



Planning Proposal
for Amendment of Byron Local Environmental Plan 2014
and Byron Local Environmental Plan 1988
– Lot 1 DP 1031848
The Coast Road, Broken Head

Byron Shire Council

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Part 1 Introduction

Objective and intended outcomes

The objective of this planning proposal is to identify the subject land in appropriate schedules to Byron LEP 2014 and Byron LEP 1988 to permit the creation of a neighbourhood community title scheme comprising 33 neighbourhood lots with a minimum size of 250 m² and one lot for association property. No more than one dwelling will be erected on each lot.

Property details and existing zones

This planning proposal relates to land located at The Coast Road, Broken Head described as Lot 1 in Deposited Plan 1031848 (Figure 1). It is an irregular shaped lot of approximately 111.2 hectares in area. The property is known as “The Linnaeus Estate”. It has 1,500 metres frontage to the coast on its eastern boundary. Its northern part is about 800 metres wide and its southern part, adjoining Ballina Shire, is also about 800 metres wide. The frontage to The Coast Road is 530 metres. The only title Restrictions on Use relate to a Right of Way in the south-western part of the site created by DP 259337.



Figure 1: Subject land – Lot 1 DP 1031848

The subject land is currently zoned under both Byron LEP 1988 (BLEP88) and Byron LEP 2014 (BLEP14) (Figure 2). It is a complex mix of land use zones that include the following:

BLEP88: 1D Investigation; 5A Special Uses; 7A Wetlands; 7D Scenic Escarpment; 7F1 Coastal Lands; and 7J Scientific.

BLEP14: RU2 Rural Landscape and SP1 Special Activities (Mixed Use Development).



Figure 2: Current combined zoning map for the subject land under Byron LEP 1988 and Byron LEP 2014

The land subject to BLEP14 has a building height limit of 9 metres (Figure 3) and a Minimum Lot Size of 40 hectares (Figure 4). It is partly classified as containing Class 4 Acid Sulfate Soils (Figure 5) and is partly identified for an Additional Permitted Use (Figure 6). The Additional Permitted Use is as follows:

8 Use of certain land at Coast Road, Broken Head

- (1) This clause applies to land at The Coast Road, Broken Head (known as the Linnaeus Estate) being part of Lot 1, DP 1031848, and identified as "Area D" on the [Additional Permitted Uses Map](#).
- (2) Development for the purposes of mixed use development that includes tourist or visitor accommodation is permitted with development consent.

- (3) *Development consent may only be granted under this clause if the consent authority is satisfied that the proposed development:*
- (a) *is ancillary to a lawful existing land use, and*
 - (b) *is for the purpose of providing education or training for professional and personal development through a variety of academic, cultural and vocational programs.*

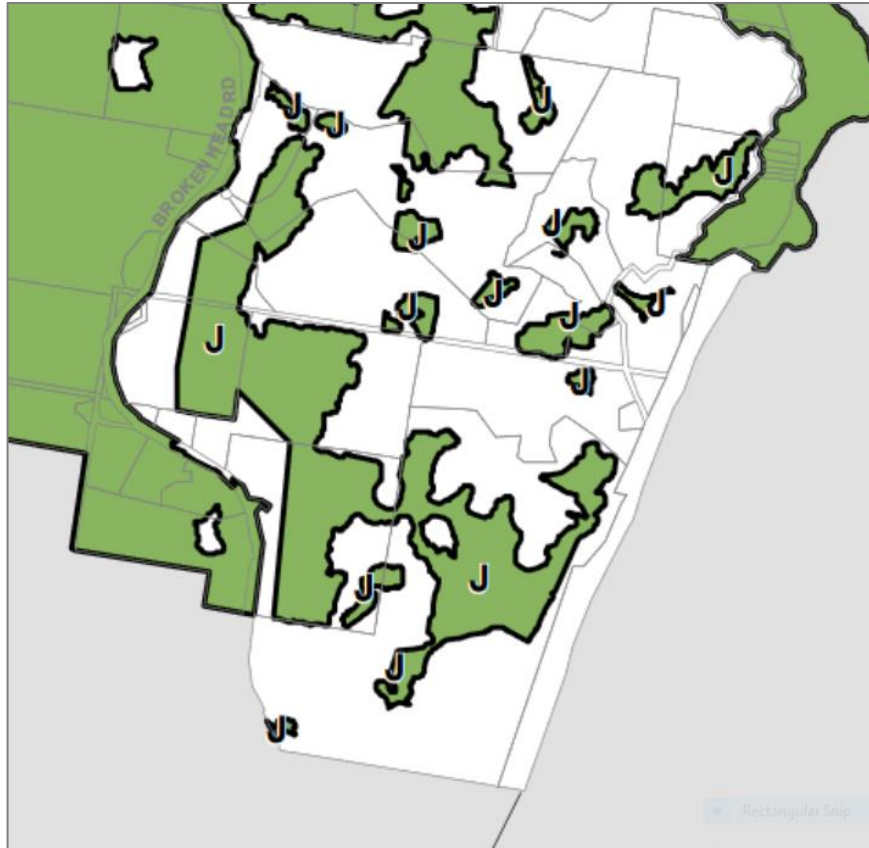


Figure 3: Building Height map under Byron LEP 2014 (9 metre building height applies)

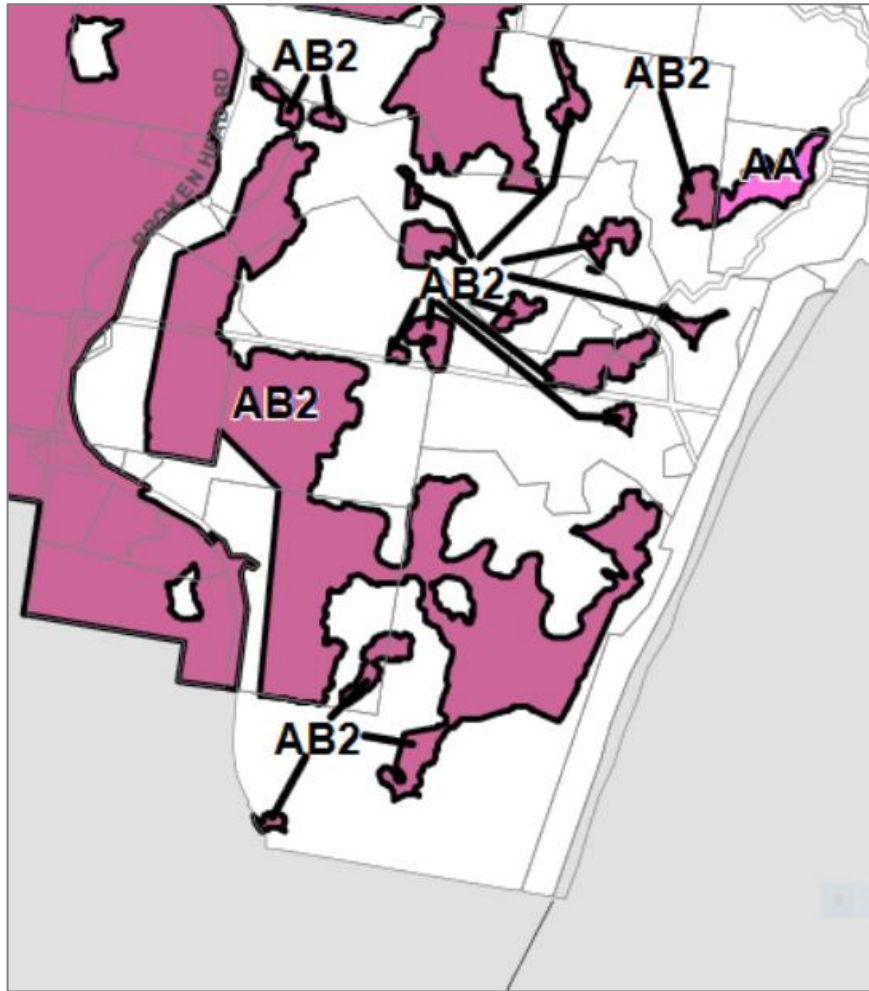


Figure 4: Minimum Lot Size map under Byron LEP 2014 (40 hectares applies)

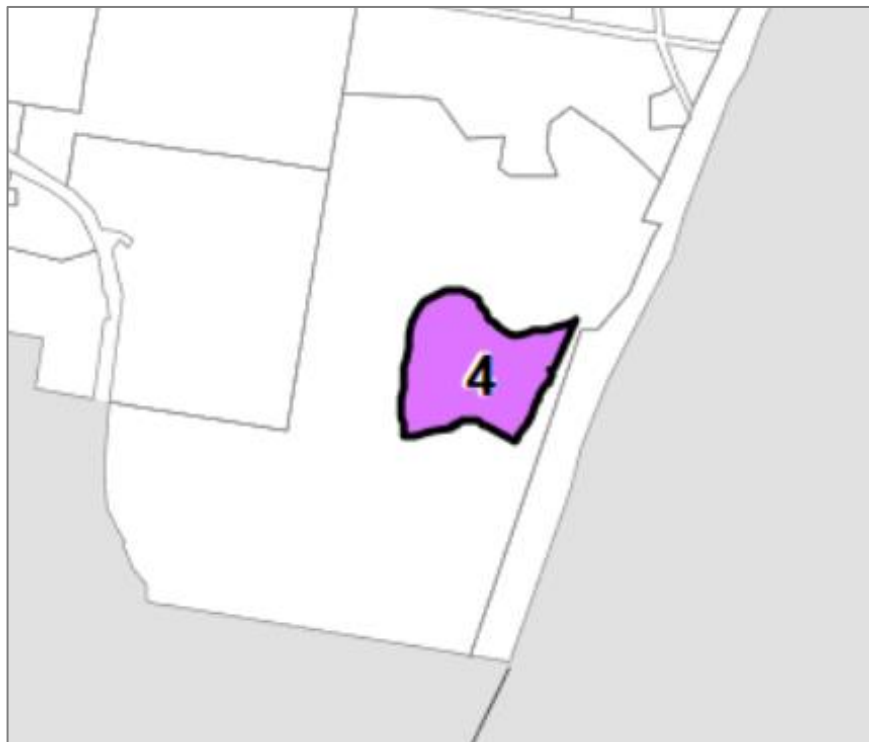


Figure 5: Acid Sulfate Soils map under Byron LEP 2014 (Class 4 partly applies)

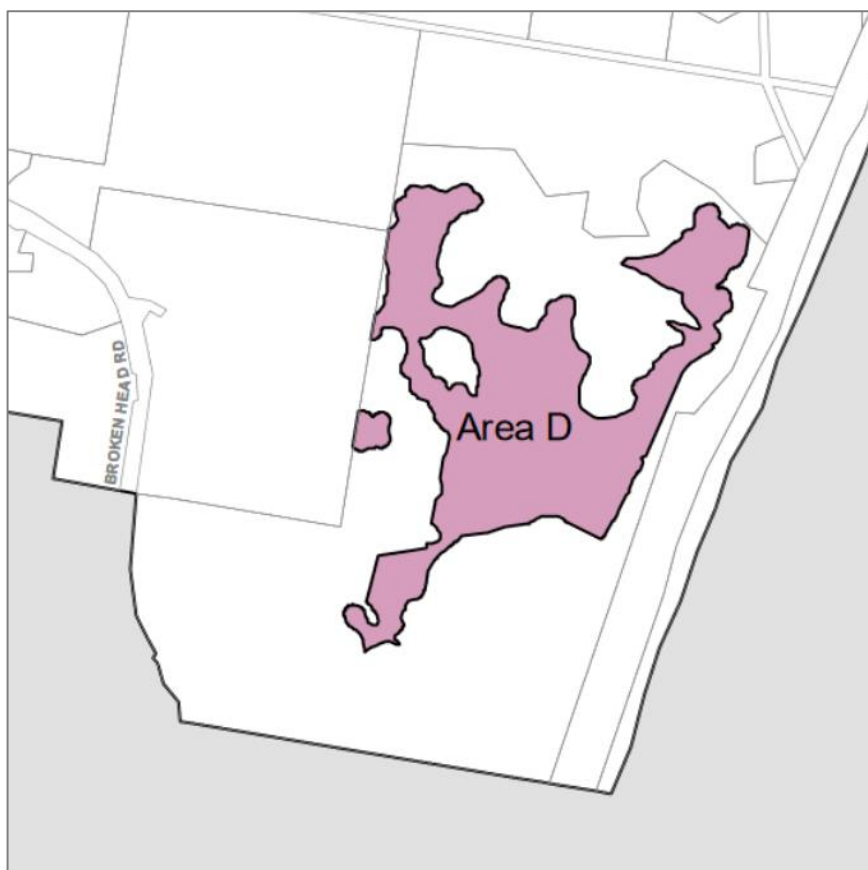


Figure 6: Additional Permitted Use map under Byron LEP 2014

Background

The Linnaeus Estate is a private education facility providing academic, cultural and vocational programs. The Linnaeus Estate was conceived as a philanthropic foundation with the objective of “rebuilding” the environmental capacity of what was a degraded cattle farm and providing a range of private education facilities to build the social capital of Byron Shire and its environs.

Investors in the philanthropic concept of The Linnaeus Estate do so by way of acquisition of units in the BHCF Unit Trust (the Foundation). Investors are also assigned a lease in relation to an accommodation unit in the facility on terms complying with all the development approval consent conditions. In addition, the lease terms require:

- that investors subscribe annually to the private education fund and the environmental enhancement of the site;
- the management of utility services; and
- the management of gardens, lawns and general landscaping.

The land has been approved for a range of uses, including 33 accommodation units that present as individual structures. Twenty of these structures have already been erected on the site. If this planning proposal is approved then the lease arrangement that binds investors to particular accommodation units will cease and the investors will convert their investment in the Foundation to a lot in a Community Title Scheme. They will also share in The Linnaeus Estate community property in the normal Community Title unit entitlement way.

The net effect of this change will be to replace the existing complicated trust/leasehold/deed arrangement with a Community Title management system, which is much more robust, easier to understand and open to external management for conflict resolution and the like. The utilisation of the site pursuant to DA approvals DA 1998/0146, DA 2008/532 and DA 2013/600 for private education is intended to be retained. Those seeking to utilise buildings at the site for dwellings will be required to lodge development applications.

The owners of The Linnaeus Estate have for some time sought to have the right to use structures on this site as dwellings but this was not consistent with the strategic planning framework for large lot residential or residential development in Byron Shire.

On 2 February 2015, Council considered a draft planning proposal for an amendment to BLEP14 to rezone land and permit Community Title at Lot 1 DP 1031848, The Coast Road, Broken Head (The Linnaeus Estate). The planning proposal was unsolicited and submitted by the land owners. Council resolved as follows:

15-029 Resolved:

- 1. That Council decline to proceed with the attached planning proposal to amend Byron LEP 2014.*
- 2. That Council investigate the suitability of the site for Community Title subdivision during preparation of the Byron Urban and Rural Housing Strategy.*
- 3. That Council defer any new zonings on the site until after release of the final E zone review report.*
- 4. That, at the next general update of Byron LEP 2014, Council agree to amend the SP1 zone on Lot 1 DP 1031848 to refer to a private education facility and amend Schedule 1 to define private education facility and specifically permit it as a use on the subject land.*

In July 2018, the NSW Department of Planning and Environment (DPE) agreed to the *Byron Shire Rural Land Use Strategy*. This strategy now includes the subject land.

New zones on the subject land are still being considered as part of the E zone review.

Council has amended the current SPI zone (as part of the LEP housekeeping amendments gazetted in 2017) to refer to “Mixed Use Development”. *Mixed use development* means a building or place comprising 2 or more different land uses. Additionally, the amendment identified the SP1 zoned land as “Area D” on the Additional Permitted Uses Map and is subject to clause ‘8’ in Schedule 1 of Byron LEP 2014. The additional permitted use is as follows:

8 Use of certain land at Coast Road, Broken Head

- (1) This clause applies to land at The Coast Road, Broken Head (known as the Linnaeus Estate) being part of Lot 1, DP 1031848, and identified as “Area D” on the [Additional Permitted Uses Map](#).*
- (2) Development for the purposes of mixed use development that includes tourist or visitor accommodation is permitted with development consent.*

- (3) *Development consent may only be granted under this clause if the consent authority is satisfied that the proposed development:*
- (a) *is ancillary to a lawful existing land use, and*
 - (b) *is for the purpose of providing education or training for professional and personal development through a variety of academic, cultural and vocational programs.*

Part 2 Explanation of provisions

The planning proposal seeks to amend Schedule 1 of BLEP14 and Schedule 8 of BLEP88 to permit a Community Title development comprising 33 neighbourhood lots with a minimum size of 250 m² and one lot for association property on the subject land. No more than one dwelling will be erected on each neighbourhood lot. The SP1 zone on the subject land is already identified as Area D on the relevant map to BLEP14 (Additional Permitted Uses map) and no map change is therefore required. BLEP88 does not have a map identifying Schedule 8 land.

The zoning of the subject land will not be changed by this planning proposal.

A “Plain English” version of the clause is as follows:

What Land Does it Apply to?

Lot 1 DP 1031848, The Coast Road, Broken Head. Also known as The Linnaeus Estate.

What Additional Development will be Permitted?

A subdivision using a neighbourhood community title scheme creating a total of 33 neighbourhood lots with a minimum size of 250 m², each of which can be privately owned, and one lot comprising the residue of the land that will be in shared ownership.

Each privately owned lot can only contain one dwelling.

Part 3 Justification

Section A Need for the planning proposal

1 Is the planning proposal a result of any strategic study or report?

Yes, the planning proposal arises from a Council resolution in 2015 to investigate the suitability of the site for Community Title subdivision during preparation of the Byron Urban and Rural Housing Strategy.

The *Byron Shire Rural Land Use Strategy 2017* identifies the subject land as “priority sites for future rural lifestyle living opportunities”. The subject land is identified for “Community Title conversion of approved accommodation units only (i.e. no additional dwelling yield)”. This strategy was endorsed by the NSW DPE in July 2018.

A map showing the subject land as identified in the *Byron Shire Rural Land Use Strategy 2017* is at Figure 7.

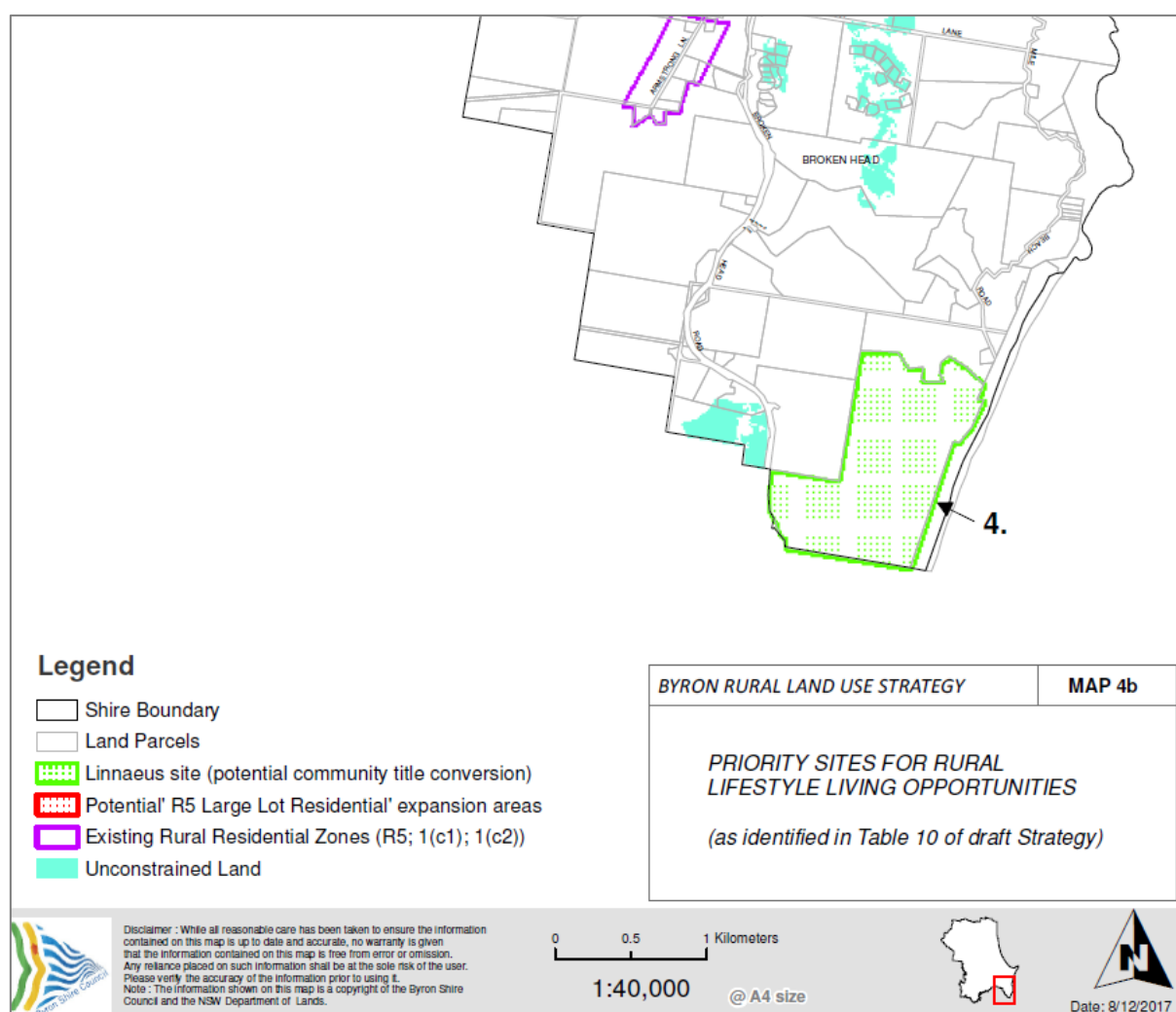


Figure 7: The Linnaeus Estate as identified in the *Byron Shire Rural Land Use Strategy 2017*

2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the best means to achieve the objective of permitting a Community Title subdivision on the subject land.

3 Is there a net community benefit?

The Net Community Benefit (NCB) Criteria are identified in the NSW Government's publication *Draft Centres Policy, 2009*, which states that the Net Community Benefit Test should be used to assess the merits of rezoning in the following circumstances:

- proposals to develop within an existing centre where the current zoning does not permit the use
- proposals to develop outside an existing centre where the current zoning does not permit the use
- proposals to create a new centre.

The main focus of the NCB Test is to ensure that centres remain compact and viable, and linked to existing and proposed transport networks (particularly public transport).

Assessment against the NCB Assessment Criteria is not appropriate for a planning proposal that deals with the subdivision of an existing development in a rural context.

Section B Relationship to strategic planning framework

1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (in this case the North Coast Regional Plan)?

The subject site is located outside of the Urban Growth Area boundary under the *North Coast Regional Plan 2036* (NCRP). It is located in the coastal strip being located east of the Pacific Highway.

The NCRP states (page 57) "*New rural residential housing will not be permitted in the coastal strip, unless the land is already zoned for this purpose, or is identified in a Department endorsed current or future local growth management strategy (or rural residential land release strategy).*" This is backed up by Actions 24.1 and 24.2.

The subject land is identified in the *Byron Shire Rural Land Use Strategy 2017*, which was endorsed by the NSW DPE in July 2018.

On this basis, the planning proposal is consistent with the NCRP.

2 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The *Byron Shire Rural Land Use Strategy 2017* identifies the subject land (Area 4) as a priority site for future rural lifestyle living opportunities (Figure 8).

Map 4 Reference	Locality	Potential Dwelling Yield (c)	Intersection requiring assessment
1.	McAuleys lane / Bilin Road, Myocum	25-45	Intersection of McAuleys Lane and Mullumbimby Road
2.	Wilsons Creek / Alidenes Rd	15-30	Intersection of Alidenes Road and Wilsons Creek Road
3.	Coopers Shoot Road, Coopers Shoot	- (a)	Not applicable
4.	Linnaeus Estate site Broken Head Road, Broken Head	- (b)	Not applicable
	TOTAL (approximate)	40-75 dwellings	

Figure 8: Extract from the *Byron Shire Rural Land Use Strategy 2017*

In 2012, Council adopted a 10 year + *Community Strategic Plan 2022* (CSP). The plan is based on five key themes being Corporate Management, Economy, Environment, Community Infrastructure, Society and Culture. Four of those themes or objectives are relevant to this planning proposal:

<i>Economy:</i> A sustainable and diverse economy which provides innovative employment and investment opportunities in harmony with our ecological and social aims	The planning proposal supports the economy through development and investment in the rural residential opportunities on the subject land, which will create economic growth and demand without major ecological or social concerns.
<i>Environment:</i> Our natural and built environment is improved for each generation	The planning proposal ensures the environment and its resources will be maintained and protected for future generations by restricting development to land with no major environmental significance. The proposed 33 neighbourhood lots reflect existing approvals and mostly existing structures and infrastructure. The large site has important ecological areas and these will be protected, including suitable buffers.
<i>Community Infrastructure:</i> Services and infrastructure that sustains, connects and integrates our communities and environment	The planning proposal builds on an existing private education facility. The site has adequate road access options with direct frontage to The Coast Road. Water and sewerage are available to service the subject land via an on-site potable water supply as well as the tertiary treatment of effluent at a land owner owned facility.

<i>Society and Culture:</i> <i>Resilient, creative and active communities with a strong sense of local identity and place</i>	The subject site is remotely located from services such as schools, shops, and health facilities but this is often the case in rural residential lifestyle based communities. It has an established group of owners and will continue to operate under existing approvals as an education facility with a unique character and strong sense of local identity and place.
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On this basis, the planning proposal is consistent with Council's CSP.

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

The State Environmental Planning Policies relevant to this planning proposal are as follows:

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP 44 – Koala Habitat Protection	SEPP 44 specifies that in order for a forested area to be classified as koala habitat, a minimum of 15% of the trees must be species of trees that provide food for koalas. The Byron Coast Comprehensive Koala Plan of Management does not include the subject land in a koala management precinct and does not identify it as having potential koala habitat. No clearing of vegetation is anticipated to implement the planning proposal outcomes beyond any clearing that has been approved in the past. Environment protection zones on this site are being dealt with under a separate planning proposal. This planning proposal complies with the SEPP.
SEPP 55 – Remediation of Land	The site has a range of approvals for structures related to its use as a private education facility. These have been approved for uses including accommodation for students. The supporting information provided to Council to support past development indicates that the site has no history of contamination from past land use. The proposed 33 Community Title neighbourhood lots will be located on the sites of existing approved accommodation structures. This planning proposal complies with the SEPP.
SEPP (Coastal Management) 2018	Parts of the subject land are within 250 metres of Seven Mile Beach and are classified as being within the “coastal environment area” identified in this SEPP (Figure 9). Parts of the subject land are within 500 metres of Seven Mile Beach and are classified as being within the “coastal use area” identified in this SEPP (Figure 10). Parts of the subject land are within mapped coastal wetlands or within 100 metres of coastal wetlands and are

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
	classified as being within the “coastal wetlands” or in proximity to coastal wetlands as identified in this SEPP (Figure 11). Parts of the subject land are within mapped littoral rainforest or within 100 metres of littoral rainforest and are classified as being within the “littoral rainforest” or in proximity to littoral rainforest as identified in this SEPP (Figure 12). The SEPP does not contain coastal vulnerability mapping. The proponent of the planning proposal contends that some land has been incorrectly mapped as “littoral rainforest” on the subject land and these mapping errors have been reported to the NSW DPE. No Community Title lots (other than the common property lot) are contemplated that would incorporate land that is correctly identified as coastal wetland or littoral rainforest. In any case, no change to the intensity of development is proposed and, accordingly, no alteration is anticipated in relation to the integrity and resilience of the biophysical characteristics of the site. No change is anticipated in relation to coastal values or impacts on the coastal process or other environmental planning considerations relevant to accessibility and cultural heritage matters. SEPP (Coastal Management) requires that Council must consider a range of matters when assessing development on land mapped in the SEPP as littoral rainforest, coastal wetlands, coastal use area or coastal environment area. It does not specifically address matters of concern when preparing a planning proposal. The SEPP will apply to future development on this site where it is proposed on land mapped in the SEPP at the time an application is being considered. Nothing in the LEP provisions contained in this planning proposal is inconsistent with the aim of the SEPP to “manage development in the coastal zone and protect the environmental assets of the coast”. The planning proposal is consistent with the SEPP.
SEPP (Rural Lands) 2008	<i>The aims of this Policy are as follows:</i> <i>(a) orderly and economic use and development of rural lands,</i> <i>(b) regard to Rural Planning Principles and the Rural Subdivision Principles,</i> <i>(c) to implement measures designed to reduce land use conflicts,</i> <i>(d) to identify State significant agricultural land</i> <i>(e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.</i>

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
	Only a very small part of the subject land is zoned rural. It is mostly zoned SP1 Special Uses and various environmental zones. No State or regionally significant agricultural land occurs on the subject land. It is a “committed urban area” or “other rural land” in the Northern Rivers Farmland Mapping Project. The planning proposal intends to convert an existing education facility to a community title based rural residential area, which will change the minimum lot size for a small part of the subject land and will permit 33 dwellings. The site is isolated from commercial agriculture by its location and extensive bushland. This should minimise the likelihood of significant impact on surrounding rural land. The planning proposal is consistent with the SEPP.



Figure 9: SEPP Coastal Environment Area (blue shade)

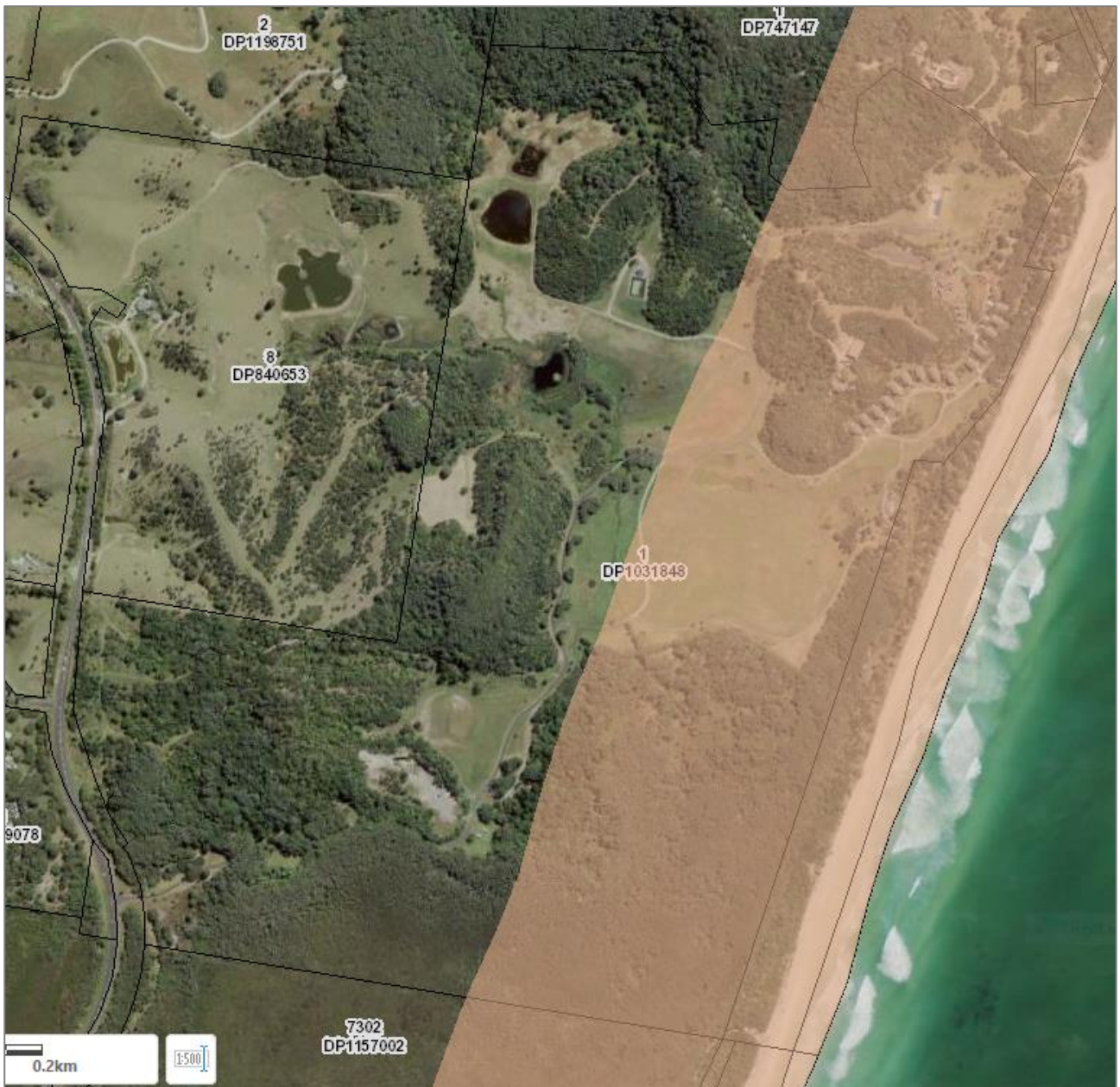


Figure 10: SEPP Coastal Use Area (orange shade)

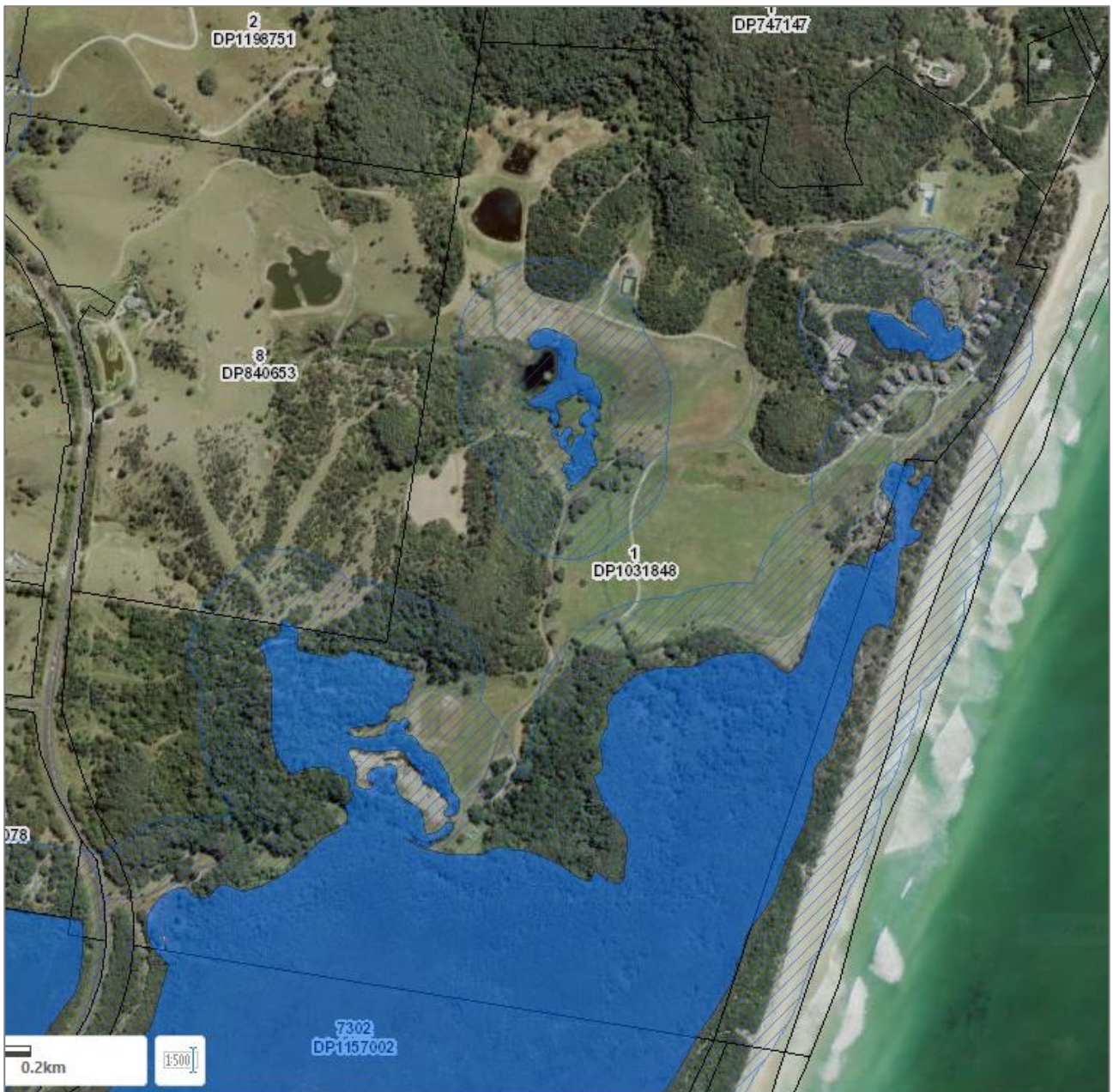


Figure 11: SEPP Coastal Wetland Area and Buffer (blue shade and blue hatch, respectively)

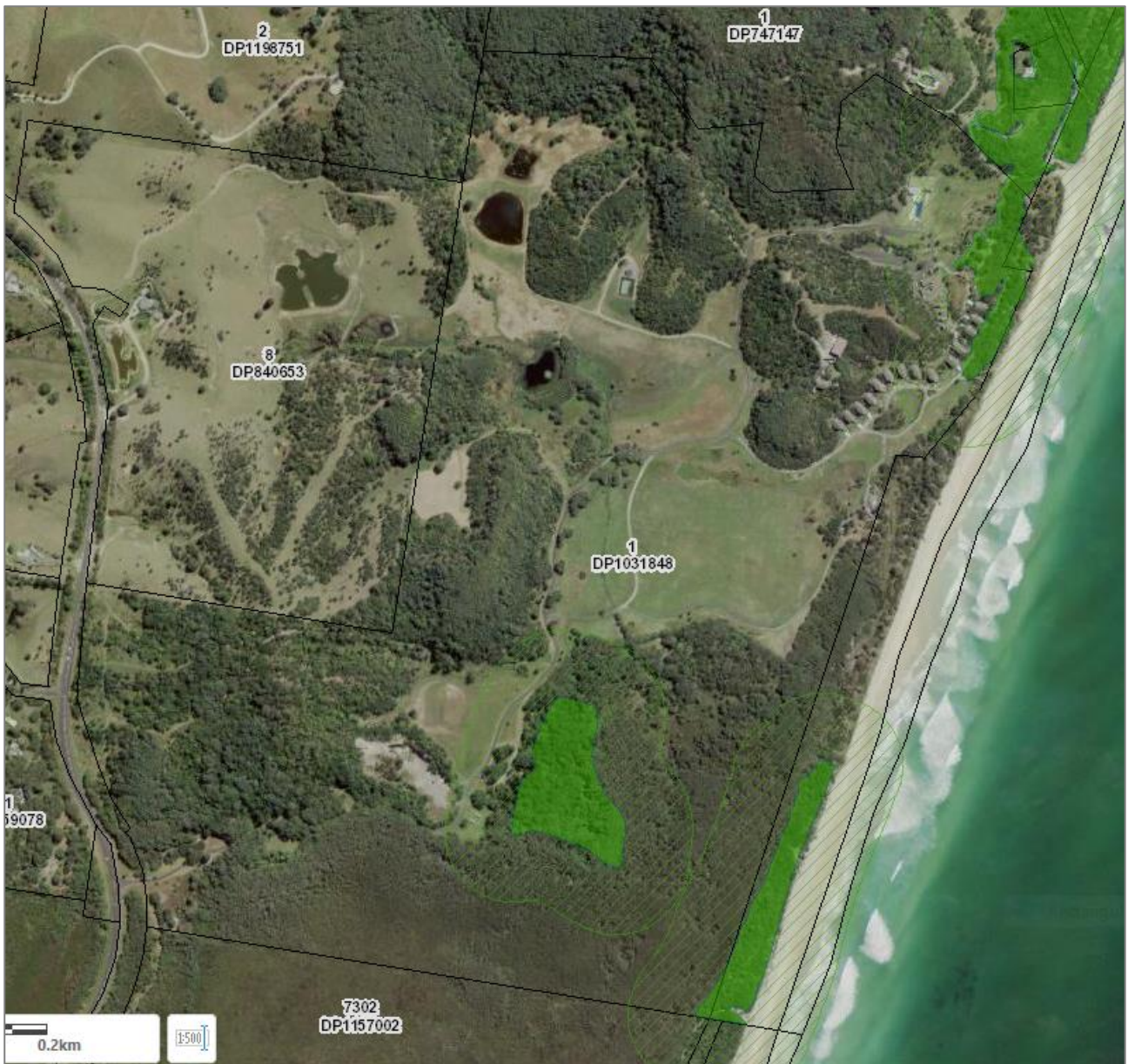


Figure 12: SEPP Littoral Rainforest Area and Buffer (green shade green hatch, respectively)

4 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?

Consistency with the s9.1 Directions is assessed in the following table:

Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
1 Employment and Resources			
1.1 Business and Industrial Zones	Applies when a relevant planning authority prepares 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).	This planning proposal will not affect the boundaries or extent of business or industrial zones.	N/A
1.2 Rural Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). Under this Direction a planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	This planning proposal will not affect the boundaries or extent of any rural zones.	N/A
1.3 Mining, Petroleum Production and Extractive Industries	Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (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.	This planning proposal will not affect the boundaries or extent of any zones. It will permit a form of subdivision and subsequent use of lots for dwellings. The dwellings will be incompatible with the use of the site for development of resources or extractive industry. However, it is a sensitive coastal location that is ecologically important. The site is already constrained by consent for land uses that are incompatible with the use of the site for development of resources or extractive industry. The inconsistency is considered to be of minor significance.	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
1.4 Oyster Aquaculture	Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in: (a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or (b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses.	Priority Oyster Aquaculture Areas (POAA) exist in the lower parts of the Brunswick River, however there is minimal likelihood the planning proposal will have adverse impacts on them. Most land in the vicinity of the POAA is already zoned for environmental protection or within the national parks estate.	Consistent
1.5 Rural Lands	Applies when: (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone. A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>. The Rural Planning Principles are: (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas, (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,	This planning proposal will not affect the boundaries or extent of any rural zones. It will alter the minimum lot size in part of the 7F1 (Coastal Lands) and 7D (Scenic) zones to allow the creation of some of the small lots that are occupied by existing accommodation structures. In relation to the Rural Planning Principles, the development that will result from this planning proposal will not undermine the rural economy; it will not impact negatively on agriculture on the subject land or adjacent to it; will not impact on the surrounding rural land use generally; balances the social and environmental interests of the site; will not impact on the biodiversity or water resources of the site; will provide for a small number of housing opportunities in a coastal rural setting; will not impact on services and infrastructure that are largely provided by the site management; and is consistent with the NCRP. In relation to the Rural Subdivision Principles, the development that will result from this planning proposal will only fragment a small part of the parent	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development, (d) in planning for rural lands, to balance the social, economic and environmental interests of the community, (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land, (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities, (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing, (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General. A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>. The Rural Subdivision Principles are: (a) the minimisation of rural land fragmentation, (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses, (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands, (d) the consideration of the natural and physical constraints and opportunities of land,	lot with dwellings occupying as little as 250 m². Overall, the proposed small lots will likely occupy less than 5% of the 111-hectare site. Conflict with surrounding rural land uses is unlikely given the location of the proposed lots on the eastern edge towards the centre of the lot. The nearest commercial agriculture is grazing about 600 metres west of the proposed lots. The provision of 33 small lots on this site is consistent with the supply and demand analysis in the <i>Byron Shire Rural Land Use Strategy 2017</i>. The natural and physical constraints of the site have been assessed in relation to past approvals for accommodation structures. The dwelling locations will be consistent with past approvals.	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	(e) ensuring that planning for dwelling opportunities takes account of those constraints.		
2 Environment and Heritage			
2.1 Environment Protection Zones	A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection 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 “<i>Rural Lands</i>”.	The planning proposal does not alter or remove any environment protection zone. No environmental standards will be reduced by the proposed LEP changes. In Byron Shire, environmental zones are being dealt with as a separate process, including this site. The proponent is also dealing with State government agencies in relation to Coastal SEPP mapping inconsistencies.	Consistent
2.2 Coastal Protection	This Direction applies when a relevant planning authority prepares a planning proposal that applies to land identified on SEPP (Coastal Management) 2018 maps as coastal wetlands, littoral rainforests, coastal environment or coastal use area. (4) A planning proposal must include provisions that give effect to and are consistent with: (a) the objects of the <i>Coastal Management Act 2016</i>, and (b) the <i>NSW Coastal Management Manual</i> and associated Toolkit, and (c) the <i>NSW Coastal Design Guidelines 2003</i>, and (d) any relevant Coastal Management Program certified by the Minister. (5) A planning proposal must not rezone land which would	The subject land is partly affected by coastal environment area, coastal use area, coastal wetlands and littoral rainforest mapping. Consistency with the relevant Objects of the <i>Coastal Management Act 2016</i> are as follows: • The existing accommodation structures have not exacerbated coastal processes and respect coastal values in design, scenic impacts and location. • The site provides no public access but it does not privatise the beach. Much of the lot frontage is separated by a 50-metre wide strip of Crown land. The public access to the beach will not change as a result of this planning proposal. • A search of the Aboriginal Heritage Information Management System (AHIMS) indicates that there	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	enable increased development or more intensive land use on land identified as being affected by current or future coastal hazard.	are two registered Aboriginal sites on the subject land; however there is uncertainty over the location of these sites. Development application No. 98/0146 was granted development consent by the NSW Land and Environment Court; the application noted that middens are evident along the foredune and a small number of flaked stone artifacts and a small grinding stone were discovered on the site. It is anticipated that there will be no impact on aboriginal heritage sites as a result of the planning proposal; however it is recommended that this be confirmed as a condition of the Gateway determination. It is noted that the current owners have a positive relationship with the local Aboriginal community. • The proposed Community Title subdivision will assist the development to remain sustainable by allowing easy transfer of property and normal access to funding for purchase. • The location of future dwellings in an area affected by coastal processes is not ideal, but the structures are there already (or approved already) and a future DA for change of use to a dwelling can impose additional relevant conditions to ensure that future erosion events do not result in loss of life. • The public will be able to comment of the planning proposal in full knowledge of what it being proposed. • Restoration of the coastal zone is a key feature of the management of this site and will be facilitated by community ownership of most of the land. • The government is unlikely to require coastal zone	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
		land in this locality for public acquisition. Byron Shire does not have a Coastal Management Program certified by the Minister. The site is affected by coastal processes. Some of the proposed neighbourhood lot sites are located east of the estimated 100-year erosion line. Permitting dwellings on the subject land is increasing the development rights relating to this land as, under current controls, only two dwellings would normally be permitted. However, this is justified because the approved accommodation structures are already built. A map showing the approved location of structures (and therefore likely lot locations) overlaid with predicted coastal erosion lines from Byron DCP Part J is at Appendix 1. The most recent approval (development consent number 10.2013.600) for accommodation structures includes conditions that: <i>The development must cease if at any time the coastal erosion escarpment comes within 50 metres of any building associated with this development. The buildings and works used in connection with the development must be removed immediately to an approved location by the owner of the land. The owner must return the landform of the subject land to the predevelopment state and suitably revegetate the land.</i> The consent also requires that a restriction-as-to-user, pursuant to the provisions of s88E of the <i>Conveyancing Act 1919</i>, be placed on the title of the land requiring that the development must cease if at any time the coastal erosion escarpment comes	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
		within 50 metres of the building subject of the consent. It is foreshadowed that similar conditions would be imposed on any approval for subdivision and/or dwellings. On this basis, no change will occur in relation to the coastal risk as a consequence of the implementation of the planning proposal.	
2.3 Heritage Conservation	A planning proposal must contain provisions that facilitate the conservation of: (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, (b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and (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.	The site is vacant and has no European heritage items located on it. A search of the Aboriginal Heritage Information Management System (AHIMS) indicates that there are two registered Aboriginal sites on the subject land, however there is uncertainty over the location of these sites. Development application No. 98/0146 was granted development consent by the NSW Land and Environment Court; the application noted that middens are evident along the foredune and a small number of flaked stone artifacts and a small grinding stone were discovered on the site. It is anticipated that there will be no impact on aboriginal heritage sites as a result of the planning proposal; however it is recommended that this be confirmed as a condition of the Gateway determination. It is noted that the current owners have a positive relationship with the local Aboriginal community. BLEP14 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire.	Consistent
2.4 Recreation Vehicle Areas	A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the	The planning proposal does not enable land to be developed for the purpose of a recreation vehicle	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	meaning of the <i>Recreation Vehicles Act 1983</i>): (a) where the land is within an environment protection zone, (b) where the land comprises a beach or a dune adjacent to or adjoining a beach, (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration: (i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and (ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</i>.	area.	
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	This Direction applies when a relevant planning authority prepares a planning proposal: (a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone; (b) that introduces or alters an overlay and associated clause. A planning proposal must apply the proposed E2 Environmental Conservation or E3 Environmental Management zones, or the overlay and associated clause, consistent with the Northern Councils E Zone Review Final Recommendations.	The planning proposal does not introduce an environmental zone or overlay. This is being dealt with by a separate planning proposal.	N/A
3 Housing, Infrastructure and Urban Development			
3.1 Residential Zones	This Direction applies when a relevant planning authority prepares a planning proposal that will affect land within: (a) an existing or proposed residential zone (including the	This planning proposal will not change or add any residential zones to the subject land. It will not permit significant residential development.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	alteration of any existing residential zone boundary), (b) any other zone in which significant residential development is permitted or proposed to be permitted. A planning proposal must include provisions that encourage the provision of housing that will: (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. A planning proposal must, in relation to land to which this Direction applies: (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.		
3.2 Caravan Parks and Manufactured Home Estates	Applies when a relevant planning authority prepares a planning proposal. In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must: (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP, zone the land in accordance with an appropriate zone under the	This planning proposal will not alter the permissibility of caravan parks or manufactured home estates on the subject land.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<i>Standard Instrument (Local Environmental Plans) Order 2006</i> that would facilitate the retention of the existing caravan park. In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must: (a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located, (b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent.		
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.	This planning proposal will not alter the permissibility of home occupations on the subject land.	N/A
3.4 Integrating Land Use and Transport	Applies when a relevant planning authority prepares 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. 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: (a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).	This planning proposal will not change or add any urban zones to the subject land. It will not permit significant residential development.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	(1) The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives: (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight.		
3.5 Development Near Licensed Aerodrome	Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome. The main requirements of the Direction are that Council considers the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential purposes, and does not increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.	The planning proposal will not alter provisions that affect land located in the vicinity of any aerodrome.	N/A
3.6 Shooting Ranges	Applies when a relevant planning authority prepares 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. A planning proposal must not seek to rezone land adjacent to and/or adjoining an existing shooting range that has the	There are no shooting ranges in the vicinity of this planning proposal.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	effect of permitting more intensive land uses in the area.		
4 Hazard and Risk			
4.1 Acid Sulfate Soils	Applies when a relevant planning authority prepares 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. A council shall not prepare a draft LEP 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 council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.	The land to which this planning proposal applies is partly mapped as Class 4 acid sulfate soils (Figure 5). For Class 4 land, the ASS layer is likely to be more than 2 metres below the ground surface. The planning proposal is unlikely to lead to works that will affect ASS at these depths. No neighbourhood lots are proposed in the ASS area. The area mapped as Class 4 is located south of that part of the development on which the proposed 33 neighbourhood lots will likely be located. If an area of Class 4 land is proposed to be disturbed, this can be dealt with under existing LEP provisions.	Consistent
4.2 Mine Subsidence and Unstable Land	Applies when a relevant planning authority prepares a planning proposal that permits development on land that: (a) is within a mine subsidence district, or (b) has been identified as unstable in a study, strategy or other assessment undertaken: (i) by or on behalf of the relevant planning authority, or (ii) by or on behalf of a public authority and provided to the relevant planning authority.	This planning proposal does not impact on any mine subsidence area. The site is not steep or known to be unstable. However, the eastern part is affected by coastal processes. Some of the proposed neighbourhood lots are east of the 100-year predicted erosion line but the structures located on these proposed lots are all approved under previous consents.	Consistent
4.3 Flood Prone Land	Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development</i>	This planning proposal does not apply to land that is flood affected.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<i>Controls on Low Flood Risk Areas</i>). A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environment Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone. A planning proposal must not contain provisions that apply to the flood planning areas which: (c) permit development in floodway areas, (d) permit development that will result in significant flood impacts to other properties, (e) permit a significant increase in the development of that land, (f) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (g) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General). For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on</i>		

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<i>Low Flood Risk Areas</i>) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).		
4.4 Planning for Bushfire Protection	Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. 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 Division 3.4 of the Act, and prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and take into account any comments so made. A planning proposal must: (a) have regard to <i>Planning for Bushfire Protection 2006</i>, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and (ii) an Outer Protection Area managed for hazard	The subject land is partly classified as bushfire prone land. Bushfire Hazard Reports have been provided for previous development applications and remain relevant to this planning proposal. Although the planning proposal seeks to make use of existing structures and approvals, it will still need to be referred to the Rural Fire Service. Consultation with the Rural Fire Service has not yet taken place and the inconsistency remains until that occurs.	Inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	reduction and located on the bushland side of the perimeter road, (b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the <i>Rural Fires Act 1997</i>), the APZ provisions must be complied with, (c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks, (d) contain provisions for adequate water supply for firefighting purposes, (e) minimise the perimeter of the area of land interfacing the hazard which may be developed, (f) introduce controls on the placement of combustible materials in the Inner Protection Area.		
5 Regional Planning			
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	The planning proposal is not within this catchment.	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	The planning proposal must not rezone land mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project for an urban use.	The land is not identified as State or regionally significant farmland under the Northern Rivers Farmland Protection Project.	Consistent
5.4 Commercial and Retail Development along the Pacific	A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that: (a) new commercial or retail development must be	The planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
Highway, North Coast	concentrated within distinct centres rather than spread along the highway, (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway. (c) For the purposes of this paragraph, “within town” means areas which, prior to the draft local environmental plan, have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) and where the Pacific Highway speed limit is less than 80 km/hour. A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that: (a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction, (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway. (c) For the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80 km/hour or greater.		
5.10 Implementation of Regional Plans	All planning proposals must be consistent with the applicable Regional Plan released by the Minister for Planning.	The planning proposal affects land subject to the NCRP. The subject land is identified in the <i>Byron Shire Rural Land Use Strategy 2017</i> , which was endorsed by the NSW DPE in July 2018. The planning proposal is therefore consistent with Actions 24.1 and 24.2 of the NCRP.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
6. Local Plan Making			
6.1 Approval and Referral Requirements	A planning proposal must: (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (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: (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and (c) not identify development as designated development unless the relevant planning authority: (i) can satisfy the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of Division 3.4 of the Act.	The planning proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority. It does not identify development as designated development.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
6.2 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 Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General).	The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.	N/A
6.3 Site Specific Provisions	Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either: (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. A planning proposal must not contain or refer to drawings that show details of the development proposal.	The planning proposal does seek to allow a particular development to be carried out. In this case, the planning proposal is introducing a new schedule item into BLEP14 and BLEP88. This will specifically allow a 33 lot Community Title subdivision based on existing approved development. The site has a long history and Council considers it is reasonable that it now be used as a rural residential community. It is affected by two LEPs and therefore both need to be amended. The planning proposal does not contain schematic drawings.	Justifiable inconsistency

Section C Environmental, social and economic impact

1 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. The planning proposal will allow subdivision of twenty existing accommodation structures and thirteen approved accommodation structures that are yet to be constructed. Minimal clearing will be involved.

However, ecological mapping over the site and the E zones that flow from it is the subject of a separate planning proposal by Council. The SEPP (Coastal Management) 2018 mapping is disputed by the land owners, including the extent of littoral rainforest and wetlands.

No zones are being altered in this planning proposal as they are being dealt with in a separate planning proposal that needs to run its course. Any future development applications for either subdivision or dwellings will be subject to the zoning and SEPPs that prevail at the time and dealt with on merit.

The site management has an 18-year association with Envite, NR Catchment Management Authority, NSW Environmental Trust, Caring for Country CoastCare, and Landcare in relation to environmental restoration and repair on the subject land.

It is highly unlikely that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the planning proposal.

2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. The subject site is currently used as a private education facility and is self-contained for water supply and wastewater treatment and disposal. This use is intended to continue. The planning proposal will allow a different form of land ownership but not much else is likely to change.

3 How has the planning proposal adequately addressed any social and economic effects?

The planning proposal will have minimal social and economic effects as the site is already well established. Any housing that may come onto the market will not be affordable to average income earners but will likely suit investors or retirees. The subject land is a gated community and all internal roads are privately owned and maintained. Construction of the remaining structures will be a positive impact for the local industry if local persons are used. Building and property maintenance will be required on an ongoing basis. Home based businesses may result if dwellings are permitted on the site.

Section D State and Commonwealth interests

1 Is there adequate public infrastructure for the planning proposal?

Reticulated water supply and sewerage exists as a privately owned and operated system. All internal roads are privately owned and maintained. The access point to The Coast Road is established and functions adequately.

Reticulated power and telecommunications are connected to the site. NBN can be installed at the subdivision stage if it is not already in place.

State infrastructure such as schools and hospitals are located at Ballina and Byron Bay, and will be able to deal with the additional population if dwellings are permitted on the site.

There is adequate public infrastructure to deal with the proposed rural residential development permitted by the planning proposal.

2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The Gateway determination has yet to be issued. It is anticipated that the Office of Environment and Heritage, Rural Fire Service, Jali LALC and Arakwal Corporation will be consulted during the public exhibition.

At this early stage, it appears unlikely that there will be any issues of interest to Commonwealth authorities. Other State government authorities will be consulted during the public exhibition period in accordance with the Gateway requirements.

The following table provides a summary of the relevant public authorities, which in the opinion of Council, should be consulted in accordance with the Gateway determination:

Public authority/stakeholder	Issue requiring comment
Office of Environment and Heritage	Consideration of littoral rainforest and wetland areas, coastal processes and Aboriginal archaeological matters
Rural Fire Service	Bushfire issues
Jali LALC and Arakwal Corporation	Aboriginal cultural heritage and archaeological matters

Part 4 Mapping

The planning proposal will not amend any maps for the following reasons:

- Byron LEP 2014 – No map is required to be amended because the subject land is already identified on map sheet APU_003D as Area D and linked to Schedule 1.
- Byron LEP 1988 – Additional permitted uses are not mapped in this LEP.

Part 5 Community consultation

Council will commence community consultation in accordance with the Gateway determination. For the purposes of public notification, the planning proposal is not considered to be low impact as outlined in the NSW DPE's *A guide to preparing local environmental plans*. A 28 day public exhibition period is recommended.

Notification of the exhibited planning proposal will include:

- a newspaper advertisement that circulates in the Byron LGA, which is the area affected by the planning proposal
- the web sites of Byron Shire Council and the NSW DPE.

Any supporting studies and information from previous development applications that apply to this site will also be included in the exhibition material.

Part 6 Project timeline

The proposed timeline for the completion of the planning proposal is as follows:

Estimated completion	Plan making step
November 2018	Decision by Council to support the planning proposal and send for Gateway determination by the NSW DPE.
December/January 2018	Gateway determination issued by the NSW DPE.
February/March 2019	Public exhibition of planning proposal. Further government agency consultation.
April 2019	Analysis of public submissions. Preparation of Council report.
May/June 2019	Decision by Council to endorse the planning proposal and submit to the NSW DPE for finalisation.

Summary and conclusions

This planning proposal seeks to amend schedules to BLEP14 and BLEP88 to permit the creation of a neighbourhood community title scheme comprising 33 neighbourhood lots with a minimum size of 250 m² and one lot for association property. No more than one dwelling will be erected on each lot. The end result will be a community title based rural residential estate in a coastal setting.

The land has been subject to a number of previous development applications for private education uses and facilities. This has resulted in approval for 33 accommodation structures that have the ability to be used as dwellings subject to Council approval. Twenty of the structures exist already.

The site is already serviced with reticulated water and sewerage infrastructure, reticulated power, and has good road access. The land is not contaminated from past land use, does not contain ASS in the proposed development area and has no serious geotechnical issues that would prevent its development. The planning proposal is not likely to have an adverse impact on significant agricultural lands.

Part of the site is affected by coastal erosion, including some of the lots that will likely result. These structures have already been approved and twenty of them have already been built. It is likely that conditions requiring future dwellings to be removed when the erosion threat is imminent will be imposed to address this issue. These conditions have been imposed on past approvals for accommodation on this site.

The site does contain coastal wetlands, littoral rainforest and other habitat areas. It is not intended that these areas would be impacted by future development.

The proposed zoning changes are consistent with the NCRP. The land is identified in the *Byron Shire Rural Land Use Strategy 2017* as a candidate area for rural community title use based on existing consents. An assessment of the planning proposal indicates that it is consistent with relevant SEPPs. It is consistent with most of the relevant s9.1 Directions, and where inconsistencies occur they can be justified.

In conclusion, it is appropriate to submit the planning proposal to the NSW DPE for a Gateway determination so that it can proceed to public exhibition (subject to compliance with any Gateway conditions).

Appendix 1

Coastal erosion lines from Byron DCP Part J on Draft Proposed Lot Layout (Source: Planners North submission)

