

**Report No. 13.4 PLANNING - 26.2022.11.1 Housekeeping Amendments to Byron Local Environmental Plan 2014**

**Directorate:** Sustainable Environment and Economy

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**File No:** I2023/502

**Summary:**

10 The LEP is periodically reviewed to ensure that planning controls are current and correct. Staff maintain a register of LEP issues to investigate for inclusion in a general amendment planning proposal. This allows for Byron LEPs to be regularly updated to provide fit for purpose planning controls and planning controls that meet community expectations.

15 At the 13 October 2022 planning meeting a [planning report](#) presenting policy and mapping amendments to Byron LEPs (1988 and 2014) was considered by Council. It was resolved that the amendments be further investigated, and a planning proposal prepared **(22-555)**. This report presents the General Housekeeping Amendments Planning Proposal and seeks endorsement by Council for submission to the Department of Planning and Environment for Gateway determination.

NOTE TO COUNCILLORS:

20 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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**RECOMMENDATION:**

**That Council:**

1. **Submit the planning proposal contained in Attachment 1 (E2022/117263) to the NSW Department of Planning and Environment for Gateway determination.**
- 30 2. **Subject to the Gateway determination, undertake public exhibition of the planning proposal and consult with government agencies as required by the Gateway determination; and**
3. **Receive a submissions report outlining the exhibition outcomes.**

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4. **In relation to the amended clause 4.1C ‘Boundary changes between lots in certain rural and conservation zones’, prepare supporting DCP provisions to provide clearer guidance around interpretation of the term “altered” boundary and clause objectives. Attachments:**

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- 1 26.2022.11.1 Housekeeping planning proposal 2023, E2022/117263
- 2 Form of Special Disclosure of Pecuniary Interest, E2012/2815

## Report

### Background

Council has two Local Environmental Plans (LEP). The Byron Local Environmental Plan (LEP) 2014 guides development and land use decisions for most of the Byron Shire. The Byron Local Environmental Plan (LEP) 1988 applies to several areas with environmental values and or coastal lands, which were deferred from being zoned in the Byron LEP 2014. These areas are known as a Deferred Matter (DM) in Byron LEP 2014.

Council maintains a live list of LEP controls and mapping matters that have been identified as being out of date, anomalous or in need of attention for other reasons. The items identified on this list are reviewed and those considered minor policy and minor mapping changes are bundled into periodic housekeeping planning proposals.

The intent of a housekeeping planning proposal is to ensure the LEP stays current, correct and consistent with Council policy and the Act.

At the 13 October 2022 planning meeting a [planning report](#) presenting policy and mapping amendments to Byron LEPs (1988 and 2014) was considered by Council. It was resolved that the amendments be further investigated, and a planning proposal prepared (22-555).

This planning proposal is for 12 housekeeping amendments to the LEPs: 7 policy related and 5 mapping related. The policy related amendments aim to address anomalies and correct out of date information. The mapping amendments proposed are minor in scale and aim to correct mapping anomalies.

Further detail on each amendment is presented below and in the attached planning proposal.

### Draft Policy Amendments

**Item 1:** Include the C4 Environmental Living zone in clause [4.1AA Minimum subdivision lot size for community title schemes](#)

#### Rationale

A recent planning proposal has introduced the C4 Environmental Living zone into Byron LEP 2014.

The C4 zone should be included in clause 4.1AA to ensure that any community title subdivision complies with the minimum lot size requirement.

**Item 2:** Remove (2A) from clause [4.4 Floor space ratio](#).

#### Rationale

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, which has been carried forward from Byron LEP 1988, is inconsistent as some areas intentionally 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 inconsistency currently promotes construction of a larger dual occupancy over a dwelling house (i.e. with lower FSR) in identified sensitive or constrained areas.

### **Item 3: Amend Rural boundary adjustment clause [4.1C](#)**

Council resolved (**21-174**) in June 2021 to consider this clause in a future housekeeping planning proposal, pending the outcome of rural planning reforms from Department of Primary Industries. Although these reforms have not progressed it is considered necessary to amend this clause in order to ensure it is fit for purpose without creating unintended outcomes.

#### Rationale

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

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 subdivision lot size, without increasing the number of lots or creating additional dwelling opportunities.

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.

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:

- revised clause modelled on clause 4.2C of the Eurobodalla Local Environment Plan 2012 and titled "*Boundary changes between lots in certain rural and conservation zones*";
- 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); and
- a broadening of the matters for consideration before consent may be granted to the subdivision of 2 or more adjoining lots.

The proposed clause wording still enables assessment officers to consider the appropriateness of individual applications. For example, there may be circumstances where a road or other physical/natural land feature make it appropriate to separate the dwelling area off from the remaining portion of the land – noting that such scenarios would need to satisfy the criteria in clause 4.1C (4) including:

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- (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,*
- 5 (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),*
- 10 (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.*
- 15 It is also recommended that supporting DCP provisions are prepared to provide clear guidance around interpretation of the term “altered” and clause objectives.

#### **Item 4: Remove "attached" from clause 6.8 Rural and nature-based tourism development - (4) (a).**

#### 20 Rationale

Clause 6.8(4)(a) requires a dwelling house or dual occupancy (attached) to be constructed on site to enable consent for rural or nature-based tourism.

This subclause has carried over from Byron LEP 1988 which only permitted ‘attached’ dual occupancies in rural areas. To be current, this clause should reference ‘dual occupancies’ (ie. Comprising both attached and detached) as both are already permissible in the rural zones under LEP 2014.

#### **Item 5: Remove “other than a classified road” from clause 6.8 Rural and nature-based tourism development – (3)(a).**

**AND**

#### 30 **Add a new consideration to subclause 3 as follows:**

**(3)(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”**

#### 35 Rationale

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This part requires suitable vehicle access to and from a road for tourism development but prohibits access to a classified road.

There are several classified roads within Byron Shire including Mullumbimby Road and Gulgan Road, with some properties having existing access to these roads.

- 5 If suitable and safe access can be demonstrated, access to these roads may be appropriate.

It is proposed to remove the prohibition in this clause (ie. access to/from a classified road) and replace with a new part for considering access to classified roads.

- 10 **Item 6: Insert the following into Schedule 1 Additional Permitted Uses, as a carryover from clause 17 in Schedule 8 of Byron LEP 1988:**

**"Lot 3, DP 599728, development for the purpose of four dwelling-houses for a multiple occupancy is permitted with development consent"**

#### Rationale

- 15 By oversight this APU was not included in Schedule 1 of LEP 2014 as part of finalising the Stage 1 Conservation Zones review, which is inconsistent with treatment of the adjoining Lot 2 DP 599728 in Schedule 1.

#### **Item 7: Remove subclause 2(c) from clause 4.2D *Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2* in LEP 2014**

#### Rationale

- 20 Subclause 2(c) requires dual occupancies to be situated within 100m of each other.

Removing this subclause acknowledges that siting dwellings further than 100m apart may be appropriate and produce better outcomes in certain circumstances.

- 25 Other considerations already exist in clause 4.2D and Byron DCP 2014 to minimise land use conflict, ensure development will not impair the use of the land for agricultural purposes and utilise a single vehicular access from a public road.

#### **Item 8: 4.1F Exceptions to minimum lot sizes for certain rural subdivisions**

Clause 4.1F was inserted into the LEP when it was first created to enable special purpose subdivisions in the rural areas, similar to what was permitted under the LEP 1988.

- 30 This clause was flagged for review as an applicant had interpreted this clause to enable subdivision of tourist cabins from the parent lot containing the dwelling house. Following further investigation of this clause, staff have determined that this is not the intention of this clause and the current provisions still remain applicable in certain (albeit limited) circumstances. **As no change is proposed, it has been excluded from the Planning Proposal.**
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## ***Draft Mapping Amendments***

Corresponding maps for the amendments below are available in the planning proposal at Attachment 1, Appendix 2.

### **Item 9: Increase the Floor Space Ratio (FSR) from 0.2:1 to 0.3:1 for certain areas in Suffolk Park and New Brighton.**

#### **Rationale**

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.

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.

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 to provide greater flexibility whilst also ensuring any redevelopment remains sympathetic to the environmental and or flood hazard constraints on the land.

### **Item 10: Reduce the height of buildings limit from 9m to 8m within the Wategos residential area.**

#### **Rationale**

Wategos is the most eastern residential area within Australia, is surrounded by a State Conservation Area and has steep topography. These attributes give it a high degree of visual exposure.

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.

Consultation with the affected landowners will be required as part of the planning proposal process.

### **Item 11: Remove rural zoning from certain lots within and adjoining the Bangalow Industrial estate, Dudgeons Lane**

#### **Rationale**

A small part of the Bangalow industrial estate still has the RU1 Primary Production zone applying (Lot 6 DP 241328; Lot 1 DP1077663 and part of unnamed road reserve). 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 *E4 General Industrial Zone* applied, consistent with the rest of the surrounding industrial estate.

FSR and Lot Size will also be amended to reflect the E4 zone.

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**Item 12: Include 3 land parcels in Bangalow in the Height of Buildings (HOB) map sheet to have a 9m height limit.**

**PN 269670, PN 269673 and PN 269693**

#### Rationale

- 5 These parcels do not currently have a height limit applying in LEP 2014. It is proposed to apply a 9m height limit to these sites consistent with the HOB mapping of the surrounding area.

**Item 13: Rezone several parcels that have been gazetted as National Parks or Nature Reserves to *C1 National Parks and Nature Reserves*.**

#### 10 Rationale

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 *C1 National Parks and Nature Reserves*:

- Lot 1 DP 1261334

- 15 - Lot 311 DP 1163830

- Unformed road Koonyum Range

The sites are now part of Billinudgel Nature Reserve and Mount Jerusalem National Park.

**Item 14: Amend Byron LEP 1988 to rezone the West Byron Urban Release Area to reflect the court approved subdivision for Harvest Estate.**

#### 20 Rationale

Council Resolved 19-137 to amend the zoning of West Byron Urban release area in relation to the subdivision plan.

The court approved Harvest Estate subdivision (2021) differs from the zoning currently within Byron LEP 1988.

- 25 Although the zoning should be amended to reflect the 'land use' layout of the approved Harvest Estate subdivision plan, there needs to be further considerations around transitioning the LEP 1988 West Byron provisions into LEP 2014. As a result this item will be considered in a separate planning proposal.

#### 30 **Next steps**

Should council resolve to proceed with this planning proposal, a request for a Gateway determination will be sent to the Department of Planning, Industry and Environment.



## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.2	Review and update LEP and DCP to reflect strategic land use priorities and/or legislative reforms

### Recent Resolutions

- 5 • [22-555](#) (13 October 2022) Amendments to Byron Local Environmental Plan 2014

### Legal/Statutory/Policy Considerations

This planning proposal will amend the Byron Local Environmental Plan 2014.

### Financial Considerations

- 10 This is a Council initiated planning proposal funded through the existing operational budget.

### Consultation and Engagement

- 15 Should Council resolve to proceed with the planning proposal, it will be sent to the NSW Department of Planning and Environment for Gateway determination to enable formal public exhibition.