



IRF24/1284

## Gateway determination report – PP-2024-1194

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Byron Shire Conservation Zones (C Zones)  
Implementation Program – Stage 4

June 24



Published by NSW Department of Planning, Housing and Infrastructure

[dpie.nsw.gov.au](https://dpie.nsw.gov.au)

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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.

## Contents

<b>1</b>	<b>Planning proposal.....</b>	<b>1</b>
1.1	Overview.....	1
1.2	Objectives of planning proposal .....	1
1.3	Explanation of provisions .....	2
1.4	Site description and surrounding area.....	2
1.5	Mapping.....	3
1.6	Background .....	4
<b>2</b>	<b>Need for the planning proposal .....</b>	<b>4</b>
<b>3</b>	<b>Strategic assessment .....</b>	<b>4</b>
3.1	Regional Plan .....	4
3.2	Local.....	4
3.3	Section 9.1 Ministerial Directions .....	5
3.4	State environmental planning policies (SEPPs) .....	8
<b>4</b>	<b>Site-specific assessment .....</b>	<b>9</b>
4.1	Environmental.....	9
4.2	Social and economic.....	10
4.3	Infrastructure .....	10
<b>5</b>	<b>Consultation.....</b>	<b>10</b>
5.1	Community .....	10
5.2	Agencies.....	11
<b>6</b>	<b>Timeframe .....</b>	<b>11</b>
<b>7</b>	<b>Local plan-making authority .....</b>	<b>11</b>
<b>8</b>	<b>Assessment summary .....</b>	<b>11</b>
<b>9</b>	<b>Recommendation.....</b>	<b>12</b>

**Table 1 Reports and plans supporting the proposal**

### Relevant reports and plans

Northern Councils E Zone Final Recommendations Report

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Byron Shire Council</b>
<b>PPA</b>	<b>Byron Shire Council</b>
<b>NAME</b>	<b>Conservation Zones Stage 4 Implementation</b>
<b>NUMBER</b>	<b>PP-2024-1194</b>
<b>LEP TO BE AMENDED</b>	<b>Byron LEP 2014</b>
<b>ADDRESS</b>	<b>Local Government Area Wide</b>
<b>DESCRIPTION</b>	<b>Local Government Area Wide</b>
<b>RECEIVED</b>	<b>4/06/2024</b>
<b>FILE NO.</b>	<b>IRF24/1284</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

The objective of this planning proposal is to implement Stage 4 of Byron Shire Council's Conservation Zone implementation program.

Council has been undertaking a staged approach to implement conservation zones and introduce deferred matter land into the Byron LEP 2014. More information on the staged approach undertaken by Council is outlined in section 1.6.

The Stage 4 planning proposal seeks to apply environmental and non-environmental zones to 1,494 land parcels, of which 1,050 are road reserves. A complete breakdown of the affected land is outlined later in this report.

The planning proposal's objectives are:

- apply C zones to land identified as meeting the criteria set out under the Northern Councils E Zone Review Final Recommendations Report;
- apply relevant urban, rural and special uses zones to other land that does not meet the criteria for application of conservation protection zones as set out under the Northern Councils E Zone Review Final Recommendations Report;
- apply the following consequential mapping to the subject land (where applicable): Height of Building; Minimum Lot Size; Floor Space Ratio; Acid Sulfate Soil; Drinking Water Catchment; and Multiple Occupancy and Community Title; and

- incorporate the land under the Byron LEP 2014 through an amendment to the Land Application Map.

It is considered these points primarily articulate the Explanation of Provisions for the planning proposal and as such, should be included under that section prior to exhibition.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Byron Shire LEP 2014 through a map only amendment. Land use tables for relevant conservation, urban, rural and special uses zones that are to be applied are already incorporated under the Byron LEP 2014.

As previously mentioned, the planning proposal articulates the explanation of provisions under the objective of the planning proposal. It is considered that these adequately explain how the objectives of the proposal will be achieved, however should be included under the explanation of provisions section of the planning proposal.

## 1.4 Site description and surrounding area

The planning proposal states that it applies to 1494 land parcels across the Byron Shire Local Government Area.

Of the parcels affected:

- 1050 road reserves (23 State road reserves, 440 Crown road reserves, 568 Council road reserves, 19 “unknown” road reserves);
- 69 privately owned;
- 1 owned by the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal);
- 30 State (including Department of Education, Transport for NSW, Water NSW, National Parks and Wildlife Service);
- 179 Crown (10 being Reflection Holiday Parks and 15 being Council managed Crown Land Reserves); and
- 163 Council.

Based on the above, the planning proposal applies to 1492 land parcels (two less than the 1494 stated in the proposal). Council confirmed on 4 June 2024 that the correct number is 1492. It is recommended that the planning proposal be updated prior to exhibition to identify the correct number of land parcels affected.

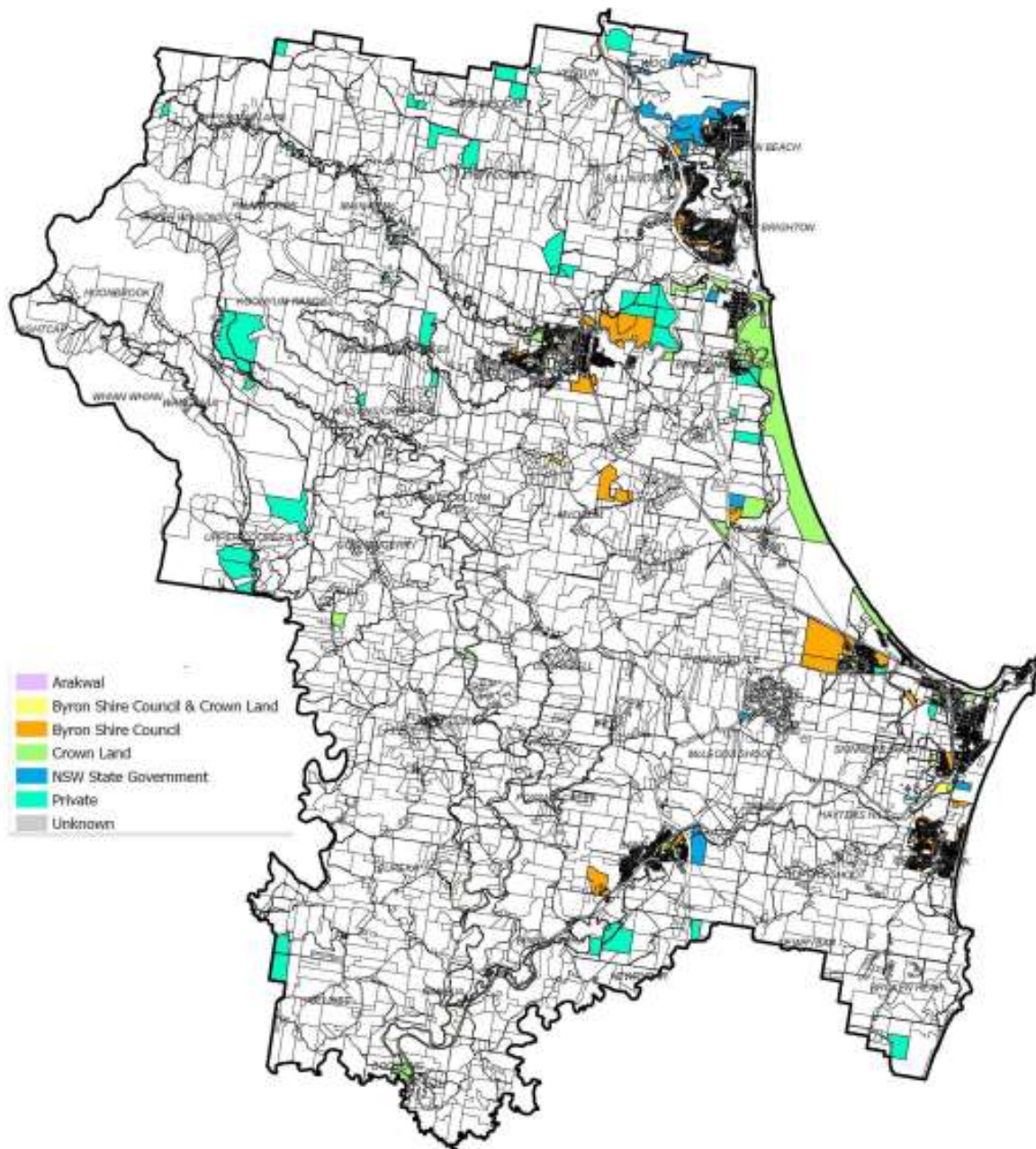
Stage 4 seeks to apply approximately the following conservation zonings:

- 35 ha of C1 National Parks and Nature Reserves;
- 625 ha of C2 Environmental Conservation;
- 270 ha of C3 Environmental Management; and
- 0.04 ha of C4 Environmental Living.

Stage 4 also applies to non-environmental zones where applicable.

The appendices of the planning proposal provide further breakdown of affected land parcels.

**Figure 1** demonstrates an overview of the land affected by the proposal. The planning proposal documents provide more detailed mapping demonstrating these affected land parcels.



**Figure 1 Subject site (source: Council Planning Proposal)**

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning, Height of Building, Minimum Lot Size, Floor Space Ratio, Acid Sulfate Soil, Drinking Water Catchment, and Multiple Occupancy and Community Title maps.

Council has also included maps which demonstrate a detailed breakdown of land affected by the proposal and the ownership of this land. These are included as appendices to the planning proposal.

It is noted that some of these maps are difficult to interpret, due to the scale at which they have been prepared and the level of detail these maps convey.

It is further noted that Council has an online mapping and zoning tool. It is strongly recommended Council consider using this tool to provide finer grain detail to landowners as to the specific changes affecting individual properties.

## 1.6 Background

Council has been undertaking a staged approach to implement conservation zones and introduce deferred matter land into the Byron LEP 2014. To date, Council has completed Stages 1-3:

- Stage 1 - Byron LEP 2014 Amendment No.17 on 28 February 2020;
- Stage 2 – Byron LEP 2014 Amendment No.23 on 12 February 2021; and
- Stage 3 – Byron LEP Map Amendment No.3 on 30 November 2022.

Stages 1-3 have integrated approximately 2,883 properties into the Byron LEP 2014. It is noted that the current Stage 4 proposal also brings forward 22 sites that were deferred by the Department previously under Stage 3 to allow Council to undertake further investigation and consultation with landowners on an appropriate zoning outcome.

## 2 Need for the planning proposal

The planning proposal has arisen as a result of the Northern Councils E Zone Review and the resulting deferral of various lands under the Byron LEP 2014.

The planning proposal is the best means of incorporating the deferred land into the Byron LEP 2014 and applying appropriate zones and development standards.

## 3 Strategic assessment

### 3.1 Regional Plan

The planning proposal is consistent with key aspects of the North Coast Regional Plan 2041.

The proposal does not release new areas of urban land outside the growth area boundaries or new release areas in locations affected by natural hazards.

The proposal seeks to apply either a conservation zone where land is found to meet criteria as established by the Northern Councils E Zone Review Recommendations Report (Recommendations Report), or an urban, rural or special uses zone that meets the primary use of the land and/or is consistent with the existing zoning applied under Byron LEP 1988, in accordance with the Recommendations Report. This is discussed in greater detail under section 3.3 of this report and **Attachment A** to this Report.

The proposal includes the rezoning of some state and regionally significant farmland to an environmental zone. Council indicates that conservation zones have been applied in accordance with the criteria as outlined by the Recommendations Report. Additionally, Council indicate that the proposal does not seek the rezoning of identified significant farmland for urban, residential or rural residential purposes.

Further, extensive farmland is a use permissible in both the C2 Environmental Conservation (with consent) and C3 Environmental Management (without consent) zones, allowing for farming activities in these areas to continue to occur, where appropriate.

### 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:



**Table 6 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement	Council indicate that the planning proposal is consistent with the overall vision of Council's Community Strategic Plan and a key objective of the community "to nurture and enhance our natural environment".
Biodiversity Conservation Strategy 2020 - 2030	Council indicate that the planning proposal is consistent with the framework and relevant actions contained in Council's Biodiversity Conservation Strategy 2020-2023.
Rural Land Use Strategy 2017	Council indicate that the planning proposal is consistent with the framework and relevant actions contained in Council's Rural Land Use Strategy 2017.

### 3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	Unresolved	<p>The planning proposal is inconsistent with this direction as, whilst a large majority of the proposal will see conservation zones applied to certain land, some lands will be rezoned from '7 Environment' Zones under Byron LEP 1988 or from C1 under Byron LEP 2014 to non-conservation zones to:</p> <ul style="list-style-type: none"> <li>implement an agreed outcome with the traditional owners of the land;</li> <li>better reflect the nature and land use of the land and correct existing errors;</li> <li>satisfy the recommendations of the E Zone Review requirements;</li> </ul> <p>and will reduce the conservation standards that apply to that land.</p> <p>Consultation with Biodiversity Conservation and Science Group and the National Parks and Wildlife Service is considered appropriate to determine the appropriateness of these rezonings. Until this consultation has occurred, the inconsistency with this direction will remain outstanding.</p>
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Unresolved	<p>A planning proposal that introduces or alters an C2 Environmental Conservation or C3 Environmental Management zone or an overlay and associated clause in Far North Coast Councils must apply C2 Environmental Conservation or C3 Environmental</p>



		<p>Management zones in line with the Northern Councils E Zone Review Final Recommendations Report.</p> <p>As mentioned, Council have indicated that conservation zones have been applied following the criteria as outlined by the Recommendations Report. Where land does not meet the criteria for a conservation zone, Council have indicated an alternate zone has been applied that meets the primary use of the land and is in keeping with the existing zone applied under the Byron LEP 1988.</p> <p>Notwithstanding, consultation with landowners to confirm primary use and site attributes remains outstanding. Until this has occurred, the consistency of the proposal with this direction can't be determined.</p> <p>Further discussion of the consistency of the proposal with the Northern Councils E Zone Review Final Recommendations Report is outlined in <b>Attachment 1</b>.</p>
4.2 Coastal Management	Unresolved	<p>This direction applies when a planning proposal applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.</p> <p>Council has not addressed the requirements of the direction, specifically completing section 3.2 of the NSW Coastal Design Guidelines and associated checklist.</p> <p>Council will be required to complete the outstanding matters in relation to this direction, prior to community consultation. The consistency with the direction will remain unresolved until this has been completed.</p>
4.3 Planning for Bushfire Protection	Unresolved	<p>This direction is relevant to the proposal as it will affect or is in proximity to land mapped as bushfire prone. The proposal is therefore potentially inconsistent with the proposal.</p> <p>The direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the direction remains unresolved.</p>
4.5 Acid Sulfate Soils	Justifiably Inconsistent	<p>The proposal is inconsistent with this direction as it applies to land that contains acid sulfate soils and is not supported by an acid sulfate soils study.</p> <p>The inconsistency with this direction is considered minor as the proposal generally does not result in any intensification of uses on the affected sites and as</p>

		Byron LEP 2014 contains acid sulfate soils provisions that can ensure this issue is adequately addressed at the development application stage if needed.
5.1 Integrating Land Use and Transport	Justifiably Inconsistent	<p>The proposal is inconsistent with the direction as it has not considered consistency with Improving Transport Choice – Guidelines for planning and development (DUAP 2001) and The Right Place for Business and Services – Planning Policy (DUAP 2001).</p> <p>The inconsistency is minor as the proposed zonings do not result in an increase in development potential and are highly unlikely to impact on planning objectives identified in the direction.</p>
5.2 Reserving Land for Public Purposes	Justifiably Inconsistent	<p>The planning proposal is inconsistent with this direction as it alters the amount of land currently zoned for recreation purposes in Byron Shire without the approval of the Department of Planning, Housing and Infrastructure Secretary.</p> <p>Council have indicated that changes have been made to add or remove land from the public recreation zones over a number of council-owned and Crown land parcels to better reflect current operational needs, zoning of adjoining land and/or corresponding Plan/s of Management.</p> <p>The inconsistency is considered to be of minor significance as the zones applied are sought only to better reflect the location of existing and future public open space.</p>
6.1 Residential Zones	Unresolved	<p>The proposal is inconsistent with this direction as it will reduce the permissible residential density of land by rezoning part or all of numerous properties from urban/residential land under Byron LEP 1988 and Byron LEP 2014 to an alternate zone.</p> <p>Whilst Council have indicated the application of these zones is in keeping with the Recommendations Report, no consultation has occurred with landowners as part of this proposal to determine the primary use.</p> <p>It is appropriate that further consultation be undertaken as part of this planning proposal and that the inconsistency with this direction remain unresolved until this is addressed.</p>
6.2 Caravan Parks and Manufactured Home Estates	Justifiably Inconsistency	<p>The proposal is inconsistent with the direction as it will result in the rezoning of land that may not permit development for the purpose of a caravan park to be carried out on land.</p> <p>The inconsistency arises mainly due to the integration of deferred matter land from the Byron LEP 1988 to the Byron LEP 2014, and in some cases, the application of</p>

		<p>a conservation or other zone where caravan parks are not permissible.</p> <p>Under the Byron LEP 1988, caravan parks are permitted in:</p> <ul style="list-style-type: none"> <li>• No 2 (a) Residential Zone</li> <li>• No 2 (v) Village Zone</li> <li>• No 7 (f2) Urban Coastal Village Zone</li> </ul> <p>Under the Byron LEP 2014, caravan parks are permitted in:</p> <ul style="list-style-type: none"> <li>• RU5 Village</li> <li>• R3 Medium Density Residential</li> <li>• SP3 Tourist</li> <li>• RE1 Public Recreation</li> </ul> <p>The inconsistency is considered minor as the Byron LEP 2014 still provides for significant opportunities where caravan parks are permissible.</p>
7.1 Employment Zones	Consistent	<p>The proposal is inconsistent with this direction as it affect land within an existing or proposed Employment zone and is not in accordance with a Department approved local strategy.</p> <p>The inconsistency is considered minor as the proposal applies to only two minor employment sites that are Council owned land and the rezonings are being undertaken in accordance with the Recommendations Report, where conservation zones can be applied in agreement with the landowner.</p>
8.1 Mining, Petroleum Production and Extractive Industries	Unresolved	<p>The direction applies as the proposal would have the effect of prohibiting the carrying out and restricting the potential development of extractive industries on some affected land parcels. Council's planning proposal indicates that the proposal contains twenty-seven parcels where a C2 Environmental Conservation Zone and/or C3 Environmental Management Zone are proposed within a s9.1 mineral "transition area". One road reserve is within an 'Identified Resource' area.</p> <p>Until consultation is undertaken with NSW Mining Exploration and Geoscience, the consistency with the direction will remain unresolved.</p>

### 3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

It is noted that the proposal to rezone some land to a conservation zone may impact on a landowner's ability to undertake certain exempt or complying development. This is not considered to be inconsistent with the SEPP provided the proposal through community and agency consultation can demonstrate that the application of a conservation zone is appropriate in regard to the primary use of the land and its environmental characteristics.

## 4 Site-specific assessment

### 4.1 Environmental

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

**Table 10 Environmental impact assessment**

Environmental Impact	Assessment
Contamination	The planning proposal notes a high-level assessment was carried to support the rezonings. The assessment found that as the proposal seeks to apply either a C2 or C3 zone, or a zone in keeping with that applied under Byron LEP 1988, the proposal does not result in an intensification of development, or expansion in regard to the range of permissible uses on affected lands that would make the sites unsuitable for their intended future use do to potential contamination. The proposal indicates that a more detailed contamination assessment is not warranted for this stage of development and suitability of future proposed uses can also be assessed at a future development stage, if required. This is considered appropriate.
Biodiversity	<p>The proposal is considered likely to have an overall positive impact in relation to the protection of biodiversity across the Byron Shire as it provides for further application of conservation zonings under the Byron LEP 2014 where it can be demonstrated as needed and appropriate in accordance with the E Zone Review.</p> <p>Notwithstanding, it is noted that the proposal does seek some minor rezonings that will remove existing conservation zones (such as altering the C1 National Park and Nature Reserve Zone to SP3 Tourist Zone at the Broken Head Holiday Park) to correct existing zoning errors and better reflect the existing and anticipated future use of the land. This is considered appropriate.</p> <p>It is considered appropriate however that the Biodiversity Conservation and Science Group be consulted in relation to the impacts of the proposal.</p>
Bushfire	Various sites subject to this proposal have been identified as being bushfire prone. It is recommended that consultation should be carried out with NSW RFS to determine suitability of the proposal.
Flood	Some sites subject of this proposal have the potential to be affected by flood. The proposal will not however result in any significant increase in development potential and this issue can be addressed adequately at the development stage if required in accordance with clauses 5.21 and 5.22 of the Byron LEP 2014.
Heritage	The proposal is considered unlikely to have any adverse impact on Aboriginal Cultural or European Heritage. The proposal generally seeks to apply either a C2 or C3 zone to land where it meets the requirements of the Recommendations Report, or a like for like zoning that would not generate further development potential of individual sites. Heritage controls under clause 5.10 of the Byron LEP 2014 would also continue to apply to any future proposals.

## 4.2 Social and economic

The proposal is anticipated to have a generally positive community social impact. The application of the C2 and C3 conservation zones in the Byron LEP 2014 will allow for land with ecological value consistent with the C Zone Review to be protected consistent with community expectations.

With regard to economic impact, the land use tables remain unchanged and will continue to allow for land uses that can be applied to privately owned land and support the overall objectives of the zones. Both the C2 and C3 zones will allow for extensive agriculture in some form to continue in the zones.

It is noted that the LEP Practice Note Environment Protection Zones (PN 09-002) states councils should be aware that uses should not be drawn too restrictively as they may, depending on the circumstances, invoke the Land Acquisition (Just Terms Compensation) Act 1991 and the Minister may need to designate a relevant acquiring authority.

Generally, an acquisition authority for C2 land would not be identified unless the land is expressly set aside for a public purpose under section 26(1)(c) of the *Environmental Planning and Assessment Act 1979*, e.g., as public open space or a public reserve. It is not considered likely that the application of the C2 zone to private land as proposed would invoke the Land Acquisition (Just Terms Compensation) act 1991.

Additionally, the proposal is considered to have a positive social and economic impact for the landowners and operators of the Broken Head Caravan Park, as the proposal appears to apply a more appropriate zoning consistent with the current use which will allow for the better ongoing management of the site.

Finally, the economic impact of the proposal on agricultural land is considered to be limited noting that the proposed application of conservation zones will be applied in accordance with the Recommendations Report and landowners whose zoning is changed would have the benefit of continuing use rights. Where land does not meet the criteria stipulated under the Recommendations Report, including due to the current primary use of the last 2 years, Council has sought to apply a like for like zone between the 1988 LEP and 2014 LEP. Further, extensive agriculture is a use that can be carried out in both the C2 and C3 zones, consistent with the Recommendations Report. An independent review undertaken by the Department can also be requested by any landowners prior to a conservation zone being applied.

## 4.3 Infrastructure

The proposal is not expected to create a need for additional public infrastructure. It seeks to undertake Stage 4 of the of the conservation zones implementation program and introduce deferred matter land into the Byron LEP 2014 by applying zones and associated controls to better reflect the current primary use of the land and environmental attributes. Where this is not appropriate, Council have applied a similar zone under the Byron LEP 2014 that is in keeping with the zone applied under the Byron LEP 1988.

The proposal will not result in a significant increase in the development potential of the land that would see a requirement for additional infrastructure. Should future development proposals require minor additional infrastructure requirements, these can be appropriately addressed at the development application stage.

# 5 Consultation

## 5.1 Community

Council does not indicate a specific timeframe for undertaking community consultation, however, notes that consultation will be undertaken in accordance with the Gateway determination.

The planning proposal is categorised as a complex under the LEP Making Guidelines (September 2022). Accordingly, a community consultation period of 30 working days is recommended and this forms part of the conditions to the Gateway determination.

## 5.2 Agencies

Council has nominated a number of public agencies to be consulted on the planning proposal.

It is recommended the following agencies be consulted on the planning proposal and given 40 working days to comment:

- Biodiversity Conservation and Science Group
- National Parks and Wildlife Service
- NSW Rural Fire Service
- Department of Primary Industries
- NSW Mining, Exploration and Geoscience
- Tweed Byron LALC and Arakwal

## 6 Timeframe

Council does not propose a time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a complex

A LEP completion date of 12 months from the date of determination, in line with the Department's commitment to reducing processing times and with regard to the benchmark timeframes for complex proposals is recommended. A condition to the above effect is recommended in the Gateway determination.

It is recommended that if the gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes. This will be provided to Council following the issuing of the Gateway determination.

## 7 Local plan-making authority

Council has not request delegation to be the Local Plan-Making authority.

Consistent with the former Secretary's letter to Byron Shire Council of 1 March 2016, an authorisation to act as the Local Plan-Making authority is not to be issued where a planning proposal seeks to apply an E Zone to land to which the Northern Councils E Zone Review applies. This is to ensure a consistent approach to the finalisation of rezoning decisions consistent with the E Zone Review Final Recommendations Report.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- Integration of the deferred subject land into Byron LEP 2014 will update the planning controls to the current instrument and provide greater certainty for landowners and the community,
- The proposal will implement the Final Recommendations of the Northern Councils E Zone Review.

## 9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.5 Acid Sulfate Soils, 5.1 Integrating Land Use and Transport, 5.2 Reserving Land for Public Purposes, 6.2 Caravan Parks and Manufactured Home Estates are minor or justified; and
- Note that the consistency with section 9.1 Directions 3.1 Conservation Zones, 3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs, 4.2 Coastal Management, 4.3 Planning for Bushfire Protection, 6.1 Residential Zones, 8.1 Mining, Petroleum Production and Extractive Industries is unresolved and will require justification.

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

The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated prior to exhibition to:
  - clearly articulate the Explanation of Provisions for the planning proposal, currently contained under the Objectives section of the proposal;
  - update the planning proposal prior to exhibition to determine the correct number of land parcels affected; and
  - update the planning proposal to address the requirements of Section 9.1 Ministerial direction 4.2 Coastal Management, specifically completing section 3.2 of the NSW Coastal Design Guidelines and associated checklist;
2. Consultation is required with the following public authorities:
  - Biodiversity Conservation and Science Group
  - National Parks and Wildlife Service
  - NSW Rural Fire Service
  - Department of Primary Industries
  - NSW Mining, Exploration and Geoscience
  - Tweed Byron LALC and Arakwal
3. The planning proposal should be made available for community consultation for a minimum of 30 working days.
4. The timeframe for the LEP to be completed is on or before 12 months from the date of Gateway determination.



13/6/24

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Craig Diss

Acting Director, Hunter and Northern Region



Assessment officer

Ella Wilkinson

Senior Planner, Hunter and Northern Region

02 6643 6408