

Byron Shire Council

Planning Proposal 26.2022.11.1

**General Housekeeping Amendments to Byron Local
Environmental Plan (LEP) 2014**

V2 Pre Gateway Version (#E2023/84917)

Date: August 2023



**BYRON
SHIRE
COUNCIL**

Planning Proposal – General amendments to Byron LEP (#E2023/84917) | August 2023

Document History

Doc No.	Date	Details Comments eg Resolution No.
E2022/117263	July 2023	Draft Planning Proposal; General Housekeeping Amendments to Byron Local Environmental Plans 2014 & 1988 Gateway Version
E2023/84917	August 2023	Planning Proposal; General Housekeeping Amendments to Byron Local Environmental Plans 2014 & 1988 Gateway Version – Post Council (Planning) Meeting

Contents

Part 1	Introduction.....	3
1.1	Objective and intended outcomes	3
1.2	Background.....	3
Part 2	Explanation of provisions	4
Part 3	Justification.....	10
Section A	Need for the planning proposal.....	10
Section B	Relationship to strategic planning framework	10
Section C	Environmental, social and economic impact	31
Section D	Infrastructure	31
Section E	State and Commonwealth Interests	31
Part 4	Mapping.....	32
Part 5	Community consultation	33
Part 6	Project timeline	33
Conclusion	34
Appendix	35

Part 1 Introduction

1.1 Objective and intended outcomes

This planning proposals seeks to make several amendments to Byron Local Environmental Plan 2014 and one amendment to Byron Local Environmental Plan 1988.

The amendments include policy and mapping changes with details of each amendment presented in Part 2.

1.2 Background

At the 13 October Planning Meeting Council resolved 22-555 to investigate several potential amendments to Byron LEP 2014 and Byron LEP 1988 and prepare a planning proposal based on this investigation.

The council report identified 6 policy amendments and 6 mapping amendments for investigation. An additional amendment relating to the separation distance of dual occupancies in the rural zones was included in the Council resolution.

Following investigation, the amendments were presented to Council at the 10 August Planning Meeting. It was resolved that one mapping amendment item to reduce the height of buildings limit from 9m to 8m within the Wategos residential area be removed from the planning proposal. The planning proposal now comprises 6 policy amendments and 5 mapping amendments.

Part 2 Explanation of provisions

There are 11 items presented within this planning proposal, including 7 policy amendments and 4 mapping amendments. The amendments are presented in the below tables.

The proposed drafting and mapping of each amendment is contained within Appendix 1 and 2. The drafting will be subject to review by Parliamentary Counsel and may change.

Table 1: Policy amendments

Item #	Amendment	Reasoning
1	Include the C4 Environmental Living zone in clause 4.1AA <i>Minimum subdivision lot size for community title schemes</i>	<p>A recent planning proposal has introduced the C4 Environmental Living zone into Byron LEP 2014.</p> <p>The C4 zone should be included in clause 4.1AA to ensure that a community title subdivision complies with the minimum lot size requirement.</p>
2	Remove (2A) from clause 4.4 <i>Floor space ratio</i> .	<p>Clause 4.4 gives weight to the floor space ratio (FSR) maps within Byron LEP. 2014 Subclause (2A) enables applications for dual occupancies in the R2 Low Density Residential zone to have a FSR of 0.5:1, regardless of what is shown in the FSR map for a particular area. This subclause has been carried forward from Byron LEP 1988.</p> <p>This is inconsistent as some areas have an FSR of less than 0.5:1 to minimise the bulk/scale of development, protect environmental features and or reduce risk to hazards (e.g. flooding). This promotes construction of larger dual occupancy over a dwelling house (i.e. with lower FSR) in identified sensitive or constrained areas.</p>
3	Amend rural subdivision clause 4.1C	<p><i>4.1C Minimum subdivision lot size for boundary adjustments in certain rural and residential zones</i></p> <p>This clause aims to enable adjustment of boundaries between two properties in rural areas where one or more of the resulting lots would be less than the minimum</p>

Item #	Amendment	Reasoning
		<p>subdivision lot size, without increasing the number of lots or creating additional dwelling opportunities.</p> <p>Other councils have this clause within their LEP, and court proceedings have placed emphasis on what does/does not constitute a 'boundary adjustment' limiting the application of the clause to meet its intention.</p> <p>Staff have undertaken further investigations to ensure this clause is fit for purpose without creating unintended outcomes. As a result of these investigations the main changes proposed are:</p> <ul style="list-style-type: none"> revised clause modelled on clause 4.2C of the Eurobodalla Local Environment Plan 2012 and titled <i>"Boundary changes between lots in certain rural and conservation zones"</i>. change in terminology from boundary "adjustment" to "altered". The latter permits a broader interpretation of the circumstances where a boundary "change" might occur, because the language and meaning of "altered" is different to the meaning of "adjustment". requirement to consider the objectives of this clause, as well as the objectives of the relevant zone (the current cl 4.1C contains no such requirements)
4	Remove "attached" from clause 6.8 <i>Rural and nature-based tourism development - (4) (a)</i> .	<p>(4)(a) requires a dwelling house or dual occupancy (attached) to be constructed on site to enable consent for rural or nature-based tourism.</p> <p>This subclause has carried over from Byron LEP 1988 which only permitted attached dual occupancies in rural areas. This clause should reference 'dual</p>

Item #	Amendment	Reasoning
		occupancies' as both attached and detached are permissible in the rural zones under LEP 2014.
5	<p>Remove "other than a classified road" from clause 6.8 <i>Rural and nature-based tourism development</i> - (3) (a).</p> <p>And</p> <p>Add a new consideration to subclause 3 as follows:</p> <p>"where that road is a classified road, vehicular access to and from the road must be safe, ensure the safety, efficiency and ongoing operations of the classified road, and it must be demonstrated that alternate access from a road other than a classified road is not practicable or safe"</p>	<p>This part requires suitable vehicle access to and from a road for tourism development but prohibits access to a classified road.</p> <p>There are several classified roads within Byron Shire including Mullumbimby Road and Gungan Road, with some properties having existing access to these roads.</p> <p>If suitable and safe access can be demonstrated, access to these roads may be appropriate.</p> <p>It is proposed to remove the prohibition of in this clause and replace with a new part for considering access to classified roads.</p>
6	<p>Insert the following into <i>Schedule 1 Additional Permitted Uses</i> as a carryover from clause 17 in Schedule 8 of Byron LEP 1988:</p> <p>"Lot 3, DP 599728, development for the purpose of four dwelling-houses for a multiple occupancy is permitted with development consent"</p>	<p>By oversight this APU was not included in Schedule 1 of LEP 2014 as part of finalising E Zones PP1, which is inconsistent with treatment of the adjoining Lot 2 DP 599728.</p>
7	<p>Remove subclause 2(c) from clause 4.2D – <i>Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2</i> in LEP 2014</p>	<p>Subclause 2(c) requires dual occupancies to be situated within 100m of each other.</p> <p>Removing this subclause acknowledges that siting dwellings further than 100m apart may be appropriate and produce better outcomes in certain circumstances.</p> <p>Other considerations exist in clause 4.2D and Byron DCP 2014 to minimise land use</p>

Item #	Amendment	Reasoning
		conflict, ensure development will not impair the use of the land for agricultural purposes and utilise a single vehicular access from a public road.

Table 2: Mapping amendments

Item #	Amendment	Reasoning
8	Increase the Floor Space Ratio (FSR) from 0.2:1 to 0.3:1 for certain areas in Suffolk Park and New Brighton.	<p>Residential areas under Byron LEP 1988 have a maximum FSR of 0.5:1 for dwellings. Some areas at New Brighton, and Suffolk Park along Broken Head Road when transitioned to LEP 2014 were given an FSR of 0.2:1 due to their environmental sensitivity/flood hazard.</p> <p>It's likely that many of these dwellings already have an FSR greater than 0.2:1 as they were constructed before the application of the 2014 zoning.</p> <p>Some landowners have stated the 0.2:1 FSR is restrictive and hindering some of these sites from redevelopment. It is proposed to increase these areas to an FSR of 0.3:1.</p>
10	Remove rural zoning from lots within Bangalow Industrial estate, Dudgeons Lane	A small part of the Bangalow industrial estate has the RU1 Primary Production zone applying. This anomaly was identified in a submission to the planning proposal for 150 Lismore Road (26.2021.3.1) and the area should have an <i>E4 General Industrial Zone</i> applied, consistent with the rest of the industrial estate. FSR and Lot Size will also need to be amended to reflect the E4 zone.
11	<p>Include 3 land parcels in Bangalow in the HOB map sheet to have a 9m height limit.</p> <p>PN 269670, PN 269673 and PN 269693</p>	These parcels do not currently have a height limit applying. It is proposed to apply a 9m height limit to these sites consistent with the surrounding area.
12	Rezone several parcels that have been gazetted as National Parks or Nature Reserves to <i>C1 National Parks and Nature Reserves</i> .	The following sites have been gazetted as National Parks or Nature Reserves under the National Parks and Wildlife Act 1974 and the zoning is to be updated to <i>C1 National Parks and Nature Reserves</i> :

Item #	Amendment	Reasoning
		Lot 1 DP 1261334 Lot 311 DP 1163830 Unformed road Koonyum Range The sites are now part of Billinudgel Nature Reserve and Mount Jerusalem National Park.

Part 3 Justification

Section A Need for the planning proposal

Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

This planning proposal is a general amendments housekeeping planning proposal. Byron LEP is periodically reviewed to ensure that planning controls are current and correct.

The amendments proposed relate to both mapping and policy but are not considered large or significant enough to be completed as a standalone planning proposal. Combining multiple amendments into a single planning proposal allows Byron LEP to be updated more regularly.

Q2. Is the planning proposal the best means of achieving the objective or intended outcomes, or is there a better way?

Yes. A planning proposal is the best way to amend Byron Local Environmental Plans.

Section B Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (in this case the North Coast Regional Plan 2041)?

The planning proposal is consistent with the North Coast Regional Plan 2041, which is a 20-year blueprint for the future of the North Coast. The NSW Government's vision for the North Coast is healthy and thriving communities supported by a vibrant and dynamic economy that builds on the regions strengths and natural environment.

The amendments proposed are relatively minor and housekeeping in nature. Reviewing and maintaining Byron LEP 2014 and 1988 is considered consistent with the vision of the North Coast Regional Plan.

Q4. Is the planning proposal consistent with a LSPS that has been endorsed by the Planning Secretary or other local strategy or strategic plan?

Byron Shire LSPS was endorsed by Department of Planning in 2019. Ensuring Byron Local Environmental Plans are current and responsive is considered consistent with the objectives of Byron Shire LSPS.

Item 3 within this planning proposal relating to provisions for rural boundary adjustment subdivisions is consistent with item 13 contained in Byron Rural Land Use Strategy to identify opportunities in our planning framework to support and strengthen existing agricultural activities. Enabling boundary adjustments between two rural properties without creating any additional dwelling entitlements will allow for more efficient use of rural land.

Planning Proposal – General amendments to Byron LEP (#E2023/84917) | August 2023

The remaining items are not directly related to actions within Council's local strategies.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

N/A

Q6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

No State Environmental Planning Policies are directly relevant to this planning proposal.

Q7. Is the planning proposal consistent with the applicable Ministerial Directions (s.9.1 directions)?

Consistency with the Local Planning Directions is assessed in the following tables:

1. Planning Systems

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
1.1 Implementation of Regional Plans	<p>Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary), that:</p> <p>(a) the extent of inconsistency with the Regional Plan is of minor significance, and</p> <p>(b) the planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of the Regional Plan's vision, land use strategy, goals, directions or actions.</p>	The North Coast Regional Plan is not directly relevant to a housekeeping planning proposal. It is considered that that reviewing and updating Byron Local Environmental Plan is consistent with the objectives of the North Coast Regional Plan 2041.	Consistent
1.2 Development of Aboriginal Land Council Land	Applies when preparing a planning proposal for land shown on the Land Application Map of chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021.	(not currently applicable to Byron Shire)	Not applicable

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
1.3 Approval and Referral Requirements	<p>A planning proposal must:</p> <p>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</p> <p>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</p> <p>i. the appropriate Minister or public authority, and</p> <p>ii. the Planning Secretary (or an officer of the Department nominated by the Secretary),</p> <p>prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act</p>	Not applicable	Not applicable
1.4 Site Specific Provisions	Applies when preparing a planning proposal that will allow a particular development to be carried out.	The planning proposal does not include site specific provisions	Not applicable

3. Biodiversity and Conservation

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
3.1 Conservation Zones	<p>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A planning proposal that applies to land within a conservation zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".</p>	This planning proposal does not reduce conservation standards. The planning proposal includes two items that introduce conservation zones on land gazetted as national parks.	Consistent
3.2 Heritage Conservation	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</p>	The planning proposal does not impact existing heritage provisions within Byron LEP.	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and</p> <p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people</p>		
3.3 Sydney Drinking Water Catchments	Not applicable to Byron Shire	N/A	N/A
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	A planning proposal that introduces or alters an C2 Environmental Conservation or C3 Environmental Management zone or an overlay and associated clause must apply that proposed C2 Environmental Conservation or C3 Environmental Management zone, or the overlay and associated clause, in line with the Northern Councils E Zone Review Final Recommendations.	<p>The planning proposal does not introduce or alter any C2 Environmental Conservation or C3 Environmental Management zone.</p> <p>Item 1 includes the C4 zone in clause 4.1AA to ensure that a community title subdivision complies with the minimum lot size requirement.</p>	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
3.5 Recreation Vehicle Areas	A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the Recreation Vehicles Act 1983).	The planning proposal does not enable land to be developed for a recreational vehicle area	Consistent
3.6 Strategic Conservation Planning	This direction applies to land that, under the State Environmental Planning Policy (Biodiversity and Conservation) 2021, is identified as avoided land or a strategic conservation area.	Not applicable	Not applicable
3.7 – 3.10	Not applicable in Byron Shire	Not applicable	Not applicable

4. Resilience and Hazards

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
4.1 Flooding	This direction applies when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	This planning proposal does not amend any flood planning provisions or increase development on flood prone land.	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
4.2 Coastal Management	This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016.	This planning proposal does not amend any provisions or enable additional development within the coastal zone	Consistent.
4.3 Planning for Bushfire Protection	<p>(1) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&A Act, and take into account any comments so made.</p> <p>(2) A planning proposal must:</p> <ul style="list-style-type: none"> (a) have regard to Planning for Bushfire Protection 2019, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the Asset Protection Zone (APZ). 	<p>The planning proposal does not enable an increase in development on bushfire prone land.</p> <p>The planning proposal will be referred to RFS as part of the public exhibition process.</p>	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
4.4 Remediation of Contaminated Land	<p>This direction applies to:</p> <ul style="list-style-type: none"> (a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997, (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out, (c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land: <ul style="list-style-type: none"> i. in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and ii. on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge). <p>(1) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any</p>	<p>This planning proposal does not enable additional development on contaminated land.</p>	<p>Consistent</p>

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>land to which this direction applies if the inclusion of the land in that zone would permit a change of use of the land, unless:</p> <p>(a) the planning proposal authority has considered whether the land is contaminated, and</p> <p>(b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and</p> <p>(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose.</p>		
4.5 Acid Sulfate Soils	<p>Applies when preparing a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps held by the Department of Planning and Environment.</p> <p>A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as</p>	This planning proposal does not enable additional development on land mapped as containing acid sulfate soils.	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Planning Secretary prior to undertaking community consultation in satisfaction of clause 4 of Schedule 1 to the Act.		
4.6 Mining Subsidence and Unstable Land	This direction applies when a relevant planning authority prepares a planning proposal that permits development on land that is within a declared mine subsidence district in the Coal Mine Subsidence Compensation Regulation 2017 pursuant to section 20 of the Coal Mine Subsidence Compensation Act 2017, or has been identified as unstable in a study, strategy or other assessment undertaken by or on behalf of the relevant planning authority or by or on behalf of a public authority and provided to the relevant planning authority.	The planning proposal does not apply to land within a mine subsidence district or land identified as unstable.	Consistent

5. Transport and Infrastructure

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
5.1 Integrated Land Use Transport	<p>This direction applies when preparing a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p> <p>1) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <p>(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</p> <p>(b) The Right Place for Business and Services – Planning Policy (DUAP 2001).</p>	The planning proposal does include map amendments. These amendments are of minor significance and housekeeping in nature.	Consistent
5.2 Reserving Land for Public Purposes	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary (or an officer of the Department nominated by the Secretary).	The planning proposal does rezone some parts of land to C1 National Parks and Nature Reserves. These sites have been gazetted as part of Billinudgel Nature Reserve and Mount Jerusalem National Park and the mapping changes reflect this.	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
5.3 Development Near Regulated Airports and Defence Airfields	Applies when preparing a planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.	Not applicable	Not applicable
5.4 Shooting Ranges	Applies when preparing a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range	Not applicable	Not applicable

6. Housing

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
6.1 Residential Zones	<p>Applies when preparing a planning proposal that will affect land within an existing or proposed residential zone (including the alteration of any existing residential zone boundary).</p> <p>(1) A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p>	<p>The planning proposal does amend maps applying to residential land. The changes do not reduce the choice of building types and apply to existing urban zones areas.</p> <p>Item 9 seeks to reduce the height limit from 9m to 8m within the Wategos residential area.</p> <p>Wategos is the most eastern residential area within Australia, is surrounded by a State Conservation Area and has steep topography.</p>	<p>Justifiably Inconsistent.</p>

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>(d) be of good design.</p> <p>(2) A planning proposal must, in relation to land to which this direction applies:</p> <p>(a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>	<p>These attributes give it a high degree of visual exposure.</p> <p>To minimise the impact of the built form on the environment and visual/public realm, it is proposed to reduce the height limit in this area from 9m to 8m.</p>	
6.2 Caravan Parks and Manufactures Home Estates	Applies when a planning proposal affects land for Caravan Parks and Manufactured Home Estates.	Not applicable	Not applicable

7. Industry and Employment

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
7.1 Business and Industrial Zones	<p>This direction applies to all relevant planning authorities when preparing a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) give effect to the objectives of this direction, (b) retain the areas and locations of existing business and industrial zones, (c) not reduce the total potential floor space area for employment uses and related public services in business zones, (d) not reduce the total potential floor space area for industrial uses in industrial zones, and (e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Planning Secretary. 	The planning proposal does amend land within an industrial zone. The mapping changes are of minor significance to correct a mapping anomaly and reflect the on ground use of the site	Consistent
7.2 Reduction in non-hosted short-term rental	This direction applies to Byron Shire Council when the council prepares a planning proposal to identify or reduce the number of days that	Not applicable	Not applicable

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
accommodation period	non-hosted short-term rental accommodation may be carried out in parts of its local government area.		
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Applies to land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.	Not applicable	Not applicable

8. Resources and Energy

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
8.1 Mining, Petroleum Production and Extractive Industries	<p>This direction applies to all relevant planning authorities when preparing a planning proposal that would have the effect of:</p> <p>(a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or</p> <p>(b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or</p>	Not applicable	Not applicable

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	regional significance by permitting a land use that is likely to be incompatible with such development.		

9. Primary Production

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
9.1 Rural Zones	<p>Applies when a planning proposal will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).</p> <p>A planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone</p>	The planning proposal does amend rural zone boundaries. The mapping amendments are housekeeping in nature and of minor significance.	Justifiably inconsistent
9.2 Rural Lands	<p>Applies when a planning proposal:</p> <p>(a) will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) or</p> <p>(b) changes the existing minimum lot size on land within a rural or conservation zone.</p>	This planning proposal does not seek to change the existing minimum lot size on land within a rural or conservation zone.	Consistent


Commented [HK1]: Alex – can you please 4.1C

Commented [CA2R1]: See my revised response at left.

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Planning Secretary, and any applicable local strategic planning statement (b) consider the significance of agriculture and primary production to the State and rural communities (c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources (d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions (e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities (f) support farmers in exercising their right to farm 		

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land use</p> <p>(h) consider State significant agricultural land identified in chapter 2 of the State Environmental Planning Policy (Primary Production) 2021 for the purpose of ensuring the ongoing viability of this land</p> <p>(i) consider the social, economic and environmental interests of the community.</p> <p>(2) A planning proposal that changes the existing minimum lot size on land within a rural or conservation zone must demonstrate that it:</p> <p>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</p> <p>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains</p>		

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(c) where it is for rural residential purposes:</p> <ul style="list-style-type: none"> i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres ii. is necessary taking account of existing and future demand and supply of rural residential land. 		
9.3 Oyster Aquaculture	Applies when preparing a planning proposal in 'Priority Oyster Aquaculture Areas'	Not applicable	Not applicable

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Applies to land mapped as mapped as State significant farmland, regionally significant farmland, or significant non-contiguous farmland.	<p>Item 10 seeks to rezone a small area of land within the Bangalow industrial estate which has an RU1 zone applying. This area has industrial buildings on site.</p> <p>The RU1 land is mapped as regionally significant farmland, consistent with the rural land within and surrounding Bangalow. This rezoning is of very minor significance and seeks to correct a zoning anomaly. Therefore an assessment against the farmland variation criteria is not required.</p> 	Justifiably inconsistent

Section C Environmental, social and economic impact

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No, this planning proposal is housekeeping in nature and will not adversely affect threatened species or their habitats.

Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No, this planning proposal does not enable an increase in development.

Item 8 seeks to increase the FSR allowable in certain areas from 0.2:1 to 0.3:1. Some of these areas have a low FSR as they may be affected by natural hazards or to protect environmental values. The application of 0.3:1 FSR is still considerably lower than the standard 0.5:1 FSR for low density residential areas within the shire. Existing controls are maintained to minimise risks from hazards and protect the environment.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The planning proposal is not anticipated to have any adverse social or economic impacts.

Section D Infrastructure

Q11. Is there adequate public infrastructure for the planning proposal?

The planning proposal does not facilitate additional development to require public infrastructure.

Section E State and Commonwealth Interests

Q12. What are the views of state and Commonwealth public authorities consulted in order to inform the Gateway determination?

Consultation has yet to occur with state agencies. As the proposal is housekeeping in nature, no objections are envisioned from state or commonwealth agencies.

Part 4 Mapping

Amendments will be required to the following Byron LEP 2014 map sheets:

- FSR_003CD
- FSR_002CA
- LZN_003A
- FSR_003AA
- LSZ_003
- HOB_003
- LZN_002B
- LZN_002C
- LZN_002CA

Current and proposed maps are available within the appendix.

Part 5 Community consultation

Community consultation will be conducted in accordance with the Gateway determination.

Notification of the exhibited planning proposal will include:

- updates to Council's website
- referral to relevant State agencies
- notification in writing to affected landowners

Consultation with Department of Primary Industries and Rural Fire Service is recommended as part of the exhibition process.

Part 6 Project timeline

The proposed timeline for the completion of the Planning Proposal is as follows:

Plan making step	Estimated completion
Gateway Determination	September 2023
Agency Consultation	October 2023
Public Exhibition Period	October 2023
Submissions Assessment and report to Council	Nov-Dec 2023
Submission of adopted LEP to DPE for finalisation (non-delegated)	February 2023
Submission of adopted LEP amendment to Parliamentary Counsel for drafting (delegated authority)	February 2023
Council to make the LEP amendment (delegated authority)	March 2024
LEP amendment notification	March 2024

Conclusion

This Planning Proposal seeks to amend Byron Local Environmental Plan (LEP) 2014 to make a range of minor changes relating to policy and mapping inconsistencies and errors. These changes ensure that the Byron LEPs (2014 & 1988) are up to date and consistent and allow for the best possible planning and land use outcomes.

The 11 amendments in this planning proposal include amendments to:

- Amend clause **4.1AA Minimum subdivision lot size for community title schemes** to include the recently introduced C4 Environmental Living zone.
- Amend clause **4.4 Floor space ratio** to remove subclause (2A) which enables applications for dual occupancies in the R2 Low Density Residential zone to have a FSR of 0.5:1. This is inconsistent with FSR maps that cover some areas to ensure development is appropriate in identified sensitive or constrained areas.
- Amend **rural subdivision clause 4.1C**
- Amend **6.8 Rural and nature-based tourism development - (4) (a)**, to remove the word 'attached' in relation to 'dual occupancies', as both attached and detached are permissible in the rural zones under LEP 2014.
- Amend **clause 6.8 Rural and nature-based tourism development - (3) (a)** so that properties with existing access to classified roads (but are prohibited from use) may demonstrate where access to classified roads may be considered appropriate.
- Amend **Schedule 1 Additional Permitted Uses as a carryover from clause 17 in Schedule 8 of Byron LEP 1988**
- Amend **clause 4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2 in LEP 2014** to remove subclause 2 (c) which requires dual occupancies to be situated within 100m of each other.
- Mapping amendments include changes to:
 - the FSR in certain areas Suffolk Park and New Brighton
 - reduce the height limits of buildings in Wategos
 - removal of rural zoning over some lots within the Bangalow Industrial Estate
 - addition of appropriate height limits to some lots in Bangalow
 - rezoning of gazetted parcels to C1 National Parks and Nature Reserves

This planning proposal is broadly consistent with the North Coast Regional Plan 2041 and SEPPs. It is also consistent (or justifiably inconsistent) with section 9.1 Directions.

Appendix

Appendix 1 – Proposed drafting changes (shown highlighted in yellow)

Appendix 2 – Current and proposed mapping changes

Item 1

4.1AA Minimum subdivision lot size for community title schemes

- (1) The objectives of this clause are as follows—
- (a) to ensure that land to which this clause applies is not fragmented by ad hoc subdivisions that would create additional dwelling entitlements.
- (2) This clause applies to a subdivision (being a subdivision that requires development consent) under the *Community Land Development Act 2021* of land in any of the following zones—
- (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape,
 - (c) Zone R5 Large Lot Residential,
 - (d) Zone SP1 Special Activities,
 - (e) Zone SP3 Tourist,
 - (f) Zone C3 Environmental Management,
 - (g) Zone C4 Environmental Living,
- but does not apply to a subdivision by the registration of a strata plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the *Community Land Development Act 2021*) is not to be less than the minimum size shown on the *Lot Size Map* in relation to that land.
- (4) This clause applies despite clause 4.1.

Item 2

4.4 Floor space ratio

- (1) The objectives of this clause are as follows—
- (a) to ensure that new buildings are appropriate in relation to the character, amenity and environment of the locality,
 - (b) to enable a diversity of housing types by encouraging low scale medium density housing in suitable locations,
 - (c) to provide floor space in the business and industrial zones adequate for the foreseeable future,
 - (d) to regulate density of development and generation of vehicular and pedestrian traffic,
 - (e) to set out maximum floor space ratios for dual occupancy in certain areas.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

~~(2A) Despite subclause (2), the maximum floor space ratio for dual occupancies on land in Zone R2 Low Density Residential is 0.5:1.~~

Item 3

4.1C Minimum subdivision lot size for boundary adjustments in certain rural and residential zones

4.1C Boundary changes between lots in certain rural and conservation zones

~~(1) The objectives of this clause are as follows—~~

~~(1) The objective of this clause is to permit the boundary between 2 or more lots to be altered in certain circumstances to give landowners a greater opportunity to achieve the objectives for development in a zone.~~

~~(a) to permit boundary adjustment subdivision between existing lots in rural areas where one or more of the resulting lots would be less than the minimum subdivision lot size,~~

~~(b) to ensure that the subdivision does not create additional lots or additional opportunities for dwelling houses,~~

~~(c) to ensure that the boundary adjustment subdivision will result in—~~

~~(i) a minimisation of further fragmentation and alienation of resource lands or lands with natural or ecological values,~~

~~(ii) the minimisation of land use conflict,~~

~~(iii) the maintenance of the rural character, environmental heritage and/or scenic quality of the land.~~

~~(2) This clause applies to land in the following zones—~~

~~(a) Zone RU1 Primary Production,~~

~~(b) Zone RU2 Rural Landscape,~~

~~(c) Zone R5 Large Lot Residential,~~

~~(d) Zone C2 Environmental Conservation,~~

~~(e) Zone C3 Environmental Management.~~

~~(3) Despite clause 4.1, development consent may be granted for a subdivision that consists of an adjustment of boundaries between existing lots where the size of one or more of the resulting lots will be less than the minimum subdivision lot size shown on the Lot Size Map in relation to those lots, if—~~

~~(a) the subdivision will not result in the creation of any additional lots or the opportunity for additional dwellings (or both), and~~

~~(b) the subdivision will minimise the further fragmentation and alienation of resource lands or lands with natural and ecological values, and~~

~~(c) the subdivision is likely to minimise actual or potential land use conflict, and~~

~~(d) the subdivision is not likely to affect the rural character, environmental heritage and scenic quality of the land.~~

(3) Despite clause 4.1 (3), development consent may be granted to the subdivision of 2 or more adjoining lots, being land to which this clause applies, if the subdivision will not result in either of the following—

(a) an increase in the number of lots,

(b) an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots.

(4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following—

(a) the objective in (1) of this clause,

(b) the relevant zone objectives in (2) of this clause

(c) the existing uses and approved uses of other land in the vicinity of the subdivision,

(d) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,

(e) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),

(f) whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,

(g) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),

(h) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,

(i) whether or not the subdivision is likely to have an adverse impact on the environmental values, heritage vistas or landscapes or agricultural viability of the land.

(5) This clause does not apply—

(a) in relation to the subdivision of individual lots in a strata plan or community title scheme, or

(b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

Items 4 & 5

6.8 Rural and nature-based tourism development

- (1) The objective of this clause is to ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land.
- (2) This clause applies to land in the following zones—
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape.
- (3) Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that—
 - (a) there is, or will be, adequate vehicular access to and from a road, taking into account the scale of the development proposed, and
 - (b) where that road is a classified road, vehicular access to and from the road must be safe, ensure the safety, efficiency and ongoing operations of the classified road, and it must be demonstrated that alternate access from a road other than a classified road is not practicable or safe, and
 - (b) the development is small scale and low impact, and
 - (c) the development is complementary to the rural or environmental attributes of the land and its surrounds, and
 - (d) the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.
- (4) Development consent must not be granted to development for the purpose of tourism development on land to which this clause applies unless—
 - (a) a lawfully erected dwelling house or dual occupancy ~~(attached)~~ is situated on the land, or
 - (b) a dwelling house may be erected on the land under this Plan.
- (5) Development consent must not be granted to development under subclause (4) if the development—
 - (a) includes an ancillary caretaker's or manager's residence, or
 - (b) is for the purpose of more than 1 bed and breakfast accommodation.
- (6) In this clause—

small scale means a scale that is small enough to be generally managed and operated by the principal owner living on the property.

tourism development includes, but is not necessarily limited to, development for any of the following purposes—

- (a) bed and breakfast accommodation,
- (b) camping grounds,
- (c) farm stay accommodation,
- (d) eco-tourist facilities,
- (e) home industries that provide services, or the sale of goods, on site to visitors,
- (f) information and education facilities,
- (g) restaurants or cafes,
- (h) rural industries that provide services, or the sale of goods, on site to visitors.

Item 6

Schedule 1 Additional Permitted Uses

12 Use of certain land at Broken Head

- (1) This clause applies to land at Broken Head , being Lot 3, DP 599728 and identified as “Area M” on the [Additional Permitted Uses Map](#).
- (2) Development for the purpose of four dwelling-houses for a multiple occupancy is permitted with development consent.

Commented [HK3]: Help!

Commented [CA4R3]: Have a look at wording in [Item 10 of Sch 1 in LEP 2014](#).

Commented [HK5R3]:

Item 7

4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2

- (1) The objectives of this clause are as follows—
- (a) to provide alternative accommodation for rural families and workers,
 - (b) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,
 - (c) to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.
- (2) Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that—
- (a) the development will not impair the use of the land for agriculture or rural industries, and
 - (b) each dwelling will use the same vehicular access to and from a public road, and
 - ~~(c) for dual occupancies (detached)—dwellings will be situated within 100 metres of each other, and~~
 - (d) the land is physically suitable for the development, and
 - (e) the land is capable of accommodating the on-site disposal and management of sewage for the development, and
 - (f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.

Appendix 2 – Current and proposed map changes