

# Planning Proposal

## North Beach Byron

For amendment to Byron Local Environmental Plan  
2014



Byron Shire Council

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# Part 1 Introduction

## Objective and intended outcomes

This planning proposal relates to land located at Bayshore Drive Byron Bay. The objectives are to amend the Byron Local Environmental Plan (BLEP14) 2014 to:

1. change the zoning of the cleared undeveloped part of the land to E4 Environmental Living; and
2. apply environmental zones to some parts of the land currently identified as “deferred matters”.

Details of the suggested BLEP14 amendments are outlined in Part 2 of this planning proposal.

## Property details and existing zones

This planning proposal relates to land located at the northern end of Bayshore Drive Byron Bay.

The individual lots subject to this planning proposal are shown in the Plan Set (Appendix A). They are:

- Lots 1, 2 & 4 DP 1215893
- Lots 12 & 13 DP 243218
- Lots 447 & 449 DP 812102
- Lot 1 DP 1215814; and
- Lot 2 DP 620642.

The existing zoning applicable to the land is shown in the Plan Set (Attachment A). As shown, the subject land contains areas zoned under *Byron Local Environmental Plan 2014* (LEP 2014) and areas mapped as “deferred matters” under that Plan. Those deferred areas retaining the applicable zoning under the previous Plan, *Byron Local Environmental Plan 1988* (LEP 1988).

Table 1 below summarises the existing zones applicable to the individual lots that make up the subject land:

**Table 1: Existing Zoning**

<b><i>Property</i></b>	<b><i>Total Area (ha)</i></b>	<b><i>Zoning</i></b>	<b><i>Existing Uses</i></b>
Lot 1 DP 1215893	32.73	LEP 2014:  SP3 Tourist  LEP 1988  2(t) Tourist Area  7(a) Wetland  7(f1) Coastal Lands	Elements of Byron resort
Lot 2 DP 1215893	2.02	LEP 2014:  SP3 Tourist  LEP 1988:  7(f1) Coastal Lands	Vacant
Lot 12 DP 243218	2.73	LEP 2014:  SP3 Tourist  LEP 1988:  7(f1) Coastal Lands	Vacant
Lot 13 DP 243218	3.95	LEP 2014  SP3 Tourist  LEP 1988  7(f1) Coastal Lands	Vacant
Lot 449 DP 812102	32.08	LEP 2014:  SP3 Tourist	Vacant

<b><i>Property</i></b>	<b><i>Total Area (ha)</i></b>	<b><i>Zoning</i></b>	<b><i>Existing Uses</i></b>
		LEP 1988:  2(t) Tourist Area  7(a) Wetland  7(b) Coastal Habitat  7(f1) Coastal Lands	
Lot 447 DP 812102	1.87	LEP 2014  SP3 Tourist  LEP 1988  2(t) Tourist Area	Vacant
Lot 4 DP 1215893	2.27	LEP 2014:  SP3 Tourist  LEP 1988:  2(t) Tourist Area	Vacant
Lot 1 DP 1215814	1.20	LEP 2014:  SP3 Tourist  LEP 1988:  2(t) Tourist Area	Vacant
Lot 2 DP 620642	2.05	LEP 1988  7(a) Wetland	Vacant

All of the subject land is owned by Ganra Pty Ltd.

Lot 1 DP 1215893 contains the approved Elements of Byron resort. The remaining lots are vacant.

The north-eastern boundary of the land abuts vegetated sand dunes of Belongil beach. The Belongil Creek mouth is located at the south-east end of the subject land.

Immediately north of the Elements resort, the land is predominantly cleared, having been used in the 1980s as a private golf course. An existing 3.0m wide Right of Way is located in this area, across Lot 2 DP 1215893 & Lot 12 DP 243218, connecting public parking areas on Bayshore Drive and the beach, to provide for public access to the beach.

Further to the north and west, substantial parts of the site are heavily vegetated, with revegetation works having been successfully implemented by the landowner, particularly in the north-west parts.

The whole of the site is generally flat, with levels averaging around RL 1.8 to 2.2m AHD throughout the central part. It rises to the rail line to approximately RL 3.0m AHD, and to a ridge along the north-eastern sand dunes at around RL 7.5 to 10.0m AHD.

Two main drainage lines traverse the site, draining to Belongil Creek, with a number of artificial water bodies located across the property.

## Background

Council has received a request to amend Byron Local Environmental Plan (BLEP) 2014 to rezone land immediately to the north-west of the Elements of Byron Resort, Bayshore Dr Byron Bay. The site includes a number of properties under one ownership.

The land had previously been used as a private golf course associated with a former tourist facility on the land. In more recent times it has been used to accommodate the Byron Writer's Festival.

The rezoning request has been made to facilitate a residential subdivision of the land to larger residential lots, each with provision for a single dwelling.

Part of the subject land is zoned SP3 Tourist under Byron Local Environmental Plan 2014, with other parts of the land deferred, retaining the zoning under Byron Local Environmental Plan 1988, including 2(t) Tourist Area, 7(a) Wetlands, 7(b) Coastal Habitat and 7(f1) Coastal Lands.

The requested rezoning relates primarily to the cleared grassed parts of the land, to implement a zoning of E4 Environmental Living. This zoning has not previously been applied within LEP 2014, and this would be the first property zoned as such.

The objectives of the E4 Environmental Living Zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*



- *To ensure that residential development does not have an adverse effect on those values.*

In this case, the significant values of the land relate to its beachfront location and the potential ongoing implications of coastal processes.

To address this, the applicant has commissioned a detailed Coastal Hazards Assessment, which provides contemporary modelling to establish the likely location of the erosion escarpment in years 2050, 2070, 2100 and 2120 (see Appendix B).

The modelling approach, which includes allowance for sea-level rise, was agreed by staff of the Department of Planning, Industry and Environment Coastal Division, and forms a sound basis for the hazard assessment.

The modelling shows that the contemporary 100 year hazard line (i.e. for the year 2020) is located approx. 135m seaward of the previously mapped 100 year hazard line, which was used as the basis of the 7(f1) Coastal Land zoning and associated DCP Part J erosion precincts. The previous mapping was based on analysis from the 1970s.

The contemporary modelling demonstrates that the area within the site that is subject to coastal hazard is far smaller than previously understood.

The landowner requested that the E4 Environmental Living zone be applied over the whole of the cleared parts of the property, including parts of the property seaward of the contemporary 100 year hazard line; suggesting that Development Control Plan (DCP) provisions could address coastal hazards for the part of the land identified as subject to coastal hazards (i.e. seaward of the 100 year hazard line).

Council is currently working on a Coastal Management Program (CMP) for the Shire's northern and southern beach compartments. Amongst other things, the CMP will identify land subject to coastal hazard, by way of contemporary "probabilistic" modelling, similar to that undertaken for the land subject to this rezoning request. The Program will also develop policies for how that land will be managed.

It is considered that, pending completion of the Coastal Management Program, it is premature to rezone land that is subject to identified coastal hazard.

As such, the landowner has agreed to a zoning of E2 Environmental Conservation over the part of the site located seaward of the 100 year hazard line.

This planning proposal, therefore, seeks to apply the E4 Environmental Living zone to the cleared parts of the site, located landward of the contemporary 100 year coastal hazard line (i.e. land not subject to coastal hazards) and E2 to land located seaward of that hazard line.

In addition to the landowner requested zoning, there has been previous agreement, as part of Council's "E zone review" process to Environmental Protection Zones E2 and E3 being applied over the vegetated parts of the property.

For completeness, these environmental zones will be applied through this planning proposal, so that the property can be addressed as a whole.

## Council resolution

At the Council (Planning) Meeting of 17 September 2020, Council resolved:

- 1. That Council prepare a planning proposal to rezone a section of land at North Beach Byron to E4 Environmental Living, and implement the agreed E2 and E3 environmental zones across the site (Attachment 1), and forward the proposal to the Department of Planning, Industry and Environment for Gateway determination.*
- 2. That the planning proposal be placed on public exhibition in accordance with the Gateway determination, and that Council receive a further report at the end of the exhibition period detailing submissions made.*
- 3. That the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line, pending completion of the Coastal Management Program, at which time it can be reviewed.*

## Part 2 Explanation of Provisions

The proposal to alter the existing zoning of the site has two components.

The first, the landowner requested proposal, seeks to apply an E4 Environmental Living zone over the cleared part of the subject land located landward of the 100 year coastal hazard line, to facilitate a subdivision of the land to create residential lots. The landowner has agreed to the application of E2 Environmental Conservation over the cleared part of the site located seaward of the 100 year coastal hazard line.

The second component relates to Council's "E Zone Review". Separate to the rezoning request, the landowner has agreed to the application of Environmental Protection Zones over the vegetated parts of the site that are currently 'deferred' under BLEP 2014.

Details of both rezoning proposals are outlined below, and shown in the attached plan set.

This Planning Proposal relates only to BLEP 2014. No changes are proposed to BLEP 1988.

The current and proposed LEP maps are contained in **Appendix A**.

## Landowner request

The landowner's rezoning request is supported by a Coastal Hazards Assessment undertaken for the site by Royal Haskoning DHV (see Appendix B). That assessment maps 50, 80 and 100 year coastal erosion hazard lines for the site, based on contemporary "probabilistic" modelling. The modelling approach was agreed by staff of the

Department of Planning, Industry and Environment Coastal Division, and therefore forms a sound basis for the hazard assessment.

The modelling shows that the contemporary 100 year erosion hazard line is located approx. 135m seaward of the 100 year hazard line that previously formed the basis of the 7(f1) zoning and Part J erosion precincts, demonstrating that the area within the site that is subject to coastal hazard is far smaller than previously thought.

The landowner originally requested that the E4 Environmental Living zone be applied over the whole of the cleared part of the site, including the land located seaward of the contemporary 100 year hazard line; suggesting that Development Control Plan (DCP) provisions could address coastal hazards for the land identified as subject to coastal hazards (i.e. seaward of the 100 year hazard line).

Council is currently working on a Coastal Management Program (CMP) for the Shire's northern and southern beach compartments. Amongst other things, the CMP will identify land subject to coastal hazard, by way of contemporary "probabilistic" modelling similar to that undertaken for this rezoning request. The Program will also develop policies for how that land will be managed.

Council resolved (Res. 20-470, Part 3) that the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line, pending completion of the Coastal Management Program, at which time it can be reviewed.

Through further consultation with the applicant and agencies an E2 zone has instead been applied. This was to ensure that this part of the future lots to be created retained the integrity of the hazard line without development being placed on it.

The landowner has subsequently agreed to the application of the E2 Environmental Conservation over the part of the site located seaward of the 100 year coastal hazard line.

The table below provides a summary of the recommended change in zoning for each of the affected lots, with the proposed zoning shown in the attached plan set.

**Table 2: Proposed Zoning**

<i><b>Property</b></i>	<i><b>Current Zone</b></i>	<i><b>Proposed Zone</b></i>
Lot 2 DP 1215893	SP3 Tourist	E4 Environmental Living
	7(f1) Coastal Lands	E4 Environmental Living landward of 100 year coastal hazard line
		E2 Environmental Conservation seaward of 100 year coastal hazard line
Lot 12 DP 243218	SP3 Tourist	E4 Environmental Living

<b>Property</b>	<b>Current Zone</b>	<b>Proposed Zone</b>
	7(f1) Coastal Lands	E4 Environmental Living landward of 100 year coastal hazard line
		E2 Environmental Conservation seaward of 100 year coastal hazard line
Lot 13 DP 243218	SP3 Tourist	E4 Environmental Living
	7(f1) Coastal Lands	E4 Environmental Living landward of 100 year coastal hazard line
		E2 Environmental Conservation seaward of 100 year coastal hazard line
Lot 449 DP 812102	7(f1) Coastal Lands	E4 Environmental Living over cleared portion landward of 100 year coastal hazard line
	2(t) Tourist Area	E4 Environmental Living over cleared portion

## Proposed E4 Zone

E4 Environmental Living is a zone that has not previously been applied in Byron Local Environmental Plan 2014. It is intended as a zone for land with special environmental or scenic values where residential development can be accommodated. Development in this zone is to give priority to preservation of the environmental qualities of the land.

Within the State Government's Standard LEP Template, the description of the zoning is:

1. *Objectives of zone*
  - *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
  - *To ensure that residential development does not have an adverse effect on those values.*
2. *Permitted without consent*  
*Home occupations*
3. *Permitted with consent*  
*Dwelling houses; Oyster aquaculture; Pond-based aquaculture; Tank-based aquaculture*

#### 4. *Prohibited*

*Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

Council is able to build on this development table, subject to the following guidance:

*The following must be included as either “Permitted without consent” or “Permitted with consent” for this zone:*

- *Environmental protection works*
- *Roads*
- *Home industries may (but need not) be included as permitted with consent.*

Based on that, and in the circumstances of the proposed rezoning, the E4 Environmental Living zoning table is proposed as shown below (land uses added are shown in *italic*):

### **Zone E4 Environmental Living**

#### 1. Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.

#### 2. Permitted without consent

*Environmental protection works; Home occupations*

#### 3. Permitted with consent

Dwelling houses; Oyster aquaculture; Pond-based aquaculture; *Roads*; Tank-based aquaculture

#### 4. Prohibited

*Home industries; Industries; Residential accommodation; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.*

## **Lot Size**

The Minimum Lot Size map is proposed to be amended to establish a minimum lot size of 1ha over the part of the site to be zoned E4. This will enable a maximum of 9 lots to be created subject to further consideration at the Development Assessment Stage.

## E Zone application

The landowner has agreed to the application of environmental zones as part of the wider E Zone review process. Given that agreement, it is reasonable that the implementation of the E2 and E3 zones be amalgamated into the Planning Proposal for the site.

**Table 3: Proposed Zones from the E Zone process**

<i><b>Property</b></i>	<i><b>Current Zone</b></i>	<i><b>Proposed Zone</b></i>
Lot 1 DP 1215893	7(f1) Coastal Lands	No change
	2(t) Tourist Area	part E2 Environmental Conservation part E3 Environmental Management
	7(a) Wetland	E2 Environmental Conservation
Lot 2 DP 620642	7(a) Wetland	E2 Environmental Conservation
Lot 449 DP 812102	7(f1) Coastal Lands	No change
	2(t) Tourist Area	E2 Environmental Conservation over vegetated part
	7(a) Wetlands	E2 Environmental Conservation
	7(b) Coastal Habitat	E2 Environmental Conservation
Lot 447 DP 812102	2(t) Tourist Area	E2 Environmental Conservation
Lot 4 DP 1215893	2(t) Tourist Area	E2 Environmental Conservation over vegetated part
Lot 1 DP 1215814	2(t) Tourist Area	E2 Environmental Conservation over vegetated part

The application of environmental zones (E zones) in Byron Shire must be consistent with the *Northern Councils E Zone Review Final Recommendations Report* prepared by the Department of Planning and Environment. That report is supported by Section 9.1 Ministerial Direction 2.5, to ensure the application of E zones and mapped planning controls are consistent with the final recommendations report.

Council's application of E zones to 'deferred' and 'non-deferred' land is informed by the following key elements of the Final Recommendations Report.

### **Primary use of land**

The Final Recommendations Report defines “primary use” of the land as the main use for which the land has been used for the last two (2) years.

For land that Council has verified as consistent with the vegetation criteria for an environmental zone, an E2 or E3 zone will generally be applied if the primary use of the land is confirmed to be environmental conservation (E2) or environmental management (E3).

For purposes of this planning proposal, the primary land use has been assessed by Council in consultation with the landowners.

### **Verifying the E zone criteria**

For the proposed E2 and E3 zones, the presence of attributes that meet the criteria have been verified through:

- review of current (not more than five years old) high resolution digital aerial photography, and
- biodiversity field inspections and ground surveys conducted by an appropriately qualified person.

### **Public and private land inconsistent with the criteria**

Private land may be zoned E2 or E3, despite being inconsistent with the criteria, if it is consistent with a negotiated development outcome (e.g. master plan, rezoning, development consent or designated offset areas) or with the agreement of the landowner.

In this case, most of the E2 and E3 areas are consistent with criteria.

The areas proposed to be zoned E3 are located directly adjacent to the existing approved tourist accommodation, being areas within which asset protection zones are required to be maintained in accordance with the applicable Bush Fire Safety Authority for the development.

The E2 zone proposed for the cleared part of the site located landward of the 100 year coastal hazard line is not directly consistent with the criteria. The land owner has agreed to the application of this zone.

## **Consequential Map amendments**

In addition to the zoning changes, the planning proposal will necessitate a number of consequential map amendments:

- Lot Size Map – LSZ\_003CC

Introduce appropriate minimum lot sizes for all zones within the study area. The E4 Environmental Living zone will have a minimum lot size of 1ha and the E2 and E3 zones will have a minimum lot size of 40ha.

- Height of Buildings Map – HOB\_003CC

Currently, a maximum height of 9.0m applies to the areas zoned SP3 Tourist. There is no maximum building height applicable to the deferred areas.

This planning proposal intends to extend the 9.0m maximum building height across the whole of the site.

- Acid Sulfate Soils Map – ASS\_003CC

The Map currently does not apply to the deferred areas. This planning proposal intends to extend the appropriate acid sulfate soils mapping across the whole of the site.

- Land Application Map – LAP\_001

The map will be amended to remove some of the deferred areas for the site.

- Floor Space Ratio Map – FSR\_003CC

The Map will be amended to reflect the changes to the part of the site zoned SP3 Tourist.

## Part 3 Justification

### Section A – Need for the Planning Proposal

#### **Q1. Is the planning proposal a result of any strategic study or report?**

The E4 component of the proposed rezoning is not a result of a strategic study. It comes from a landowner application, to enable a future residential development of the land.

The E2 / E3 component is a result of Council's E zone review process and comes from the *Northern Councils E Zone Review Final Recommendations Report* published by the Department of Planning and Environment in October 2015. This report outlines the criteria for the application of environmental zones ("E" zones) to deferred matters previously identified as an E zone but excluded from the new plan (Byron LEP 2014).

#### **Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

A planning proposal is the appropriate and only mechanism to integrate deferred matters into the Byron LEP 2014.

### Section B – relationship to strategic planning framework

#### **Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?**



As shown below, part of the site is located within the Byron Urban Growth Area under the *North Coast Regional Plan 2036* (NCRP). All of the land is within the 'coastal strip' as identified in that plan.



The part of the site currently zoned 7(f1) Coastal Land is the portion located outside of the Urban Growth Area, based on the historic coastal hazard mapping upon which that zoning was based.

This planning proposal includes a zoning of E4 Environmental Living over part of that land. The following table therefore addresses that proposal in relation to the Urban Growth Variation Principles.

### Urban Growth Variation Principles

Principle	Consistency
<p><b>Policy</b> The variation needs to be consistent with the objectives and outcomes in the <i>North Coast Regional Plan 2036</i> and any relevant Section 9.1 Directions and State Environmental Planning Policies, and should consider the intent of any applicable local growth management strategy.</p>	<p><u><i>Principle 1: Direct growth to identified urban growth areas</i></u></p> <p>The proposal relates to cleared land adjacent to a resort and closely connected to nearby residential and business areas. The increase to the urban growth area is considered minor.</p> <p><u><i>Principle 2: Manage the sensitive coastal strip</i></u></p> <p>The associated coastal hazards have been addressed within this planning proposal. The new E4</p>

Principle	Consistency
	<p>Environmental Living Zone and 1ha minimum lot size will ensure this coastal site is not heavily developed.</p> <p><i>Principle 3: Provide great places to live and work in a unique environment</i></p> <p>The close connection to residential areas, industrial state and the Byron town centre will allow for easy access to employment and services. Due to the site's location and scale of the potential housing, it is unlikely that this will contribute greatly to housing diversity.</p>
<p><b>Infrastructure</b> The variation needs to consider the use of committed and planned major transport, water and sewerage infrastructure, and have no cost to government.</p> <p>The variation should only be permitted if adequate and cost-effective infrastructure can be provided to match the expected population.</p>	<p>Access to the site is via a sealed road and water sewer infrastructure is also available. The small increase in residential housing is unlikely to have any significant impact on public infrastructure.</p>
<p><b>Environmental and farmland protection</b> The variation should avoid areas of high environmental or heritage value and mapped as important farmland</p>	<p>The proposed E4 zoned area is not considered as high environmental or heritage value. An ecological assessment for this site is provided. The site is not mapped as important farmland</p>
<p><b>Land use conflict</b> The variation must be appropriately separated from incompatible land uses, including agricultural activities, sewage treatment plants, waste facilities and productive resource lands.</p>	<p>The 1ha minimum lot size will ensure enough separation of the residential housing to the existing tourist resort. It is unlikely that there will be any land use conflicts.</p>
<p><b>Avoiding risk</b> The variation must avoid physically constrained land identified as:</p> <ul style="list-style-type: none"> <li>• flood prone;</li> <li>• bushfire-prone;</li> </ul>	<p>The land has mapped constraints including flood prone, bushfire prone, coastal zone and acid sulfate soils.</p> <p>These constraints have been addressed in this planning proposal and the accompanying studies.</p>

Principle	Consistency
<ul style="list-style-type: none"> <li>• highly erodible;</li> <li>• having a severe slope; and</li> <li>• having acid sulfate soils</li> </ul>	
<b>Heritage</b> The variation must protect and manage Aboriginal and non-Aboriginal heritage.	Consultation has occurred with Tweed Byron Local Aboriginal Land Council (TBLALC) with a report produced and attached. No objection to the proposed rezoning is presented, however due to the high possibility of aboriginal artifacts being present in the coastal area any future development applications should be referred to TBLALC.
<b>Coastal area</b> Only minor and contiguous variations to urban growth areas in the coastal area will be considered due to its environmental sensitivity and the range of land uses competing for this limited area.	The variation to the urban growth boundary is of a relatively small scale and adjoins the existing boundary which follows a past coastal hazard line. Based on more recent studies this hazard line can be moved seaward and as such the urban growth boundary should also reflect this.

The most relevant NCRP principle is *Principle 2: Manage the Sensitive Coastal Strip* which describes the constraints associated with this land and acknowledges the demand for new residential land with only minor and contiguous variations to the urban growth boundaries to be considered.

This proposal acknowledges these constraints and seeks minor residential development that complements the surrounding environmental values without enabling an inappropriate density for the site.

**Q4. Will the planning proposal give effect to a Council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

Council's Local Strategic Planning Statement (LSPS) has recently been endorsed. It presents a 2036 vision and framework for land use within Byron Shire, outlining how growth and change will be managed to maintain the high levels of environmental amenity, liveability and landscape quality that characterises the Shire.

It sets out key themes and priorities for the Shire, which are addressed below in relation to this planning proposal:

***A Sustainable Shire***

**SP1** *Protect and enhance our biodiversity, ecosystems and ecology*

The planning proposal will implement environmental protection zones over parts of the site that contain high biodiversity value.

- |  |   |
|--|---|
| <p><i>SP2 Strive to become a sustainable community</i></p>     | <p>The planning proposal will finalise the future for the whole of the site, protecting key areas of biodiversity and authorising a low-scale residential use of cleared parts of the land.</p>   |
| <p><i>SP3 Adapt to climate change and build resilience</i></p> | <p>The contemporary coastal hazards assessment is based on modelling that incorporates climate change and sea level rise. Restricting the E4 zoning to the area landward of the mapped 100 year coastal hazard line will ensure that the future of the land is appropriate to future risks.</p> |

### **A Liveable Shire**

- |   |   |
|---|---|
| <p><i>LP1 Support and celebrate our heritage, vibrant culture and diverse lifestyles</i></p>                | <p>The E4 zone will provide for a very minor increase in local housing.</p> |
| <p><i>LP2 Create great places that support and encourage an active, healthy and connected community</i></p> | <p>The E4 zoning will finalise future uses of this site.</p>                |
| <p><i>LP3 Support housing diversity and affordability with housing growth in the right locations</i></p>    | <p>The E4 zone will provide for a very minor increase in local housing.</p> |

### **A Thriving Shire**

- |   |  |
|---|--|
| <p><i>TP1 Support a strong diversified and sustainable economy based on Byron Shire's unique character, landscapes and important farmland</i></p> | <p>Not directly relevant to this proposal, as the E4 zone will only facilitate a very minor increase in local housing.</p> |
| <p><i>TP2 Develop and implement strategies to support agriculture, agri-business and farmers</i></p>  | <p>Not directly relevant to this proposal.</p>   |
| <p><i>TP3 Promote and support local business development, education and employment opportunities</i></p>  | <p>Not directly relevant to this proposal.</p>   |
| <p><i>TP4 Deliver an adequate supply of employment</i></p>  | <p>Not directly relevant to this proposal.</p>   |

### **A Connected Shire**

- |   |   |
|---|---|
| <p><i>CP1 Ensure infrastructure delivery is aligned with planned growth</i></p> | <p>Infrastructure required to service the anticipated subdivision is available to the land.</p> |
|---|---|

CP2	<i>Lead partnerships to develop a network of sustainable transport</i>	Not directly relevant to this planning proposal.
CP3	<i>Support community wellbeing and appropriate community infrastructure</i>	Not directly relevant to this planning proposal.
CP4	<i>Provide essential services and reliable infrastructure which meets and acceptable community standard</i>	Infrastructure required to service the anticipated subdivision is available to the land.

This site is not specified in any Council strategy, but offers an opportunity to apply a new environmental living zone and enable modest residential development on a site zoned under the 1988 LEP. The rezoning is supported by a number of studies suggesting modest residential zoning is appropriate for the site.

#### **Q5. Is the planning proposal consistent with the applicable State Environmental Planning Policies?**

The application of the coastal management SEPP requires particular consideration in relation to this proposal as the site is mapped as containing land identified as coastal wetlands and littoral rainforest, coastal use area and coastal environment area. A coastal hazard assessment also accompanies this planning proposal for further information.

The SEPP requires council to consider a range of matter when assessing development on land mapped under this SEPP. While the SEPP does not specifically address matters of concern when preparing a planning proposal the SEPP will continue to apply to any future development on the site at the time a development application is considered.

#### **State Environmental Planning Policy (Coastal Management) 2018**

##### **Coastal wetlands and littoral rainforests area**

This rezoning will not facilitate development on areas mapped as coastal wetlands or littoral rainforest with environmental zones proposed for these areas.

##### **Development on land in proximity to coastal wetlands or littoral rainforest**

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—*
  - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*



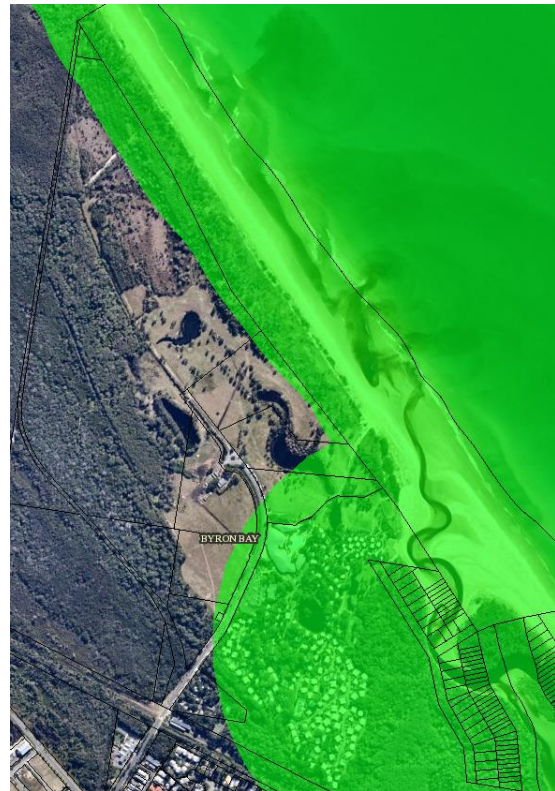
Part of the proposed E4 Environmental Living area is mapped as in proximity to land identified as coastal wetlands.

The proposed E4 Environmental Living zone is designed to enable low scale development, which is not anticipated to impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland area. Additional design and siting requirements can be considered during the development application stage.

Proximity to wetlands is shown below in the blue shading.



**Coastal Wetlands (hatched) and Proximity Area (solid)**



**Coastal use area**

### **Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*

- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
  - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

The majority of the land mapped as coastal environment area will not be zoned as E4 Environmental Living, as it is seaward of the 100 year hazard line. Part of the proposed E4 area, adjacent to the existing resort is mapped as coastal environment area, however it is proposed that the any future development can be sited and designed appropriately to have minimal impact on the coastal processes or environment.

Public access to and along the coastal foreshore has been formalised from Bayshore Drive and the proposal is not considered to raise potential impacts in terms of aboriginal cultural heritage.

#### **Development on land within the coast use area**

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
  - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
    - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
    - (iv) *Aboriginal cultural heritage, practices and places,*

- (v) *cultural and built environment heritage, and*
  - (b) *is satisfied that—*
    - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
    - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
    - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

As discussed above, the formalised public access to the beach will not be impacted by this proposal and any development is not likely to result in significant adverse impacts on existing natural or built environment.

**Q6. Is the planning proposal consistent with applicable Ministerial Directions (s. 9.1 directions)?**

Consistency with the Ministerial Directions is assessed in the following table:



9.1 Direction	Application	Relevance to this planning proposal	Consistency
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 does not affect any land within a business or industrial zone	Not applicable
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).	This planning proposal does not affect any rural zones.	Not applicable
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.	Not applicable	Not applicable

9.1 Direction	Application	Relevance to this planning proposal	Consistency
1.4 Oyster Aquaculture	<p>Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:</p> <ul style="list-style-type: none"> <li>(a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or</li> <li>(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.</li> </ul>	There are no priority oyster aquaculture areas within the nearby Belongil Creek.	Not applicable
1.5 Rural Lands	<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>(a) protect the agricultural production value of rural land;</li> <li>(b) facilitate the orderly and economic development of rural lands for rural and related purposes.</li> </ul> <p>Applies when:</p> <ul style="list-style-type: none"> <li>(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</li> </ul>	This planning proposal does not affect any rural zones.	Not applicable

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>environment protection zone boundary), or</p> <p>(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.</p> <p>A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in State Environmental Planning Policy (Rural Lands) 2008.</p>		
<b>2. Environment and Heritage</b>			
2.1 Environment Protection Zones	<p>The objective of this direction is to protect and conserve environmentally sensitive areas. A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>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</p>	<p>This planning proposal includes provisions to protect environmentally sensitive areas proposing to rezone significant areas as E2 and E3 environmental zones. No zoning change is proposed on the land subject to coastal hazards.</p>	Consistent

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	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 "Rural Lands".		
2.2 Coastal Management	<p>This direction applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:</p> <ul style="list-style-type: none"> <li>(a) within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018; or</li> <li>(b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:</li> </ul>	<p>The area includes sections mapped as coastal environment area, coastal use area, coastal wetlands and littoral rainforest.</p> <p>Areas mapped as coastal wetlands and littoral rainforest are proposed to be rezoned to environmental zones to ensure their protection. Refer to Q5 for more detail on the Coastal Management SEPP.</p> <p>This planning proposal will enable increased development on land currently identified in Byron DCP 2010 as subject to coastal hazard.</p> <p>A comprehensive study attached to this planning proposal address's the coastal hazards for this land supporting previous coastal studies undertaken by Council showing the coastal hazard line seaward of the hazard line identified in the Byron DCP 2010.</p> <p>Land seaward of the coastal hazard line identified in this study is proposed to be zoned as E2 Environmental Conservation, to ensure that no development occurs in the</p>	Justifiably inconsistent

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(i) by or on behalf of the planning proposal authority and the planning proposal authority, or</p> <p>(ii) by or on behalf of a public authority and provided to the planning proposal authority.</p> <p>A Planning Proposal may be inconsistent with this requirement if justified by a study or strategy that considers the objective of this direction.</p>	<p>area identified as being subject to coastal hazard.</p> <p>It is submitted that the inconsistencies with this direction are justifiable based on the supporting coastal study.</p>	
2.3 Heritage Conservation	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(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,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and</p> <p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes</p>	<p>This planning proposal does not impact on any heritage items or provisions.</p> <p>Consultation has occurred with Tweed Byron Local Aboriginal Land Council (TBLALC) with a report produced and attached. No objection to the proposed rezoning is presented, however due to the high possibility of aboriginal artifacts being present in the coastal area any future development applications should be referred to TBLALC and a representative present during excavation.</p>	Consistent

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	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.		
2.4 Recreation Vehicle Areas	<p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the Recreation Vehicles Act 1983):</p> <ul style="list-style-type: none"> <li>(a) where the land is within an environmental protection zone,</li> <li>(b) where the land comprises a beach or a dune adjacent to or adjoining a beach,</li> <li>(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: <ul style="list-style-type: none"> <li>(i) the provisions of the guidelines entitled Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New</li> </ul> </li> </ul>	This planning proposal does not enable land to be developed for the purpose of a recreational vehicle area.	Consistent.

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>South Wales, September, 1985, and</p> <p>(ii) the provisions of the guidelines entitled Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</p>		
<p>2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs</p>	<p>This direction applies when a relevant planning authority prepares a planning proposal:</p> <p>(a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone;</p> <p>(b) that introduces or alters an overlay and associated clause.</p> <p>A planning proposal that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone or an overlay and associated clause must apply the proposed E2 Environmental Conservation or E3 Environmental Management zones, or the overlay and associated clause, consistent with the</p>	<p>This planning proposal proposes to introduce E2 and E3 zones to this site.</p> <p>The E2 and E3 zoning has been applied consistently with the ezoning recommendation. The ezones have been agreed by the land owners and were scheduled as part of the next ezoning planning proposal. For a holistic approach to the site the ezoning component applying to this land has been included in this planning proposal</p>	<p>Consistent.</p>

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	Northern Councils E Zone Review Final Recommendation		
2.6 Remediation of Contaminated Land	<p>This direction applies to:</p> <ul style="list-style-type: none"> <li>(a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,</li> <li>(b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,</li> <li>(c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital, land: <ul style="list-style-type: none"> <li>(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and</li> <li>(ii) on which it would have been lawful to carry out such development during any period in respect of</li> </ul> </li> </ul>	<p>This planning proposal will enable modest residential housing on a coastal protection zoned area where it was previously prohibited.</p> <p>The site is mapped in Council's GIS mapping as potentially contaminated. Pesticides from past use as a golf course and past sand mining in Byron Bay could present potential sources of contamination.</p> <p>It is noted that previous studies have been completed for the existing tourist facilities on the site.</p> <p>As residential uses are proposed on this site it is considered appropriate to condition a preliminary contaminated land assessment for the E4 component of this site as part of the Gateway determination.</p> <p>A preliminary contamination assessment has now been provided, concluding that there is a low level risk of contamination from past land uses and the site is suitable for 9 larger residential lots.</p>	Consistent.



9.1 Direction	Application	Relevance to this planning proposal	Consistency
	which there is no knowledge (or incomplete knowledge).		
<b>3. Housing, Infrastructure and Urban Development</b>			
3.1 Residential Zones	<p>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <ul style="list-style-type: none"> <li>(a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),</li> <li>(b) any other zone in which significant residential development is permitted or proposed to be permitted.</li> </ul> <p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <ul style="list-style-type: none"> <li>(a) broaden the choice of building types and locations available in the housing market, and</li> <li>(b) make more efficient use of existing infrastructure and services, and</li> <li>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</li> <li>(d) be of good design.</li> </ul>	This planning proposal will introduce an E4 Environmental Living zone. The land is already cleared and situated in a location close to town with connections to the required infrastructure.	Consistent

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>A planning proposal must, in relation to land to which this direction applies:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) not contain provisions which will reduce the permissible residential density of land</li> </ul>		
3.2 Caravan Parks and Manufactured Home Estates	<p>In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> <li>(a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and</li> <li>(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 Standard Instrument (Local Environmental Plans) Order 2006 that</li> </ul>	This planning proposal does not have any implication on caravan parks or manufactured home estates.	Consistent.

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	would facilitate the retention of the existing caravan park.		
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 does not have any implication on home occupations.	Consistent.
3.4 Integrating Land Use and Transport	<p>This direction 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:</p> <p>(a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and</p> <p>(b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).</p>	<p>The planning proposal will enable modest residential development adjacent to existing infrastructure and in close proximity to the Byron Bay town centre.</p> <p>It is considered that this planning proposal is consistent with the aims, objectives and principles of <i>Improving Transport Choice</i> and the <i>Right Place for Business and Services</i></p>	Consistent.

9.1 Direction	Application	Relevance to this planning proposal	Consistency
3.5 Development Near Regulated Airports and Defence Airfields	This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.	This planning proposal does not alter or remove a zone in proximity to a regulated airport.	Not applicable.
3.6 Shooting Ranges	<p>This direction 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 effect of:</p> <ul style="list-style-type: none"> <li>(a) permitting more intensive land uses than those which are permitted under the existing zone; or</li> <li>(b) permitting land uses that are incompatible with the noise emitted by the existing shooting range.</li> </ul>	This planning proposal does not affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.	Not applicable
3.7 Reduction in non-hosted short term rental accommodation period	This direction applies when the council prepares a planning proposal to identify or reduce the number of days that non-hosted short-term rental accommodation may be	Not applicable	Not applicable

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	carried out in parts of its local government area.		
<b>4. Hazard and Risk</b>			
4.1 Acid Sulfate Soils	<p>This direction 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.</p> <p>A relevant planning authority must not prepare a planning proposal 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 relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Director General prior to undertaking community consultation in satisfaction of section 57 of the Act.</p>	<p>Acid Sulfate Soils are found within Byron Shire.</p> <p>The site is mapped as Class 3 Acid Sulfate Soils and this planning proposal will enable an intensification of use on this land.</p> <p>In accordance with this direction an acid sulfate soils study will be required prior to public exhibition.</p> <p>A preliminary contaminated lands study has now been submitted.</p> <p>The building sites will be raised above existing ground level due to the flooding applicable to the site. This will limit any excavation required for development and minimise the likelihood of impacting acid sulfate soils.</p> <p>Byron LEP 2014 contains controls for development in areas mapped with acid sulfate soils and will be further considered with any subsequent development applications.</p>	Consistent

9.1 Direction	Application	Relevance to this planning proposal	Consistency
4.2 Mine Subsidence and Unstable Land	<p>This direction applies to land that:</p> <p>(a) is within a Mine Subsidence District proclaimed pursuant to section 15 of the Mine Subsidence Compensation Act 1961, or</p> <p>(b) has been identified as unstable land.</p> <p>This direction applies when a relevant planning authority prepares a planning proposal that permits development on land that:</p> <p>(a) is within a mine subsidence district, or</p> <p>(b) has been identified as unstable in a study, strategy or other assessment.</p>	<p>This planning proposal does not apply to land within a mine subsidence district or identified as unstable land.</p>	<p>Not applicable</p>
4.3 Flooding	<p>This direction 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.</p> <p>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 Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).</p>	<p>This site is mapped as flood prone.</p> <p>An accompanying study attached to this planning proposal discusses the flooding associated with this site and the proposed development.</p> <p>Following exhibition of the planning proposal further reports were provided on:</p> <ul style="list-style-type: none"> <li>Review of state governments changes to planning guidelines regarding flood planning levels and how changes to Council's adopted flood planning level</li> </ul>	<p>Justifiably inconsistent.</p>

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zones.</p> <p>A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> <li>(a) permit development in floodway areas,</li> <li>(b) permit development that will result in significant flood impacts to other properties,</li> <li>(c) permit development for the purposes of residential accommodation in high hazard areas,</li> <li>(d) permit a significant increase in the development and/or dwelling density of that land,</li> <li>(e) permit development for the purpose of centre-based childcare facilities, hostels, boarding houses, group homes, hospitals, residential care facilities, respite day care centres and seniors housing in areas where the</li> </ul>	<p>could impact the proposed development</p> <ul style="list-style-type: none"> <li>• Review of Hydraulic Categorisation resulting in the site being considered 'no development' area in the Belongil Creek Floodplain Risk Management Study and Plan 2015</li> <li>• Verification of the hydraulic model set used to investigate the study area</li> <li>• Assessment of Evacuation Options that don't rely on sheltering in place</li> </ul> <p>These reports are also attached to this planning proposal.</p> <p>The study states that construction on raised pads is possible on site and will have minimal effect on localised flooding.</p> <p>It is submitted that the inconsistencies with this direction are justifiable based on the supporting flooding studies.</p>	

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>occupants of the development cannot effectively evacuate,</p> <p>(f) permit development to be carried out without development consent except for the purposes of exempt development or agriculture. Dams, drainage canals, levees, still require development consent,</p> <p>(g) are likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures, which can include but are not limited to the provision of road infrastructure, flood mitigation infrastructure and utilities, or</p> <p>(h) permit hazardous industries or hazardous storage establishments where hazardous materials cannot be effectively contained during the occurrence of a flood event.</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the planning proposal authority can satisfy the Secretary of the Department of Planning, Industry and Environment (or their nominee) that:</p>		



9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(a) the planning proposal is in accordance with a floodplain risk management study or plan adopted by the relevant Council in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or</p> <p>(b) where there is no council adopted floodplain risk management study or plan, the planning proposal is consistent with the flood study adopted by the council prepared in accordance with the principles of the Floodplain Development Manual 2005 or</p> <p>(c) the planning proposal is supported by a flood and risk impact assessment accepted by the relevant planning authority and is prepared in accordance with the principles of the Floodplain Development Manual 2005 and consistent with the relevant planning authorities' requirements, or</p> <p>(d) the provisions of the planning proposal that are inconsistent are of minor significance as determined by the relevant planning authority</p>		

9.1 Direction	Application	Relevance to this planning proposal	Consistency
<p>4.4 Planning for Bushfire Protection</p>	<p>This direction applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>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 section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made. A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) have regard to Planning for Bushfire Protection 2006,</li> <li>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</li> <li>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</li> </ul> <p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> <li>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</li> </ul>	<p>This site contains bushfire prone land mapping.</p> <p>A bushfire assessment is attached to this report concluding that compliant asset protection zones can be achieved for the proposed subdivision.</p>	<p>Consistent.</p>

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<ul style="list-style-type: none"> <li>(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</li> <li>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</li> <li>(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 Rural Fires Act 1997), the APZ provisions must be complied with,</li> <li>(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,</li> </ul>		

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	(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.		
(e) Regional Planning			
5.1 Implementation of Regional Strategies	This direction applies to land to which the following regional strategies apply: (a) South Coast Regional Strategy (excluding land in the Shoalhaven LGA) (b) Sydney–Canberra Corridor Regional Strategy.	Not Applicable.	Not applicable
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	Not Applicable.	Not applicable
5.3 Farmland of State and Regional Significance on	This applies to Byron Shire Council except within areas contained within the “urban growth area” mapped in the North Coast Regional Plan 2036. A planning proposal must not:	This site is not mapped as state or regional significant farmland	Not applicable

9.1 Direction	Application	Relevance to this planning proposal	Consistency
the NSW Far North Coast	<ul style="list-style-type: none"> <li>(a) rezone land identified as “State Significant Farmland” for urban or rural residential purposes.</li> <li>(b) rezone land identified as “Regionally Significant Farmland” for urban or rural residential purposes.</li> <li>(c) rezone land identified as “significant non-contiguous farmland” for urban or rural residential purposes.</li> </ul>		
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	<p>This Direction applies when a relevant planning authority prepares a planning proposal for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway. A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that:</p> <ul style="list-style-type: none"> <li>(a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway;</li> <li>(b) development with frontage to the Pacific Highway must consider impact the development has on the safety and efficiency of the highway; and</li> </ul>	Not applicable	Not applicable.

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(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 80km/hour.</p> <p>A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that:</p> <p>(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;</p> <p>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and</p> <p>(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 (e.g. “village”, “residential”, “tourist”, “commercial”, “industrial”, etc.) or are in areas where</p>		

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	the Pacific Highway speed limit is 80km/hour or greater.		
5.5 – 5.8 Revoked	-	-	-
5.9 North West Rail Link Corridor Strategy	Not Applicable	Not applicable	Not applicable
5.10 Implementation of Regional Plans	Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.	The consistency of this planning proposal with the North Coast Regional Plan is addressed in Section B above.	Consistent
5.11 Development of Aboriginal Land Council land	This direction applies when a planning proposal authority prepares a planning proposal for land shown on the Land Application Map of State Environmental Planning Policy (Aboriginal Land) 2019.	Not applicable	Not applicable
(f) 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	This planning proposal will not include provisions that require concurrence, consultation or referral of development applications to a Minister of public authority. It does not identify development as designated development.	Consistent

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(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:</p> <ul style="list-style-type: none"> <li>(i) the appropriate Minister or public authority, and</li> <li>(ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and</li> </ul> <p>(c) not identify development as designated development unless the relevant planning authority:</p> <ul style="list-style-type: none"> <li>(i) can satisfy the Director-General of the Department of Planning (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</li> <li>(ii) has obtained the approval of the Director-General of the Department</li> </ul>		



9.1 Direction	Application	Relevance to this planning proposal	Consistency
	of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.		
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).	A right of carriage way remains for public access to Belongil beach. This planning proposal will not alter or reduce existing zones or land for public purposes.	Consistent
6.3 Site Specific Provisions	<p>This direction applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.</p> <p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> <li>(a) allow that land use to be carried out in the zone the land is situated on, or</li> <li>(b) rezone the site to an existing zone already applying in the environmental</li> </ul>	This planning proposal does not allow a particular development to be carried out	Not applicable

9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</p> <p>(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.</p> <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>		

**Q7. 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 this proposal?**

An ecological assessment for the proposed subdivision is attached to this planning proposal. The proposed E4 zone on the cleared section of the subject site will enable low scale residential development which complements the environmental values of the vegetated areas of the site. It is unlikely that any critical habitat or threatened species, populations or ecological communities will be adversely affected as a result of this proposal.

A large portion of the site will be zoned as an environmental zone to protect the environmental values of the site.

**Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

As addressed in Q7, it is unlikely that there will be any environmental effects as a result of this rezoning.

**Q9. Has the planning proposal adequately addressed any social and economic effects?**

It is unlikely that there will be any social or economic impacts as a result of the planning proposal. The land is in private ownership and the right of carriage will still remain for the public to access the beach.

## **Section D – State and Commonwealth interests**

**Q10. Is there adequate public infrastructure for the planning proposal?**

The rezoning can enable up to 9 residential dwellings with no substantial increase in demand for public infrastructure. Developer contributions will be payable as part of any future development application. The site is serviced by an existing sealed road with access to existing sewer and water mains.

**Q11. What are the views of the State and Commonwealth public authorities consulted in accordance with the Gateway Determination?**

Preliminary discussion has occurred with Department of Planning, Industry and Environment Coastal Division regarding the rezoning of this site.

Further consultation was undertaken as part of the public exhibition as per the gateway determination with NSW Rural Fire Service, NSW Biodiversity and Conservation Division and Heritage NSW and Tweed Byron Local Aboriginal Land Council.

Advice was received from NSW Rural Fire Service in relation to matters that need consideration at the DA stage. Advice was also received from the Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry and Environment. Some of the issues raised by BCD have subsequently been addressed, resulting in two outstanding matters of objection and one other matter.

BCD Issues	Comment
<p>The PP is expanded to include the entirety of the subject lot to the north of the area proposed for E4 zoning and this area to the north currently zoned 7f1 is zoned E2 as part of this PP.</p>	<p>The contemporary coastal hazard modelling that's determined the new 100yr hazard line was only applied to the cleared parts of the property. As it was not applied to the full length of the property it cannot be used to 'fix' a zoning line north of the E4 zone.</p> <p>Council is currently working on a Coastal Management Program (CMP) for the Shire's beach compartments. Amongst other things, the CMP will identify land subject to coastal hazard, by way of contemporary "probabilistic" modelling, similar to that undertaken for the subject land.</p> <p>Until the CMP determines the coastal hazard for these areas and the policies for how that land will be managed, it is considered premature to rezone land that is subject to identified coastal hazard.</p> <p>This approach is supported by council's long standing resolutions <b>16-576</b> (part 2) and <b>17-045</b> (Part 2c) which request the DPIE to provide a separate coastal hazard zone as the Standard Instrument LEP does not provide a suitable replacement for the 7(f1) Coastal Land and 7(f2) Urban Coastal Land Zones.</p>
<p>The PP identifies the mechanism to be used to secure the requirement to prepare a vegetation management plan for land zoned E2, E3 and E4 in the planning area and describes the intent of the VMP and how it will be implemented.</p>	<p>Council's Development Control Plan 2014, Chapter B1 – Biodiversity provides for Vegetation Management Plans (VMP) and Biodiversity Conservation Management Plans (BCMP).</p> <p>A BCMP is required for any development that includes the subdivision of land.</p> <p>A BCMP contains similar information and management actions as a Vegetation Management Plan. However, a BCMP generally has increased management actions over a longer period of time and requires more detailed information.</p> <p>BCDs requirement for a VMP will be considered at the DA stage.</p>

BCD also requested that Council considers waiting for relevant data from the Coastal Management Program (CMP) to inform the PP so the areas south of the planning area of the proposed E4 zone is also rezoned from its current 7f1 to an appropriate zone as part of this PP.

Council is currently working on a CMP for the Shire's northern and southern beach compartments. Amongst other things, the CMP will identify land subject to coastal hazard, by way of contemporary "probabilistic" modelling, similar to that undertaken for the land subject to this rezoning request. The CMP will also develop policies for how that land will be managed.

It is considered that, pending completion of the CMP, it is premature to rezone land that is subject to identified coastal hazard.

## Part 4 – Mapping

Amendments will be required to the following Byron LEP 2014 Map Sheets:

- Land Zoning Map - LZN\_003CC  
Implement the zoning changes described in this planning proposal
- Lot Size Map – LSZ\_003CC  
Introduce appropriate minimum lot sizes for all zones within the study area. A minimum lot size of 1 hectare will be applied to the E4 Environmental Living Area and SP3 Tourist zones and 40 hectares for the environmental zones.
- Height of Buildings Map – HOB\_003CC  
Currently, a maximum height of 9.0m applies to the areas zoned SP3 Tourist. There is no maximum building height applicable to the deferred areas.  
This planning proposal intends to extend the 9.0m maximum building height across the whole of the site.
- Acid Sulfate Soils Map – ASS\_003CC  
The Map currently does not apply to the deferred areas. This planning proposal intends to extend the appropriate acid sulfate soils mapping across the whole of the site.
- Land Application Map – LAP\_001  
The map will be amended to remove the deferred areas for the site.
- Floor Space Ratio Map – FSR\_003CC  
The Map will be amended to reflect the changes to the existing SP3 Tourist zone.

The current and proposed mapping for this planning proposal is contained within the appendix.

## Part 5 – Community Consultation

Community consultation was conducted in accordance with the Gateway determination.

The proposed rezoning was publicly exhibited between April and May 2021. A total of 113 objections were received as well as 62 submissions of support.

A report on the public exhibition was tabled at the 4 November 2021 Council meeting.

## Part 6 – Project Timeline

Plan making step	Estimated completion
Council resolved to seek a Gateway determination	September 2020
Gateway determination	March 2021
Agency Consultation	April 2021
Public Exhibition Period	May - April 2021
Submissions Assessment	September-October 2021
Submissions report to Council	November 2021
Submission of Council endorsed LEP amendment to DPIE	November 2021

## Conclusion

This planning proposal seeks to apply the E4 Environmental Living Zone to enable the subdivision of the land for 9 large environmental living lots over a cleared site at Bayshore Drive, Byron Bay.

This rezoning provides an opportunity to transition this area into the Byron LEP 2014 and provide a low impact solution for the site.

The constraints applicable to the site have been considered and addressed in the relevant reports. Positive environmental outcomes are achieved through extensive applications of E2 and E3 zones on the remainder of the site.

As per the Gateway Determination a preliminary contaminated land assessment has been provided prior to public exhibition.

## Appendix A Plan Set

Final Plan Set to be prepared post Council's consideration of the submissions report to 4 November 2021 meeting.



## **Appendix B Coastal Hazard Assessment**

Coastal Hazard Assessment – E2021/53423

## Appendix C Flood Assessment

E2021/125689

Flood Assessment, Initial Flood Modelling, 27 November 2019

Further information request received post exhibition:

- Flood Planning Levels, 19 July 2021
- Hydraulic Categorisation, 3 September 2021
- Hydraulic Model Setup and Verification, 16 September 2021
- Land Evacuation Options, 6 October 2021

## **Appendix D Bushfire Assessment**

E2019/92528

## Appendix E Ecological Assessment

E2021/125699

Further information request received post exhibition:

- Latham's Snipe, 31 August 2021

# Appendix F Cultural Heritage Report

E2020/5232

# **Appendix G Preliminary Site Contamination Report**

E2021/55944