

Byron Shire Council

Planning Proposal 26.2024.8.1 (Council Ref #)

Amendment of Byron Local Environmental Plan 2014

Public Road Subdivision

Gateway Version #1

Date: August 2024

#E2024/94025



**BYRON
SHIRE
COUNCIL**

Document History

| Doc No. | Date | Details Comments eg Resolution No. |
|-------------|------------|---|
| E2024/75673 | 02/07/2024 | Draft Planning proposal reported to Council for gateway submission (1 August 2024 Planning Meeting) |
| E2024/94025 | 13/08/2024 | Gateway submission |
| | | |

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Part 1 Introduction

1.1 Objective and intended outcomes

The objective of this Planning Proposal is to amend Byron LEP 2014 to include public road subdivision as an item within Schedule 2 Exempt Development. The amendment will allow Council to efficiently subdivide and close Council-owned roads without having to meet the minimum-lot size required to subdivide land in that particular zone. The wording of the proposed provision is subject to legal drafting to ensure the intent of the proposal is best realised.

Details of the suggested LEP amendments are outlined in the **Part 2** of this report.

1.2 Subject land

This planning proposal relates to potentially all Council public roads in Byron Shire. There are currently more than 10 sites that Council could use the proposed provisions to close and dispose of small sections unwanted public roads. Sites normally become surplus when a road is realigned.

1.3 Background

The current process for the closure of Council-owned roads depends on the ability to obtain consent for a subdivision certificate granted through a Development Application.

Since the responsibility of road closures was transferred to Council, issues have arisen in the closure of roads located in areas zoned RU1 or RU2. It will also be a problem in any other zone with a 40 ha Minimum Lot Size. Subdivision of a road cannot occur due to the land area not being able to meet the required Minimum Lot Size specified in the Byron LEP 2014. Road closure does not meet any of the exceptions to minimum lot size in the LEP. The road closure therefore cannot be finalised as the appropriate consents are unable to be obtained. Council is unable to fulfil its obligation under s38A of the Roads Act 1993.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 permits road widening as exempt development but does not permit road subdivision (and closure) as exempt development.

Other North Coast Councils that have commenced a similar LEP amendment include Bellingen and Nambucca. Camden Council successfully amended its LEP in November 2022 to make public road subdivision exempt development.

Part 2 Explanation of provisions

Byron LEP 2014 contains Schedule 2 Exempt Development. Exempt development may be carried out without the need for development consent under the Act. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners' property rights and the common law still apply. This Schedule contains additional exempt development not specified in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

This planning proposal seeks to amend Byron LEP 2014 to add "Subdivision of Council public roads" as an exempt development. No mapping changes are required.

The following item would be added to *Schedule 2 Exempt Development*:

Subdivision of Council public roads

Must relate to land comprising a council public road proposed for closure under the Roads Act 1993, Part 4, Division 3.

The wording of the proposed provision is subject to legal drafting to ensure the intent of the proposal is best realised.

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?

No. The issue to be resolved by this planning proposal has been identified by Council officers and is considered minor in nature.

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

Yes. The planning proposal is the best means to achieve the objective of permitting subdivision and closure of Council owned roads. It is a regular function of Council and including it in Schedule 2 is considered to be the best means of establishing an efficient process. A number of rural and semi-rural Councils (eg Camden) have amended their LEPs already to achieve this objective.

The only practical alternative would be to lobby the State Government to amend the SEPP (Exempt and Complying Development Codes) 2008. However, there is no evidence that this is likely to commence in the foreseeable future.

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 North Coast Regional Plan 2041(NCRP) is a high-level strategic document that does not directly address the issue of permitting public road subdivision as exempt development. However, making these minor matters exempt is consistent with good governance principles that underpin the NCRP. There is no benefit in prohibiting or requiring consent for minor matters that have no significant merit issues.

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 region's strengths and natural environment.

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 Council adopted a Local Strategic Planning Statement (LSPS) in September 2020, which was subsequently endorsed by DPIE. The LSPS includes priorities that include:

- *Ensure infrastructure delivery is aligned with planned growth.*

- *Lead partnerships to develop a network of sustainable transport.*
- *Support community wellbeing with appropriate community infrastructure.*
- *Provide essential services and reliable infrastructure which meet an acceptable community standard.*

Creating an efficient and minimal cost process to subdivide and close surplus sections of Council public roads is consistent with these priorities as it will allow scarce resources to be dedicated to other priorities.

This planning proposal is consistent with the adopted LSPS.

Council adopted a 10 year + Community Strategic Plan 2032 (CSP). The plan is based on five key themes, being Effective Leadership, Inclusive Community, Nurtured Environment, Ethical Growth, and Connected Infrastructure. This planning proposal is relevant to Effective Leadership particularly the strategy to achieve *Ethical and efficient management of resources*.

This planning proposal is consistent with the adopted CSP.

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

No other state and regional strategies or studies are applicable.

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

The State Environmental Planning Policies relevant to this Planning Proposal are as follows (no other SEPPs are relevant):

| State Environmental Planning Policy (SEPP) | Compliance of Planning Proposal |
|--|---|
| SEPP (Exempt and Complying Development Codes) 2008 | This SEPP nominates subdivision for road widening as an exempt use (Section 2.75). This planning proposal is complementary to the SEPP provision. |

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> <ul style="list-style-type: none"> (a) the extent of inconsistency with the Regional Plan is of minor significance, and (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 2041(NCRP) is a high level strategic document that does not directly address the issue of permitting public road subdivision as exempt development. However, making these minor matters exempt is consistent with good governance principles that underpin the NCRP. There is no benefit in prohibiting or requiring consent for minor matters that have no significant merit issues.</p> | Consistent |
| 1.2 Development of Aboriginal Land Council Land | <p>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.</p> | (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> | This planning proposal does not introduce any of these matters. | Not Applicable |
| 1.4 Site Specific Provisions | Applies when preparing a planning proposal that will allow a particular development to be carried out. | This planning proposal does not allow a particular development to be carried out | 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> | <p>Some road subdivision and closure may apply to land in a conservation zone.</p> <p>This planning proposal will not alter or reduce environmental protection standards</p> | 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> | <p>Byron LEP 2014 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire. Sites and relics are also protected under state legislation.</p> <p>The planning proposal is consistent with this Direction.</p> | 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. | This planning proposal does not introduce or alter an environmental zone on the subject land. | 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). | This planning proposal does not enable land to be developed for the purpose of a recreation vehicle area. | Consistent |

4. Resilience and Hazards

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|------------------|---|---|-------------|
| 4.1 Flooding | <p>This direction applies when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p> <p>(3) A planning proposal must not contain provisions that apply to the flood planning area which:</p> <p>(a) to (e) Not applicable</p> <p><i>(f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,</i></p> | <p>Some road subdivision and closure may apply to land that is flood affected.</p> <p>This planning proposal will permit road subdivision as exempt development which is consistent with clause 3 (f) of the Direction.</p> | 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. | Some road subdivision and closure may apply to land that is in the coastal zone. However it is a type of development with minimal likelihood of impacting coastal issues. | Consistent |
| 4.3 Planning for Bushfire Protection | (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. (2) A planning proposal must: (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). | Not applicable | Not applicable |

| 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> | Not applicable | Not applicable |

| 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> <p>In order to satisfy itself as to paragraph 1(c), the planning proposal authority may need to include certain provisions in the local environmental plan.</p> <p>(2) Before including any land to which this direction applies in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land</p> | | |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|---|--|---|----------------|
| | carried out in accordance with the contaminated land planning guidelines | | |
| 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 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.</p> | Byron LEP 2014 already includes ASS provisions. | Not applicable |
| 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 | Not applicable | Not applicable |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|------------------|--|-------------------------------------|-------------|
| | 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. | | |

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> | <p>Some road subdivision and closure may apply to land that is in an urban zone.</p> <p>Road subdivision and closure are part of ongoing transport improvements.</p> | Consistent |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|---|--|---|----------------|
| 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). | Not applicable. Public roads are addressed separately to other public purposes reservations. | Not applicable |
| 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. There are no regulated or defence airfields in proximity to the subject land. | 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 | Some road subdivision and closure may apply to land that is in proximity to a shooting range. However it is a type of development with minimal likelihood of impacting on shooting ranges. | Consistent |

6. Housing

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|-----------------------|---|--|-------------|
| 6.1 Residential Zones | Applies when preparing a planning proposal that will affect land within an existing or proposed | Some road subdivision and closure may apply to land in a residential zone. | Consistent |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|------------------|---|--|-------------|
| | <p>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> <ul style="list-style-type: none"> (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. <p>(2) A planning proposal must, in relation to land to which this direction applies:</p> <ul style="list-style-type: none"> (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 (b) not contain provisions which will reduce the permissible residential density of land. | <p>However it is a type of development with minimal likelihood of impacting on residential uses.</p> | |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|---|--|-------------------------------------|----------------|
| 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, | <p>Some road subdivision and closure may apply to land in a business or industrial zone.</p> <p>However it is a type of development with minimal likelihood of impacting on business or industrial uses.</p> | Consistent |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|--|--|--|----------------|
| | <p>(d) not reduce the total potential floor space area for industrial uses in industrial zones, and</p> <p>(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Planning Secretary.</p> | | |
| 7.2 Reduction in non-hosted short-term rental accommodation period | This direction applies to Byron Shire Council when the council prepares a planning proposal to identify or reduce the number of days that non-hosted short-term rental accommodation may be carried out in parts of its local government area. | Not applicable | Not applicable |
| 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. | <p>Some road subdivision and closure may apply to land in the vicinity of the Pacific Highway.</p> <p>However it is a type of development with minimal likelihood of impacting on the Pacific Highway.</p> | Consistent |

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 regional significance by permitting a land use that is likely to be incompatible with such development.</p> | Not applicable | Not applicable |

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> | Not applicable | Not applicable |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|------------------|---|---|-------------|
| | A planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone | | |
| 9.2 Rural Lands | <p>Applies when a planning proposal:</p> <ul style="list-style-type: none"> (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 (b) changes the existing minimum lot size on land within a rural or conservation zone. <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 | <p>Some road subdivision and closure may apply to land in a rural or conservation zone.</p> <p>However it is a type of development with minimal likelihood of impacting on rural or conservation land</p> | Consistent |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|------------------|--|-------------------------------------|-------------|
| | <p>vegetation, cultural heritage, and the importance of water resources</p> <p>(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</p> <p>(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities</p> <p>(f) support farmers in exercising their right to farm</p> <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> | | |

| S. 9.1 Direction | Application | Relevance to this planning proposal | Consistency |
|------------------------|--|-------------------------------------|----------------|
| | <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> <p>(c) where it is for rural residential purposes:</p> <p>i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres</p> <p>ii. is necessary taking account of existing and future demand and supply of rural residential land.</p> | | |
| 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. | Not applicable | Not applicable |

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. There is no likelihood that the planning proposal will have adverse effects on critical habitat, threatened species, populations, ecological communities, 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. The planning proposal has no likelihood of other environmental effects.

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

Subdividing and closing roads has minimal social effects. The economic effect of this planning proposal is the increased efficiency it will bring. Improving the process for road closures will mean less time and resources are utilised to do so. Council will also be able to better maintain its assets through the disposal of redundant parcels of road.

There is a low likelihood of impacts on items or places of European or Aboriginal cultural heritage.

Section D Infrastructure

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

This planning proposal will not impact on public infrastructure other than surplus public roads.

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?

Due to the minor nature of this planning proposal, early consultation with State and Commonwealth public authorities was not undertaken. Public consultation will be conducted after the Gateway determination has been issued.

The NSW Land Registry Services is likely to be the only State agency with an interest in this minor matter.

Part 4 Mapping

No mapping amendments are required for this planning proposal.

Part 5 Community consultation

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

Due to the minor and non-controversial nature of the LEP amendment it is recommended that a 14-day exhibition period be undertaken.

Notification of the exhibited planning proposal will include:

- updates to Council's website
- referral to relevant State agencies such as NSW Land Registry Services

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 2024 |
| Agency Consultation | October 2024 |
| Public Exhibition Period | October 2024 |
| Submissions Assessment and report to Council | November 2024 |
| Submission of endorsed LEP to DPIE for finalisation (non-delegated) | N/A |
| Submission of endorsed LEP amendment to Parliamentary Counsel for drafting (delegated authority) | January 2025 |
| Council to make the LEP amendment (delegated authority) | March 2025 |
| LEP amendment notification | April 2025 |

Conclusion

This Planning Proposal seeks to amend Byron Local Environmental Plan (LEP) 2014 to include subdivision of Council-owned roads as an item within Schedule 2 Exempt Development.

The current process for the closure of Council-owned roads depends on the ability to obtain consent for a subdivision certificate granted through a Development Application.

Since the responsibility of road closures was transferred to Council, issues have arisen in the closure of roads located in areas zoned RU1 or RU2 or any land with a 40 hectare Minimum Lot Size. Subdivision of a road cannot occur due to the land area not being able to meet the required Minimum Lot Size specified in the Byron LEP 2014. Road closure does not meet any of the exceptions to minimum lot size in the LEP. The road closure therefore cannot be finalised as the appropriate consents are unable to be obtained. Council is unable to fulfil its obligation under s38A of the Roads Act 1993.

The Planning proposal is a minor change to Byron LEP 2024 but it will increase Council efficiency in processing road closures and reduce the resources required. No studies are required to support the planning proposal.

No agency or community concerns are anticipated.