



Our Ref: DOC21/674700
Your Ref: e-mail dated 5 August 2021

General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2482

Attention: Ms Sharyn French

Dear Mr Arnold

RE: Planning Proposal to amend Byron LEP 2014 - Bayshore Drive, Byron Bay

Thank you for your e-mail dated 5 August 2021 about the Planning Proposal at Bayshore Drive, Byron Bay, seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment, Energy and Science Group of the Department of Planning, Industry and Environment. I appreciate the opportunity to provide input.

We have reviewed the further information provided by Planners North dated 4 August 2021. This further information has been provided to address our previous comments on the planning proposal dated 25 May 2021.

Our review has identified several outstanding issues, and these are discussed in detail in **Attachment 1** to this letter.

In summary, the BCD retains its objection to the planning proposal unless:

1. The planning proposal 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 planning proposal.
2. The planning proposal 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.

The BCD also requests that the Byron Shire Council considers waiting for relevant data from the Coastal Management Program to inform the planning proposal so the area south of the proposed E4 zone is also rezoned from its current 7f1 to an appropriate zone as part of this planning proposal.

If you have any questions about this advice, please do not hesitate to contact Mr Krister Waern, Senior Operations Officer, at krister.waern@environment.nsw.gov.au or 6640 2503.

Yours sincerely



24 September 2021

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Biodiversity and Conservation

Enclosure: Detailed BCD Comments – Planning Proposal - Bayshore Drive, Byron Bay

Attachment 1: Detailed BCD Comments – Planning Proposal - Bayshore Drive, Byron Bay

The Biodiversity and Conservation Division (BCD) previously provided comments on an earlier version of the Planning Proposal for Bayshore Drive, Byron Bay, in our letter to the Byron Shire Council dated 25 May 2021. We have reviewed the updated information prepared by Planners North dated 4 August 2021 and provide the following comments.

Expanded Planning Proposal Area

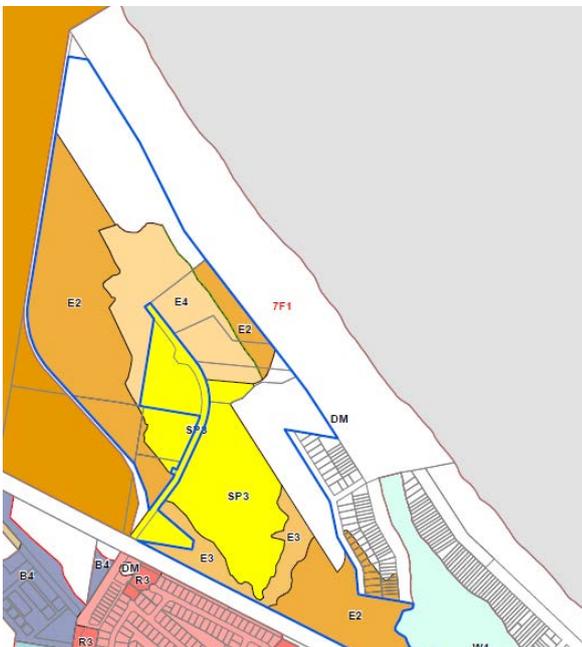
In our previous letter we recommended that the planning proposal be expanded to include the entirety of each lot. Unfortunately, this recommendation has not been incorporated into the revised proposal.

The area to the north of the proposed E4 zone should form part of the planning proposal. This area has suitable characteristics to be zoned E2. This area is currently not part of the planning proposal and the information provided suggests that this area will be considered as part of the broader E zone review for the Byron local government area.

Considering the biodiversity values present in this area, it is unlikely that there would be any other suitable zone other than E2. The BCD prefers that this area is dealt with as part of this planning proposal rather than deferring this area to another review at a future date.

We also note that the area south of the proposed E4 zone has also been excluded from the current planning proposal. This area may be more sensitive to coastal erosion process and we acknowledge it requires further consideration as part of the Coastal Management Program (CMP). We understand that stage 2 of the CMP will be able to provide the data for this location within the next 12 months.

It would be preferable to wait for the CMP data so that this area can also be considered as part of the current planning proposal to ensure that there is consistency applied across the subject lots.



BCD Recommendations

- The planning proposal must be 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 should be zoned E2 as part of this planning proposal.
- Consideration should be given to waiting for relevant data from the CMP to inform the planning proposal and the zoning of the area south of the proposed E4 zone.

Vegetation Management Plan

In our previous letter we recommended that a detailed Vegetation Management Plan (VMP) be prepared and incorporated into a planning agreement to ensure the appropriate rehabilitation of the site.

Although this measure of the VMP has been agreed to, our recommendation for a Voluntary Planning Agreement (VPA) to secure this measure has not been supported. Planners North has indicated that recent discussions with the Byron Shire Council indicate that securing the preparation of a VMP can be legislated as a requirement in the proposed amendment to the Byron Local Environmental Plan 2014.

The BCD is happy to consider alternative ways of securing the requirement of the VMP at the rezoning stage. This may be achieved through a VPA, Additional Permitted Use, a local provision, or any such other mechanism.

There is currently very little information about the proposed VMP in the planning documents. The planning proposal needs to describe the intent of the VMP and how it will be implemented. It should be noted that the VMP should apply to all the Environmental zones in the planning area.

The proposed E4 zone still contains biodiversity values in relation to existing vegetation and the waterbodies. We also understand that there have been sightings of the Latham's Snipe which is a migratory bird listed on the schedules of the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*. A report prepared by Peter Parker details the potential habitat for the species on site.

Although the VMP may largely focus on the E2 and E3 areas, the proposed VMP should also provide rehabilitation and protection measures for the biodiversity values within the proposed E4 zone and this should be specified in the mechanism used at the planning proposal stage to secure the preparation of the VMP.

BCD Recommendation

- The Planning Proposal must identify 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 describe the intent of the VMP and how it will be implemented.

Other Matters

All the other matters raised in our previous letter have been satisfactorily resolved.