



IRF24/2426

Gateway determination report – PP-2024-1800

Enable the subdivision of council-owned public roads
as exempt development

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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

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

1 Planning proposal

1.1 Overview

Table 1 Planning proposal details

LGA	Byron Shire Council
PPA	Byron Shire Council
NAME	Enable subdivision for the closure of a public road as exempt development
NUMBER	PP-2024-1800
LEP TO BE AMENDED	Byron LEP 2014
ADDRESS	All of land within the Byron LEP 2014
DESCRIPTION	N/A
RECEIVED	16/09/2024
FILE NO.	IRF24/2426
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to enable subdivision for the purpose of a public road closure to be undertaken as exempt development.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to implement its objective by introducing a new provision to Schedule 2 Exempt development of the Byron LEP 2014 to permit subdivision of a council-owned public road for the purpose of road closure.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved. However, it is recommended that prior to community consultation, the proposed wording of Schedule 2 Exempt development prepared by Council should be removed from the planning proposal, recognising that the Parliamentary Counsel Office (PCO) will draft the LEP to give effect to the proposal.

1.4 Site description and surrounding area

The planning proposal applies to land under the Byron LEP 2014. This land is shown on the Byron LEP 2014 Land Application Map (**Figure 1**). It is not proposed to apply to land shown as a deferred matter and subject to the provisions of the Byron LEP 1988.

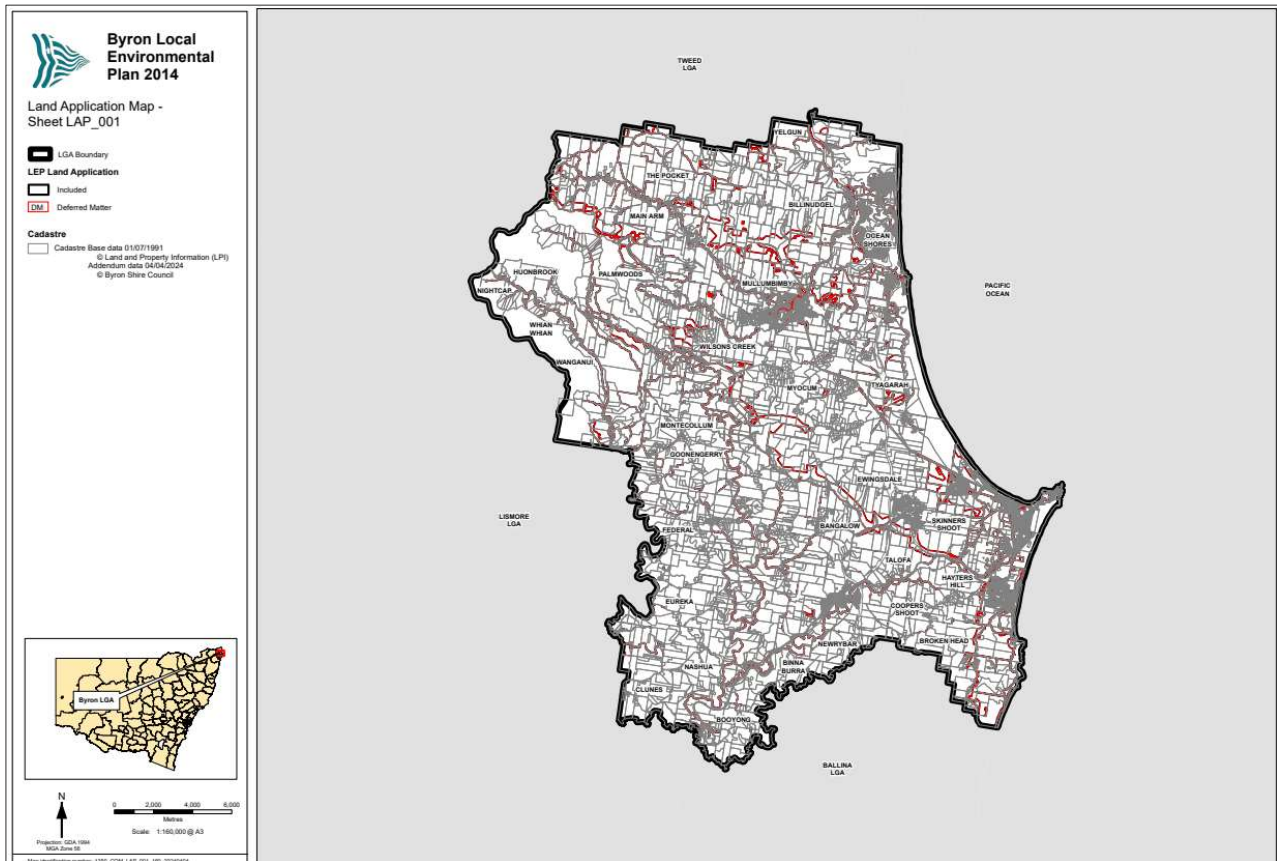


Figure 1 - Land Application Map (Byron LEP 2014)

1.5 Mapping

No mapping changes to the Byron LEP 2014 are required or proposed.

1.6 Background

In December 2019, the responsibility for road closures was transferred from the former Department of Planning, Industry and Environment - Crown Lands to councils.

It is understood that when closing a public road, Land Registry Services (LRS) require a subdivision plan of the section of road to be closed to be registered as a new lot. Council's interpretation is that a public road closure falls within the definition of 'subdivision' under the *Environmental Planning & Assessment Act 1979* and as there are no exempt provisions in State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 or State Environmental Planning Policy (Transport and Infrastructure) 2021 to create a lot for a road closure without consent, a development application is required.

Council has indicated that in most cases the section of road to be closed will not meet the minimum lot size nominated by the Byron LEP 2014 for the land, particularly in rural zones with a 40-hectare development standard. Council has indicated that if it is unable to issue development consent to close a road, it is unable to fulfil its obligation under section 38A of the *Roads Act 1993*.

2 Need for the planning proposal

The planning proposal is not a result of any strategic study or report. The amendment to the Byron LEP 2014 is proposed to facilitate public road closures and remove impediments in the process identified by Council.

The proposed amendment to Byron LEP 2014 is considered by Council to be the best means of establishing an efficient process for the subdivision and closure of council-owned public roads.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is not inconsistent with or undermine the objectives of the North Coast Regional Plan 2041.

3.2 Local

The proposal is consistent with the strategic direction and objectives of the Byron Shire Local Strategic Planning Statement 2020 and will assist Council to manage its infrastructure in an efficient manner.

3.3 Section 9.1 Ministerial Directions

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

Table 1 - 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	No – Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction because it applies to environmentally sensitive areas but does not include provisions that facilitate the protection and conservation of environmentally sensitive areas. The inconsistency is considered to be of minor significance because:</p> <ul style="list-style-type: none"> the proposal does not reduce the environmental protection standards currently applicable to land in the LGA; the proposal will not result in an intensification of uses which may impact environmentally sensitive areas; and environmental impact will need to be considered before consent is granted for any future development application on individual land parcels.

3.2 Heritage Conservation	No – Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction because it applies to items, areas, objects and places of environmental heritage significance and indigenous heritage significance and does not contain provisions that facilitate their conservation. The inconsistency is considered to be of minor significance because:</p> <ul style="list-style-type: none"> the proposal will not result in an intensification of uses which may negatively impact items, areas, objects and places of environmental heritage significance and indigenous heritage significance; and the Byron LEP 2014 contains provisions relating to heritage which will need to be considered before consent is granted for any future development application on individual land parcels.
4.1 Flooding	No – Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction because it applies to flood prone land but does not include provisions that give effect to and are consistent with the relevant policy, manual, guideline, study or plan. The inconsistency is considered to be of minor significance because:</p> <ul style="list-style-type: none"> the proposal will not result in an intensification of uses or increase risk in flood prone areas; and the Byron LEP 2014 contains provisions relating to flooding which will need to be considered before consent is granted for any future development application on individual land parcels.
4.2 Coastal Management	No – Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction because it applies to the coastal zone but does not include provisions that give effect to and are consistent with the relevant coastal management legislation, manual, design guidelines, program or plan. This inconsistency is considered to be of minor significance because:</p> <ul style="list-style-type: none"> the proposal will not result in an intensification of uses in the coastal area; and the relevant coastal management legislation, manual, design guidelines, program or plan will need to be considered before consent is granted for any future development proposed on individual land parcels.
4.3 Planning for Bushfire Protection	No – Unresolved	<p>The planning proposal is potentially inconsistent with this Direction because it applies to land that is bush fire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) following the issue of a Gateway determination. Consultation with the RFS is yet to occur. Until this consultation has occurred the inconsistency with the Direction is unresolved.</p>

4.5 Acid Sulfate Soils	No – Justifiably Inconsistent	<p>The planning proposal inconsistent with this Direction as it applies to land that contains acid sulfate soils, but does not give effect to, and is consistent with all the matters listed in the Direction. This inconsistency is considered to be of minor significance because:</p> <ul style="list-style-type: none"> the proposal will not result in an intensification of uses on land containing acid sulfate soils; and the Byron LEP 2014 contains provisions in relation to acid sulfate soils that need to be considered before consent is granted for any future development application which may lead to an intensification of use.
5.2 Reserving Land for Public Purposes	No – Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction as it applies to land that has been reserved for the purpose of a public road. This inconsistency is considered to be of minor significance because the <i>Roads Act 1993</i> enables and establishes a process for closure of a public road. The planning proposal only assist with the subsequent process under the <i>Environmental Planning and Assessment 1979</i> to create and register a new lot with NSW LRS.</p>
9.2 Rural Lands	No – Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction as it applies to rural land but does not include provisions that give effect to and are consistent with all the matters listed in the Direction. This inconsistency is considered to be of minor significance because:</p> <ul style="list-style-type: none"> the proposal will not lead to intensification of uses or further fragmentation of rural land; and matters relating to agriculture and land use conflict will need to be considered before consent is granted for any future development application on rural land.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in Table 2.

Table 2 - Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Transport and Infrastructure) 2021	The policy aims to provide well-designed and located transport and infrastructure integrated with land use.	Yes	<p><i>Chapter 2 Infrastructure</i> of the SEPP is applicable to the planning proposal.</p> <p>The proposal is consistent as it does not impede the delivery or application of this SEPP.</p> <p>It is noted that clause 2.21 and Schedule 1 of this SEPP can facilitate a boundary adjustment associated with the closure of a road, despite minimum lot size requirements assigned to particular zones.</p> <p>Despite this, the LRS require a subdivision certificate to enable the closure and consolidation of lots which are not required for boundary adjustments.</p>
State Environmental Planning Policy (Exempt & Complying Development Codes) 2008	The policy aims to provide streamlined assessment processes for development that complies with specified development standards by providing exempt and complying development codes that have State-wide application.	Yes	<p>The planning proposal does not impede the delivery or application of this SEPP.</p> <p>It is Council's interpretation that the closure of a public road would comprise the 'subdivision of land' under Section 6.2 of the <i>Environmental Planning and Assessment Act 1979</i> in that it results in the creation of an allotment. Clause 2.75 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) contains provisions for certain subdivision purposes, however the closure of public roads is not identified within the development types specified.</p> <p>It is noted that similar proposals have been supported at Gateway in Nambucca Valley and Bellingen and the Camden LEP 2010 has been similar amended.</p>

4 Site-specific assessment

4.1 Environmental

It is unlikely that the proposal will have any adverse impact upon threatened species, populations or ecological communities, or their habitats.

Council will have the opportunity, as the relevant landowner, to make assessments and determinations regarding the desirability of supporting public road closures should they involve vegetation or habitat removal as part of the road closure process.

No other adverse environmental impacts are considered likely to arise from any aspects of this planning proposal.

4.2 Social and economic

No adverse social or economic impacts are considered likely to arise from the planning proposal.

4.3 Infrastructure

The planning proposal will not require the provision of additional infrastructure or services.

5 Consultation

5.1 Community

Council proposes a community consultation period of 14 days. In accordance with the LEP Making Guideline (August 2023), a standard planning proposal should be exhibited for 20 working days.

A condition of the Gateway determination requires an exhibition period of 20 days to align with the Guideline.

5.2 Agencies

It is recommended the NSW RFS be consulted on the planning proposal and given 30 working days to comment.

Council proposes to consult with the NSW LRS. The NSW LRS is a private company that operates the land titles registry on behalf of the NSW Government. It is not considered necessary for consultation with the NSW LRS be required in the conditions of the Gateway Determination.

6 Timeframe

Council proposes a seven month 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 standard.

The Department recommends an LEP completion date of 9 months to align with the standard categorisation and in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination. It is also noted that Council can still complete the proposal in quicker timeframe.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the planning proposal is not considered to be significant or controversial in nature, it is recommended that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

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

- it is not inconsistent with the North Coast Regional Plan 2041 or contrary to a SEPP;
- it is not inconsistent with the Byron Shire Local Strategic Planning Statement; and
- it will assist Council to manage its infrastructure in an efficient manner.

9 Recommendation

It is recommended the delegate of the Secretary:

- **agree** that any inconsistencies with section 9.1 Directions 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.1 Flooding, 4.2 Coastal Management, 4.5 Acid Sulfate Soils, 5.2 Reserving Land for Public Purposes and 9.2 Rural Lands are minor or justified; and
- **note** that the consistency with section 9.1 Direction 4.3 Planning for Bushfire Protection is unresolved and will require justification.

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

1. Prior to community consultation, the proposed wording of Schedule 2 Exempt development of the Byron LEP 2014 should be removed from the planning proposal.
2. Consultation is required with the NSW Rural Fire Service.
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. The timeframe for the LEP to be completed is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority.



17 October 2024

(Signature)

(Date)

Lucy Walker
Manager, Hunter and Northern Region
Local Planning and Council Support



17 October 2024

(Signature)

(Date)

Craig Diss
A/Director, Hunter and Northern Region
Local Planning and Council Support

Assessment officer

Jon Stone
Senior Planning Officer, Hunter and Northern Region
Local Planning and Council Support