

**Report No. 13.3 PLANNING - 26.2023.7.1 Planning Proposal to transition the West Byron Urban Release Area into LEP 2014**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Lachlan Wall, Land Use Planner

**File No:** I2023/1215

**Summary:**

This report is prepared in response to Council Resolution **19-137** and as foreshadowed in the 10 August 2023 Housekeeping LEP report.

10 This Report presents a standalone planning proposal.

(i) amend the West Byron Urban Release Area (WBURA) land use zones to reflect the court approved subdivisions for Harvest Estate (development consent 10.2017.201.1) and Site R&D (Development Consent 10.2017.661.1); and

15 (ii) transition all relevant LEP 1988 maps and site-specific provisions into Byron Local Environmental Plan 2014 (LEP 2014) for the WBURA.

20 The WBURA is currently a deferred matter zoning under the Byron Local Environmental Plan 2014 (LEP 2014), with the Byron Local Environmental Plan 1988 (LEP 1988) zones comprising a mixture of R2 Low Density Residential, R3 Medium Density Residential, B1 Neighbourhood Centre, E2 Environmental Conservation, E3 Environmental Management, RE1 Public Recreation, and IN2 Light Industrial.

25 It is proposed to rezone the WBURA to a mix of R2 Low Density Residential, R3 Medium Density Residential, R5 Large Lot Residential (new), C2 Environmental Conservation (previously E2), C3 Environmental Management (previously E3), RE1 Public Recreation, RE2 Private Recreation (new), E1 Local Centre (previously B1) and E4 General Industrial (previously IN2), and SP1 Infrastructure – Drainage (new), as applicable under the LEP 2014.

30 The proposed zone changes outside the L&E court-approved residential subdivisions relate to the existing IN2 – Light Industrial and B1 Neighbourhood Centre zoned land, which are to be rezoned to E4 – General Industrial and E1 – Local Centre, respectively, to reflect recent planning reforms.

The Planning Proposal also seeks to delete Part 4 of the Byron Local Environmental Plan 1988 (LEP 1988), which is specific to the WBURA. As part of transitioning into LEP 2014, it is proposed to bring forward two West Byron-specific clauses within the 1988 LEP into the LEP 2014. This will ensure the intent of these provisions are retained.

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.

NOTE TO COUNCILLORS:

- 5 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. **Proceeds with the planning proposal contained in Attachment 1, which seeks to:**
- 15 (i) **amend the West Byron Urban Release Area (WBURA) zones to reflect the court approved subdivisions for Harvest Estate (development consent 10.2017.201.1) and Site R&D (Development Consent 10.2017.661.1); and**
- (ii) **transition all relevant LEP 1988 maps and site-specific provisions into Byron Local Environmental Plan 2014 for the WBURA.**
- 20 2. **Forwards the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination;**
3. **Pending a positive Gateway determination, undertakes public exhibition of the planning proposal in accordance with the determination requirements; and**
- 25 4. **Considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

**Attachments:**

- 1 26.2023.7.1 - West Byron Transition Planning Proposal, E2023/76729 
- 2 26.2023.7.1 - Current and proposed land zoning map, E2023/106157 
- 30 3 26.2023.7.1 - West Byron Transition LEP comparison, E2023/103464 

## Report

This report presents a planning proposal to:

- 5 (i) amend the West Byron Urban Release Area (WBURA) zones to reflect the court approved subdivisions for Harvest Estate (development consent 10.2017.201.1) and Site R&D (Development Consent 10.2017.661.1); and
- (ii) transition all relevant LEP 1988 maps and site-specific provisions into Byron Local Environmental Plan 2014 (LEP 2014) for the WBURA.

10 The amended zoning is intended to reflect the 'land use' layout of the approved subdivision plans.

This report has been prepared in response to Council Resolution 19-137 and as foreshadowed in the 10 August 2023 Housekeeping LEP report. As part of this planning proposal it is also proposed to delete Part 4 of the Byron LEP 1988, which only applies to the West Byron Bay Site. This comprises clauses 65 through 101 of the LEP 1988.

15 This proposal applies to the land shown in the West Byron Bay - Land Application Area map of LEP 1988, as shown in Figure 1 below.

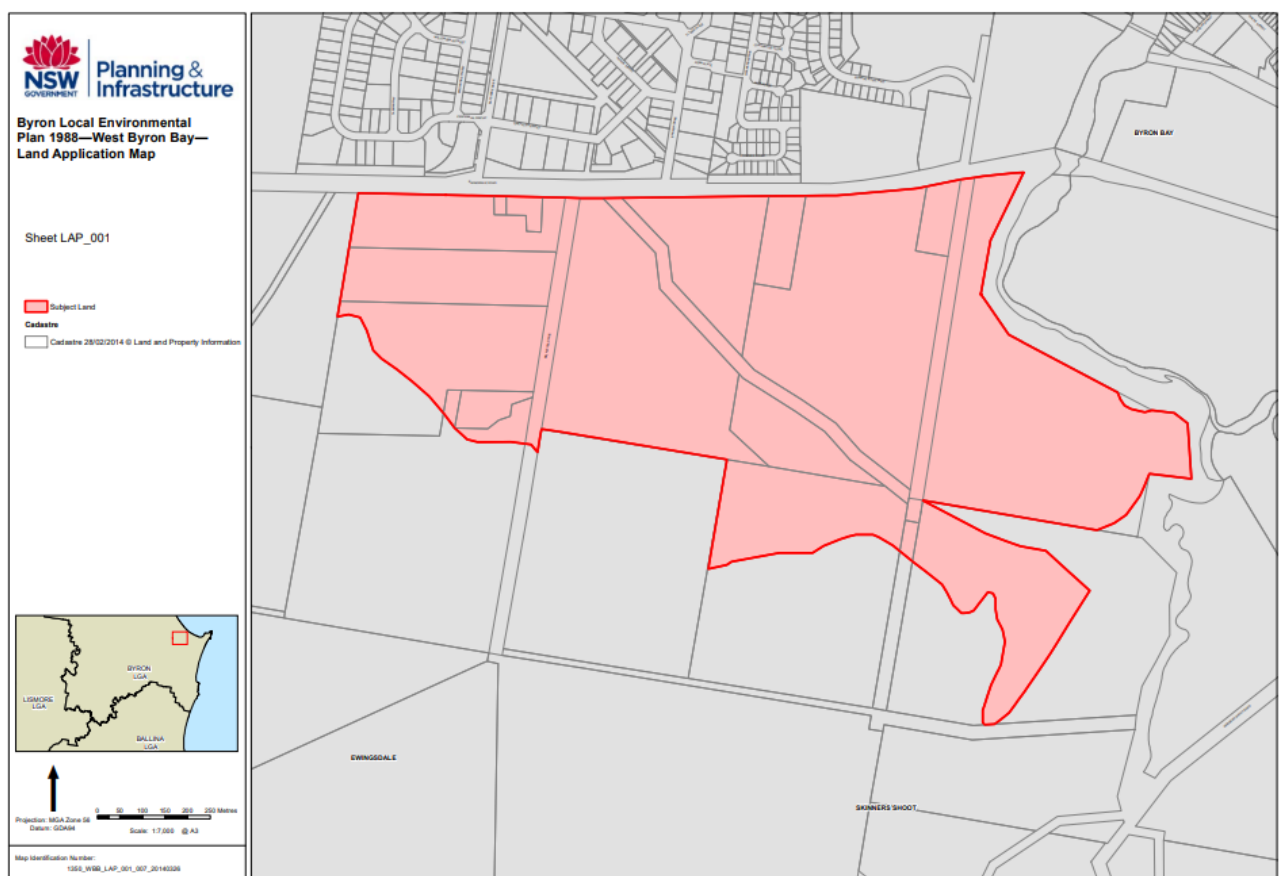


Figure 1: [Land Application Area West Byron Urban Release Area](#)

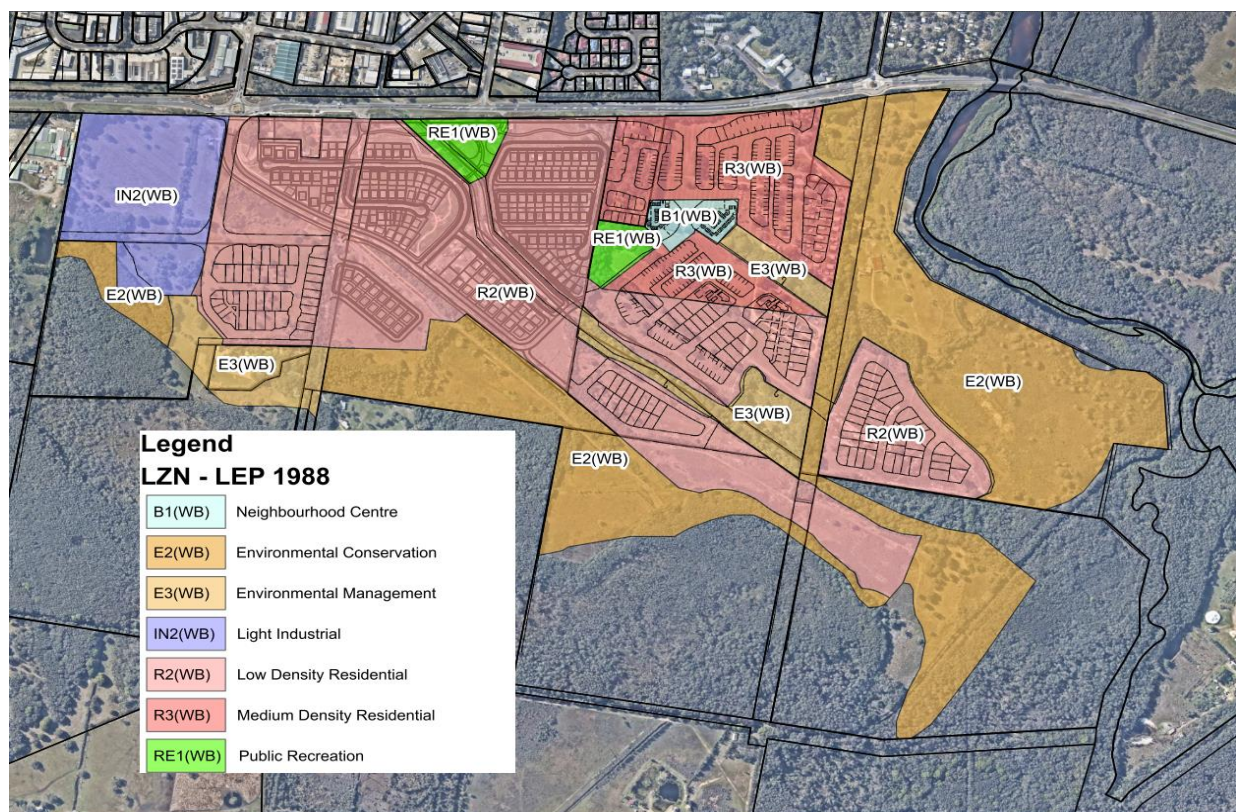
**Land & Environment Court approved Subdivisions.**

The West Byron Urban Release area has two development applications approved for the subdivision of the land. Both subdivisions are largely residential in nature with a mixture of low density, medium density and large lot residential zonings. These development consents comprise 10.2017.201.1 approved by the Land & Environment Court on 8 December 2020, and 10.2017.661.1 approved by the Land & Environment Court on 21 April 2022.

Development consent 10.2017.201.1 approved the subdivision of the land comprising 145 residential lots, 4 large lifestyle lots and contains a community centre / garden and public recreational green space lots. construction works for this subdivision have commenced for the initial stages of this development.

Development consent 10.2017.661.1 approved the subdivision of the land into one hundred and sixty-two (162) lots comprising one hundred and twenty-seven (127) residential lots, twenty-five (25) super (master) lots, two (2) business lots, one (1) recreation lot, two (2) industrial lots and five (5) residue lots. Construction works associated with this subdivision has yet to begin.

The layout of these subdivisions with the existing land use zoning overlaid is shown in figure 2.

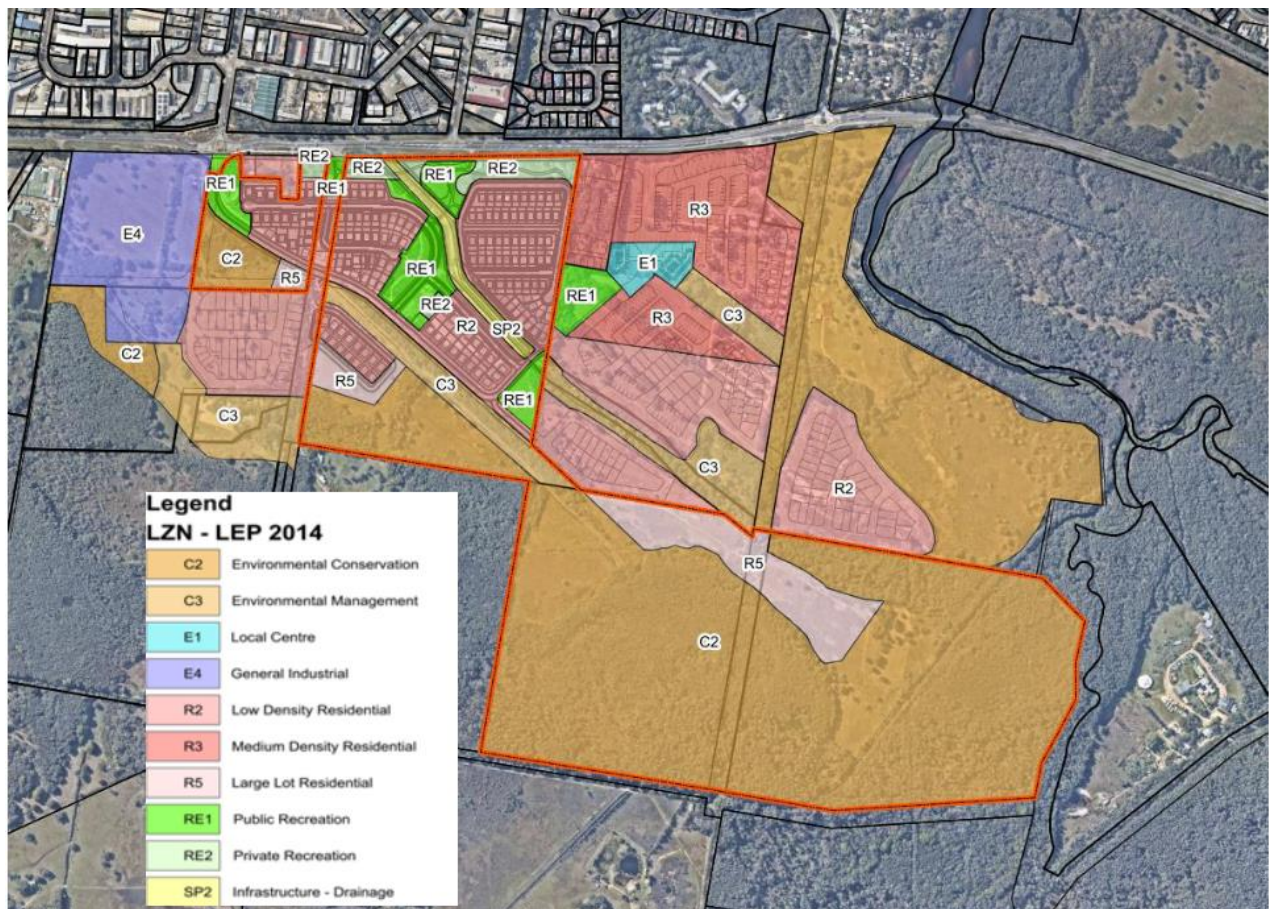


**Figure 2:** Layout of the West Byron Bay Site subdivision approvals and existing zoning overlaid.

The Current land use zoning of the WBURA is shown in figure 2 above and within Attachment 2. The majority of the proposed zoning changes relate to the subdivision



known colloquially as “Harvest Estate,” as approved by the development consent 10.2017.201.1.



**Figure 3:** Proposed land zoning map of the entire West Byron Urban Release Area.

- 5 The court approved Harvest Estate subdivision (2021) differs from the zoning currently within Byron LEP 1988. The proposed zoning map shown in Figure 3 is consistent with the subdivision layout as approved by the Land and Environment Court issued Development Consents.
- 10 Other proposed zoning changes within the WBURA relate to land zoned IN2 Light Industrial and B1 Neighbourhood Centre. The Employment zone reforms undertaken by the NSW Department of Planning have removed these two zones from the Standard Instrument LEPs and replaced with a corresponding Employment zone or ‘E zone.’ It is proposed to rezone these areas ‘E4 – General Industrial’ and ‘E1 – Local Centre’,

respectively, as the equivalent land use zones as shown in figure 4 below.

Equivalent zone tables



## Byron Local Environmental Plan 2014

Current Business and Industrial Zones	Employment Zones
B1 Neighbourhood Centre B2 Local Centre	E1 Local Centre
B4 Mixed Use	MU1 Mixed Use
B7 Business Park	E3 Productivity Support
IN1 General Industrial IN2 Light Industrial	E4 General Industrial
B7 Business Park (Byron A&IE)	E4 General Industrial*

\*This area was translated to a non-direct equivalent zone.

**Figure 4:** Equivalent zone table - Employment zone reform.

- 5 In addition to the Harvest Estate zoning amendments, other consequential mapping amendments are required to ensure there is consistency between the land use, and other principal planning controls, including height of buildings, acid sulfate soils and minimum lot size.

- 10 The planning proposal also proposes to carry over a number of West Byron-specific policy amendments in LEP 1988 to ensure there is no reduction in permissible residential densities. These changes are discussed below and outlined in Attachment 3.

## Draft Policy Amendments

There are three key differences between the 1988 and 2014 LEP provisions that the planning proposal seeks to address. These are discussed below.

### 15 **Item 1:** deletion of [Part 4](#) of LEP 1988 West Byron Bay Site

- 20 The entirety of the land to which this part applies is proposed to be transitioned into the Byron LEP 2014, and hence this part will be removed from Byron LEP 1988. As part of this transition, the planning proposal seeks to retain certain site-specific clauses that currently apply to the site, which if not adopted would substantially reduce the number of dwellings that can be delivered within the WBURA. These are discussed below.

**Item 2: Inconsistency between (I) [Clause 82](#) Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings (LEP 1988) and (II) [Section 4.1E](#) – minimum lot size for certain residential developments (LEP 2014).**

- 5 In transitioning WBURA into LEP 2014, there are differences between Clause 82 (LEP 1988) and Section 4.1E (LEP 2014) in terms of minimum lot size requirements for dual occupancies, multi-dwelling housing and residential flat buildings. Table 1 below provides a comparison of both LEP clauses.

<b>Development Type</b>	<b>Land Zoning</b>	<b>Minimum Lot Size 1988 required (Clause 82)</b>	<b>Minimum Lot Size 2014 required (Section 4.1E)</b>
Dual Occupancy (attached)	R2 Low Density Residential	600m <sup>2</sup>	800m <sup>2</sup>
	R3 Medium Density Residential	300m <sup>2</sup>	800m <sup>2</sup>
Dual occupancy (detached)	R2 Low Density Residential	700m <sup>2</sup>	800m <sup>2</sup>
	R3 Medium Density Residential	400m <sup>2</sup>	800m <sup>2</sup>
Multi dwelling Housing	R2 Low Density Residential	1000m <sup>2</sup>	1000m <sup>2</sup>
	R3 Medium Density Residential	450m <sup>2</sup>	800m <sup>2</sup>
Residential Flat Building	R3 Medium Density Residential	1000m <sup>2</sup>	800m <sup>2</sup>
Attached Dwelling	R2 Low Density Residential	Not specified	1000m <sup>2</sup>

<b>Development Type</b>	<b>Land Zoning</b>	<b>Minimum Lot Size 1988 required (Clause 82)</b>	<b>Minimum Lot Size 2014 required (Section 4.1E)</b>
	R3 Medium Density Residential	Not specified	800m <sup>2</sup>
Manor House	R2 Low Density Residential	Not specified	1000m <sup>2</sup>
	R3 Medium Density Residential	Not specified	800m <sup>2</sup>

**Table 1:** comparison of minimum lot size between 1988 LEP and 2014 LEP for certain types of residential development

The difference between Clause 82 and 4.1C would result in an inconsistency with Ministerial Direction Focus Area 6. Direction 6.1- Housing, as existing clause 4.1C would reduce the permissible residential density of WBURA if left as is. As minimum Lot sizes within the WBURA have been largely set by the court-approved subdivisions, and to ensure permissible residential densities are maintained (and not reduced), it is proposed to amend Section 4.1E (LEP 2014) to include the provisions of Clause 82(2) as applicable to the West Byron Bay site.

## Rationale

Clause 82 requires a smaller minimum lot size of 600m<sup>2</sup> for dual occupancies on R2 Low Density Residential or 300m<sup>2</sup> for R3 Medium density zoned land when compared to the LEP 2014 Clause 4.1E, which requires a minimum lot size of 800m<sup>2</sup> for any dual occupancy. There is also a difference between the two clauses for minimum lot size requirements for multi-dwelling housing on R3 zoned land. Clause 82 requires a minimum lot size of 450m<sup>2</sup> but the Clause 4.1E requires 800m<sup>2</sup>.

Due to the age of clause 82, there is no reference to ‘attached dwellings’, or ‘manor houses’ within this clause, which are permissible land uses within the LEP 2014, but would otherwise have no minimum lot size requirement under the 1988 LEP.

As a result, the current provisions of clause 82 would allow for greater residential density within the WBURA when compared with the provisions of Clause 4.1E. Amending Clause 4.1E to reflect this will ensure consistency with the Ministerial Direction, Focus Area 6: Housing, Direction 6.1., which states that: “A planning proposal must, in relation to land to which this direction applies..(b) **not contain provisions which will reduce the permissible residential density of land.**” If the LEP 1988 table is not carried forward into



LEP 2014 the potential for infill development beyond a single dwelling house and / or secondary dwelling is significantly reduced.

More specifically, not adopting this change will effectively prohibit the construction of a dual occupancy on most lots within the entire area, substantially reducing the permissible density within this area.

**Item 3: Clause 83 Exceptions to minimum subdivision lot sizes for certain residential development.**

Clause 83 of the 1988 LEP allows for the provision of ***Integrated Housing*** within the WBURA, but has no direct equivalent clause within the LEP 2014. Clause 83 states

**83 Exceptions to minimum subdivision lot sizes for certain residential development**

(1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.

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

(a) Zone R2 Low Density Residential,

(b) Zone R3 Medium Density Residential.

(3) Development consent may be granted for a single development application for development to which this clause applies that is both of the following—

(a) the subdivision of land into 3 or more lots,

(b) the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than—

(i) for the erection of a dwelling house—300 square metres for land in Zone R2 Low Density Residential and 200 square metres for land in Zone R3 Medium Density Residential, or

(ii) for the erection of an attached dwelling—250 square metres for land in Zone R2 Low Density Residential and 150 square metres for land in Zone R3 Medium Density Residential, or

(iii) for the erection of a semi-detached dwelling—250 square metres for land in Zone R2 Low Density Residential and 150 square metres for land in Zone R3 Medium Density Residential

The term ***Integrated Housing*** is defined as following within the Byron Development Control Plan 2014 – Part A: “the subdivision of land into three or more lots and the

erection of a dwelling (attached or semi attached) or dwelling house on each lot as per Clause 83 of Byron LEP 1988”.

As part of the transition process, it is proposed to create a new additional local provision of the under Part 6 of the LEP 2014 that brings forward this provision.

5 Rationale

This clause is unique to the West Byron Bay Site and should be retained as it provides for greater diversity in housing types to be constructed within the area. Bringing forward this provision into the 2014 LEP would also be consistent with the Ministerial Direction 6: Housing, and would retain the current permissible residential density of the West Byron Site.

**Item 4: Savings provision for the amendments**

The West Byron Bay Urban Release Area contains number of lots that are not related to the subdivision of the WBURA as approved by the two Development consents issued.

- 15 To ensure that a development application made on any lot affected by this planning proposal will not be impacted by the processing of the application, It is proposed to create a self-repealing savings provision for this planning proposal that will provide certainty for any development application lodged currently, or lodged during, but not finally determined during the planning proposal process to provide clarity and surety for landowners that this
- 20 planning proposal will impact.

Doing so will ensure that any Development Application made during the processing of this planning proposal does not create new or modified planning considerations that were not in force at the date of lodgement of that application.

## Draft Mapping Amendments

25 **Item 5: Changes to Land Zoning.**

The planning proposal seeks to modify the zoning within the West Byron Urban Release Area to reflect the approved subdivision layout of the Harvest Estate. The proposed zoning changes are contained within Attachment 2.

Rationale

- 30 Council Resolution 19-137 sought to enact this change. The changes to the zoning presented are consistent with the (subsequently) approved subdivision layout, as well as the Employment zone review undertaken by the Department of Planning.

- 35 On 26 April 2023 the Department of Planning Employment Zone reforms replaced the *IN2 – Light Industrial* and *B1 Neighbourhood Centre Zones* in the Standard LEP instrument with the new zones shown in Figure 4 above. The WBURA includes area an area of Lot 2 DP 542178 which is currently zoned B1 Neighbourhood centre, and Lot 5 DP 1269369 and

a section of Lot 2 DP 818403 that are currently zoned IN2 Light Industrial (refer to figure 2).

- 5 It is proposed, as part of the transitioning these areas into the 2014 LEP, to rezone these areas to the equivalent land use zone in LEP 2014 (see Attachment 7). Specifically, the proposed rezoning will apply *E1 – Local Centre* and *E4 – General Industrial* respectively over these lots.

- 10 Other consequential mapping amendments are required to ensure there is consistency between the land use, and other principal planning controls, including height of buildings, acid sulfate soils and minimum lot size.

### **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**

### 15 **Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
4: Ethical Growth	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 Local Environmental Plan and Development Control Plans to reflect strategic land use priorities and/or legislative reforms

## **Recent Resolutions**

- 20 19-137 (28 March 2019). **Resolved** that Council proceed with the preparation of a planning proposal to rezone the West Byron Urban Release Area as per the Alternate Zoning Map [in attachment 1] for submission to the Department of Planning for gateway determination.

**19-137** **Resolved** that Council proceed with the preparation of a planning proposal to rezone the West Byron Urban Release Area as per the Alternate Zoning Map in Attachment 1 (#E2019/19623) for submission to the Department of Planning for gateway determination. (Lyon/Ndiaye)

*The motion was put to the vote and declared carried.  
Cr Hunter voted against the motion.*

**Legal/Statutory/Policy Considerations**

This planning proposal will amend the Byron Local Environmental Plan 2014 and Byron Local Environmental Plan 1988.

**Financial Considerations**

- 5 Task to be managed within existing financial / legal and resource allocations.

**Consultation and Engagement**

Should Council proceed with the planning proposal, upon receipt of a Gateway determination it will be placed on public exhibition for 28 days in accordance with Byron Community Participation Plan.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.3**      **PLANNING - 26.2023.7.1 Planning Proposal to transition the West Byron Urban Release Area into LEP 2014**  
**File No:**              I2023/1215

**23-525**    **Resolved** that Council:

1.    Proceeds with the planning proposal contained in Attachment 1, which seeks to:
  - (i)    amend the West Byron Urban Release Area (WBURA) zones to reflect the court approved subdivisions for Harvest Estate (development consent 10.2017.201.1) and Site R&D (Development Consent 10.2017.661.1); and
  - (ii)   transition all relevant LEP 1988 maps and site-specific provisions into Byron Local Environmental Plan 2014 for the WBURA.
2.    Forwards the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination;
3.    Pending a positive Gateway determination, undertakes public exhibition of the planning proposal in accordance with the determination requirements; and
4.    Considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption. (Coorey/Lyon)

*The motion was put to the vote and carried unanimously.*

*Crs Coorey, Hunter, Lyon, Dey, Swivel, Westheimer and Balson voted in favour of the motion.*

*Nil voted against the motion.*

*Cr Pugh was not present for the vote.*

## BYRON SHIRE COUNCIL

### ORDINARY (PLANNING) MEETING MINUTES

9 November 2023

*The motion was put to the vote and carried unanimously.*

*Crs Coorey, Hunter, Lyon, Dey, Swivel, Westheimer and Balson voted in favour of the motion.*

*Nil voted against the motion.*

*Cr Pugh was not present for the vote..*

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*There being no further business the meeting concluded at 2:31pm.*

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I hereby certify that these are the true and correct Minutes of this Meeting  
as confirmed at Council's Ordinary Meeting on 7 December 2023.



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Mayor Michael Lyon