



Gateway determination report – PP-2023-1376

Rezone land at Rankin Drive Bangalow for residential purposes

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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 – Amendment to Byron Local Environmental Plan 2014 – Rezone Lot 261 DP1262316 and Lot 11 DP 807867 for residential purposes, Version #2 for Gateway Submission (March 2024)
Report on Broadscale Geotechnical Investigation And Landslide Susceptibility Assessment for Proposed Residential Subdivision at Rankin Drive, Bangalow – Geotech Investigations Pty Ltd (7 July 2022)
Hydraulic Assessment for 68 Granuaille Crescent, Bangalow, NSW – Floodworks (16 November 2023)
Request For Information (RFI) – Review of Flooding and Stormwater for the rezoning of Lot 261 DP1262316 and Lot 11 DP807867 in 68 Rankin Drive, Bangalow. Additional information requested for Planning Proposal Application PP-2023-1376- Floodworks (15 April 2024)
Traffic Impact Statement for a Planning Proposal For Residential Development at 68 Rankin Drive Bangalow NSW 2479 – SDS Civil Enterprises (June 2023)
Engineering Services Report for a Planning Proposal for Residential Development And Associated Works at 68 Rankin Drive Bangalow NSW 2479 – SDS Civil Enterprises (April 2023)
Land Use Conflict Risk Assessment - Proposed Rezoning Planning Proposal at Lot 261 DP 1262316 & Lot 11 DP 807867 Rankin Drive Bangalow – HMC Environmental (June 2022)
Environmental Assessment: Rezoning Application, Rankin Drive Bangalow - Peter Parker Environmental Consultants (9 August 2022)
Preliminary Site Investigation - Proposed Rezoning Planning Proposal – HMC Environmental Consulting (June 2022)
Bush Fire Assessment Report - Proposed Rezoning – Bushfire Certifiers (27 June 2023)
Noise Impact Assessment - Planning Proposal (Rezoning) Lot 11 DP807867 & Lot 261 DP 1262316 Rankin Drive Bangalow – Tim Fitzroy (14 September 2022)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Byron
PPA	Byron Shire Council
NAME	Rezone of land at Rankin Drive Bangalow for residential purposes
NUMBER	PP-2023-1376
LEP TO BE AMENDED	Byron LEP 2014
ADDRESS	68 Rankin Drive
DESCRIPTION	Part of Lot 261 DP1262316 and part of Lot 11 DP 807867
RECEIVED	27/03/2024
FILE NO.	EF 24/4362
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 objective of the proposal is to rezone the land to part R2 Low Density Residential Zone and part R3 Medium Density Residential.

It is noted that the eastern corner of Lot 11 DP 807867 proposed as R3 Medium Density Residential (outlined in yellow in Figure 1) is not identified in Council's Department approved Residential Strategy or Affordable Housing Contribution Scheme. This section of land is also impacted by a high flood hazard in the Probable Maximum Flood (PMF) event as discussed further in section 4.1 of this report. Accordingly, it is recommended that the eastern portion of Lot 11 DP 807867 plus any other part of the land affected by a high flood hazard be omitted from the planning proposal, which includes the north-eastern corner of Lot 261 DP 1262316.

This issue was discussed with Council staff on 4 July 2024 who queried whether the R3 zone could be extended further across the site to help offset any dwelling loss from the removal of this land. Department staff confirmed that they had no objection to such a change. Should Council resolve to extend the proposed R3 Zone when updating the proposal ready for consultation, a Gateway alteration can be submitted at that time for the Department's consideration.

It is also recommended that the objectives of the planning proposal be amended to identify that associated changes to the minimum lot size, floor space ratio and affordable housing contribution provisions associated with the rezoning will be undertaken.

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 (LZN) Map sheet LZN_003CB	Lot 261 DP 1262316 – RU1, RU2 & R2 Lot 11 DP807867 - RU2	R2 & R3
Minimum lot size (MLS) Map sheet LSZ_003CB	R2 – part 600m ² & 800m ² RU1 & RU2 – 40ha	R2 - part 600m ² & 800m ² R3 - 1000m ²
Floor Space Ratio (FSR) FSR_003CB	R2 – 0.5:1	R2 – 0.5:1 R3 - Nil
Number of dwellings	11	18 residential 14 strata title (affordable housing)
Affordable Housing Contribution Scheme	N/A	Identify the land on the AHCS map

As shown in Table 3 above, the minimum lot size proposed for the R3 zone is 1000m². Both 600m² and 800m² are proposed to apply to the R2 zone.

An 800m² and 1000m² minimum lot size is greater than applied to the R2 and R3 zones in other parts of the LGA. The planning proposal notes that the minimum lot size of 800m² will apply to the steeper area of the site and the minimum lot size of 1000m² is intended to enable lots that can facilitate medium density housing and future strata subdivision. To ensure the objective of the proposal is achieved and a mix of housing types are realised, it is recommended a dwelling density clause is applied to the R3 zone. A condition has been imposed in this regard.

No change to the existing 9m Height of Buildings provisions is proposed.

The explanation of provision is considered adequate for community consultation subject to the recommended changes.

1.4 Site description and surrounding area

The proposal applies to parts of Lot 261 DP 1262316 and Lot 11 DP 807867 Rankin Drive, Bangalow. The combined land area is approximately 4.01ha. The land is a residual parcel created by the adjoining residential subdivision. The planning proposal indicates the site was formerly currently vacant with most vegetation cleared. It also nominates regrowth is mostly exotic species however some mature native vegetation (including Koala feed trees) remains.

Rankin Drive is located to the south of the site with Hinterland Way (old Pacific Highway) bordering the site to the north. Residential development is located to the west and a non-operational rail corridor adjoins the site's eastern boundary (Figure 1).

Bangalow is located approximately 13 km's southeast from Byron Bay with the subject land being located on the northern extremity of the existing Bangalow village (Figure 2).

Prior to consultation, the description of the site in the planning proposal should be updated to nominate it applies only to parts of Lot 261 DP 1262316 and Lot 11 DP 807867 Rankin Drive, Bangalow to accurately reflect the scope of the proposal. A gateway condition is recommended in this regard.



Figure 1 - Subject site (source: Six Maps)

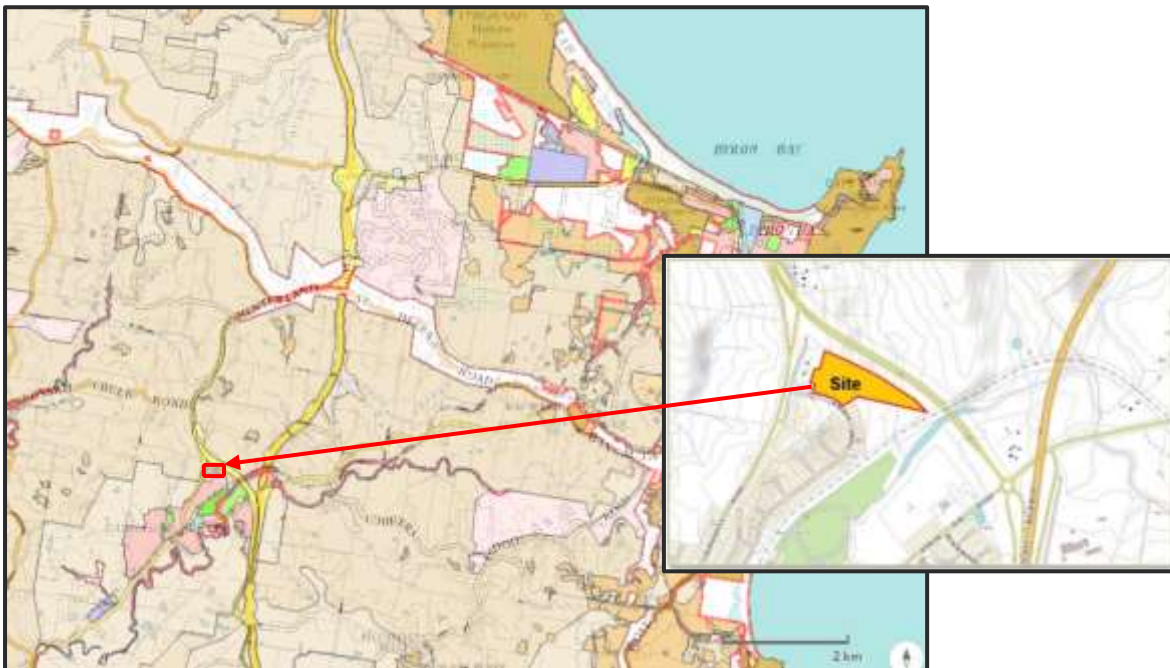


Figure 2 - Site context (source: Planning Portal Spatial Viewer)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the zoning, minimum lot size and floor space ratio. These maps do not adopt the standard LEP colour scheme or show the land zones and controls which apply to surrounding lands. To provide context and define the scope of the proposal, all maps should be updated prior to consultation.

In addition, the maps are currently located randomly within the proposal or an appendix making a comparison of existing development standards and proposed changes difficult. It is therefore recommended that prior to community consultation, the planning proposal is amended to include a consolidated set of both existing and proposed maps within the proposal itself.

The planning proposal has included an indicative subdivision layout map in the Appendix 1. This should be removed from the planning proposal prior to community consultation.

Finally, all maps within the proposal will need to be amended to remove part of Lot 11 DP 807867 plus any other part of the land affected by a high flood hazard as discussed in section 1.2 of this report. Conditions have been imposed on the gateway determination to address these matters.

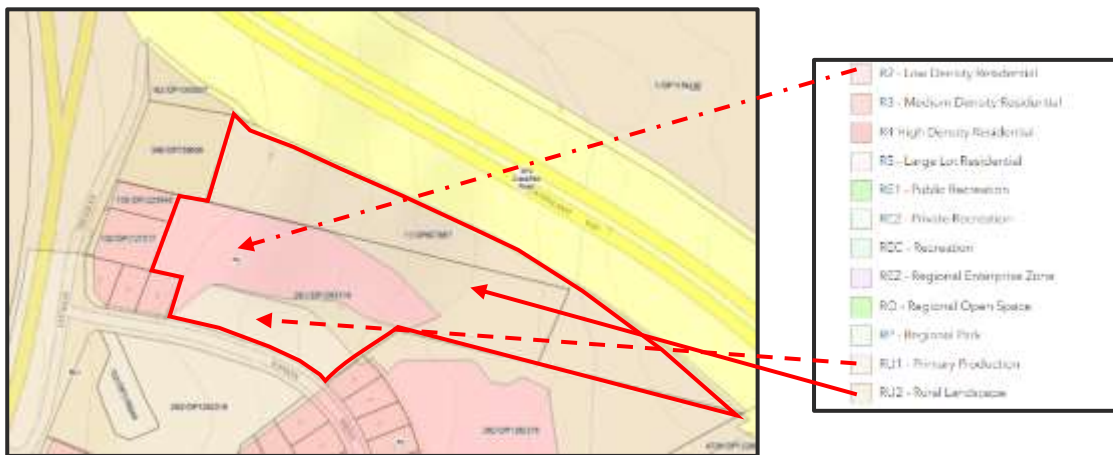
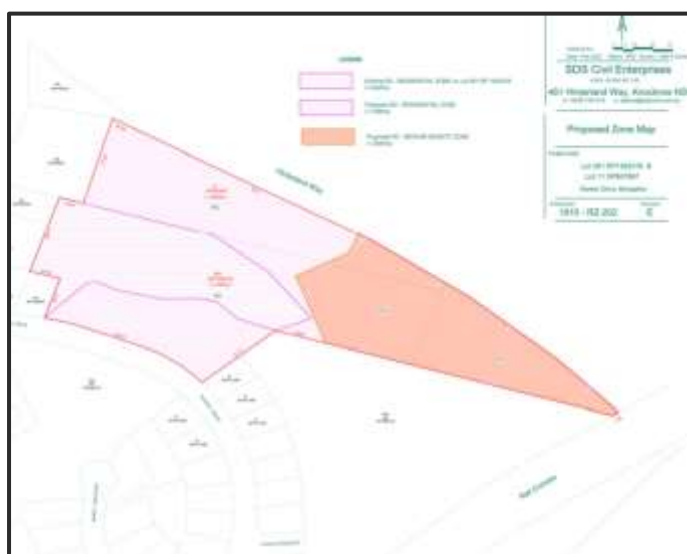


Figure 3 - Current Zoning Map (source: Planning Portal Spatial Viewer)



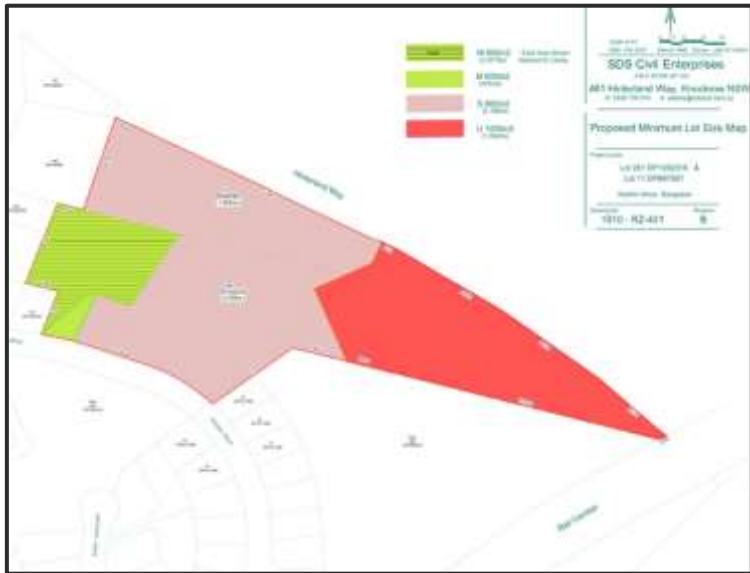


Figure 6 - Proposed Lot Size Map (source: Planning Proposal)

1.6 Background

A planning proposal and associated Voluntary Planning Agreement (VPA) for affordable housing on the subject land was originally submitted to Council by the landowner in 2021. Council however resolved not to support the planning proposal until an affordable housing contribution scheme was in place and the Residential Strategy had been approved by the Department.

The Byron Shire AHCS was adopted by Council in August 2022. Planning proposal (PP-2021-7395) which amended the Byron LEP 2014 to enable Council to collect contributions for affordable housing in accordance with the scheme was made in January 2023. Any subsequent planning proposals to upzone the land identified on the maps in the Byron Shire AHCS need to include the land on the AHCS map contained the Byron LEP 2014.

The Byron Shire AHCS map for Bangalow is illustrated in Figure 7. A small triangular section in the eastern corner of Lot 11 DP 807867 has not been included in the scheme. This triangular section of land equates to approximately 5800m². Given the area has not been identified on the Byron Shire AHCS map, it is unable to be included on the AHCS map contained in the Byron LEP 2014 so that clause 6.18 applies.

In April 2024, Council submitted its refreshed Byron Shire Residential Strategy 2041 to the Department for endorsement. Most of the land is shown as Area 11. However, the eastern triangular portion of Lot 11 DP 807867 that Council is now proposing be developed for affordable housing is not included (Figure 8). The Residential Strategy was approved by the Department in June 2024.

Affordable Housing Contribution Scheme 01 - Bangalow

NOTE: This map is for illustrative purposes only



Legend



BER (1) Affordable Housing Contribution Areas



Disclaimer: While all reasonable care has been taken to ensure the information contained in this map is accurate, the information is provided as a guide only. The information is not to be used for any purpose other than that for which it was provided. The information is not to be used for any purpose other than that for which it was provided.

0

200

500m scale

1:5,489

© 2022



Date: 24/02/22

Figure 7 - Affordable Housing Contribution Areas at Bangalow (source: PP-2021-7395)

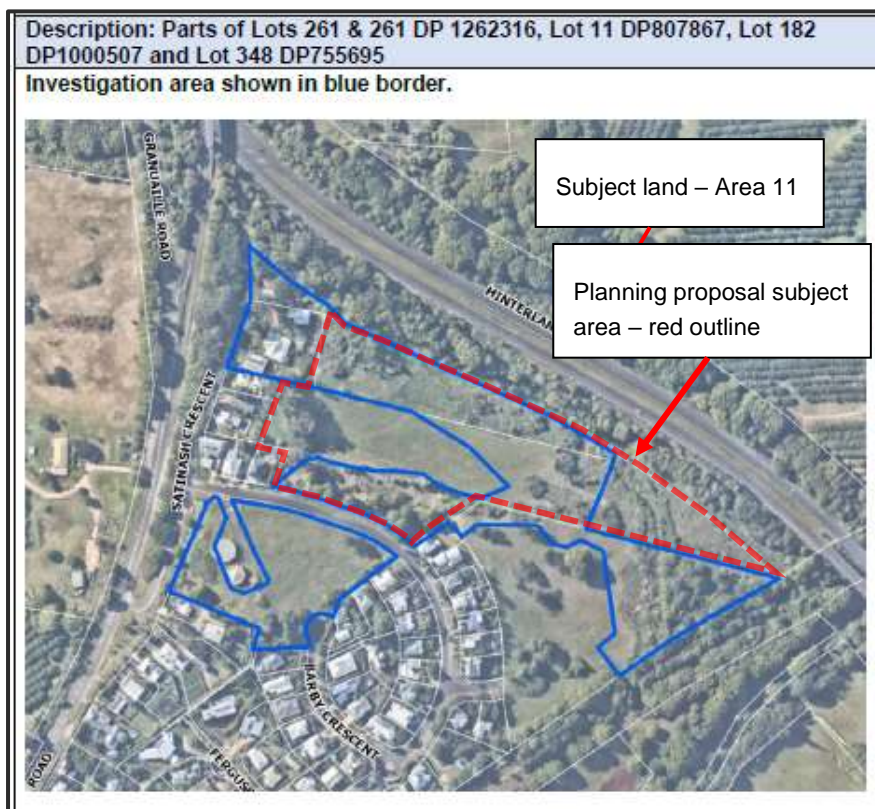


Figure 8 - 2024 draft Byron Residential Strategy showing subject land (Area 11) in blue

2 Need for the planning proposal

The planning proposal is the result of the Byron Shire Residential Strategy 2041. The subject land (minus the eastern triangular portion of Lot 11 DP 807867) is identified in the Residential Strategy as an investigation area - Area 11.

The Department's implied dwelling demand projections forecast of 4,522 additional homes over the next 20 years are required to house the LGA's growing population. The housing market and housing pressures in Byron Shire are different to other places due to its unique and exceptional circumstances as one of Australia's most popular holiday destinations. Additional residential land in Bangalow will assist in addressing the scale of the current housing crisis and Council's commitment to the Minister for Planning and Public Spaces to address housing supply issues.

The planning proposal is considered the most appropriate means of rezoning the subject land to make it available for future residential development.

3 Strategic assessment

3.1 Regional Plan

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

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
<p>Objective 1: Provide well located homes to meet demand.</p>	<p>The planning proposal seeks to rezone land for low and medium density residential uses. The planning proposal also seeks to dedicate to Council the eastern portion of Lot 11 DP 807867 for affordable housing under the Byron Shire AHCS. However, for the reasons discussed in section 1.2 of this report, it has been recommended the eastern portion of Lot 11 DP 807867 be omitted from the proposal.</p> <p>Most of the site is identified by Council for investigation in the Residential Strategy and as land for affordable housing under the Byron Shire AHCS.</p> <p>The planning proposal is therefore considered to be consistent with this objective</p>
<p>Objective 2: Provide more affordable and low-cost housing.</p>	<p>The planning proposal seeks to dedicate the eastern portion of Lot 11 DP 807867 to Council for affordable housing through the Byron Shire AHCS. As mentioned earlier, this section of land has not been mapped in the Byron Shire AHCS. This report recommends removal of this section of land from the planning proposal as it has not been identified in the Byron Shire AHCS and is subject to high hazard flooding and isolation in the PMF event. This is discussed in more detail later in the report.</p> <p>Although the part of Lot 11 DP 807867 intended to be dedicated for affordable housing will not progress as proposed, Council will still be able to levy a contribution toward affordable housing at the development application stage in accordance with clause 6.18 of the Byron LEP 2014 for that part of the land to which the Byron Shire AHCS applies. The planning proposal is therefore considered to be consistent with this objective.</p>
<p>Objective 3: Protect regional biodiversity and areas of high environmental value</p>	<p>A small area of mapped potential High Environmental Value (HEV) is located in the eastern corner of the site in the immediate vicinity of the creek (see Figure 9).</p> <p>The planning proposal is supported by an environmental assessment which indicates that the site is dominated by exotic species of little conservation value. No threatened plants or threatened ecological communities were recorded on the site. The assessment states that there is no HEV vegetation habitats on or adjoining the site and no areas identified under the Biodiversity Conservation Act 2016. No part of the site is identified in mapping relating to State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP). The site has also been partially cleared over the last few years.</p> <p>The site supports four Koala Feed Trees. An initial assessment conducted in 2020 found scratches on forest redgum trunks as well as scats. A standalone Koala Assessment has not been undertaken. The planning proposal states that the four Koala feed trees will be retained and additional plantings undertaken along the creek (Figure 11).</p> <p>The need for a Koala Habitat Assessment will be determined by Council in accordance with the relevant provisions of SEPP (Biodiversity and Conservation) 2021 at the development application stage.</p> <p>The planning proposal has already been referred by Council to the Division of Biodiversity, Conservation and Science (BCS) for comment. At the time of writing this report, a response has not been received. A condition has been imposed on the Gateway determination that requires consultation with BCS, recognising this condition will be satisfied by the current referral.</p> <p>Consistency with this Objective is unresolved at this stage.</p>

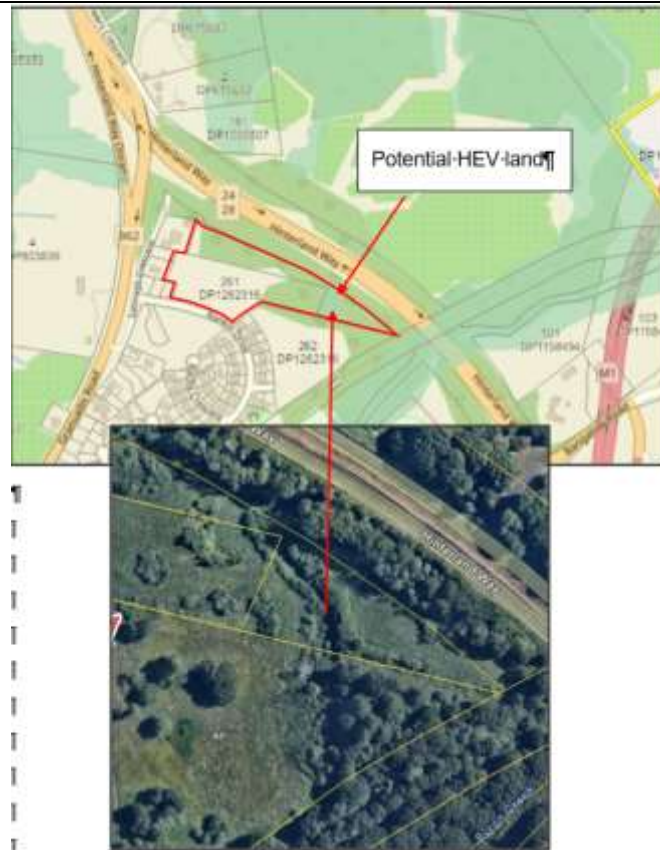


Figure 9 - Subject site showing land identified as potential HEV - NCRP 2041 (source: NCRP Spatial Viewer)

Objective 8:
Support the
productivity of
agricultural land

The site contains land mapped as Important Farmland under the NCRP 2041 (Figure 10). It is considered the agricultural capability and sustainability of the site has been compromised by a combination of the:

- small size of that part zoned RU1 and RU2;
- location of R2 zoned land through the centre of the site which has an approved four lot subdivision consent;
- proximity of existing residential development;
- fragmentation and isolation from nearby farmland; and
- the majority of the land is identified in the Byron Residential Strategy as an investigation area – Area 11.

It is recognised that for the above reasons, the site is unlikely to be suitable for agricultural pursuits. However, the proposal does not specifically address the agricultural capability and sustainability of the land as required by the NCRP 2041. As such, it is recommended that further detail should be included in the proposal to confirm its suitability for residential development and address the requirements of the NCRP 2041.

It is noted the Residential Strategy was referred to the Department of Primary Industries (DPI) Agriculture for review prior to endorsement by the Department in June 2024. DPI Agriculture raised no objection to inclusion of Area 11 as an investigation area within the strategy at that time. Notwithstanding, it is recommended DPI Agriculture is provided with the opportunity to review and comment on the planning proposal.



Figure 10 - Subject site showing land mapped as Important farmland under the NCRP 2041 (source: NCRP Spatial Viewer)

Objective 16:
Increase active and public transport usage

It is proposed to extend the existing Rankin Drive 2m shared pathway from the south of the site up to the most western frontage, being approximately 120m. The existing shared pathway connects to the Bangalow town centre and so it is anticipated that the proposed development will enable active transport usage.

Walking distance to Bangalow village is approximately 1.3km.

The closest bus stop is Granuaille Road, approximately 215m west of the proposed new road entry (off Rankin Drive). The existing bus service operates 6 services during the day to this bus stop. Uber and taxi are also available within Bangalow. It is considered that the planning proposal is consistent with this Objective.

Objective 18 – Plan for sustainable communities

This objective refers to the key settlement planning principles and the settlement planning guidelines including:

- identify growth needs and opportunities;
- direct growth to identifies urban growth areas;
- ensure sustainable development within the coastal strip;
- determine a required structure for future development; and
- encourage locally responsive sustainable design.

It is considered the planning proposal is consistent with these principles apart from directing growth to identified urban growth areas as the site is not currently located within the urban growth area boundary (Figure 11).

An assessment against the urban growth area variation principles is provided with the planning proposal. The Department's assessment is provided below.

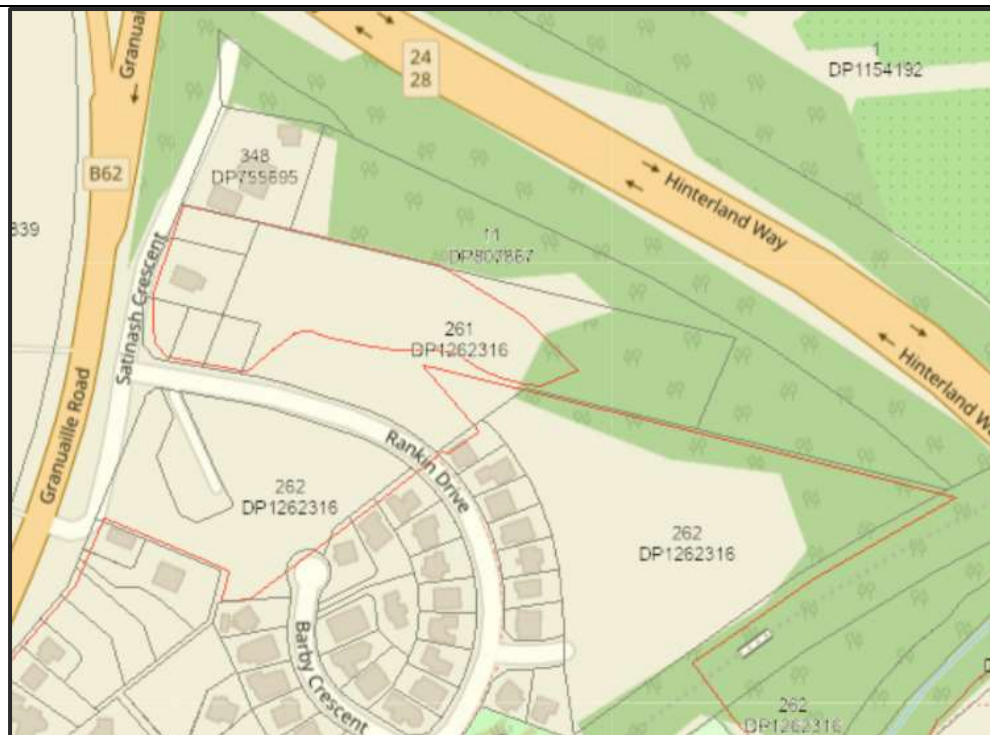


Figure 11 - Subject land showing Urban Growth Area Boundary for Byron in the NCRP 2041 – solid red line (source: Planning Portal Spatial Viewer)

The NCRP 2041 requires that any planning proposal that seeks to rezone land outside the UGA must satisfy the Urban Growth Area Variation Principles in Appendix B. Due to the site's small size, irregular shape, and its proximity to nearby residential areas, it is considered the proposal represents a minor adjustment to the adjacent urban growth area boundary.

The following table provides an assessment against the Urban Growth Area Variation Principles in the North Coast Regional Plan 2041. It is considered the proposal can demonstrate consistency with these principles.

Table 5 Urban Growth Area Variation Principles North Coast Regional Plan 2041.

Principle	Consistency
Policy	The planning proposal (subject to the recommended changes outlined in this report) is consistent with the NCRP 2041, Council's Residential Strategy and Byron Shire AHCS. Consistency with section 9.1 directions and SEPPs is considered as part of this report.
Infrastructure	The Engineering Services Report included as part of the planning proposal indicates that all services can be provided on site at no cost to government. Contributions to Byron Shire and Rous Water will also be made as the site is developed following rezoning.
Environmental and Heritage	<p>The planning proposal states that there is no detrimental impact on the environment and that water quality in the unnamed water course will be improved and revegetated as a result of the proposed development. Aboriginal and non-Aboriginal heritage has been addressed and considered satisfactory in that no detrimental impact is anticipated.</p> <p>Despite clearing of the subject land, the site is mapped as containing potential HEV land in the NCRP 2041. Comments have been sought from BSC in relation to potential HEV, biodiversity and flooding. The feedback from BCS will confirm whether the proposal meets this principle</p>

Avoiding Risk	<p>Risks associated with physically constrained land have been identified and avoided. In this regard:</p> <ul style="list-style-type: none"> • Flood prone: By excluding part of Lot 11 DP 807867 and other areas of high flood hazard in the PMF from the planning proposal, the flood risk to future residents has been mitigated. This is discussed in detail in section 4.1 of this report. • Bushfire prone: The accompanying Bushfire Assessment Report concludes that bushfire risk can adequately be addressed at the development application stage of the proposal. This is discussed in detail in section 4.1 of this report. • Highly erodible and severe slopes: The accompanying Broadscale Geotechnical Investigation and Landslide Susceptibility Assessment recommends that good engineering practices be adopted in the design of all structures and foundations and in particular. This is discussed in detail in section 4.1 of this report. • Acid sulfate soils – The land is not affected by acid sulfate soils
Coastal Strip	The site is located outside the coastal strip, being west of the Pacific Highway.
Land Use Conflict	The accompanying Land Use Conflict Assessment (LUCRA) found that the Hinterland Way Motorway, including a 30m vegetated buffer in the road reserve is sufficient to reduce the likelihood of any conflict with farming to the east of the subject land. No other potential conflict land uses are located within close proximity to the subject land. This is discussed in detail in section 4.1 of this report.
Important Farmland	<p>The subject land is mapped as containing Important Farmland under the NCRP 2041 (Figure 10). The land comprises a small area of rural zoned land (approx. 3ha) that is isolated from larger rural holdings by the Hinterland Way and land zoned R2 with an approved four lot residential subdivision. The planning proposal indicates that part of the site mapped as Significant Farmland has not supported agriculture for a considerable time, due to limited size and shape, as well as being adjacent to residential properties.</p> <p>Rezoning of the land and that area mapped as Significant Farmland is considered to meet the Urban Growth Area Variation Principles as a minor adjustment to round off an urban boundary. It is however recommended that further detail about the agricultural capability and sustainability of the land be included in the planning proposal to confirm the suitability of the land for residential development. It is also recommended that consultation be undertaken with DPI Agriculture.</p>

3.2 Local

The proposal's consistency with relevant local plans and endorsed strategies is detailed in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	The planning proposal is consistent with the relevant priorities and actions of Council's LSPS, in particular Priority 3 – Support housing diversity and affordability with housing growth in the right locations.
Byron Shire Residential Strategy 2041	The Residential Strategy was conditionally approved by the Department on 17 June 2024. The conditions of endorsement relevant to this proposal are:

- any future proposals for rezoning are supported by infrastructure servicing plans and detailed studies and assessment of site-specific development constraints; and
- 40% of all new dwellings being delivered across the entire LGA by 2036 are in the form of multi dwelling/small lot (less than 400m²) housing, consistent with the requirements of the NCRP 2041.

The Residential Strategy has identified the majority of the planning proposal area as a residential investigation area – Area 11 (see Figure 8). Area 11 is identified in the intended development sequencing plan in Appendix C as an immediate action (1-2 years).

Appendix B.1 to the Residential Strategy contains a site profile for Area 11 which nominates:

- the site is suitable for a range of single, two and three storey residential building types including dwelling houses, dual occupancies and multi dwelling housing reflecting local housing needs and character;
- the preferred zones nominated for the land area R2 and/or R3 or R1;
- the land has a potential yield of 22 to 37 dwellings;
- a structure plan is required to accompany a planning proposal which respects and reflects Bangalow's low scale heritage village feel and landscape character; and
- the key issues for further investigation as part of a planning proposal include:
 - flood and stormwater management;
 - management of steepness of slopes;
 - farmland of regional significance, with a planning proposal to:
 - be consistent with the North Coast Regional Plan 2036 farmland variation principles;
 - incorporate a Land Use Conflict Risk Assessment (LUCRA);
 - consider provision of a rural zoned buffer;
 - Aboriginal cultural heritage sensitivities (where applicable); and
 - Koala Habitat Protection SEPP- biodiversity and ecological sensitivities including land shown on the koala 'Site Investigation Area' map (where applicable).

The planning proposal is supported by site-specific studies. These studies are listed in Table 1 of this report and discussed under the relevant headings. The reports respond to the Department's conditional endorsement of the Residential Strategy and the key issues for further investigation identified in Appendix B.1, with the exception of important farmland. This is discussed in section 3.1 of this report.

In response to the study prepared in relation to flooding, it is recommended the eastern section of the land and any part affected by high flood hazard in the PMF event be removed from the planning proposal to achieve a tolerable flood risk level. This is discussed further in section 4.1 of this report.

It is noted the proposal has not been accompanied by a structure plan as required by the Residential Strategy. However, this is not fundamental to the Department's assessment of the proposal and is a local matter for which Council must be satisfied. The proposal does, however, contain an indicative subdivision layout map in Appendix 1. It has been recommended this plan be removed from the planning proposal noting that part of the proposal will be removed.

The proposal adopts a 30 dwellings per hectare lot yield which aligns with the medium dwelling density yield contained in Appendix B.1 of the Residential Strategy. Based on this dwelling yield, the proposal estimates it will deliver 42

	<p>house sites, recognising the actual number is likely to be less given part of the site is not recommended to progress.</p> <p>With regard to the 40% infill target nominated by the NCRP 2041, it is recommended that a dwelling density clause is applied to the R3 zone to ensure the objective of the planning proposal to enable a mix of housing types is realised and the proposal contributes to the 40% infill target for the region.</p> <p>It is considered the proposal is in alignment with the Residential Strategy.</p>
Byron Affordable Housing Contribution Scheme	<p>The Byron Shire AHCS came into effect from January 2023, following an amendment to the Byron LEP 2014. The scheme details how, where, and at what rate development contributions can be collected from landowners for affordable housing. The areas to which the Byron Shire AHCS applies is identified on mapping contained in the scheme.</p> <p>The form of contribution is to be determined by Council and may include a combination of land within the development, monetary contribution or dwellings within the development.</p> <p>Clause 6.18 was included in the Byron LEP 2014 in January 2023 which enables Council to levy an affordable housing contribution for development in the areas mapped in the Byron Shire AHCS. The outcome of this amendment was that subsequent planning proposals to upzone the land identified on the maps in the Byron Shire AHCS would need to include the land on the AHCS map contained the Byron LEP 2014 so that clause 6.18 would apply.</p> <p>As detailed above, the planning proposal has included an area of Lot 11 DP 807867 which is intended to be dedicated to Council for affordable housing purposes but is not identified in the scheme.</p> <p>As the land is not mapped in the Byron Shire AHCS it cannot be included on the AHCS map in the Byron LEP 2014 and levied for affordable housing. Therefore it is recommended the eastern portion of Lot 11 DP 807867 be excluded from the planning proposal. Council will, however, still be able to levy a contribution in accordance with clause 6.18 of the Byron LEP 2014 for affordable housing on that portion of the land to which the updated planning proposal will apply.</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal is considered to be 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
1.1 Implementation of Regional Plans	Unresolved	The planning proposal is inconsistent with this Direction as discussed above in relation to the NCRP 2041 and matters requiring further consultation and investigation with agencies.
3.1 Conservation Zones	Unresolved	The planning proposal is potentially inconsistent with this Direction as it contains areas mapped as potential HEV under the NCRP 2041. The planning proposal is supported by an environmental assessment which indicates that the site is dominated by exotic species of little conservation value. However, it is recommended that this direction remain unresolved until consultation with BCS has concluded.

4.3 Planning for Bushfire Protection	Unresolved	<p>The planning proposal is potentially inconsistent with this Direction as the subject site is mapped as bushfire prone.</p> <p>The Direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the Direction remains unresolved.</p>
8.1 Mining, Petroleum Production and Extractive Industries	Minor significance	<p>The proposal is inconsistent with this Direction as it will prohibit the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials by rezoning the land for residential purposes. It is considered the inconsistency is of minor significance as the site's small size, irregular shape, and its proximity to nearby residential areas make it unlikely to be suitable for these activities.</p>
9.1 Rural Zones	Justified	<p>The planning proposal is inconsistent with this Direction as it seeks to rezone land from a rural zone to a residential zone.</p> <p>The inconsistency with this Direction is justified because the land is identified in the Department approved Byron Shire Residential Strategy 2041.</p>
9.2 Rural Lands	Justified	<p>The planning proposal is inconsistent with this Direction as it will affect land within an existing rural zone and does not satisfy all of the stated objectives such as supporting farmers right to farm.</p> <p>The inconsistency with this Direction is justified because the land is identified in the Department endorsed Byron Shire Residential Strategy 2041.</p>
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Unresolved	<p>The planning proposal is inconsistent with this Direction as it seeks to rezone land identified as regionally significant farmland for urban purposes.</p> <p>As discussed above in regard to the NCRP 2041 Urban Growth Boundary Variation criteria, further detail about the agricultural capability and sustainability of the land needs to be included in the proposal and consultation be undertaken with DPI Agriculture before consistency with this Direction can be determined.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental

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

Table 8 Environmental impact assessment

Environmental Impact	Assessment
Biodiversity	<p>The planning proposal is supported by an Ecological Assessment. The assessment identifies:</p> <ul style="list-style-type: none">the site and adjoining areas are dominated by exotic grasses (e.g. pale pigeon grass) and trees (e.g. camphor laurel);there are no areas identified under the Biodiversity Conservation Act 2016;no threatened flora species occur at the site. As such, the proposal will not have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction;a small gully which is potential frog habitat runs through the site. However, the proposed development will not alter the hydrology of this site;the little eagle has been recorded within 1 km of the site and a number of other threatened birds may occur in the vicinity of the site opportunistically. However, no threatened species habitat will be removed or modified; andfour koala food trees occur on the site. These are forest redgum and swamp mahogany. Scratches attributed to the koala were recorded on forest redgum trunks and several koala scats were recorded on a previous site inspection in 2020. The proposal has been designed to retain all koala food trees and has identified a suitable area for additional plantings. <p>The assessment concludes that the proposal will not result in a significant impact on threatened species or endangered ecological communities.</p> <p>Despite the findings of the ecological assessment, it is recommended that consultation with BSC in regard to potential impacts on HEV, biodiversity and flooding is undertaken.</p>
Flooding	<p>The planning proposal is accompanied by a Hydraulic Assessment (dated 16 November 2023) which has assessed the hydraulic impact of the proposed subdivision and associated roads/ancillary development, a bio-basin and proposed causeway. Existing and post development 1% AEP, 1% AEP (+ climate change), 5% AEP and 20% AEP design events have been considered. This report concludes that:</p> <ul style="list-style-type: none">the proposed development will have no significant impact on peak water levels or velocities upstream or downstream of the subject site for the 1% AEP and 1% AEP + CC with the proposed causeway being flood free during a 5% AEP and 20% AEP design events; andat peak flood hazard (at the location of the causeway), there will be no significant impact on peak water levels or velocities upstream or downstream

of the subject site for the 1% AEP and 1% AEP + CC with the proposed causeway being flood free during a 5% AEP and 20% AEP design events.

The mapping in the report indicates however, that some lots are prone to flooding ranging from H1 to H4 in a 1% AEP flood event (Figure 12). This is of particular concern noting that the proposed zone enables various sensitive land uses. In accordance with the general hazard flood vulnerability curve:

- H1 is generally safe for people, vehicles and building;
- H2 is unsafe for small vehicles;
- H3 is unsafe for vehicles, children and the elderly; and
- H4 is unsafe for people and vehicles.

Further information was provided by the proponent following preparation of the assessment to enable the full flood risk profile for the site to be considered. The further information was received from Council on 8 May 2024 and addressed the following matters:

- flooding up to and including the PMF;
- warning time and duration of each event;
- evacuation route;
- any necessary shelter in place arrangements; and
- suitability for affordable housing.

This further information identified:

- in a PMF event, the water level at the causeway (surface level 46.95 AHD) will be approximately +0.77m above the surface level with a velocity of 3.33(m/s) and depth of 0.837. This equates to a H5 hazard level;
- water levels are predicted to rise and fall quickly due to the topographic nature of the contributing catchment, with sufficient warning times provided by BOM updates. At a PMF event, the causeway road will be closed for approximately 43 minutes;
- no evacuation route is proposed due to the short duration of road closure in a PMF event and as all future dwellings will be flood free; and
- no shelter in place arrangement is proposed.

The general flood hazard vulnerability curve designates a H5 hazard to be unsafe for vehicles and buildings require special engineering design and construction.

Consistent with Planning Circular PS 24-001 Update on addressing flood risk in planning decisions that planning decisions should be based on a balanced consideration of the merits, risks and impacts of a given proposal, and that appropriate measures are in place to limit impacts to an acceptable level and achieve a tolerable flood risk level for flood-affected proposals. Taking into account these matters, it recommended the Gateway is conditioned to remove the eastern portion of Lot 11 DP 807867 which is affected by the PMF or isolated in a PMF event and any other part affected by high hazard in the PMF flood event, which includes the north-eastern corner of Lot 261 DP 1262316.

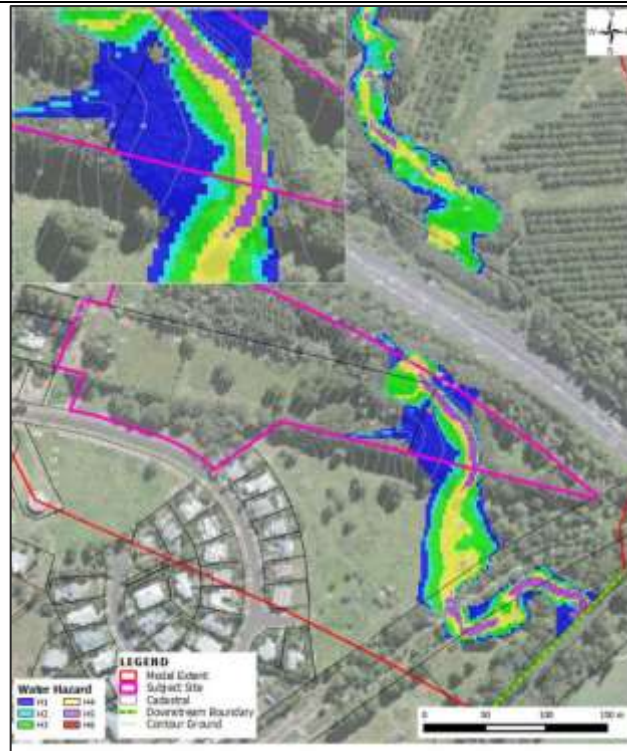


Figure 12 - Existing Maximum Flood Hazard – 1% AEP (source: FLOODWORKS 2023)

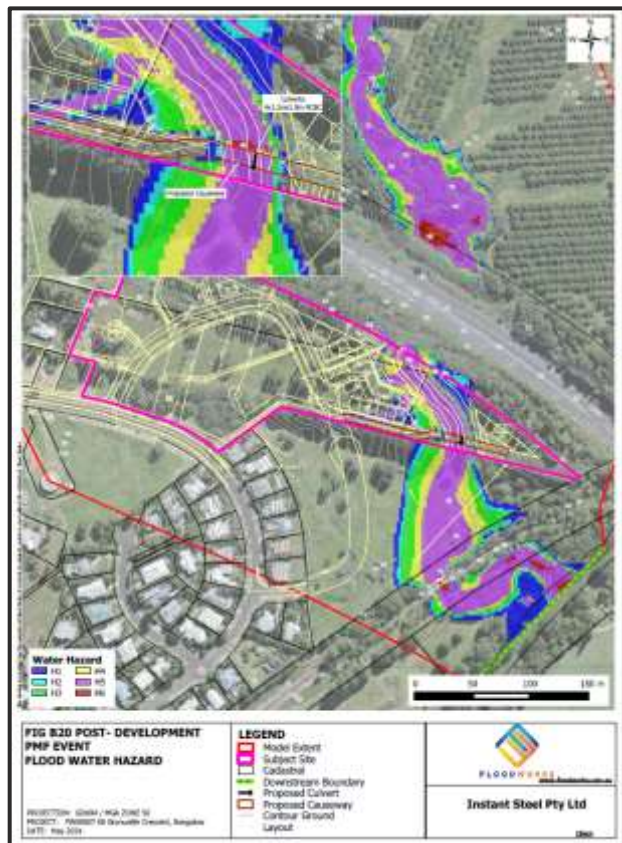


Figure 13 - Post development PMF event Flood Water Hazard (source: FLOODWORKS 2024)

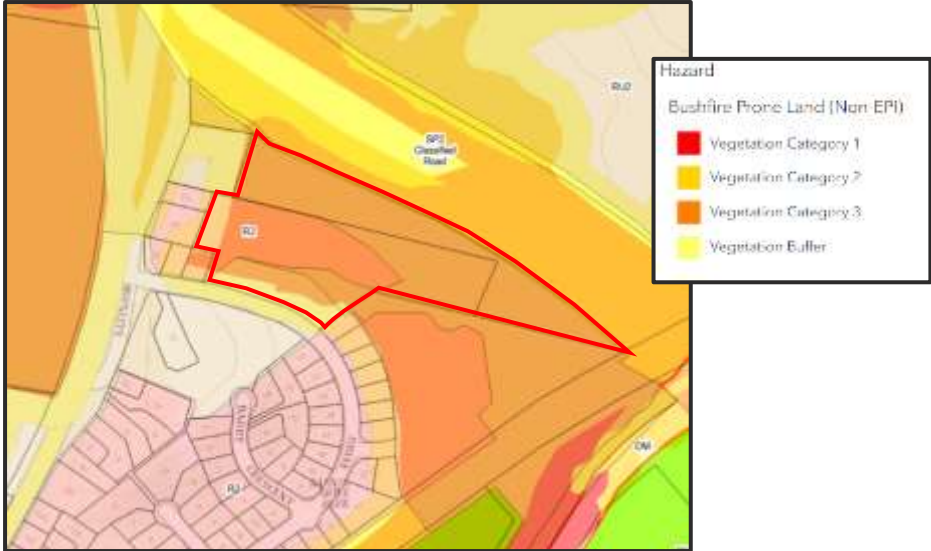
<p>Bushfire</p>	<p>The subject land is mapped as containing bushfire prone lane (Figure 14). The planning proposal is accompanied by a Bushfire Hazard Assessment that concluded that the proposed rezoning is appropriate in the bush fire hazard context. Bushfire mitigation and management measures for the future development can be adequately addressed with the proposal having the ability to comply with Planning for Bushfire Protection 2019.</p> <p>Consultation with NSW Rural Fire Service is however required to comply with the requirements of Section 9.1 Direction 4.3 Planning for Bushfire Protection.</p>  <p>Figure 14 - Subject site showing land mapped as bushfire prone (source: Planning Portal Spatial viewer)</p>
<p>Noise</p>	<p>The planning proposal is supported by a Noise Impact Assessment which:</p> <ul style="list-style-type: none"> • considers background noise levels at the site; • determines likely impacts of existing and future road traffic noise from the Hinterland Way; and • provides recommendations should residential development be approved at the site. <p>Modelling has found that Pacific Highway Bypass noise in 2030 is expected to exceed the daytime and night noise goals along part of the eastern portion of the subject site (Figures 15 and 16).</p> <p>It is anticipated that any mitigation measures for the affected lands can be adequately addressed at the development application stage of the development.</p>



Figure 15 - 55 dBA Noise contour at 1.5 above ground - 2030 traffic flows, Day

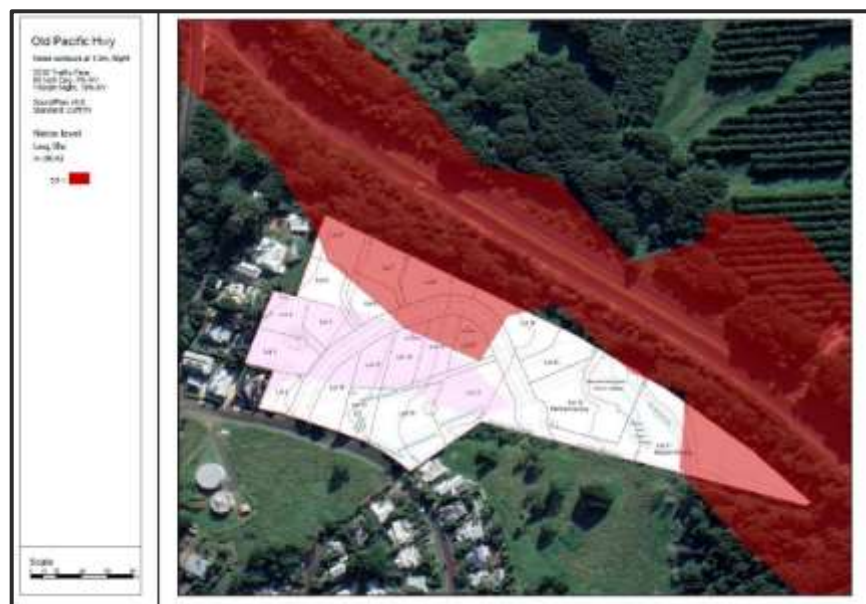


Figure 16 - 55 dBA Noise contour at 1.5 above ground - 2030 traffic flows, Night

Geotechnical /
landslide susceptibility

The planning proposal is accompanied by a broadscale geotechnical investigation and landslide susceptibility assessment.

The site has been assessed as having slopes in the range of 18 degrees near the western boundary to 10 degrees towards the stream which lies towards the far eastern corner of the allotment. Risk categorisation has found the site to have a mainly low to moderate risk category however a high risk has been found for potential landslip in excavated embankments or filled platforms. Both the high and medium risk areas will require mitigation measures to be employed.

It is considered appropriate that such recommendations be considered further at the development application stage.

Landuse conflict

The planning proposal is accompanied by a Land Use Conflict Risk Assessment (LUCRA). The LUCRA is dated June 2022 and whilst it considers potential development of the site for residential land uses, it has not considered the affordable housing proposed for the eastern end of Lot 11 DP 807867. As this

	<p>area of land has been omitted from the proposal by a condition of the gateway determination, an update to the report is not required to address this component.</p> <p>The LUCRA has identified a primary source of potential conflict as a macadamia plantation located to the north of the subject site, with the main sources of potential conflict arising from agricultural spray drift, noise, odour and dust.</p> <p>The <i>Living and working in Rural Areas</i> handbook recommends a minimum separation buffer of 300m between residential and urban development and cropping and horticulture or a vegetated buffer of 30m. The closest point of the property to the plantation is 110m and there is a 100m buffer provided by the Hinterland Way which has a 30m vegetated buffer either side of the roadway.</p> <p>A large rural landholding to the west of the proposed development was also identified as a potential source of conflict. There are however no current intensive agricultural practices occurring on this land. The LUCRA has concluded that if such activities were to occur in the future, the existing buffer distance and vegetated buffers would ensure any potential conflict would be minimal.</p> <p>The LUCRA has concluded that the site of the proposed development is suitable in regard to potential landuse conflict subject to the following recommendations that can be employed at the development application stage of the proposal:</p> <ul style="list-style-type: none"> the existing vegetated buffer between the Hinterland Way and the subject site should be retained with a minimum width of 5m and foliage from base to the crown; and clear lines of communication between neighbours and agricultural land users regarding agricultural practices. <p>It is recommended that the planning proposal be referred to DPI Agriculture to confirm the suitability of the proposal.</p>
Contamination	<p>The planning proposal is accompanied by a Preliminary Site Investigation. This report nominates that based on a review of available information, and a detailed site inspection, there are no potentially contaminating activities on the proposed residential subdivision site.</p> <p>The report concludes that the land is considered suitable for the proposed residential land use in relation to potential site contamination associated with the current and former land use and that no further investigation or remediation is required in relation to potential site contamination.</p>

4.2 Social and economic

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

Table 9 Social and economic impact assessment

Social and Economic Impact	Assessment
Socio-economic	<p>It is recognised that any new housing development is likely to have a positive economic contribution through the subdivision and residential development phase. It is expected that social and economic benefits will also arise from the provision of greater housing choice.</p> <p>Byron Shire LGA has geographical, economic and social characteristics that are impacting the affordability and availability of its housing, including purchase prices and rental costs that outweigh those in surrounding regional LGAs and many LGAs within metropolitan Sydney.</p>

	<p>To ensure that the proposal delivers housing supply and diversity as intended, it is recommended that a dwelling density clause is applied to the R3 land.</p> <p>Taking into account the relative flood risks of the proposal, those areas affected by high hazard in a PMF flood event or isolated have been omitted from the proposal to achieve a tolerable flood risk level.</p> <p>It is noted that a local European heritage item (dwelling) is located on the adjoining land to the north-west of the site. The proposal confirms that there is sufficient curtilage and design measures that can be undertaken at the development application stage to ensure no significant adverse impact on this heritage item.</p>
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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 and what infrastructure is proposed in support of the proposal.

Table 10 Infrastructure assessment

Infrastructure	Assessment
Water and sewer	Water mains will be extended into the subdivision with the owner having already provided for the pump station to enhance pressure and flows to the area. A sewer pump station will be constructed to service the land to Council requirements. All other urban services are available.
Electricity and telecommunications.	Electricity and communications are reticulated throughout the locality and available to the subject land when required.
Roads and traffic	<p>The planning proposal is supported by a Traffic Impact Statement. Given the area of land available and proposed zoning, the assessment assumes an indicative residential development of 18 R2 lots and 3 R3 lots. It has also assumed that a third of the future lots may contain secondary dwellings or dual occupancy and adopts a yield of 1 unit style housing per 300m² on the proposed R3 zoned land.</p> <p>Based on an approximate daily trip count of 308 vehicles, the assessment concludes the proposal can be adequately by road infrastructure and that this is best addressed at the development application stage of the proposal.</p>
State	It is not anticipated that there will be any impact on State or regional infrastructure or the requirement for additional funding

5 Consultation

5.1 Community

Council have not proposed a specific community consultation period however the submitted project timeline has indicated that public exhibition of the proposal would occur in March 2024. The planning proposal will need to be updated prior to public exhibition to amend the proposed timeline as per the proposed conditions of this assessment.

The planning proposal has been categorised as standard as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, August 2023). Should the proposal proceed, the proposal would need to be publicly available for a minimum of 20 working days.

5.2 Agencies

It is recommended that the following agencies be consulted and given 30 days to comment.

- Department of Primary Industries – Agriculture
- Rural Fire Service
- Department of Climate Change, Energy, the Environment and Water - Biodiversity and Conservation Services
- Rous Water

6 Timeframe

Council proposes an approximate 9-month time frame to complete the LEP.

A time frame of 9 months is consistent with timeframes recommended by the LEP Plan Making Guidelines (August 2023) for Standard Planning proposals.

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.

As the planning proposal relates to primarily local planning matters, it is recommended that Council be authorised as the local plan-making authority for this proposal.

8 Assessment summary

Once the planning proposal is updated as per the Gateway conditions, the planning proposal is supported to proceed for the following reasons:

- it is consistent with the Byron Shire Residential Strategy and Byron Shire Affordable Housing Contribution Scheme;
- it will deliver new dwellings which will assist in boosting both local and regional housing supply; and
- it will result in positive socio-economic outcomes for the Byron Shire Local Government Area.

9 Recommendation

It is recommended the delegate of the Secretary:

- **agree** that any inconsistencies with section 9.1 Directions 4.1 Flooding, 9.1 Rural Zones, 8.1 Mining, Petroleum Production and Extractive Industries, 9.1 Rural Zones and 9.2 Rural Lands are minor or justified: and
- **note** that the consistency with section 9.1 Directions 1.1 Implementation of Regional Plans, 3.1 Conservation Zones, 4.3 Planning for Bushfire Protection and 9.4 Farmland of State and Regional Significance on the NSW Far North Coast are unresolved and will require justification.

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

1. Prior to exhibition, the planning proposal is to be updated to:
 - a. remove the triangular area of land located in the eastern corner of Lot 11 DP 807867 that lies outside Area 11 of the Byron Shire Residential Strategy and the Byron Shire Affordable Housing Contribution Scheme and any other part affected by high flood hazard (H5 or H6) in the Probable Maximum Flood event;

- b. update the description of the site to nominate it applies only to parts of Lot 261 DP 1262316 and Lot 11 DP 807867 Rankin Drive, Bangalow;
 - c. clearly articulate the proposed changes to zoning, minimum lot size, floor space ratio and intent to update the Byron Affordable Contribution Scheme Map in Part 1.1 Objective and Intended Outcomes;
 - d. identify in Part 2 Explanation of provisions that the proposal includes introduction of a clause for the R3 zone that will deliver dwelling density consistent with the Byron Residential Strategy (2024) to ensure the objective of the proposal to deliver housing diversity is achieved;
 - e. update all proposed maps to apply standard LEP colour scheme, show existing controls on surrounding lands and enhance the resolution / quality;
 - f. include existing and proposed maps for all changes relating to land zoning, minimum lot size and floor space ratio;
 - g. remove the assessment of the proposal against Important Farmland Variation Criteria in the North Coast Regional Plan 2036;
 - h. include further discussion and detail in relation to the agricultural capability and sustainability of the land;
 - i. remove the Indicative Subdivision Layout map from Appendix 1; and
 - j. revise the timeline for completion.
2. Consultation is required with the following public authorities:
 - Department of Primary Industries – Agriculture
 - Rural Fire Service
 - Department of Climate Change, Energy, the Environment and Water - Biodiversity and Conservation Services
 - Rous Water
 3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
 4. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date on or before 9 months from the Gateway determination date be included on the Gateway.



03-07-2024

(Signature)

(Date)

Lucy Walker
Manager, Local Planning and Council Support
Hunter and Northern Region



4/7/24

(Signature)

(Date)

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