

Mr Mark Arnold  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Attention: Ms Roseanna Meech

Dear Mr Arnold

**RE: Planning Proposal to amend the Byron Local Environment Plan 2014, 249 Ewingsdale Road Byron Bay, (PP-2023-119)**

Thank you for your referral via the NSW Planning Portal dated 23 March 2023 about the Planning Proposal to amend the Byron Local Environment Plan 2014 to permit events without Council consent at 249 Ewingsdale Road, Byron Bay, seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment and Heritage Group of the Department of Planning and Environment. I appreciate the opportunity to provide input.

The BCD forms part of a Group that has responsibilities relating to biodiversity (including threatened species and ecological communities, or their habitats), National Parks and Wildlife Service estate, flooding, and coastal processes and associated hazards.

We have reviewed the Planning Proposal and related documents supplied and have identified an issue in relation to flood risk management. This issue is discussed in detail in **Attachment 1** to this letter.

The BCD generally recommends the entire lot subject to a Planning Proposal be included in the planning area. The Planning Proposal has only been applied to the eastern RE1 (Public Recreation) zone portion of the lot, and we note the western portion of the subject lot is zoned as a Deferred Matter (DM). The DM area contains high environmental value (HEV) land that should be zoned C2 (Environmental Conservation). We understand that the rezoning of the DM portion of the lot will be subject to a separate Planning Proposal as part of Stage 4 of Byron Shire Council's Conservation Zone Review. Therefore, in this instance the BCD supports the current Planning Proposal applying to only part of the lot, and we look forward to an opportunity to comment on a future Planning Proposal to rezone the DM portion of the lot.

In summary, the BCD recommends that a 'Flood Plan' for the Cavanbah Centre be developed that has clear protocols, procedures, and triggers in place to mitigate possible risk from a flood event. The plan needs to be incorporated and/or referenced in relevant plans for the centre such as Plans of Management or Operational Plans.

If you have any questions about this advice, please do not hesitate to contact Mr Tom Schmidt,  
Senior Conservation Planning Officer, at or .

Yours sincerely

13/04/2023

**DON OWNER**  
**A/Senior Team Leader Planning, North East Branch**  
**Biodiversity and Conservation**

Enclosure: Detailed BCD Comments – Planning Proposal to amend the Byron Local Environment Plan 2014, 249  
Ewingsdale Road Byron Bay, (PP-2023-119)

## **Attachment 1: Detailed BCD Comments – Planning Proposal to amend the Byron Local Environment Plan 2014, 249 Ewingsdale Road Byron Bay, (PP-2023-119)**

The Biodiversity and Conservation Division (BCD) of the Department of Planning and Environment has reviewed the information provided in the Planning Portal for Planning Proposal PP-2023-119 at 249 Ewingsdale Road Byron Bay and we provide the following comments.

### Background

The objective of the Planning Proposal is to permit events on certain Council controlled land without the need to obtain development consent on the RE1 (Public Recreation) zoned portion of 249 Ewingsdale Road Byron Bay (Lot 3 DP 706286). The other parts of the lot are not affected by the Planning Proposal.

The Planning Proposal seeks to amend Byron Local Environmental Plan (LEP) 2014 to permit events such as low impact performance of live music or arts without Council consent on land owned by Council. The assessment and permission for any such event would be dealt with under the *Local Government Act 1993*. This outcome would be achieved by adding a new item to Schedule 2 Exempt Development.

The proposed wording of the Schedule 2 amendment is as follows:

### ***Schedule 2 Exempt development***

#### ***Function Centres on land owned or managed by Council***

*Applies to that part of Lot 3 DP 706286 zoned RE1 Public Recreation*

*Must not include the erection of a permanent structure on the land*

*Must not include clearing of native vegetation*

*Must have obtained all required approvals*

### Flooding

The Planning Proposal is seeking an LEP amendment to permit outdoor events at the Cavanbah Centre without having to obtain development approval on RE1 zoned land. Based on data from the Belongil Creek Floodplain Risk Management Study (BMT 2015), the site is constrained by flood impacts with the 100-year ARI impacting the southern portion of the site (Figure 1), and the Probable Maximum Flood (PMF) flood event affecting the whole site (Figure 2). The PMF flood level is approximately 3.8m AHD and ground levels on the oval in the NE corner are approximately 3.5m AHD. In a PMF flood event flooding of the northeast portion of the site is relatively shallow and low hazard.

The Planning Proposal does not promote additional structures or permanent use of the area and is restricted to short term events. It does facilitate an increase in use and thus a possible increase in flood risk. There is no mention of a 'Flood Plan' for the Cavanbah Centre in the Planning Proposal.

With triggers and procedures in place there is opportunity to cancel or evacuate events, ensuring there are no events during major flooding, minimising the possible increase in flood risk.

### *BCD recommendation:*

1. A 'Flood Plan' for the Cavanbah Centre be developed that has clear protocols, procedures and triggers in place to mitigate possible risk from a flood event. The plan needs to be incorporated and / or referenced in relevant plans for the centre such as Plans of Management or Operational plans.



Figure 1: 100-year ARI flood depths



Figure 2: PMF flood depths



Your ref: Byron LEP 2017 amendment  
Our ref: DOC23/320871-2

Roseanna Meech  
Byron Shire Council  
PO Box 219

By email:

21 April 2023

Dear Ms Meech,

### **EPA Response to proposed Byron LEP 2014 amendment**

This letter responds to a call for submissions about Byron Shire Council's (Council) proposal to amend Byron Local Environment Plan 2014 to permit function centres and associated events without development consent, at 249 Ewingsdale Road Byron Bay (Proposal). The Proposal is on exhibition until 1 May 2023.

The NSW Environment Protection Authority (EPA) regulates Byron Sewage Treatment Works (STP) and has provided general terms of approval for a Bioenergy Facility located adjacent to the Proposal. The Bioenergy Facility proposes to recover energy from waste including fat oil, dewatered biosolids and food waste. Both facilities have the potential to cause odour that may impact on sensitive receivers.

The EPA recommends Council to consider the potential land use conflict between proposed sensitive receivers attending events at the Proposal site and facilities that hold environment protection licences to the north.

If you have any further questions about comments, please contact Kim Stuart, Senior Policy and Programs Officer, Strategic Planning Unit, on 02 6659 8292 or at [environmentprotection.planning@epa.nsw.gov.au](mailto:environmentprotection.planning@epa.nsw.gov.au).

**Strategic Planning Unit**



## NSW RURAL FIRE SERVICE

Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Your reference: (REF-2061) PP-2023-119  
Our reference: SPI20230326000044

**ATTENTION:** Roseanna Meech

Date: Monday 24 April 2023

Dear Sir/Madam,

**Strategic Planning Instrument  
LEP Amendment -  
Schedule 2 Exempt Development - Function Centres - Part Lot 3 DP 706286**

I refer to your correspondence dated 23/03/2023 inviting the NSW Rural Fire Service (NSW RFS) to comment on the above Strategic Planning document.

The NSW RFS has considered the information submitted and provides the following comments.

The Planning Proposal is to permit the Cavanbah Centre to include Function Centre land uses which may include events such as low impact performance of live music or arts.

The LEP amendment will permit Function Centre land use as exempt development.

The referred draft wording of the LEP amendment:  
Schedule 2 Exempt development

- Function Centres on land owned or managed by Council
- Applies to that part of Lot 3 DP 706286 zoned RE1 Public Recreation
- Must not include the erection of a permanent structure on the land
- Must not include clearing of native vegetation
- Must have obtained all required approvals

The NSW RFS notes that 'Primitive camping' is a permitted use under the Plan of Management Community Land – Cavanbah Centre” (PoM).

The NSW RFS has no objection to the LEP amendment and recommends the draft LEP amendment wording includes:

- Must not include overnight accommodation or camping.

For any queries regarding this correspondence, please contact Alan Bawden on

Yours sincerely,

Allyn Purkiss  
**Manager Planning & Environment Services**  
**Built & Natural Environment**

14 April 2023

File No: NTH06/00871/03

Your Ref: PP-2023-119 – Ref-2060

The General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

**Attention: Roseanna Meech**

**Ewingsdale Road (MR 545): PP-2023-119, Permit function centres as exempt development on the RE1 zoned portion of the lot, Lot: 3 DP: 706286, 249 Ewingsdale Road Byron Bay**

I refer to the abovementioned Planning Proposal referred to Transport for NSW (TfNSW) on 23 March 2023 for agency consultation in accordance with Condition 3 of the gateway determination under Section 3.34(2)(d) of the *Environmental Planning and Assessment Act 1979*.

TfNSW key interests are the safety and efficiency of the transport network, the needs of our customers and the integration of land use and transport in accordance with the *Future Transport Strategy*.

The Pacific Highway (HW 10) is a classified State Road and Ewingsdale Road (MR 545) is a classified Regional road. Council is the roads authority for Ewingsdale Road and all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*.

The Cavanbah Centre is located just over 2km from the Pacific Highway. TfNSW is primarily concerned that an unspecified number of attendees permitted at any given event may impact the on/off ramp with queuing onto the motorway. In particular, significantly increased traffic volumes at the Ewingsdale Interchange are experienced during school holiday periods.

It is considered that the abovementioned concerns can be appropriately addressed through relevant road approvals/licences (such as a Road Occupancy Licence, Traffic Management Plan, Traffic and Pedestrian Plan etc) as specified by the Local Traffic Committee.

Accordingly, TfNSW supports the progression of the Planning Proposal provided the draft provision for exempt development (to be included in the Byron LEP 2014) is expanded to include the following consideration:

***Function Centres on land owned or managed by Council***

*Applies to that part of Lot 3 DP 706286 zoned RE1 Public Recreation*

*Must not include the erection of a permanent structure on the land*

*Must not include clearing of native vegetation*

*Must have obtained all required approvals **including (but not limited to) the endorsement of the Local Traffic Committee***



Yours faithfully

**Court Walsh**

A/Team Leader Development Services  
North Region | Community & Place  
Regional & Outer Metropolitan

