



IRF23/341

Gateway determination report – PP-2023-119

permit functions centres (being low impact performance of live music and / or arts events) as exempt development under the Byron LEP 2014 on part of the Cavanbah Sporting and Cultural Centre site, 249 Ewingsdale Road, Byron Bay

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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.

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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 – Site Identification Map

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Byron
PPA	Byron Shire Council
NAME	permit functions centres (being low impact performance of live music and / or arts events) as exempt development under the Byron LEP 2014 on part of the Cavanbah Centre site, 249 Ewingsdale Road, Byron Bay
NUMBER	PP-2023-119
LEP TO BE AMENDED	Byron Local Environmental Plan 2014
ADDRESS	249 Ewingsdale Road, Byron Bay
DESCRIPTION	Lot 3 DP 706286
RECEIVED	19/01/2023
FILE NO.	IRF21/341
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

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

The objective of the planning proposal is to permit functions centres (being low impact performance of live music and / or arts events) as exempt development under the Byron LEP 2014 on land zoned RE1 Public Recreation at the Cavanbah Centre site, 249 Ewingsdale Road, Byron Bay. The objective of this planning proposal is clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to alter the Byron LEP 2014 by amending Schedule 2 Exempt Development to include functions centres as exempt development on land owned or managed by Council and zoned RE1 Public Recreation at the Cavanbah Centre site, 249 Ewingsdale Road, Byron Bay provided:

- no permanent structure is erected;
- no clearing of native vegetation is involved; and
- all other required approvals have been obtained.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. It will be Parliamentary Counsel's responsibility to determine the final drafting and mechanism that best achieves the intent of the planning proposal.

1.4 Site description and surrounding area

The subject lot is known as Lot 3 DP 706286, 249 Ewingsdale Road, Byron Bay. The planning proposal only relates to the eastern part of the subject lot zoned RE1 (Figure 1) which contains Council's Cavanbah Sporting and Cultural Centre (Figure 2). The site is situated on Ewingsdale Road, the main entrance into Byron Bay town (Figure 3).

The lot is zoned part RE1 Public Recreation, part RU2 Rural Landscape and part DM Deferred Matter under Byron LEP 2014. The DM land is zoned 6A Open Space and 7K Habitat under Byron LEP 1988. The surrounding land use in the area include residential dwellings to the east, mapped coastal wetlands to the west and rural land to the north.

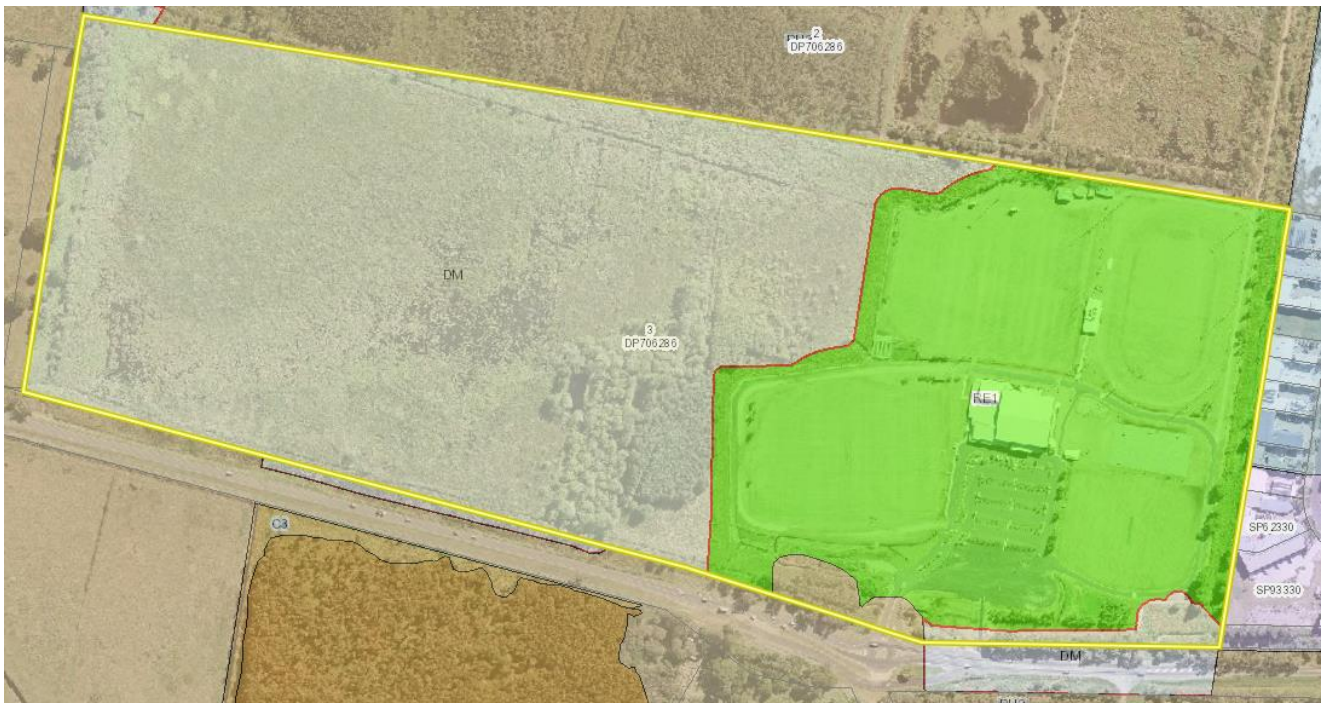


Figure 1 Subject site (source: NCRP Mapping)



Figure 2: Site location (source: NCRP Mapping)

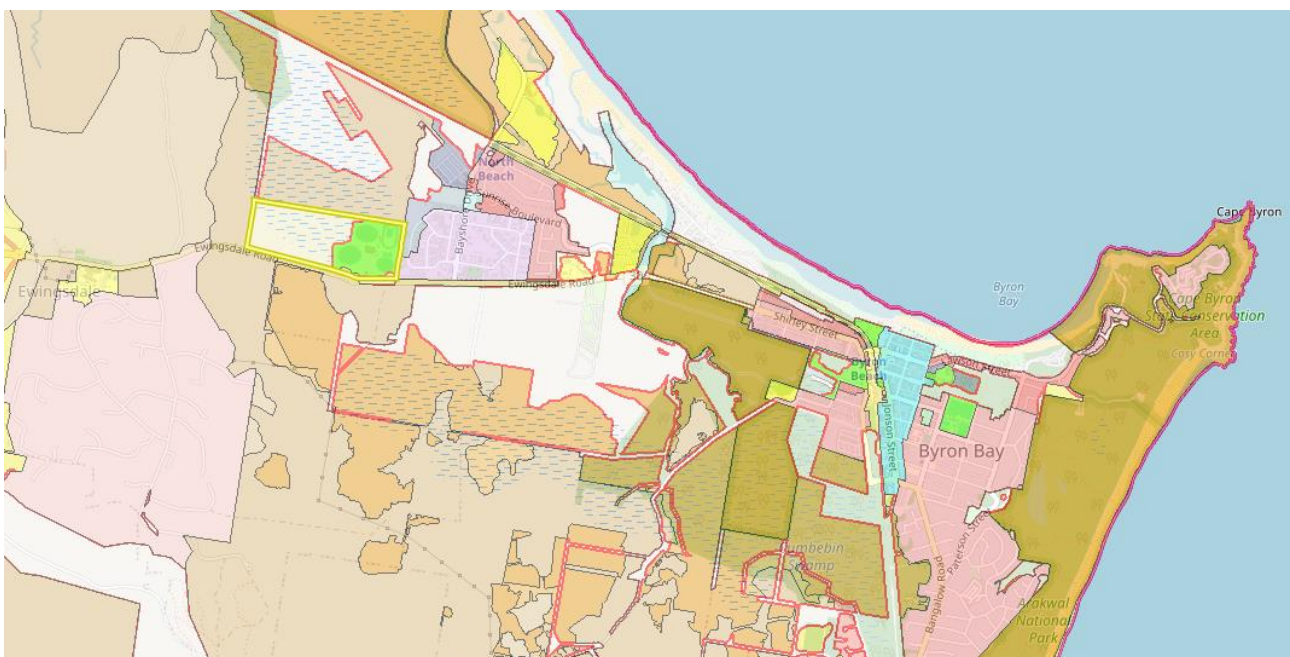


Figure 3: Locality Map (source: NCRP Mapping)

1.5 Mapping

The planning proposal is a proposed amendment to Schedule 2 Exempt Development of the LEP. Mapping is not required.

2 Need for the planning proposal

Byron Shire Council adopted a Plan of Management (PoM) - Community Land for the Cavanbah Sporting and Cultural Centre in 2017. The PoM identifies outdoor/indoor entertainment as authorised development at the Cavanbah Sporting and Cultural Centre site. While indoor events are exempt development under SEPP (Exempt and Complying Development Codes) 2008, outdoor events require Council approval.

An amendment to the LEP is being sought to allow for these types of low impact music and / or outdoor events (on Council owned/managed land at the subject site) to be permitted without needing to seek Council development approval under the LEP. Council will continue to manage and control these events as landowner and under section 68 of the *Local Government Act 1993*.

These small-scale events are best defined as ‘functions centres’ under the Byron LEP 2014 standard instrument definitions. This is consistent with advice received from the Department’s Codes team who have consulted with Parliamentary Counsel on this issue. While the term ‘function centre’ does encompass development other than low impact music and / or outdoor events, making this broader term as exempt development is considered acceptable in the circumstances as the type and scale of development can still be controlled by Council as both a landowner and as a consent authority under the *Local Government Act 1993*. It is also noted that functions centres are already permissible in the RE1 Public Recreation zone and can occur with consent under Byron LEP 2014.

An amendment to Schedule 2 Exempt Development of Byron LEP 2014 is the most appropriate means to achieve the outcome and objectives of the proposal.

3 Strategic assessment

3.1 Regional Plan

The North Coast Regional Plan 2041 was finalised in December 2022. References in the proposal to the 2036 plan are no longer relevant and should be amended prior to consultation.

The planning proposal did reflect that although the NCRP 2036 does not clearly address the issue of permitting events on public land, it is consistent with the vision of ‘a thriving interconnected economy’ and ‘vibrant and engaged community’. These directions align with Objective 19 ‘Public spaces and green infrastructure and healthy communities’ and Objective 20 ‘Celebrate local character’ of the NCRP 2041. The proposal is therefore considered not to be inconsistent with the regional plan.

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 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	The planning proposal is consistent with Council's LSPS and aligns with its Economic Priority Action that facilitates and supports sustainable development of Byron's business community. By supporting the use of the site for small scale events will also supporting the local business community.
Community Strategic Plan 2032	The planning proposal is consistent with the key themes of the Community Strategic Plan 2032 including involving the community in its decision making, opportunities and participation in arts and cultural activities which this clause is specifically targeted to permit and responsible development of effective place and space planning.

3.3 Section 9.1 Ministerial Directions

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

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	No - Justified	The proposal is inconsistent with this Direction as the RE1 zone area of the site is partly flood affected and the proposal will intensify potential development. The inconsistency is considered to be of minor significance as the site is not in a floodway or high hazard area and as the proposed small scale temporary events can be adequately managed or cancelled if a flood event was forecast or flooding was to occur on site, and the scale and type of use can be adequately controlled and managed by Council.
4.2 Coastal Management	No – Justified	The proposal is inconsistent with this Direction as the RE1 zone area of the site is within the coastal wetland buffer area under SEPP (Resilience and Hazards) 2021 and the proposal will intensify potential development and does not include provisions that give effect and are consistent with the Coastal Management Act 2016. The inconsistency is considered to be of minor significance as the proposed use is temporary in nature, no adverse impact to the coastal environment is anticipated and the scale and type of use can be adequately controlled and managed by Council.

4.3 Planning for Bushfire Protection	No - Unresolved	The planning proposal is potentially inconsistent with this Direction as it applies to land that is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway Determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the Direction remains unresolved.
4.5 Acid Sulfate Soils	No - Justified	The proposal is inconsistent with this Direction as the RE1 zone area of the site contains acid sulfate soils, the proposal will intensify potential development and is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as the intensification involves only small scale temporary events that can be adequately controlled and managed by Council. It is also noted that the land was previously filled and disturbance of acid sulfate soils would therefore also be unlikely particularly in association with temporary outdoor events.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 8 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Resilience and Hazards 2021	<p>The land is mapped as being within 100m of a Coastal Wetland.</p> <p>The Coastal Wetland buffer infringes on the land subject to the planning proposal.</p>	Yes	The proposal is consistent with the SEPP apart from the buffer extending into the RE1 zoned area which consists of the sporting fields. The land is substantially cleared for the sporting facilities and does not support any wetland vegetation. The proposal is not likely to increase pressure on the adjacent wetland or it is unlikely that small scale events proposed for the site would impact on the wetland or the buffer that would trigger the SEPP.

4 Site-specific assessment

4.1 Environmental

No adverse environmental impacts from the proposal are considered unlikely. The subject site is mostly devoid of vegetation so it is considered unlikely that the proposal will have negative impacts on threatened species or populations of threatened species or their habitats.

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Flooding	The site is partly flood prone. The impact and risk from flooding on small scale temporary music or art festival events in outdoor settings is minimal as these events can be easily suspended or evacuated when flooding is forecast as discussed above. It is however recommended that the proposal be referred to the NSW Biodiversity and Conservation Division (flooding) for review.
Aboriginal Heritage	The location is highly disturbed due to the creation of the sporting fields and event centre, therefore impacts are not anticipated for Aboriginal cultural heritage. No ground disturbance is expected. However, the Aboriginal community should be consulted during the consultation period.
Potential Contamination	The proposal confirms that there is no known potential contamination of the site.

4.2 Social and economic

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

The proposal is expected to have both positive economic and social outcomes.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Community	Byron Bay is known for its musical and art culture and these small-scale events can cater to both the wider music community but also the local community of Byron. The site has successfully hosted past events including small festivals and community markets.
Amenity	Amenity is unlikely to be affected as it is not located close to residential receptors and is separated by the Byron Arts and Industry Estate. Noise and hours of operation can be managed by Council as landowner and through the s68 approval process.

Stimulate economy	The events have the potential to provide economic benefits to the wider community through increased patronage to other businesses and the Byron CBD.
Tourism	Musical and art events are quite popular in the Byron area and can have a positive impact on Byron's tourism trade.
Traffic	Due to the small-scale nature of the proposed land uses it is considered likely that the existing infrastructure is adequate to serve the site. Consultation with Transport for NSW is however recommended to confirm the suitability of the proposal.

4.3 Infrastructure

The proposal is not expected to be any drain on existing infrastructure. The site is already serviced with water and waste and external temporary amenities can be brought in if necessary. As the events are only expected to be of a small scale there is limited potential impact to infrastructure by the proposal.

5 Consultation

5.1 Community

Council proposes a community consultation period of 30 days.

The exhibition period proposed is considered appropriate and forms to the conditions of the Gateway determination.

5.2 Agencies

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

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

- Biodiversity and Conservation Division (flooding)
- Transport for NSW
- NSW Rural Fire Service
- Local Aboriginal Land Council

6 Timeframe

A time frame of six (6) months is recommended to ensure it is completed in line with its commitment to reduce processing times.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal relates to a matter of local significance, it is recommended that Council 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:

- implement the actions from the Plan of Management for the Cavanbah Sporting and Cultural Centre site;
- provide a streamline approach for permitting small scale outdoor events at the site; and
- promote additional uses for public recreational space.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.1 Flooding, 4.2 Coastal Management and 4.5 Acid Sulfate Soils are minor or justified; and
- Note that the consistency with section 9.1 Direction 4.3 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. The planning proposal is to be updated to:
 - Reference and assess its consistency with the North Coast Regional Plan 2041.
2. Consultation is required with the following public authorities:
 - Biodiversity and Conservation Division (flooding)
 - Transport for NSW
 - NSW Rural Fire Service
 - LALC
3. The planning proposal should be made available for community consultation for a minimum 30 days.
4. The timeframe for completing the LEP is to be six (6) months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



15/2/23

(Signature)

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24/2/2023

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