the proposed zoning of Gulgan Road and The Saddle Road also be included as part of this planning proposal as they immediately adjoin the planning area. Relevant controls including land zoning, minimum lot size and height of buildings should be updated prior to exhibition to ensure consistency and continuity between this proposal, PP-2024-1194 and surrounding arrangements.

It is also noted that the proposed minimum lot size and height of building maps incorrectly remove development standards outside the deferred areas particularly along Gulgan Road to the south of the planning area and The Saddle Road as it bisects the western portion of the allotment. These maps are required to be updated prior to exhibition.

The Council report indicates that the subject land will be identified on a Local Clauses Map, with that portion of the subject land proposed to be zoned E3 Productivity Support identified as a work / live precinct. This map is to be included as part of the PP prior to public exhibition.

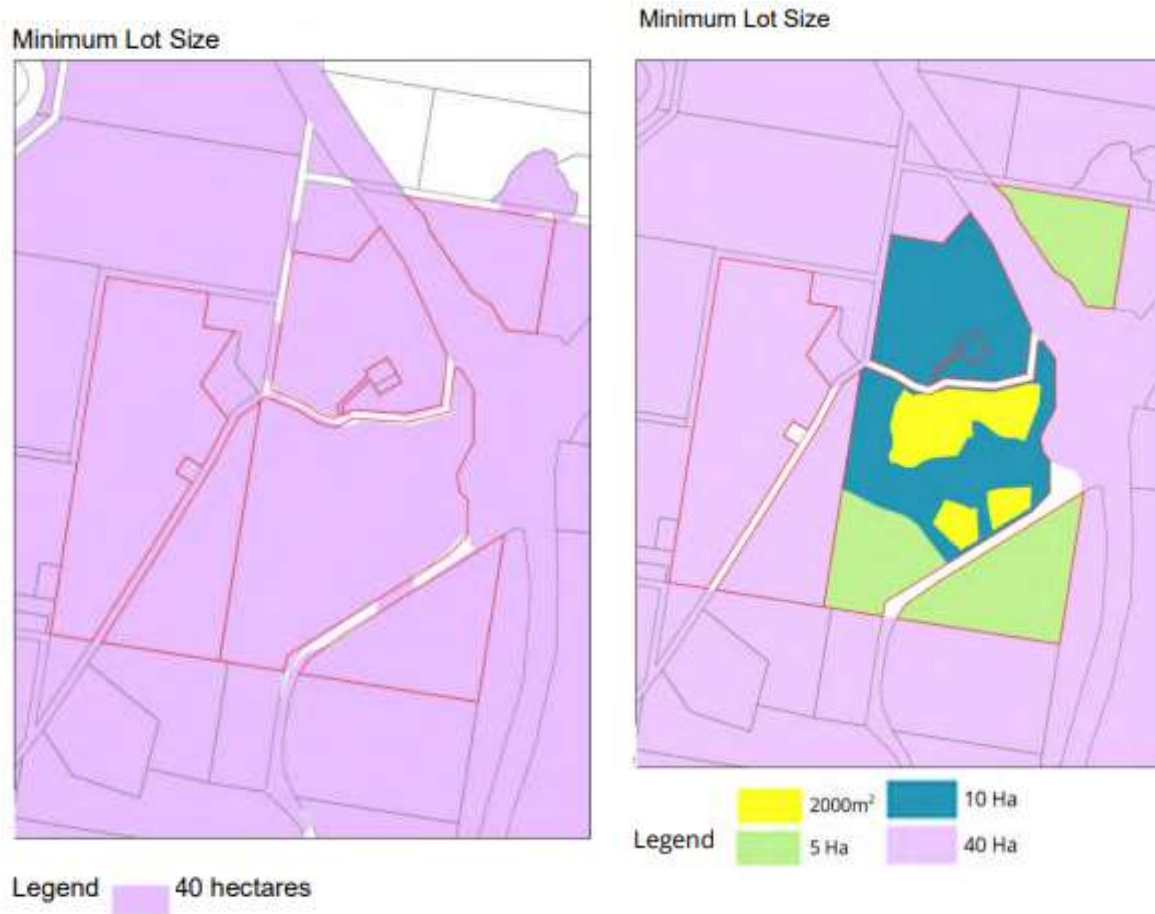
All final maps will need to be prepared to the Department's Standard Technical Requirements prior to the plan being made.



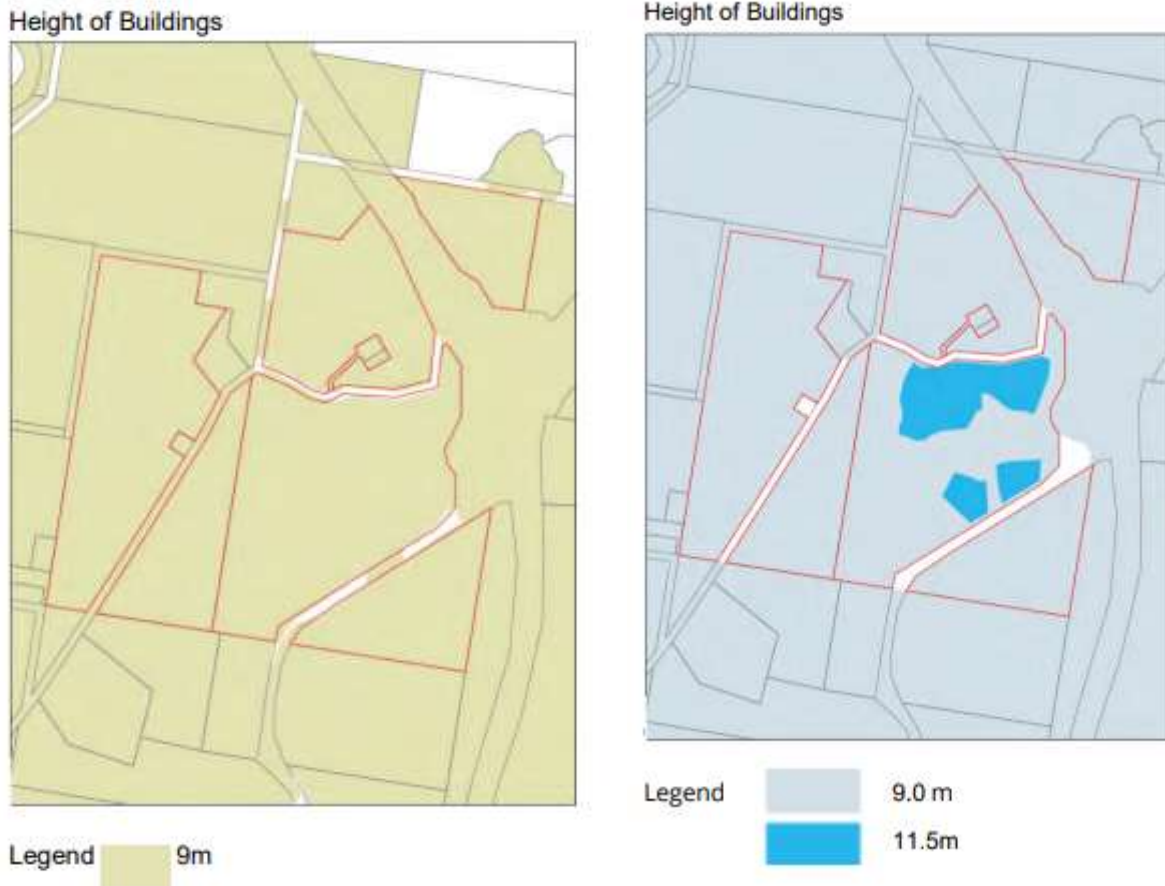
**Figure 4 - Byron Shire Council C Zone Stage 4 implementation as it applies to the subject land, Lot 2 DP 1159910 (Source: PP-2024-1194)**



Figure 5 - Current and proposed land zoning maps, Byron LEP 2014 (Source: Planning Proposal)



**Figure 6 - Current and proposed minimum lot size maps, Byron LEP 2014 (Source: Planning Proposal)**



**Figure 7 - Current and proposed height of buildings maps, Byron LEP 2014 (Source: Planning Proposal)**



**Figure 8 - Current and proposed floor space ratio maps, Byron LEP 2014 (Source: Planning Proposal)**

## 2 Need for the planning proposal

The planning proposal to rezone the land for employment purposes is the result of the Byron Shire Local Strategic Planning Statement and Council's Department approved Byron Shire Business and Industrial Lands Strategy (BILS).

It is noted that the proposed work / live clause and associated map to facilitate a residential component in the area to be zoned E3 was not addressed in the BILS. Providing an opportunity for people to live and work in the same location is however supported, particularly noting the current shortage of housing options for residents in the Byron LGA, provided that employment remains the primary use and any potential land use conflicts can be appropriately managed.

The proposal outlines that the work component on E3 zoned land is not to exceed 50 per cent of the residential area, meaning that any future residential land use is to remain subservient to the dominant work, use or industry permitted in the E3 Productivity Support zone. To this end, the residential component of the proposal could potentially be considered in some circumstances to be an ancillary use as outlined in Planning Circular PS21-008 'How to characterise development'.

The integral relationship between the business, office or light industrial component and the residential component has not however been demonstrated in the proposal. Furthermore, the proposed work / live clause contemplates the construction of attached dwellings, multi dwelling housing and residential flat buildings which could make an 'ancillary' approach problematic and unable to be relied upon to deliver the intent of the proposal.

The planning proposal, including the proposed work / live local provision, is therefore the best means for achieving the objectives and intended outcome.



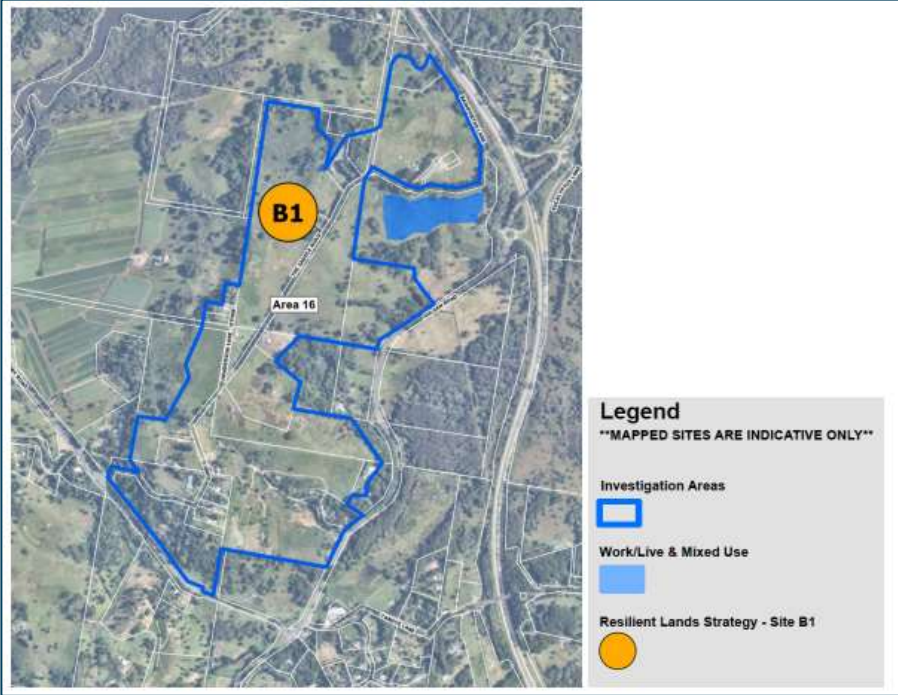
## 3 Strategic assessment

### 3.1 State

#### 3.1.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2041.

**Table 4 Regional Plan assessment**

Regional Plan Objectives	Justification
Objective 1 Provide well located homes to meet demand	<p>The proposed work / live clause on E3 Productivity Support land will permit the construction of attached dwellings, multi dwelling housing and residential flat buildings where they are subservient to a type of work, use or industry permitted in the E3 zone thereby providing housing diversity and choice in an area close to essential services and outside the coastal strip.</p> <p>The reduction of minimum lot sizes on the residual land also has the opportunity to provide additional dwelling entitlements. As shown by Figure 9, the northern and south-western portions of the subject land are included in The Saddle Road precinct area of the Byron Shire Residential Strategy 2041 which was approved by the Department on 17 June 2024. However, the land to the south-east of Gulgarn Road and to the north-east of Pacific Motorway, proposed to be afforded a minimum lot size of 5 hectares by this planning proposal to allow its incision from the principal allotment, is not identified. This will be discussed in further detail below.</p>
	 <p><b>Figure 9 - The Saddle Road Precinct Area, Byron Shire Residential Strategy 2041</b></p>

Objective 3 Protect regional biodiversity and areas of high environmental value	<p>The planning proposal has been designed so that the majority of the land to be zoned E3 Productivity Support and E4 General Industrial is currently zoned RU2 Rural Landscape. This land primarily consists of previously grazed exotic pasture and, consistent with this objective, largely avoids areas of vegetation classified as HEV. The planning proposal also increases the amount of land zoned C2 Environmental Conservation and C3 Environmental Management.</p>
Objective 5 Manage and improve resilience to shocks and stresses, natural hazards and climate change	<p>The planning proposal identifies that the land is affected by flooding, bushfire and acid sulfate soils.</p> <p>Consultation with the Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Group and the NSW Rural Fire Service will be required prior to finalisation of the plan in accordance with section 9.1 Ministerial Directions 4.1 Flooding and 4.3 Planning for Bushfire Protection to reduce any ongoing risk to life, property and the environment. Until this consultation has occurred, consistency with this objective remains unresolved.</p>
Objective 8 Support the productivity of agricultural land	<p>The subject land is currently utilised for agricultural purposes and a portion has been identified as Significant Non-Contiguous Farmland under the Northern Rivers Farmland Protection Project. Both the BILS and the Byron Shire Residential Strategy 2041 have been approved by the Department and justify the proposed rezoning as well as the majority of the reduction in minimum lot sizes.</p> <p>However, the proposal also includes the rezoning of some RU2 zoned land to C2 Environmental Conservation and C3 Environmental Management. Additionally, land to the south-east of Gulgan Road and to the north-east of Pacific Motorway (primarily zoned RU2 Rural Landscape with some areas of C2 Environmental Conservation and C3 Environmental Management) is proposed to be afforded a minimum lot size of 5 hectares to allow their incision from the principal allotment. These matters are not identified in an endorsed Strategy.</p> <p>It is noted that both residual areas are physically separated from the main allotment by roads and the 5-hectare minimum lot size will not permit further subdivision of the land, as the portion to the south-east of Gulgan Road is approximately 8 hectares while the portion to the north-east of the Pacific Highway is approximately 5.8 hectares.</p> <p>Although the proposed conservation zonings and reduction in minimum lot sizes of the residual land are considered appropriate, consultation with the Department of Primary Industries – Agriculture is appropriate. Until this consultation has occurred, consistency with this objective remains unresolved.</p>
Objective 11 Support cities and centres and coordinate the supply of well-located employment land	<p>The subject land was identified as being appropriate for use as employment land by the BILS due to its proximity to direct north- and south-bound ingress and egress to the Pacific Motorway, connections to existing public transport and proximity to residential areas.</p>



Byron Local Government narrative	<p>The land to be rezoned for urban purposes is within the urban growth area boundary as detailed in Figure 14 of the Regional Plan. The proposal is consistent with the following local government narratives:</p> <ul style="list-style-type: none"> <li>• support a resilient and innovative economy;</li> <li>• manage and support sustainable growth;</li> <li>• support environmentally sustainable development that is responsive to natural hazards;</li> <li>• protect and enhance local biodiversity through partnerships and management of environmental assets and ecological communities;</li> <li>• deliver additional employment land at West Byron and other investigation sites in the Shire.</li> </ul>
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### 3.1.2 Northern Councils E Zone Review Final Recommendations Report

The Northern Councils E Zone Review Final Recommendations Report details clear criteria and methodologies for the application of C zones in certain Northern Rivers local government areas. The report is supported by a section 9.1 Ministerial Direction requiring councils to be consistent with the adopted recommendations as well as a directive from the Secretary on 1 March 2016 providing further guidance on how to apply the final recommendations.

The Ecological Assessment Report prepared by Bower Ecology Pty Ltd, Version 1 dated 28 September 2023 and submitted in support of the planning proposal does not include an assessment against the provisions of the Recommendations Report for RU2 Rural Landscape land to be rezoned to C2 Environmental Conservation and C3 Environmental Management (although it does note that the overarching intent of Section 9.1 Direction 3.4 – Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs has been met and exceeded). This is considered satisfactory in the circumstances noting that the Final Recommendations Report confirms that a C Zone can be applied to any land with the owners' consent (which is understood to have been provided in this instance as part of the proponent-initiated proposal for both the private and public lands).

## 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	<p>Action TA6 of the Byron Shire LSPS outlines the intention to finalise the Byron Shire Business and Industrial Lands Strategy (BILS).</p> <p>The BILS was conditionally approved 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 approval on 11 November 2020.</p> <p>This action of the LSPS is relevant to the proposal as the BILS is the supporting strategy for this planning proposal.</p>

The planning area is identified in the BILS as Investigation Area 5 (Figure 10).



**Figure 10 - BILS Area 5, North Gulgan (Source: Council report)**

The BILS identifies key issues that require further investigation prior to the progression of a planning proposal, including:

- community views;
- Aboriginal cultural heritage sensitivities;
- non-indigenous cultural sensitivities;
- biodiversity and ecological sensitivities including prime koala habitat;
- land containing HEV vegetation to be excluded and designated as environmental zone;
- distance from existing water and sewerage infrastructure and connection to existing infrastructure;
- important farmland classification;
- bushfire prone;
- traffic impacts and safe access point to Gulgan Road;
- linkages to urban areas (workforce) using pedestrian / cycling pathways;
- landscaping to enhance visual amenity as it pertains to view lines from Gulgan Road and Pacific Highway;
- SEPP 55 assessment of dip site implications.

These matters have been addressed in this planning proposal by way of accompanying technical reports.

### 3.3 Section 9.1 Ministerial Directions

The planning proposal is consistent with relevant section 9.1 Directions except as discussed below:

#### **Table 6 Section 9.1 Ministerial Direction assessment**

Directions	Consistent / Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Unresolved	As discussed above in Table 4, consistency with the North Coast Regional Plan 2041 is unresolved until consultation with the Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Group, the NSW Rural Fire Service and the Department of Primary Industries – Agriculture has been undertaken to confirm that the proposal is satisfactory.
1.4 Site Specific Provisions	Justified	<p>The planning proposal is inconsistent with this direction as it includes a site-specific clause and development controls in relation to residential development on the proposed E3 Productivity Support land. It is considered that the inconsistency is of minor significance as:</p> <ul style="list-style-type: none"> <li>• providing an opportunity for people to live and work in a mixed-use area that will have appropriate controls to manage and minimise land use conflict is supported, particularly noting the current shortage of housing options for residents in the Byron LGA; and</li> <li>• amending the E3 land use table to facilitate residential development across all land zoned E3 in the LGA is not considered appropriate and would likely result in adverse outcomes in other locations.</li> </ul>

3.2 Heritage Conservation	Unresolved	<p>The proposal's potential consistency with this direction and whether it makes adequate provisions to facilitate the conservation of Aboriginal cultural heritage is unresolved.</p> <p>The subject land is within the area referenced by Tribunal No NCD2019/001 (Bundjalung People of Byron Bay #3) and the Cavanbah (Arakwal) Indigenous Land Use Agreement (ILUA) by the Bundjalung of Byron Bay.</p> <p>An Aboriginal Cultural Heritage Assessment Report (ACHAR) prepared by Everick Heritage, dated 21 January 2024 has been submitted with the planning proposal as well as a letter from Everick Heritage dated 30 January 2024 confirming ACHAR consultation.</p> <p>The ACHAR states that nine previously identified Aboriginal sites, predominantly comprising isolated stone artefacts but with two small low density subsurface stone artefact scatters, are recorded within the project area. Further stone artefacts are likely to be identified as eroded ground surface expressions on ridge landforms as well as at subsurface levels.</p> <p>One new Aboriginal site, a quarry, was identified during the survey. Two potentially culturally modified trees were also located during the survey and two areas of potential archaeological deposit were identified.</p> <p>The ACHAR also notes that the planning area forms part of a wider cultural landscape that comprises Aboriginal pathways, ceremonial sites and resource gathering sites. There are a number and variety of Aboriginal sites and objects within the planning area that complement and support the cultural significance of the wider landscape which indicates that the sites are of moderate to high social significance. One Aboriginal site is of high scientific significance due to its regional and local rarity and the ability of this site to further our knowledge of past Aboriginal utilisation of the landscape. The remainder of the sites have been previously assessed as being of low scientific significance.</p> <p>One Aboriginal site is directly impacted by the planning proposal. At least two further Aboriginal sites could also be indirectly impacted as they are located within an asset protection zone. The submitted ACHAR does not identify any reason why the rezoning should not proceed and notes:</p> <ul style="list-style-type: none"> <li>• that all 3 sites comprise stone artefacts which have been assessed as being of low scientific significance;</li> <li>• that an Aboriginal Heritage Impact Permit should be sought for Precinct A to support a future development application;</li> <li>• that preservation of these sites must be ensured in perpetuity with methodology to be discussed and agreed with Arakwal representatives including consideration of physical barriers or relocation of artefacts;</li> <li>• an agreed methodology must be included in a future Aboriginal Heritage Management Plan AHMP to be submitted with the development application.</li> </ul> <p>Consultation with Arakwal and Heritage NSW is recommended to confirm the appropriateness of the proposal. Until this consultation has occurred, consistency with this direction remains unresolved.</p>
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## 4.1 Flooding

Unresolved

The proposal is potentially inconsistent with this direction as a small area of the land to be rezoned to E4 is identified as being flood prone.

The civil engineering report prepared by Ingen Consulting, Revision B dated 23 December 2021 considers the flood prone nature of the planning area and has been based on the 1% ('1 in 100-year event') AEP storm in accordance with council's DCP. This report indicates that a small portion of the area to be rezoned E4 General Industrial, is below the 2100 flood planning level but is of low hazard level. It is noted that fill is proposed on the subject land to ensure that future development is constructed above the flood planning level. The civil engineering report also notes that flash flooding of Gulgan Road could occur during a minor storm event as well as in larger storms.


The planning proposal does not include information regarding the level of the Probable Maximum Flood (PMF) event (relevant as a residential component is included as part of the proposal), the level of hazard, time of isolation or shelter in place. It is recommended that this information be included in the planning proposal prior to agency and community consultation.

It is noted that it may be possible to design the final development to provide emergency access for residents onto The Saddle Road which will provide connection to the Motorway in times of inundation by flooding (although formal access at present will be provided to the site via Gulgan Road in an effort to preserve the vegetation along The Saddle Road).

Until this additional information is included and further consultation has been undertaken with the Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Group and the NSW Reconstruction Authority, consistency with this direction will remain unresolved.



**Figure 11 - Flood affectation on the subject land (Source: Byron Shire Council Web Map)**

<p><b>4.3 Planning for Bushfire Protection</b></p>	<p>Unresolved</p>	<p>This direction is relevant as the land to which the proposal applies is identified as bushfire prone land.</p> <p>The Bushfire Protection Assessment prepared by Travers Bushfire &amp; Ecology, dated 22 December 2021 considers multiple land uses on the subject land, including Special Fire Protection Purposes. The report concludes that the site can accommodate asset protection zones within its boundaries with a minimum of environmental disturbance while still providing viable options for a number of development types.</p> <p>The direction requires the planning proposal authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination is issued. Until this consultation has occurred, the inconsistency of the proposal with this direction remains unresolved.</p>
<p><b>4.5 Acid Sulfate Soils</b></p>	<p>Justified</p>	<p>The proposal is inconsistent with this direction as it applies to land that contains Class 5 acid sulfate soils (Figure 12 shown in pink) and is not supported by an acid sulfate soils study.</p>  <p><b>Figure 12 – Acid Sulfate Soils (Source: Northern Region Map Viewer)</b></p> <p>The inconsistency with this direction is considered minor as Byron LEP 2014 contains acid sulfate soils provisions that can ensure that this matter is adequately addressed at the development application stage.</p>



5.1 Integrating Land Use and Transport	Unresolved	<p>The proposal is potentially inconsistent with the direction as it has not considered Improving Transport Choice – Guidelines for planning and development (DUAP 2001) and The Right Place for Business and Services – Planning Policy (DUAP 2001).</p> <p>It is noted that the Pacific Motorway (HW10) in this location is a classified road (a declared Freeway), Gulgan Road (MR689) is a classified (Regional) road and The Saddle Road is a public (local) road.</p> <p>A Traffic Impact Study prepared by Ingen Consulting, Revision I dated 20 April 2023 has been lodged with the planning proposal. Preliminary advice received from Transport for NSW on 9 February 2024 states that based on information provided to date, TfNSW provides in-principal support for a reduction of the 80 km/h speed zone on Gulgan Road to 60 km/h to accommodate the proposed new roundabouts on Gulgan Road.</p> <p>It is considered appropriate to consult with Transport for NSW regarding the planning proposal as part of the exhibition process to ensure consistency with this direction.</p>
9.1 Rural Zones	Justified	<p>The planning proposal is inconsistent with this direction as it seeks to rezone rural land for employment purposes.</p> <p>The planning proposal is justifiably inconsistent with this direction as the proposal is supported by the BILS which:</p> <ul style="list-style-type: none"> <li>• gives consideration to the objectives of this direction;</li> <li>• identifies the land which is the subject of the planning proposal; and</li> <li>• is approved by the Secretary of the Department of Planning, Housing and Infrastructure.</li> </ul>
9.2 Rural Lands	Unresolved	<p>The proposal is inconsistent with this direction as it will rezone rural land for urban purposes and provide additional dwelling entitlements and does not support all the objectives of the direction such as supporting farmers in exercising their right to farm.</p> <p>The inconsistency is considered likely to be of minor significance noting that:</p> <ul style="list-style-type: none"> <li>• the proposed employment lands are consistent with Council's Department approved local strategy and the urban growth area boundaries within the North Coast Regional Plan 2041 (and these areas are not identified as being important farmland in the regional plan); and</li> <li>• the proposal is supported by an agricultural land assessment that confirms the low agricultural capability of the broader site.</li> </ul> <p>Consultation with the Department of Primary Industries – Agriculture in relation to this direction is considered appropriate. Consistency with this direction will remain unresolved until this consultation has occurred.</p>

### 3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.



## 4 Site-specific assessment

### 4.1 Environmental

An Ecological Assessment Report prepared by Bower Ecology Pty Ltd, Version 1 dated 28 September 2023 has been prepared together with a Hairy-joint Grass Survey prepared by Bower Ecology Pty Ltd dated 6 March 2024.

The ecological assessment confirms that vegetation on the property includes isolated patches of rainforest, small areas of swamp and wet sclerophyll forest and freshwater wetlands. Habitat connectivity to the west and north of the proposed project footprint is generally limited due to extensive agricultural clearing resulting in relatively small, isolated patches of native vegetation. The Pacific Highway negatively affects landscape permeability to the east where there are more extensive areas of connected woody native vegetation. To the south of the proposed project footprint, habitat connectivity is supported with woody vegetation patches generally within 100 metres of each other.

To avoid ecological impacts, the majority of the proposed urban areas overlay existing paddocks which are dominated by exotic grasses and forbs and have been subject to historic grazing.

During the surveys undertaken as part of the assessment, four threatened species were observed on the property including Whitebellied Sea Eagle which was flying over the site (foraging), the White-eared Monarch (foraging) as well as the threatened flora species *Tinospora tinctoria* (Arrow-head Vine) and *Cryptocarya foetida* (Stinking cryptocarya). The threatened flora was observed within C2 Environmental Conservation zoned land which is not proposed to be rezoned.

The assessment report states that it is not expected that a significant impact to threatened species will result if the site is developed. Given the presence of NSW Biodiversity Value mapping in the south-east of the site and the likely requirement for traffic access from Gulgan Road, further assessment that can also help ensure no adverse environmental impact will also likely be required for future development applications.

#### Koala habitat

The ecological assessment confirms that the site is outside of a koala management precinct that is mapped by the Byron Coast Comprehensive Koala Plan of Management (KPoM), however there is a very small area of potential koala habitat on site. In accordance with the KPoM, proposals relating to land containing potential koala habitat outside of a Koala Management Precinct must undertake survey to assess koala activity on the site. A koala survey within koala habitat areas was undertaken as part of the ecological assessment and no evidence of koala activity was observed and the site is not considered to represent “core koala habitat”.

While the status of the local koala population in this area is not known, the ecological assessment states that it is likely that a small number of koalas persist in the local area. For this reason, the assessment recommends that the small stand of *E. tereticornis* on the property be considered potential koala habitat (albeit with limitations on habitat value due to isolation from other areas and significant barriers to movement within the wider area). Prior to exhibition, the planning proposal is to confirm that this area is included in the C2 Environmental Conservation or C3 Environmental Management zone.

#### Hairy Jointgrass

The Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Group (BCS) provided pre-Gateway advice to Council regarding the proposal. BCS recommended that further targeted surveys be undertaken in the planning area to rule out the presence of any threatened Hairy Jointgrass populations.

A study regarding Hairy Jointgrass was completed in March 2024 which found no Hairy Jointgrass within Area 5 of the BILS. While patches / clumps of Hairy Jointgrass were found in the south of the survey area at 7 micro-sites, these sites are located outside the site boundary and no adverse impact to Hairy Jointgrass in the locality is anticipated.

### Potential Contamination

The planning proposal is accompanied by a Preliminary Site Investigation prepared by Contaminated Site Investigation Australia Pty Ltd, dated 15 July 2021 as well as a Cattle Dip Exclusion Zone Assessment prepared by Contaminated Site Investigation Australia Pty Ltd, dated 18 November 2021. The area affected by the former cattle dip is detailed in Figure 13.

The planning proposal concludes that it is appropriate as the employment land area has been carefully mapped having regard to on-site research in relation to land potentially contaminated by the former dip site and an exclusion perimeter is recommended to be installed at approximately 15m from the dip infrastructure. It is concluded that the remainder of the site (outside the exclusion area) is suitable for commercial and industrial use.

Although the contamination reports did not consider the inclusion of the proposed live / work clause on the subject site and whether the land is suitable for residential purposes, the most conservative criteria of 'Residential / Public Open Space' has been adopted for the ecological investigation levels and ecological screening levels. The concluding comments of the report confirm that analytical results from surface soils around the portion of the site that is proposed for a change in land use did not report any exceedances of the human health criteria for industrial use or for the more conservative residential criteria' and is therefore suitable for its intended future purpose.



**Figure 13 - Location of the cattle dip (Source: Cattle Dip Exclusion Zone Assessment)**

## 4.2 Social and economic

It is understood that if the planning proposal proceeds to public exhibition, a Development Control Plan will be exhibited concurrently to detail planning and design guidelines that support the proposed LEP amendments.

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 7 Social and economic impact assessment**

Social and Economic Impact	Assessment
Housing	Social and economic effects arising from the planning proposal are expected to be positive in terms of the provision of work / live options in proximity to existing facilities and infrastructure.
Economic	The planning proposal has been submitted in response to the BILS which aims to ensure that Byron Shire has adequate business centres and industrial land. Council expects that the impact of the proposed E3 Productivity Support zone on the commercial centres of Mullumbimby and Brunswick Heads will be minor due to the distance to these centres. Additionally, council notes that there is no existing E3 zone in Mullumbimby or Brunswick Heads. As such, the proposal is expected to provide a new suite of land uses that are currently lacking in the north of the Shire.
Land use conflict	<p>A Land Use Conflict Risk Assessment (LUCRA) prepared by Tim Fitzroy &amp; Associates, dated 20 December 2021 was submitted in support of the planning proposal.</p> <p>The LUCRA notes that conflict between residential development and industrial land uses may occur where land uses directly abut or are close to each other. The key potential constraints regarding the proposed development include:</p> <ul style="list-style-type: none"> <li>• noise impacts from future light industrial uses on farm residential receivers in the locality;</li> <li>• odour from future light industrial uses on farm residential receivers in the locality;</li> <li>• surface and groundwater impacts from the future light industrial uses on the receiving environment; and</li> <li>• soil, surface and groundwater contamination from the existing cattle dip site on future users at the subject site.</li> </ul> <p>It is noted that the LUCRA did not address proposed residential land uses facilitated by the proposed work / live provision. The LUCRA notes that in order to achieve the amenity criteria at the closest affected existing residential properties, appropriate mitigation measures such as setback distances / buffers, noise wall / mounds, limited operating hours and / or ensuring that noisy industry and activities are located at the maximum distance possible from sensitive receivers may be required.</p> <p>It is considered that these matters are capable of being addressed at the development application stage for both existing and proposed residential development.</p>

## 4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal as well as the infrastructure that is required in support of the proposal.

**Table 8 Infrastructure assessment**

Infrastructure	Assessment
Water	Potable water supply to the planning area is available from the operational reservoir on the northern side of The Saddle Road which is fed by Rous water mains that traverse the site from south to north. Due to the limited elevation difference pumps may be required to ensure adequate pressure. Consultation with Rous County Council regarding the proposal is considered appropriate.
Sewer	Sewage from site can be pumped to an existing pump station in Brunswick Heads. The proposed route uses the existing services corridor through the centre of the subject site, then travels along the eastern boundary until it enters the Bashforth's Lane reserve in the northeaster corner, after which it crosses the Pacific Motorway by ways of under bore. The west-to-east alignment follows an existing crown road, it then crosses the Old Pacific Highway South to then follow Bayside Way, until a suitable point is found to travel north across the sports fields to the existing pump station in Brunswick Heads. The total length of this route is approximately 2.6km.
Stormwater management	Preliminary modelling detailed in the Civil engineering report prepared by Ingen Consulting, Revision B dated 23 December 2021 shows that the post-development runoff peaks increase in flow rate compared to the pre-development peaks due to an anticipated increase in hardstand. Therefore, the civil engineering report recommends that on-site stormwater detention (OSD) be applied to the development to ensure that the post-development peak discharge does not exceed pre-development discharge flow rates. The details of the OSD strategy can be determined at the development application stage.
Traffic	<p>A Traffic Impact Study prepared by Ingen Consulting, Revision I dated 20 April 2023 was submitted with the planning proposal. The study explored four potential site access arrangements and review by council engineers found that Option B delivered the best outcomes. This option constitutes a single lane roundabout with a southbound Gulgan Road bypass lane to eliminate queueing towards the motorway. The southern approach would have a slip lane into the site to reduce delays for northbound through traffic.</p> <p>A 'letter of offer' has been submitted by the proponent to enter into a planning agreement to fund works associated with a proposed roundabout on Gulgan Road which will allow vehicle access to the site.</p>

Public transport,  
pedestrian and  
cycleway linkages

It is understood that the proposed main access road to the site has been designed to cater for buses and that council will identify available bus routes.

It is proposed to include a footpath along one side of the main access road. This will connect with the Gulgan Road infrastructure.

Byron Shire Council's Bike Plan shows a high-priority cycle path on both sides of Gulgan Road at the frontage of the site. The proposed roundabout design includes a pedestrian and bicycle refuge across all three legs to cater for bicycle movements.

## 5 Consultation

### 5.1 Community

Council has indicated that a community consultation period will be undertaken in accordance with the Gateway determination.

The planning proposal is categorised as standard under the LEP Making Guideline (August 2023). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

### 5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- Arakwal Corporation
- Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Group
- Department of Primary Industries – Agriculture
- Heritage NSW
- NSW Reconstruction Authority
- NSW Rural Fire Service
- Rous County Council
- Transport for NSW

## 6 Timeframe

Council proposes a 6 month time frame to complete the LEP.

The LEP Plan Making Guideline (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as standard.

The Department recommends an LEP completion date of 9 months from the date of determination to allow sufficient time to satisfy the Gateway conditions prior to public exhibition and agency consultation. A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.



To ensure a consistent approach to the finalisation of rezoning decisions and in line with the former Secretary's letter to Byron Shire Council of 1 March 2016, an authorisation to act as the local plan-making authority is not to be issued where a planning proposal seeks to apply a C zone to land to which the Northern Councils E Zone Review applies.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions as it is consistent by the Council's Department approved Byron Shire Business and Industrial Lands Strategy 2020.

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

- remove the draft work / live special provision detailed in Appendix B;
- amend planning proposal maps to apply proposed controls along Gulgan Road and The Saddle Road as specified by Byron Shire Council's C Zone Stage 4 implementation (PP-2024-1194), to the extent that it applies to the planning area of the planning proposal;
- update land zoning, minimum lot size and height of buildings maps to reflect existing provisions;
- include a Local Clauses Map, with that portion of the subject land proposed to be zoned E3 Productivity Support identified as a work / live precinct;
- update the explanation of provisions to also detail the proposed changes to Precinct C as shown on the site analysis plan;
- include an appropriate level of investigation of the site's flood risk and management options including the level of the PMF event, the level of hazard, potential flood evacuation routes, the time of isolation and compliance with the Department's draft shelter-in-place guideline;
- confirm that the small stand of *E. tereticornis* on the property, considered potential koala habitat, is to be incorporated in the C2 Environmental Conservation or C3 Environmental Management zone.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 1.4 Site Specific Provisions, 4.5 Acid Sulfate Soils, 9.1 Rural Zones are minor or justified; and
- Note that the consistency with section 9.1 Directions 1.1 Implementation of Regional Plans, 3.2 Heritage Conservation, 4.1 Flooding, 4.3 Planning for Bushfire Protection, 5.1 Integrating Land Use and Transport and 9.2 Rural Lands is unresolved and will require justification.

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

The following conditions are recommended to be included on the Gateway determination:

1. Prior to community and agency consultation the planning proposal is to be updated to:
  - remove the draft work / live special provision detailed in Appendix B;
  - amend planning proposal maps to apply proposed controls along Gulgan Road and The Saddle Road as specified by Byron Shire Council's C Zone Stage 4 implementation (PP-2024-1194), to the extent that it applies to the planning area of the planning proposal;
  - update land zoning, minimum lot size and height of buildings maps to reflect existing provisions;

- include a Local Clauses Map, with that portion of the subject land proposed to be zoned E3 Productivity Support identified as a work / live precinct;
- update the explanation of provisions to also detail the proposed changes to Precinct C as shown on the site analysis plan;
- include an appropriate level of investigation of the site's flood risk and management options including the level of the PMF event, the level of hazard, potential flood evacuation routes, the time of isolation and compliance with the Department's draft shelter-in-place guideline;
- confirm that the small stand of *E. tereticornis* on the property, considered potential koala habitat, is to be incorporated in the C2 Environmental Conservation or C3 Environmental Management zone.

2. Consultation is required with the following public authorities:

- Arakwal Corporation
- Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Group
- Department of Primary Industries – Agriculture
- Heritage NSW
- NSW Reconstruction Authority
- NSW Rural Fire Service
- Rous County Council
- Transport for NSW

3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

The timeframe for the LEP is 9 months from the date of determination and that Council is not authorised to act as the Local Plan Making Authority for this proposal.



01-07-2024

\_\_\_\_\_  
(Signature)

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

Lucy Walker

Manager, Hunter and Northern Region



3/7/24

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(Signature)

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

Craig Diss

Acting Director, Hunter and Northern Region

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