

Mr K Gainger
General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2482

Our ref: PP_2016_BYRON_007_00 (16/12483)
Your ref: #E2016/82354

Dear Mr Gainger

Planning proposal to amend Byron Local Environmental Plan 2014

I am writing in response to your Council's letter dated 15 September 2016 and the additional information provided on 22 December 2016 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 (the Act) in respect of the planning proposal to rezone part of Lot 181 DP 755695 and Lot 7022 DP 1113424, 268 Ewingsdale Road, Byron Bay from RU2 Rural Landscape to IN2 Light Industrial and apply relevant planning controls to the site.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistencies with S117 Directions 1.1 Business and Industrial Zones, 1.2 Rural Zones, 2.1 Environmental Protection Zones and 5.1 Implementation of Regional Strategies, are justified in accordance with the terms of the directions. No further approval is required in relation to these Directions.

Council will still need to obtain the agreement of the Department's Secretary to comply with the requirements of relevant S117 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 2.3 Heritage Conservation 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 4.4 Planning for Bush Fire Protection. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has accepted this delegation but not requested delegation for this proposal. I have agreed not to issue delegation to Council at this stage. I will reconsider this decision following receipt of the updated planning proposal as required.

The amending Local Environmental Plan (LEP) is to be finalised within 18 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

It is noted that the planning proposal is supported by two industrial land analyses which indicate varying levels of available employment land within the Byron Shire LGA. While this proposal has been supported on the basis of the merits of the site it is recommended Council give consideration to reconciling these two reports to determine whether further employments lands within the shire should be identified.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Mr Paul Garnett of the Department's regional office to assist you. Mr Garnett can be contacted on (02) 6641 6607.

Yours sincerely

 16 February 2017
Stephen Murray
Executive Director, Regions
Planning Services

Encl:
Gateway Determination



Gateway Determination

Planning proposal (Department Ref: PP_2016_BYRON_007_00): to rezone part of Lot 181 DP 755695 and Lot 7022 DP 1113424, 268 Ewingsdale Road, Byron Bay from RU2 Rural Landscape to IN2 Light Industrial and apply relevant planning controls to the site.

I, the Executive Director, Regions at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Byron Local Environmental Plan (LEP) 2014 to rezone part of Lot 181 DP 755695 and Lot 7022 DP 1113424, 268 Ewingsdale Road, Byron Bay from RU2 Rural Landscape to IN2 Light Industrial and apply relevant planning controls to the site should proceed subject to the following conditions:

1. Consultation with the Department of Industry – Lands to resolve ownership and potential future use of Lot 7022 DP 1113424 is to be undertaken prior to any site investigations or community consultation.
2. Prior to community consultation and undertaking State agency consultation:
 - (a) the following site investigations are to be undertaken:
 - A flora and fauna assessment;
 - Flooding impact assessment;
 - Acid sulfate soils;
 - Aboriginal cultural heritage;
 - Potential site contamination;
 - Bushfire;
 - Traffic impacts;
 - Infrastructure and services provision;
 - Stormwater management to and from the site; and
 - The potential impacts on the adjoining SEPP 14 wetlands of the proposed future industrial use of the site.
 - (b) the planning proposal is to be amended to:
 - reflect the findings of the site investigations required above;
 - include current and proposed minimum lot size and floor space ratio maps for the land proposed to be zoned IN2; and
 - include a reference to the draft North Coast Regional Plan or final North Coast Regional Plan, whichever is applicable.

- (c) Council is to submit the amended proposal to the Department of Planning and Environment for approval.
3. Consultation is required with the following public authorities under section 56(2)(d) of the Act and/or to comply with the requirements of relevant S117 Directions:
- NSW Rural Fire Service;
 - NSW Department of Primary Industries – Agricultural;
 - NSW Office of Environment and Heritage;
 - NSW Roads and Maritime Services;
 - Local Aboriginal Land Council in relation to matters of Aboriginal cultural heritage; and
 - NSW Department of Industry – Resources and Energy.

Each public authority is to be provided with a copy of the updated planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

4. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
- (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A Guide to Preparing LEPs (Department of Planning and Environment 2016)*.
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The timeframe for completing the LEP is to be **18 months** from the week following the date of the Gateway determination.

Dated 16th day of February 2017


Stephen Murray
Executive Director, Regions
Planning Services

Delegate of the Minister for
Planning