

Rezoning Review Briefing Report – RR number

The planning proposal seeks to amend the Byron Local Environmental Plan 2014 to facilitate a low density residential development at the former Broken Head Quarry (92 residential lots).

Element	Description
Adequacy of request	5 September 2024
Department ref. no	RR-2024-25 (PP-2024-679)
LGA	Byron
LEP to be amended	Byron Local Environmental Plan (LEP) 2014
Address	Broken Head Road, Suffolk Park (Lot 1 DP 123302 and Lot 2 DP 700806)
Reason for review	<div><input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment</div> <div><input type="checkbox"/> Council failed to indicate support for the proposal within 90/115 days, or failed to submit the proposal after indicating its support</div>
Has council nominated PPA role	Byron Shire Council (Council) has resolved not to support the planning proposal. In accordance with Local Environmental Plan (LEP) Making Guideline (August 2023), the Northern Regional Planning Panel (the Panel) should appoint itself as the Planning Proposal Authority (PPA) if it is supported to proceed to Gateway determination.
Consultation	<p>Byron Shire Council (Council) undertook pre-Gateway consultation with the following government agencies:</p> <ul style="list-style-type: none">the Biodiversity and Conservation Division (BCD) (now known as Biodiversity, Conservation and Science Group); andthe NSW Rural Fire Service (RFS). <p>The consultation is outlined in the rezoning review request in the Public Authority Correspondence (Attachment B2). The proponent's rezoning review request report includes a response to each matter raised by these agencies (Attachment B).</p> <p>The comments received from these two government agencies are summarised below and are to be ready in conjunction with the Key Issues section of this briefing report:</p> <p><u>BCD</u></p> <p>On 14 August 2023, BCD provided comments on the planning proposal, including:</p>

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Element	Description
	<ul style="list-style-type: none">the planning proposal does not protect areas of High Environmental Value (HEV) in accordance with the North Coast Regional Plan (NCRP) 2041. Areas of High Environmental Value (HEV) land zoned RU1 Primary Production be rezoned to C2 Environmental Conservation;the planning area is not within an urban growth area identified in the NCRP 2041 and so would need to satisfy the urban growth area variation principles in the NCRP 2041. The balance of the planning area that does not contain HEV land be retained in the RU1 zone; andthe rehabilitation works have not had enough time to develop into similar vegetation communities to those removed, or to replace the habitat lost by the quarry operations, which is necessary to fulfil the EIS commitment to considerably mitigate the long-term biodiversity impacts of the quarry operations The parts of the planning area, which were required to be revegetated and rehabilitated in accordance with the former quarry development consent, be rezoned to C2 Environmental Conservation. <p><u>RFS</u></p> <p>On 16 June 2023, RFS provided comments on the planning proposal, including that based upon an assessment of the information provided, NSW RFS raises no objections to the proposal subject to a requirement that the future subdivision/development of the land complies with Planning for Bush Fire Protection 2019.</p>
Brief overview of the timeframe/progress of the planning proposal	<p>12 April 2023 – Proponent submitted a response to Council's comments and concluded the pre-emptive 'return' of the proposal was not legitimate.</p> <p>23 April 2023 – Proponent formally lodged proposal which was accepted for assessment by Council. The offer to enter into a VPA was included.</p> <p>19 May 2023 – Council referred the proposal to RFS for comment.</p> <p>20 May 2023 – Council referred the proposal to BCD for comment.</p> <p>16 June 2023 – Council received response from RFS.</p> <p>14 August 2023 – Council received response from BCD.</p> <p>28 March 2024 – Proponent submitted a Biodiversity Development Assessment Report (BDAR) to Council for assessment in accordance with feedback from BCD. The VPA offer was updated to include dedication of 20% of lots to council for affordable housing</p> <p>7 May 2024 – Council commissioned MikeSvikisPlanning to undertake an independent pre-Gateway assessment of the planning proposal referred to as the Independent Merit Based Assessment dated 7 May 2024 (Attachment C1).</p> <p>4 June 2024 – Council's Independent Merit Based Assessment was made publicly available.</p>

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Element	Description
	<p>12 June 2024 – Proponent forwarded a response to Council's assessment report. Council denied the Proponent's request to defer the determination of the proposal.</p> <p>13 June 2024 – Council resolved (Attachment D):</p> <p><i>"1. Council does not support the subject planning proposal (as contained in Attachment 1) seeking to amend Byron LEP 2014 to rezone the former Broken Head Quarry site on the western side of Broken Head Road for residential development.</i></p> <p><i>2. Both the applicant and the Department of Planning, Housing and Infrastructure be notified of Council's decision to not support the planning proposal.</i></p> <p><i>3. Council writes to the Department of Planning to clarify whether the owner of the site has met their obligations under the 2018 Enforceable Undertaking and receives a further update from staff."</i></p> <p>This resolution was generally consistent with the conclusions of the Independent Merit Based Assessment and subsequent Council officer recommendation (Attachment C2).</p> <p>17 June 2024 – Proponent received notification that Council did not support the planning proposal.</p> <p>25 July 2024 – Proponent submitted Rezoning Review request.</p> <p>27 September 2024 – Council provided comments on the rezoning review.</p>
Department contact:	Ian Woods - Planning Officer, Planning Proposal Authority (PPA) Team

Planning Proposal

Table 1. Overview of planning proposal

Element	Description
Site Area	Approximately 32.78ha
Site Description	<p>The planning proposal applies to land fronting Broken Head Road, Suffolk Park, which comprises two (2) lots legally described as Lot 1 DP 123302 and Lot 2 DP 700806 (the site).</p> <p>The site has an approximate area of 32.78ha and comprises (Figure 1):</p> <ul style="list-style-type: none">• remnant infrastructure, including workshop and office buildings;• dense vegetation with areas; and• regenerating forest in areas of rehabilitation works. <p>The site has a south-westerly aspect, with an undulating landform and a north-west to south-east aligned ridge. Elevations on the site vary between 32mAHD in the western portion of the site to 66mAHD in the eastern portion.</p>

Element	Description
	<p>The area immediately surrounding the site is undeveloped bushland land and the former quarry site immediately to the east across Broken Head road. The site is located approximately (Figure 2):</p> <ul style="list-style-type: none"> • 950m south of Suffolk Park Town Centre; • 3.8km south of Byron Bay High School; • 6.2km south of Byron Bay Town Centre; • 6.5km east of the Pacific Highway; and • 7.7km south-east of Byron Hospital. <p><u>Biodiversity</u></p> <p>The site is identified on the NSW Biodiversity Values mapping (Figure 3).</p> <p><u>Bushfire</u></p> <p>The site is identified as being bushfire prone (Figure 4).</p>
Proposal summary	<p>The planning proposal seeks to facilitate a residential development on the former Broken Head Quarry.</p> <p>To facilitate this objective, the planning proposal seeks to amend the Byron LEP 2014 on the site.</p> <p>Part of the site remains deferred from the Byron LEP 2014 and is thus zoned Rural 7(d) Scenic Escarpment under the Byron LEP 1988. The proposal seeks no amendments to this deferred land.</p> <p>The proposed amendments are detailed further in Table 2 of this Report.</p> <p><u>Development Concept Scheme</u></p> <p>The proposed indicative layout masterplan includes 92 residential lots ranging in size from 383sqm to 1,505sq.m (Figure 5).</p> <p><u>Public Benefit Offer</u></p> <p>A letter of offer to enter into a VPA with Council dated 28 March 2024 (Attachment A2) supports the planning proposal and includes:</p> <ul style="list-style-type: none"> • construction of a shared pedestrian/ cycle path along Broken Head Road from the site to the Suffolk Park neighbourhood centre; and • dedication of 20% of the lots to council for affordable housing.
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none"> • North Coast Regional Plan 2041 • Byron Local Strategic Planning Statement 2036 (the LSPS) • Byron Shire Residential Strategy 2041 • Byron Community Strategic Plan 2032 (CSP) • Byron Shire Rural Land Use Strategy 2017 • Relevant State Environmental Planning Policies (SEPPs) include: <ul style="list-style-type: none"> ◦ SEPP (Resilience and Hazards) 2021 ◦ SEPP (Transport and Infrastructure) 2021 • Relevant Section 9.1 Ministerial Directions include: <ul style="list-style-type: none"> ◦ 3.1 Conservation Zones

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Element	Description
	<ul style="list-style-type: none">○ 4.3 Planning for Bushfire Protection○ 4.4 Remediation of Contaminated Land○ 6.1 Residential Zones○ 9.1 Rural Zones○ 9.2 Rural Lands <ul style="list-style-type: none">• Byron Local Environment Plan 2014• Byron Shire Development Control Plan 2014
Enforceable Undertaking – Remediation of the Broken Head Quarry	<p>The site is the subject of rehabilitation works as:</p> <ul style="list-style-type: none">• a condition of consent for the former ‘Western Quarry Sector’ of the Broken Head sand and gravel quarry (DA97/0465, dated May 1999, modified 10 April 2000); and• part of an Enforceable Undertaking agreement under section 9.5 of the Environmental Planning and Assessment Act (EP&A Act), dated 20 August 2018. <p>Quarry works ceased in 2016 when rehabilitation began.</p> <p>On 1 July 2024, Council wrote to the Department of Planning, Housing and Infrastructure (the Department) in response to its resolution on this planning proposal to clarify whether the owner of the site has met their obligations under the 2018 Enforceable Undertaking (Attachment C4).</p> <p>On 12 July 2024, the Department responded to Council (Attachment C4) confirming:</p> <ul style="list-style-type: none">• that some terms of the enforceable undertaking have not been met but are in the process of being carried out;• that Leadshine have reported that planting and bank stabilisation activities remain outstanding following feedback from the approved independent auditor’s site inspection• Leadshine have committed to having all revegetation and stabilising works completed by mid-late September 2024; and• it is optimistic the enforceable undertaking obligations will be confirmed as having been addressed in the final quarter of 2024.

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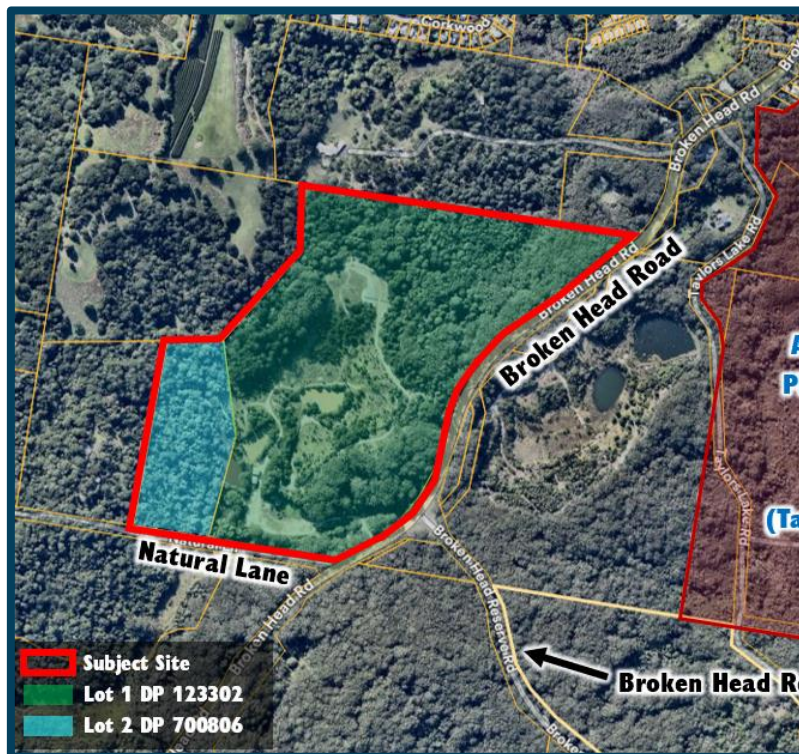


Figure 1: Aerial Photo - the site highlighted red (source: The planning proposal)

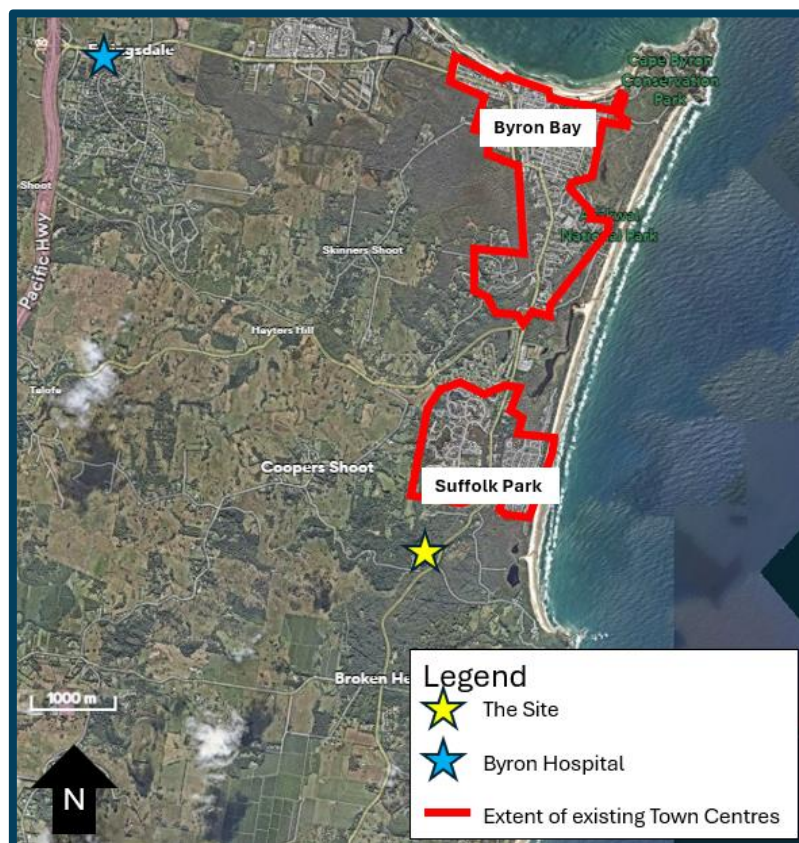


Figure 2: Context Map – the site highlighted red (Source: Nearmaps, October 2024)



Figure 3: Biodiversity Values Map – the site highlighted red (Source: NSW Spatial Viewer)

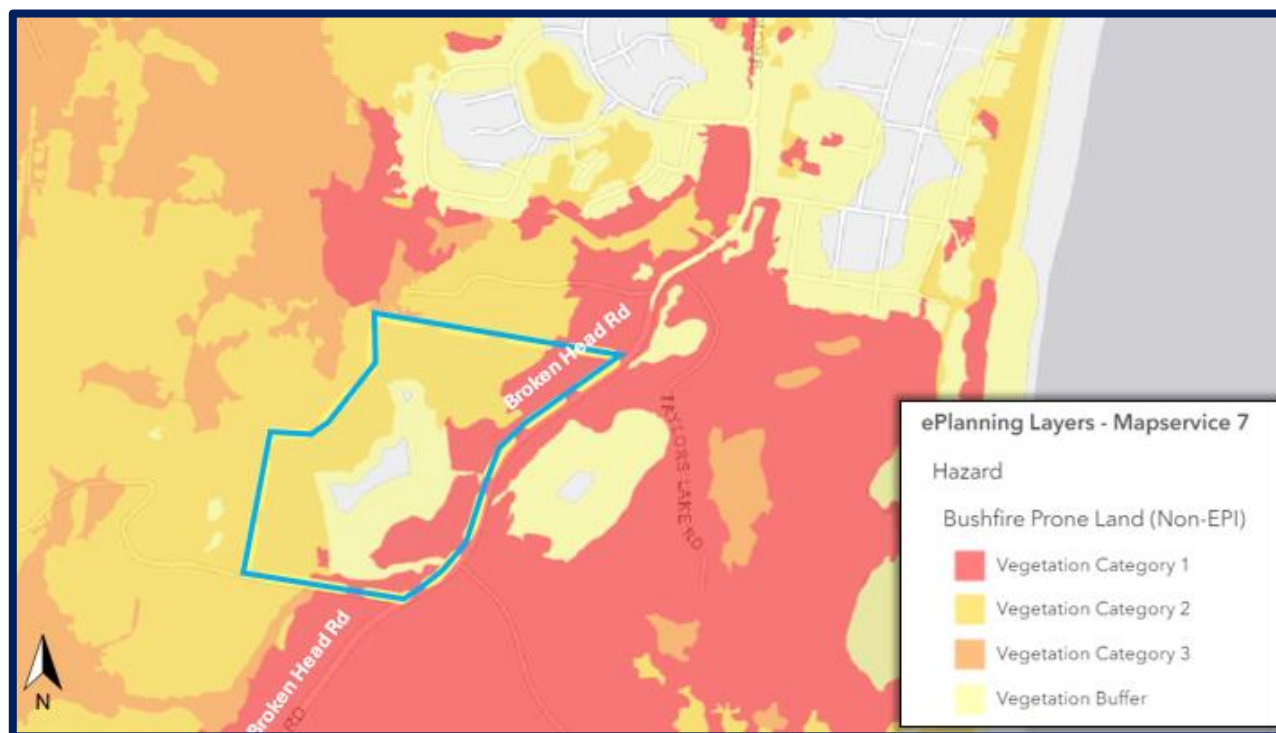


Figure 4: Bushfire Prone Land Map – the site highlighted blue (Source: NSW Spatial Viewer)

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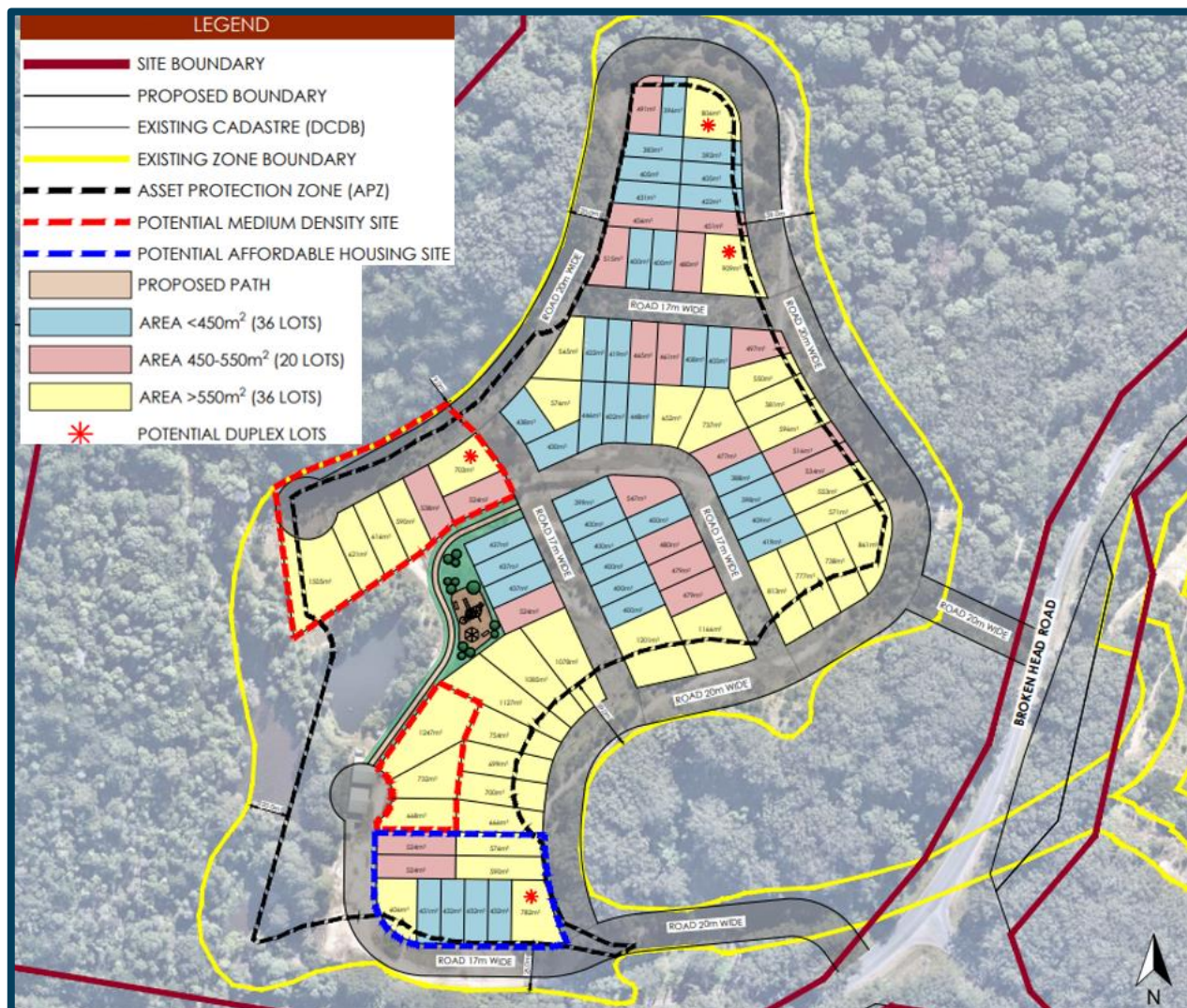


Figure 5: Development Concept Scheme (Source: Planning Proposal, March 2023)

The planning proposal seeks to amend the Byron LEP 2014 on the site as discussed in **Table 2** below.

Table 2. Current and proposed controls

Control	Current	Proposed
Zone	RU1 Primary Production (RU1) C2 Environmental Conservation (C2)	R2 Low Density Residential (R2). No change is proposed to existing C2 zoned land.
Maximum height of the building	9m	No change
Floor space ratio	N/A	0.6:1

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Control	Current	Proposed
Minimum lot size	40ha	400sq.m
Number of dwellings	none	92 residential lots (20% for affordable housing subject to VPA)
Number of jobs	N/A	N/A
Reclassify land from	N/A	N/A

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

Mapping

The Planning Proposal includes the following map amendments to Byron LEP 2014 (**Attachment A**): Land Zoning Map (**Figure 6**); Minimum Lot Size Map (**Figure 7**); and Floor Space Ratio Map (**Figure 8**).

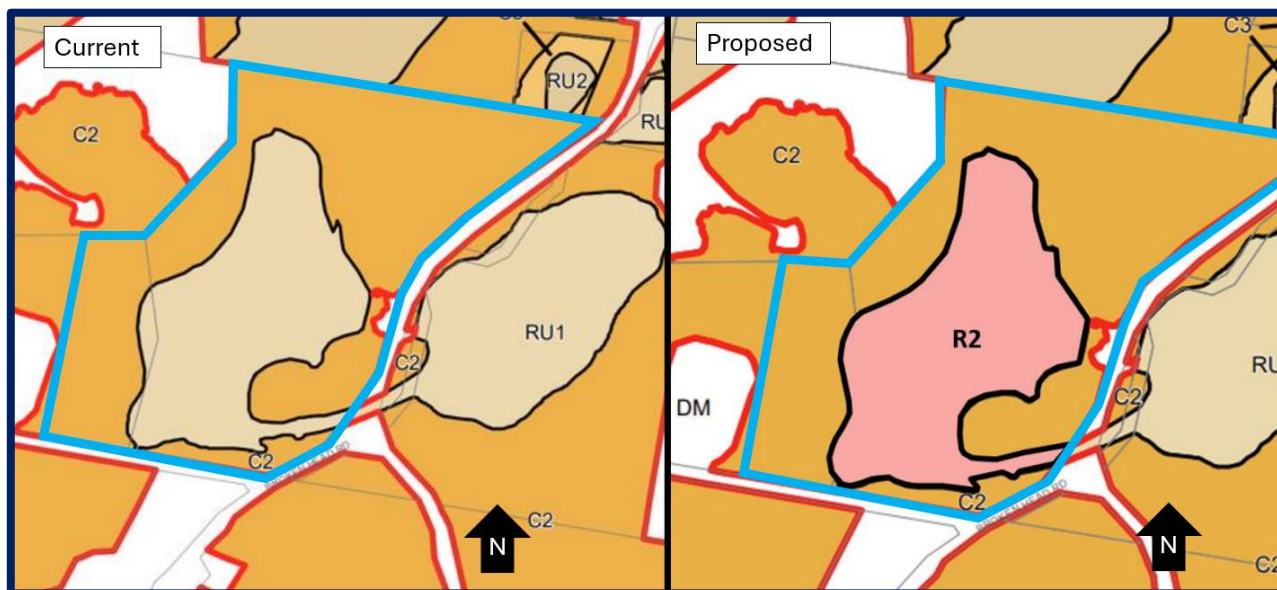


Figure 6: Current and proposed zoning maps – the site highlighted blue (source: the planning proposal)

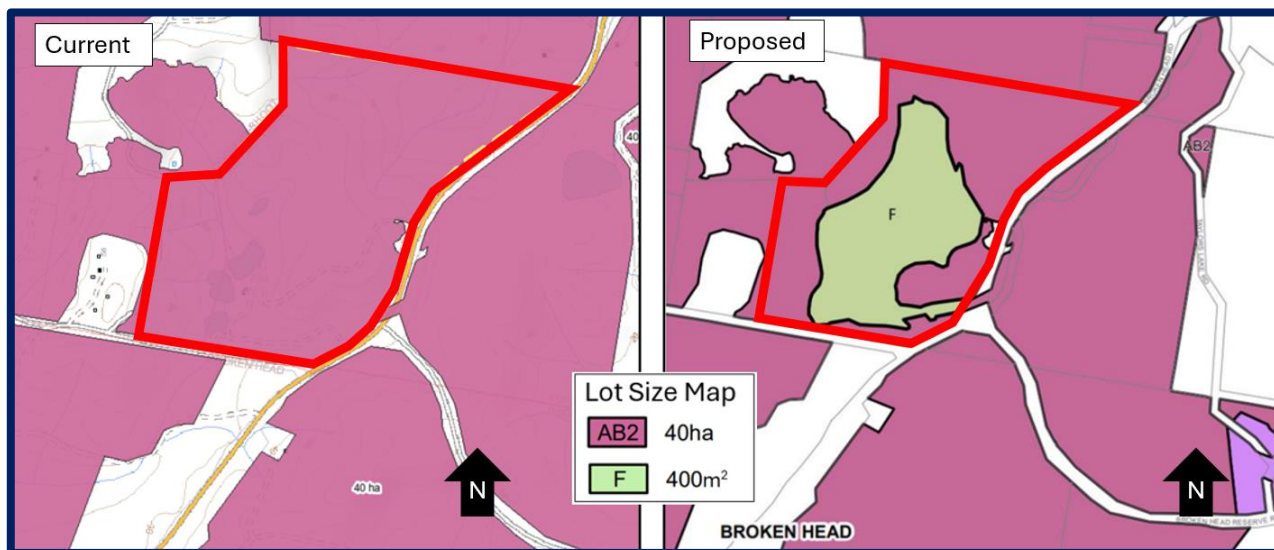


Figure 7: Current and proposed minimum lot size maps – the site highlighted red (source: the planning proposal)

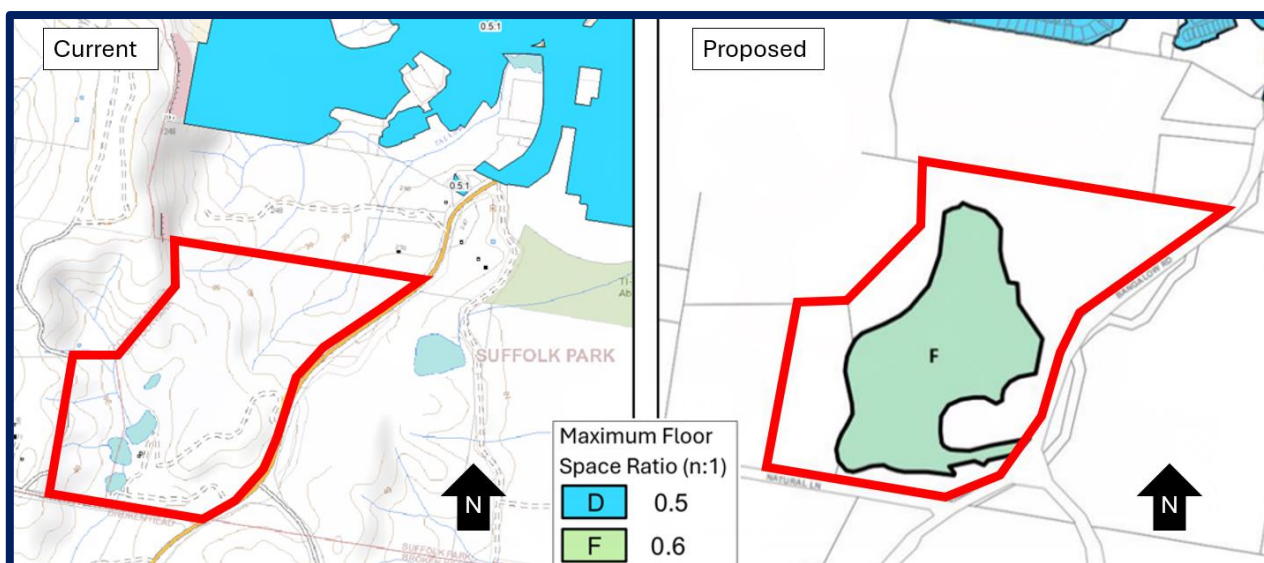


Figure 8: Current and proposed maximum floor space ratio maps – the site highlighted red (source: the planning proposal)

Key Issues

The following section summarises the key issues drawn from documents including the proponent's rezoning review request (**Attachment B**), Council's response to the rezoning review request (**Attachment C**), the Independent Council Assessment undertaken for Council (**Attachment C1**), Council Meeting (**Attachment C2**).

STRATEGIC MERIT

Issue – The proposal is not justified by relevant state and local strategic plans

Council view

- the planning proposal is not consistent with the **North Coast Regional Plan 2041** (NCRP) and the inconsistencies have not been justified, including:
 - The subject land is not identified in the NCRP urban growth area, nor urban land investigation areas. This land has been considered on several occasions and has not been supported.
 - The landowners made representations to the (then) Department of Planning and Environment in 2017 and were specifically advised that “the Department wishes to advise Leadshine Pty Ltd that the North Coast Regional Plan 2036 does not identify the quarry as a future urban growth area”.
- Council has prepared the Byron Shire Residential Strategy 2041 (BSRS) to address the supply of residential land in its LEP. It is currently being considered for endorsement by the Department.
- Only minor and contiguous variations to urban growth areas will be considered within the coastal strip due to its environmental sensitivity and the range of land uses competing for this limited area.

Proponent view

- The proposal is generally consistent with the NCRP. The proponent believes that the Planning Proposal does satisfy the Settlement Planning Guidelines and Urban growth Variation Principles. Part 2 of the 2041 Strategy provides details related to housing demand and the increasing pressures on the housing supply in the Byron LGA, stating that *‘pressure on housing supply has increased.’*
- Although the site is not currently identified within the NCRP or the BSRS, the site is a key candidate for future urban residential growth, due to its proximity to existing services and facilities, reduced environmental impact, location outside of flood prone land and promotion of connected and active communities through the proposed pedestrian and bicycle path.
- The BSRS has not, as yet, been endorsed by the NSW Government. As Council is well aware a previous version of this Strategy, which was adopted by Council in 2020, was not endorsed by the NSW government. A local council strategy that has not been endorsed by the NSW government is not a relevant matter for consideration in the application of the Strategic Merit Test.
- There is no requirement under the NCRP for new residential land to be immediately adjoining an existing urban area. In addition, the Settlement Planning Guidelines, at Appendix A (p.117) of the NCRP include a principle that *“new greenfield areas should be located adjacent to existing urban settlements to minimise travel and promote sustainability”*.

Not only is “should” not a mandatory requirement, but the objective behind the principle is also explained – it is to minimise travel and promote sustainability. It is possible to achieve this objective, notwithstanding the fact that a greenfield area is not directly adjoining an existing urban settlement. In this case, the northern most part of the development footprint that would be rezoned R2 under the PP is approximately 415m

south of the southern portion of the residential zoning in Suffolk Park and approximately half the Site is within a one-kilometre radius of the Suffolk Park neighbourhood centre.

- In order to gain a thorough understanding of the housing crisis in Byron LGA, it is beneficial to refer to the report released by the NSW Independent Planning Commission (IPC) in April 2023 entitled "[Byron Shire Short- Term Rental Accommodation Planning Proposal](#)".

The IPC report demonstrates that there is an acute housing crisis being experienced in the Byron LGA and urges the NSW Government and Council to take urgent steps to address the housing crisis. The evidence presented to the IPC shows that the housing crisis is significantly worse in Byron LGA compared to other LGAs in the Northern Rivers region and in NSW.

- The site is near an existing urban area, namely Suffolk Park, and within 4 kilometres of Byron Bay. The VPA offer associated with the proposal seeks a shared pathway alignment to provide direct connection for cyclists and pedestrians to Suffolk Park Neighbourhood Centre.

PPA Team Comment

- The BSRS was conditionally endorsed by the Department in June 2024 (**Attachment E**).

SITE SPECIFIC MERIT

Issue – Biodiversity

Council view

- The biodiversity development assessment report (BDAR) concluded the development will impact on native vegetation that occupies 56% of the development site.
- The development will affect native vegetation across a large part of the site and will result in a new urban community surrounded by substantial areas of high biodiversity native vegetation.
- A specific study of the biodiversity on this site has been undertaken which concluded that impacts on threatened species and threatened ecological communities cannot be avoided despite confining most of the development to areas disturbed in the past.
- The report does not address off-site impacts such as the proposed shared path, or infrastructure such as road widening (at intersections), and pipelines and pump stations for water and sewerage.
- On balance, the report concludes that areas of native vegetation of various quality will be cleared by future residential development (based on the concept design) and offsets will be required.
- There is no indication of how practical or costly this may be. It is also not clear if future bushfire hazard clearing to protect dwellings and infrastructure will also impact on native vegetation — both on and beyond the subject land.
- It is notable that the applicant has not addressed the practicality and environmental impacts of connecting the subject land to trunk water and sewer mains that are located hundreds of metres away to the east of Broken Head Road. The BDAR notes the ecological significance of intact native vegetation surrounding the subject land. Adding such services to the proposed development will affect native vegetation across a large portion of the site.

- It is not certain that the shared path can be constructed without considerable cost and ecological impact.

Proponent view

- Although 56% of the potential development area does contain some native vegetation, over 4.5 hectares of the 11.8 hectares development footprint is either regrowth vegetation or planted native vegetation. There is only 2.1 hectares of intact native vegetation that will have to be cleared if the proposed residential development proceeds. This represents 18% of the area proposed to be rezoned R2, with only 0.13 hectares of Threatened Ecological Community (TEC) to be cleared.
- The balance of the site which is zoned C2 Environmental Conservation will be managed for conservation purposes in perpetuity by the Community Association proposed to be established under Community Title legislation.
- The BDAR (**Attachment A4**) concludes “*The removal of this vegetation is not considered a significant impact and will be compensated by way of ecosystem credits calculated under the BAM-C.*”
- The site was selected for the proposed development based on its former use as a quarry and lack of significant environmental features such as wetlands. Substantial portions of the site have been historically cleared and have undergone extensive disturbance over time. These disturbed areas contain little native vegetation and generally have limited biodiversity value.
- Multiple pathways for pipelines are available, as are different construction techniques, including under boring, to ensure that biodiversity impacts are avoided or minimised and are acceptable. There is an agreement between the landowners of the eastern and western quarry that would allow such infrastructure work to occur.
- Only minor road works are required to provide suitable site access and it is clear from the Concept Design that only minimal off-site clearing would be required in connection with these works.
- The construction of the proposed shared pathway is not considered likely to result in a significant impact on any threatened species, populations or ecological communities, or their habitats.

Issue – Water and Sewer Infrastructure

Council view

- No information is supplied on the practicality of upgrading and connecting electricity to the subject land.
- Council has no plans to provide infrastructure and services to the subject land, which is currently not connected to reticulated water or sewerage, electricity and NBN.
- There is no assessment of the cost of off-site pipelines and connections, and the cost of building and running pump stations (potentially two for sewage and one for water). It should not be assumed that the narrow and heavily vegetated Broken Head Road reserve can accommodate multiple pipelines.

Proponent view

- The site can be readily serviced with reticulated water, sewer, telecommunication, stormwater drainage, electricity, etc without the need for major infrastructure works and

expensive augmentation works and allows for the efficient use of existing infrastructure (**Attachment A1**).

- No pump stations will be required off site. Existing water and sewer mains run through the northeastern corner of the eastern quarry, on the opposite side of Broken Head Road.

Issue – Bushfire Impacts

Council view

- The supplied strategic bushfire hazard analysis of the subject land was undertaken in 2020, based on 2018 bushfire mapping. BSC adopted revised shire-wide hazard mapping in 2022. The site remains substantially either in a bushfire hazard category or a buffer. As the rehabilitation areas mature, this may change further.
- It is noted that the bushfire hazard analysis is reliant on a slope analysis. It appears that the LiDAR slope analysis was based on a surface analysis undertaken in 2010, before the site was reshaped for rehabilitation. Bushfire hazard is a significant issue with this site. Although it can be addressed, this essentially requires removal and management of all vegetation within the proposed 11.8-hectare residential zone. Furthermore, it is reliant on creating a second (new) access to Broken Head Road that may or may not be approved.

Proponent view

- A Strategic Bushfire Study (SBS) was prepared by Bushfire Planning Australia and submitted with the Planning Proposal (located in the planning Proposal March 2023 **Attachment A2**) concluding that “... *the hazard identified can be successfully mitigated by applying the requirements of PBP 2019, along with some additional measures which build in a climate change resilience factor.*”
- Only very minor earthworks were undertaken as part of the rehabilitation works, and this is unlikely to have had any impact on the site contours that were used in the preparation of the SBS.
- The BDAR specifically considers the impact of asset protection zones. Although some retained vegetation will need to be managed for bushfire purposes, this is not the same as wholesale clearing of vegetation.

PPA Comment

- On 16 June 2023, RFS provided comments on the planning proposal, including that based upon an assessment of the information provided, NSW RFS raises no objections to the proposal subject to a requirement that the future subdivision/development of the land complies with Planning for Bush Fire Protection 2019.

Issue – Geotechnical assessment

Council view

- The site has been substantially reshaped as part of the quarry rehabilitation work, but there is no indication as to whether this work has made the site sufficiently stable to now be used for residential development.
- There is no information on areas that have been filled and no consideration of existing water bodies proposed for residential use. It is noted that extensive drainage and surface water storage work has been undertaken to control the major erosion issues that the site exhibited in 2017, yet parts of the site are still actively eroding, and parts are quite steep.

Proponent view

- Only minor earth works were undertaken in isolated areas of the site, essentially to manage stormwater and batter stability to support the successful planting program. Extensive earthworks were not undertaken.
- A Geotechnical Assessment of the site has been prepared by Martens and Associates Pty Ltd (**Attachment A8**). The geotechnical assessment concludes the site is considered suitable for the proposed residential development, following the adoption of the recommendations presented in Section 5.3 of the report. The recommendations cover zone-specific measures as well as recommendations for earthworks, surface drainage, soil erosion control, and any further works.
- Recommendations within the geotechnical assessment are not intended to be final and can be further refined through the development and design process of future residential development.

Other issues:

Land Contamination

Council considers no site-specific contaminated land analysis of the subject land has been provided, yet the history of land use on this site is defined by the State as a potentially contaminating land use.

The proponent contends that an adequate contamination assessment has been prepared and the site is suitable for the intended residential development.

Indigenous Cultural Heritage

Council considers There is no evidence of contact with the relevant LALC or any site assessment by a qualified archaeologist.

The proponent considers it has provided an Archaeological Desktop Report (**Attachment A7**) which concludes *'no sites are expected to remain within the Proposed Rezoning Area, which generally aligns with the previous quarrying areas.'*

Traffic

Council considers minimal information is provided on traffic generation and impacts from the site and whether the second access proposed is practical or even possible given site topography and ecological constraints.

The proponent considers that a Traffic Impact Assessment (TIA) has been prepared by EMM Consulting Pty Ltd (**Attachment A11**) which concludes that the additional traffic volumes from the proposed development will only have a minor impact at the existing intersections and result in improved traffic outcomes.

Attachments

Attachment A: Planning Proposal (March 2023)

Attachment A1: Water and Sewer Services Report

Attachment A2: Strategic Bushfire Study

Attachment A3: Concept Plan

Attachment A4: Biodiversity Development Assessment Report (BDAR)

Attachment A5: Voluntary Planning Agreement Offer

Attachment A6: 1999 Development Consent Broken Head Quarry

Attachment A7: Contamination Report

Attachment A8: Geotechnical Report

Attachment A9: Archaeological Report

Attachment A10: Preliminary Ecological Assessment of Shared Pathway Alignment

Attachment A11: Traffic Impact Assessment

Attachment B: Rezoning Review Report (25 July 2024)

Attachment B1: Council Correspondence

Attachment B2: Public Authority Correspondence

Attachment B3: Email Correspondence (September 2023) regarding response to Biodiversity and Conservation Division (BCD)

Attachment B4: Letter to Byron Shire Council (BSC) (Response to BCD Assessment) (28 March 2024)

Attachment C: Council Response to Rezoning Review request (27 September 2024)

Attachment C1: Independent Council Merit Assessment dated 7 May 2024

Attachment C2: Council Report dated 13 June 2024

Attachment C3: Signed Enforceable undertaking (Proposed rehabilitation works) for site (Westside Land quarry)

Attachment C4: Enforceable undertaking correspondence, including Department letter dated 12 July 2024

Attachment D: Council Meeting Minutes dated 13 June 2024

Attachment E: Department's conditional endorsement of the Byron Shire Council Residential Land Strategy 2041.

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A handwritten signature in black ink, appearing to read "Alex".

25 October 2024

Alexander Galea

Manager, Planning Proposal Authority

A handwritten signature in black ink, appearing to read "L McMahon".

28/10/24

Louise McMahon

Director, Planning Proposal Authority

Assessment officer

Ian Woods

Planning Officer, Planning Proposal Authority

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