



**Planning Proposal  
for Amendment of Byron Local Environmental Plan 2014  
– Lot 51 DP 844054 and Part Lot 4729 DP 1228104  
158 Jonson Street, Byron Bay**

Byron Shire Council

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**V2 Public Exhibition Version (#E2021/9574)**

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## Part 1 Introduction

### Objective and intended outcomes

The objective of this planning proposal is to rezone the subject land from SP2 Infrastructure (Rail corridor) to part SP2 Infrastructure (Car park), part E2 Environmental Conservation and part E3 Environmental Management under Byron LEP 2014. This will permit a car park with Council consent on the SP2 zoned land. It will protect coastal wetlands and allow an area to be rehabilitated to offset EEC vegetation removal from other parts of the site.

### Property details and existing zones

This planning proposal relates to two lots located at the southern end of Jonson Street in Byron Bay (Figure 1). The land is described as Lot 51 DP 844054 and Part Lot 4729 DP 1228104. It is a triangle-shaped parcel with a combined area of approximately 0.619 hectares. The street address is 158 Jonson Street, Byron Bay. The subject land has approximately 150 metres frontage to an unmade part of Jonson Street and approximately 140 metres frontage to the disused Byron Bay rail line. The northern boundary is a 70-metre frontage to a range of business related buildings and sheds.

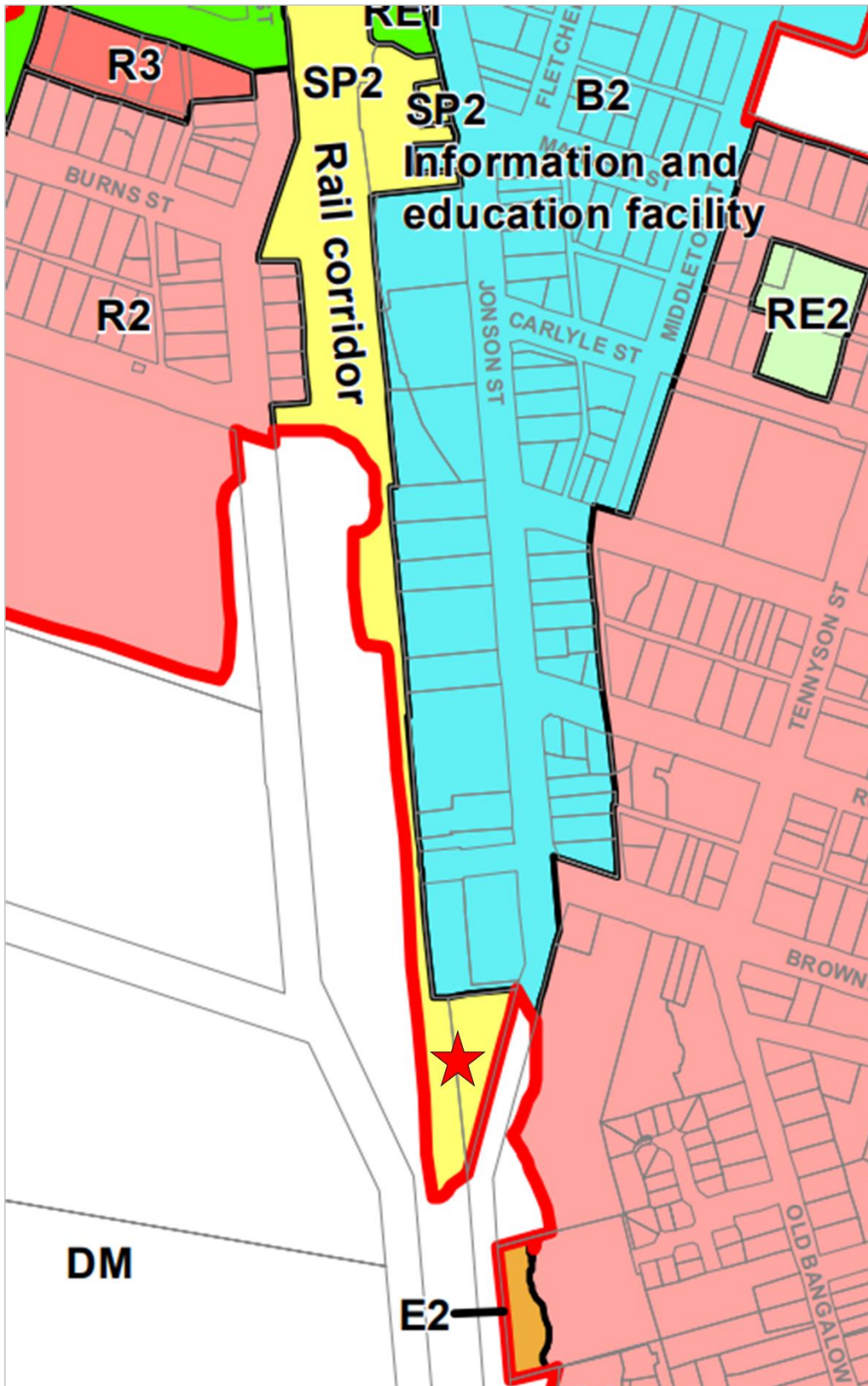
Figure 1: Subject land – 158 Jonson Street, Byron Bay





The subject land is currently zoned entirely SP2 Infrastructure (Rail corridor) under Byron LEP 2014 (BLEP14) (Figure 2).

Figure 2: Existing land use zones under Byron LEP 2014 – SP2 Infrastructure (Rail corridor)



The land subject to BLEP14 has a building height limit of 9 metres (Figure 3). It has no minimum lot size (MLS) and no floor space ratio (FSR). It is affected by acid sulfate soils (ASS) classes 2 and 3 (Figure 4).

Figure 3: Height of Buildings Map under Byron LEP 2014 – site is 9 metres

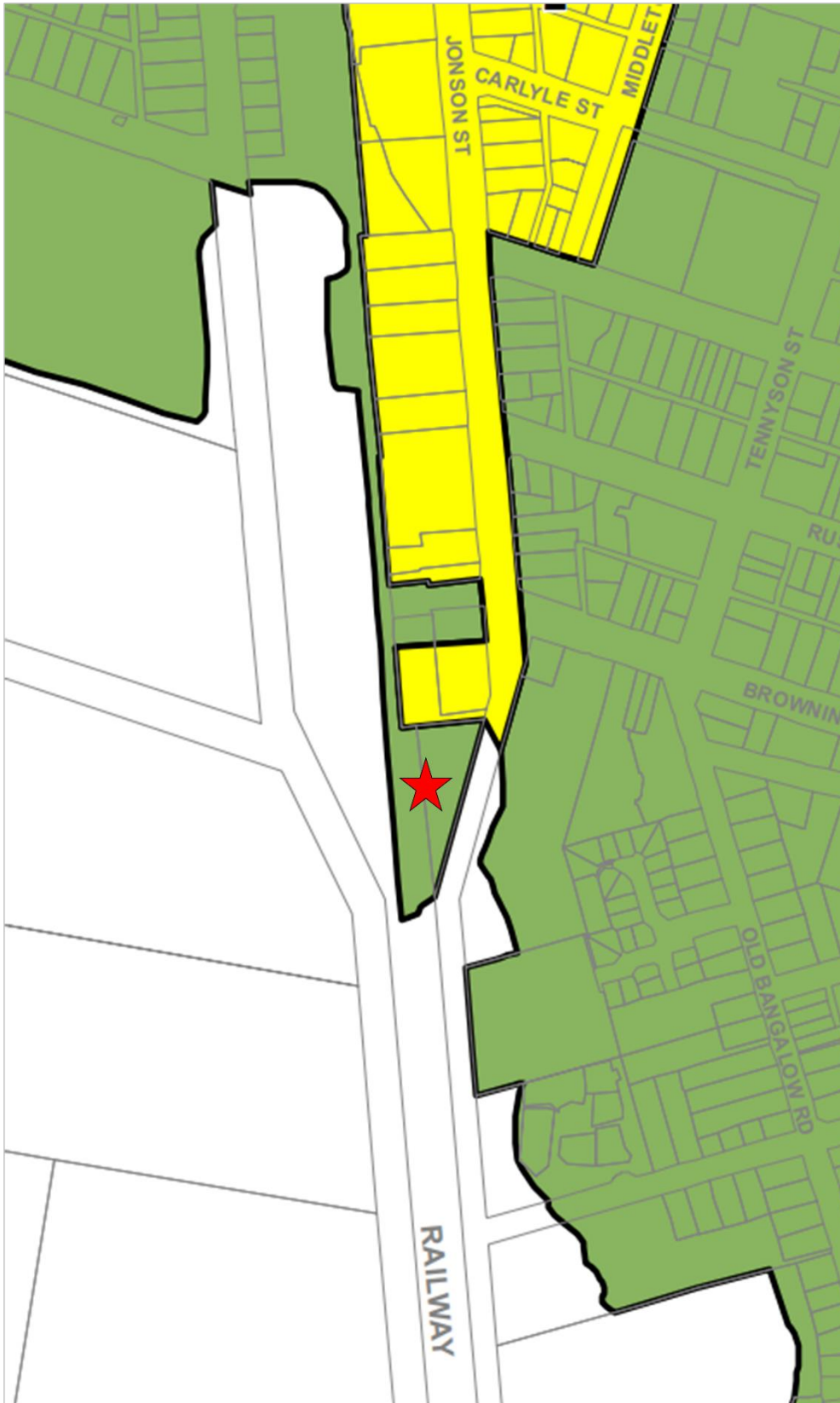
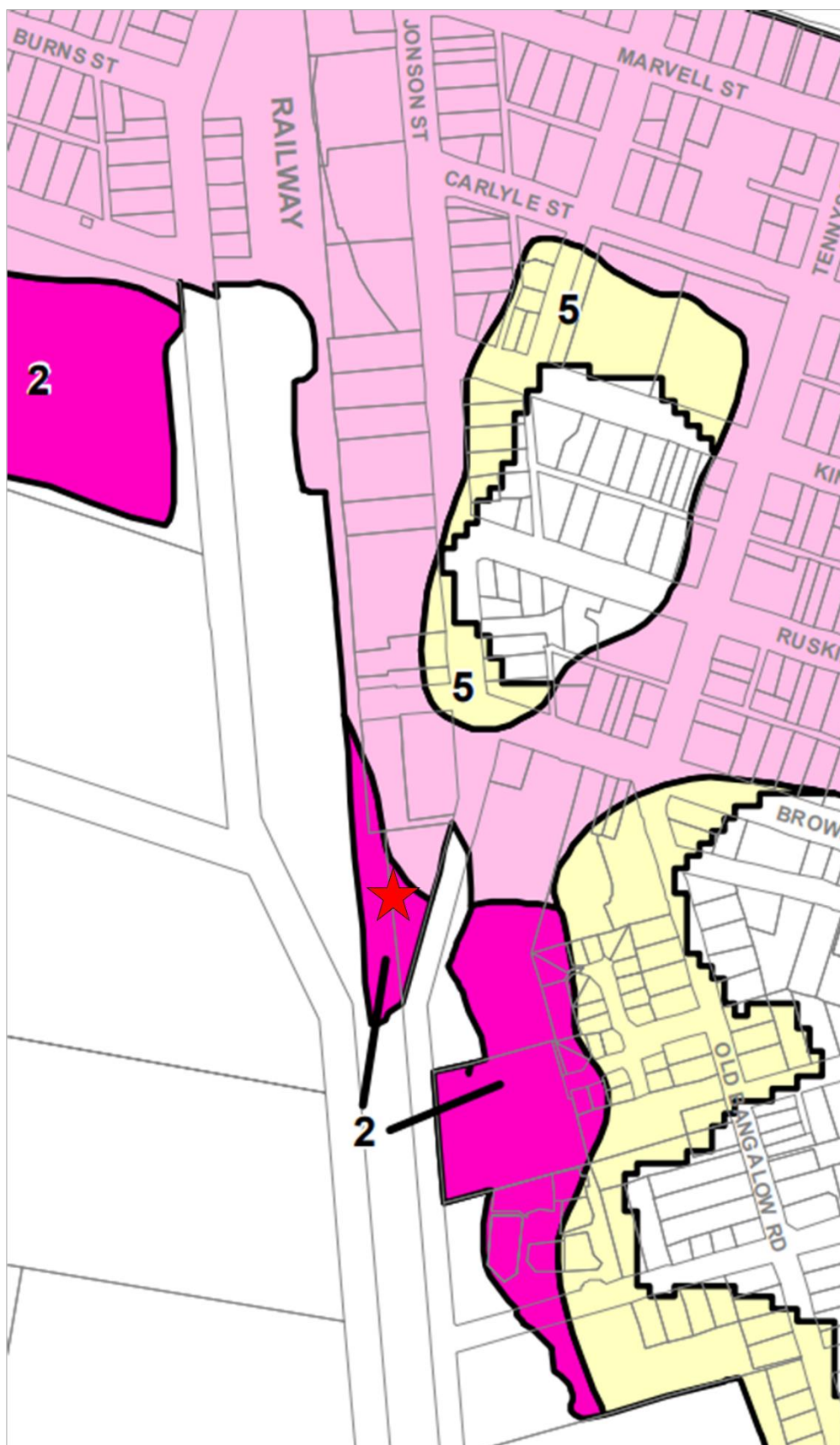


Figure 4: Acid Sulfate Soils Map under Byron LEP 2014 – site is classes 2 and 3



The subject land is not identified as being within the Wilsons River Drinking Water Catchment.



## Background

Historically, the subject land has been owned by the relevant NSW rail authority (most recently, Transport for NSW) and has only passed into private hands in the last ten years. The current owners purchased the larger piece (Lot 51 DP 844054) and are currently finalising purchase of the thin strip close to the rail line (Part Lot 4729 DP 1228104).

The site has been disturbed in the past and has contained buildings in different locations associated with its rail use. It was partly cleared and partly filled without Council consent by previous owners in about 2017. It contains a small patch of native vegetation on the central eastern side and another at the southern tip. The applicant's ecologist identifies this vegetation as degraded EEC (Figure 5). A row of *Casuarina* trees is growing on the western edge adjacent to the rail line. The vegetation in the south is mapped as being within a SEPP Coastal Wetland (Figure 6). The land currently does not contain any buildings.

Parts of the site are flood prone in 1:100-year flood events and above (Figure 7). The entire site is either bushfire prone or in a bushfire buffer (Figure 8).

Figure 5: Degraded Paperbark Swamp Forest EEC mapped by applicant on or near the site





Figure 6: SEPP Coastal Wetland map from Byron Shire Council GIS (no buffer shown)





Figure 7: Flood affected land in the 1:100-year flood event and estimated flood depths in a 1:100-year flood event

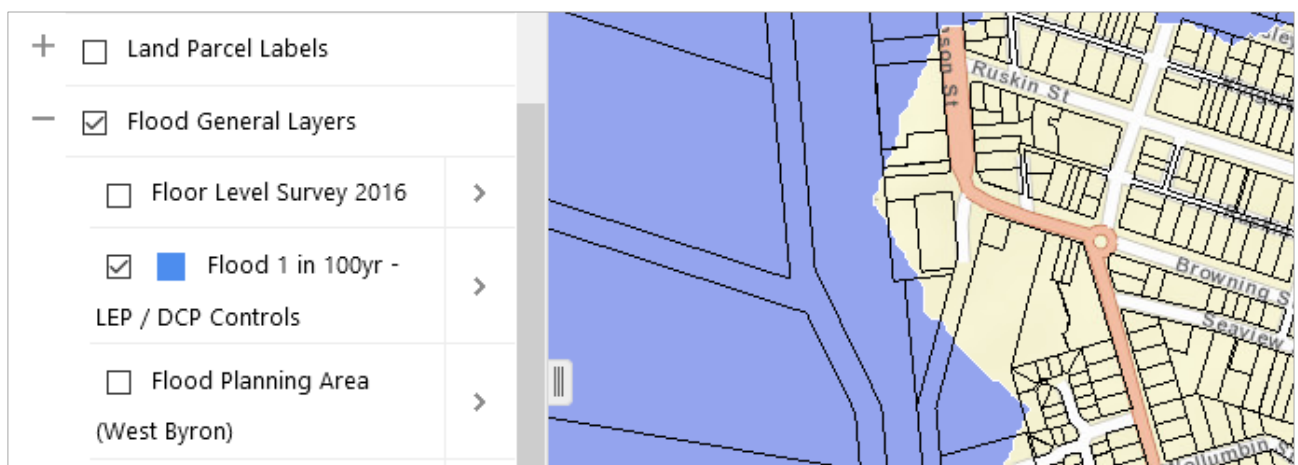
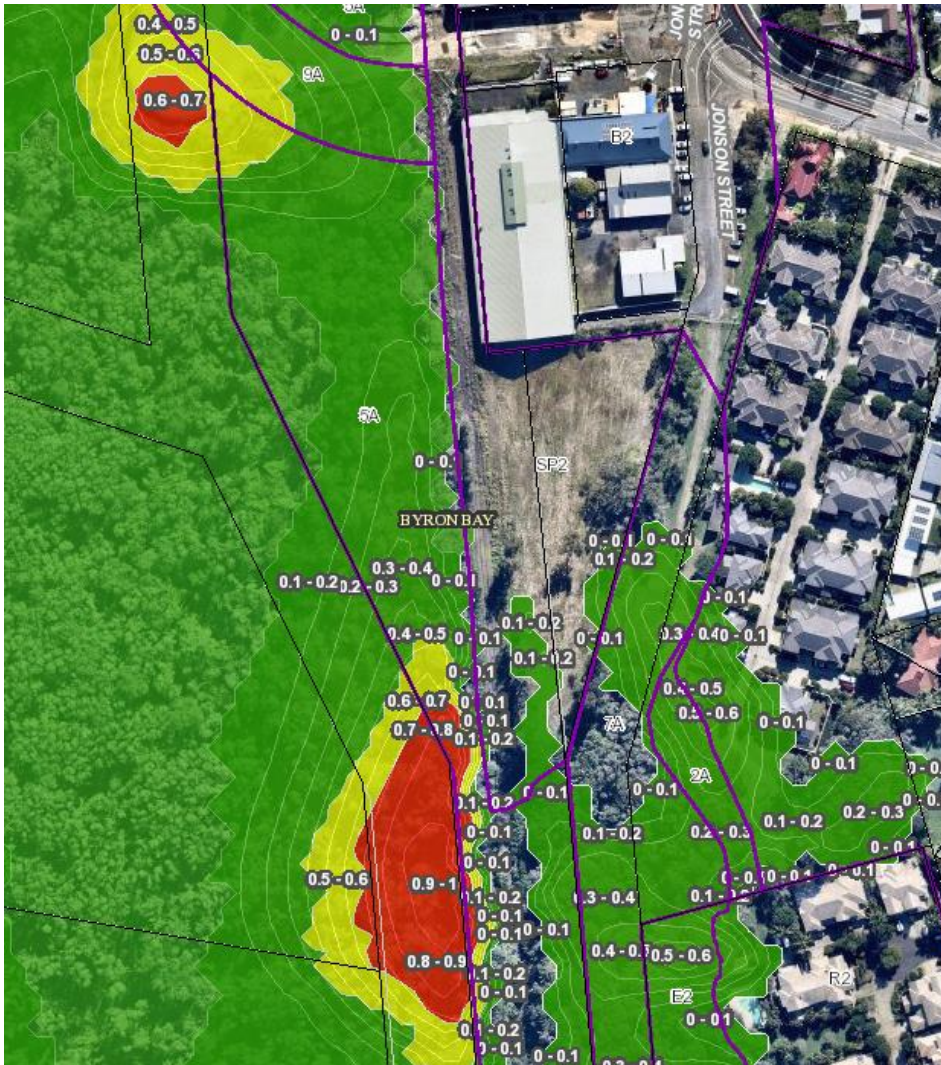
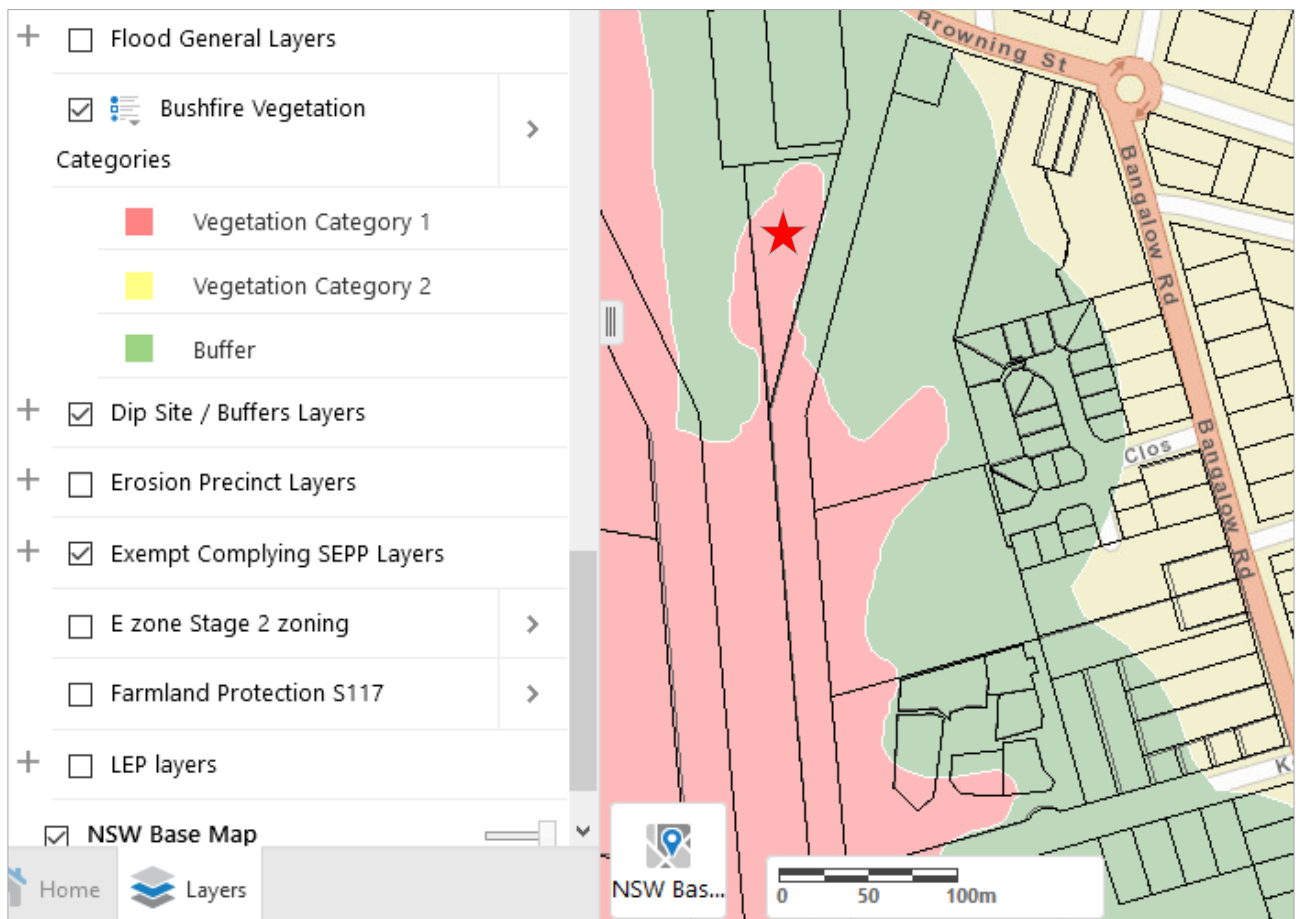


Figure 8: Byron Shire Council bushfire hazard mapping





## Part 2 Explanation of provisions

The planning proposal seeks to amend Byron LEP 2014 to permit a car park on the subject land with Council consent. The entire site is currently zoned SP2 Infrastructure (Rail corridor). To permit a car park on this site the zone will be changed from SP2 Infrastructure (Rail corridor) to part SP2 Infrastructure (Car park). The land mapped as coastal wetlands will be included in an E2 Environmental Conservation zone, and a buffer and vegetation offset area will be included in the E3 Environmental Management zone under Byron LEP 2014. The car park will be restricted to the land zoned SP2. The proposed new land zoning map is at Figure 9.

It is not intended to introduce a floor space ratio (FSR) to the site (it does not currently apply to the site) and the current height of buildings (9 metres) will be retained. A minimum lot size of 40 hectares is proposed for the land to be zoned E2 and E3, which is consistent with other locations where these zones are used. No minimum lot size is required for the SP2 car park land. The proposed new minimum lot size map is at Figure 10.

Figure 9: Proposed amendment to the Land Zoning Map (Byron LEP 2014)

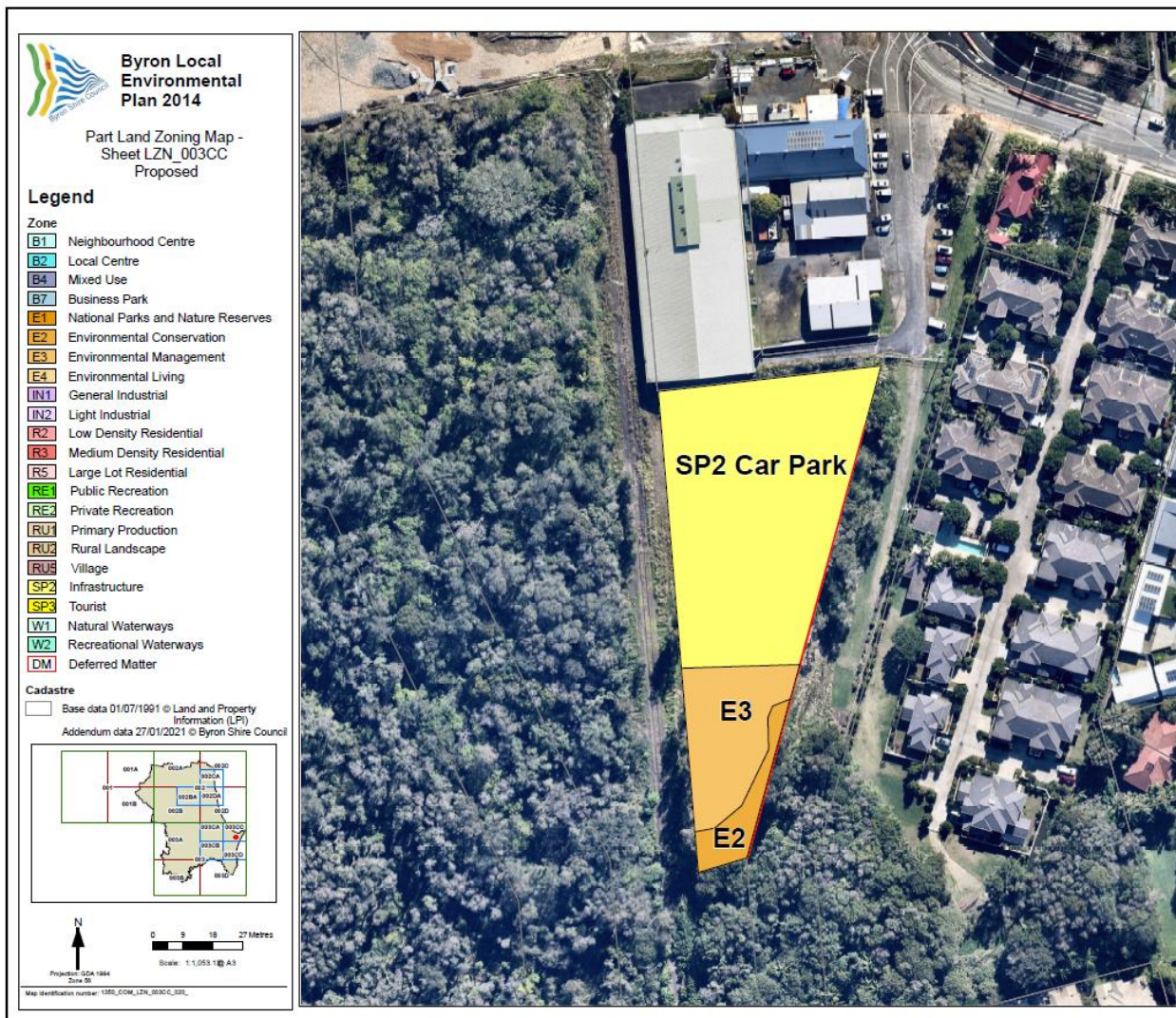
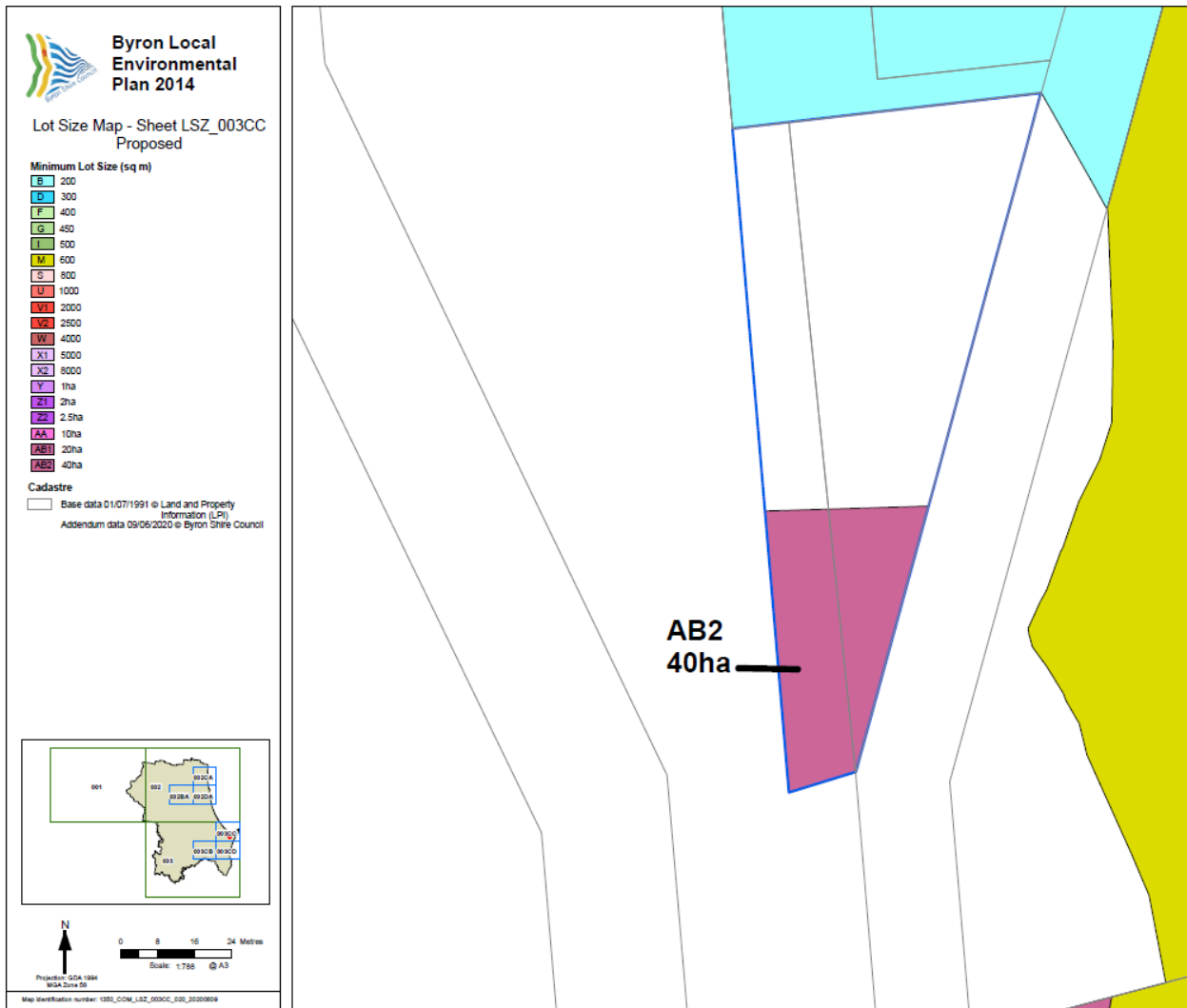


Figure 10: Proposed amendment to the Minimum Lot Size Map (Byron LEP 2014)





## Part 3 Justification

### Section A Need for the planning proposal

- 1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?**

No. It is an applicant initiated planning proposal.

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

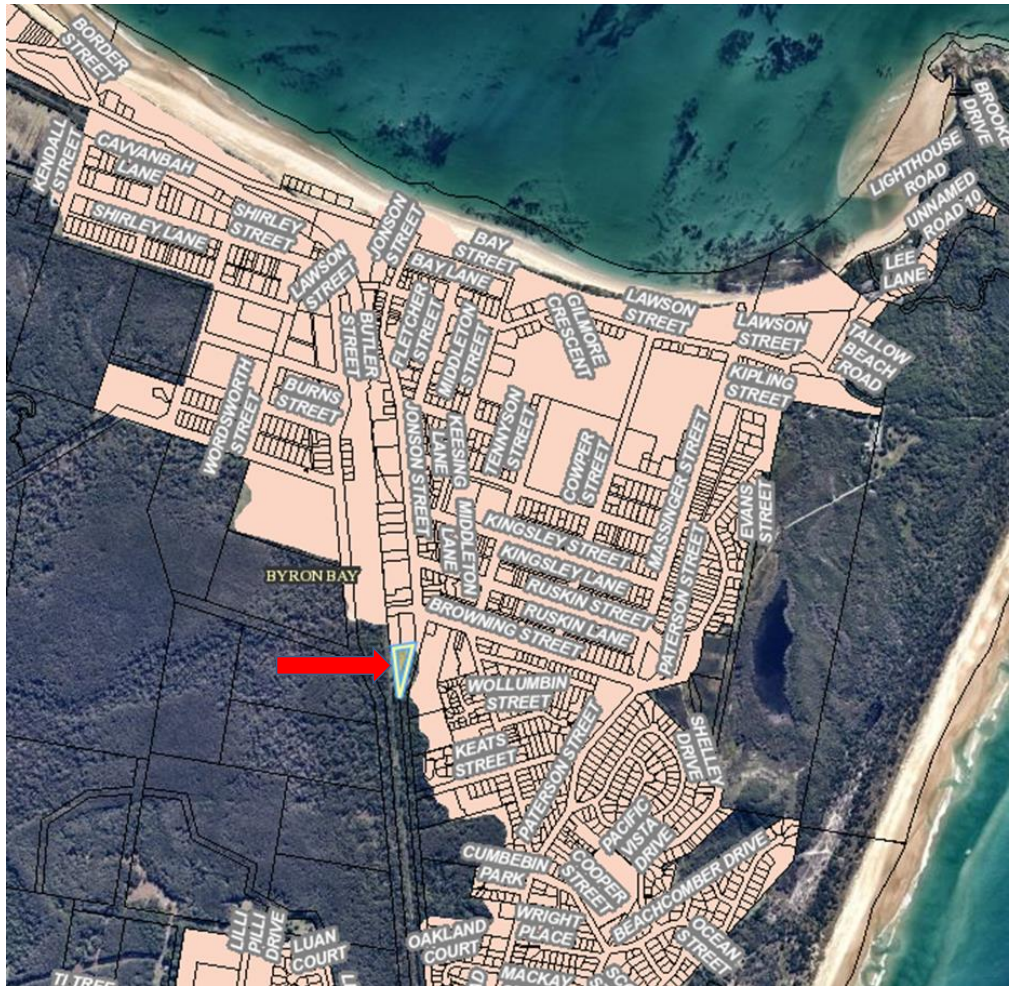
The planning proposal is the best means to achieve the objective of permitting a car park on the subject land. The current zone for rail infrastructure is not required and does not reflect that it is now privately owned land and no longer required for rail purposes.

### Section B Relationship to strategic planning framework

- 3 Will the planning proposal give effect to 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 not located within the Byron Bay Urban Growth Area boundary under the *North Coast Regional Plan 2036* (NCRP) (Figure 11). It is located immediately adjacent to it on two sides and it is not clear why it would have been omitted given its location and history of railway related zones and uses.

Figure 11: NCRP urban growth area for Byron Bay



The most relevant NCRP direction is *Direction 6: Develop successful centres of employment*. The most relevant action is *6.4 Focus retail and commercial activities in existing centres and develop place-making focused planning strategies for centres*. A car park on this land has the advantage of allowing the adjacent employment land to the north to be developed consistent with zone objectives. The car park will be located on the edge of the CBD and accessed from the Byron Bay bypass. This meets with Council's goals of promoting parking on the CBD edges and promoting pedestrian uses in the CBD.

It is also consistent with action *6.5 Promote and enable an appropriate mix of land uses and prevent the encroachment of sensitive uses on employment land through local planning controls*. The use of this land is compatible with the business uses to the north and is separated from residential uses to the east by a road reserve.

On this basis, the planning proposal is justifiably inconsistent with the NCRP.

#### 4 Will the planning proposal give effect to a council's endorsed local strategic statement, or another endorsed local strategy or strategic plan?

The *Byron Bay Town Centre Masterplan* was completed in 2016 and includes an 'access and movement strategy' that addresses parking. The subject land is immediately south of the masterplan study area and is not specifically identified. However, the access and movement strategy states that a key goal is to "encourage people movement in the town centre and redirect traffic and parking away from the town centre. Large portions of existing parking need to be removed to the outer



fringes” (pages 25–28). The goal is to relocate 60% of on-street parking to the edge of the town centre in the long term.

The use of the subject land as an ‘edge of town centre car park’ is consistent with the *Byron Bay Town Centre Masterplan*.

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:

<b><i>Economy:</i></b> 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 on the subject land, which will create economic growth and demand without major ecological or social concerns. Parking private vehicles on the edge of the CBD, on this land, will facilitate more efficient use of business zone land nearby.
<b><i>Environment:</i></b> Our natural and built environment is improved for each generation	The planning proposal includes a coastal wetland in an environmental zone. The site has the opportunity for important rehabilitation and repair that can be achieved along with its future development as a car park.
<b><i>Community Infrastructure:</i></b> Services and infrastructure that sustains, connects and integrates our communities and environment	The site has good road access to the southern end of Jonson Street and the new Byron Bay bypass at its intersection with Browning Street. Power is connected to the site. Water and sewerage are also available nearby.  A future car park on this site will provide accessible parking for the southern end of the CBD. Cars approaching Byron Bay from the south or the bypass will be able to park here and access businesses at the southern end of town.
<b><i>Society and Culture:</i></b> Resilient, creative and active communities with a strong sense of local identity and place	The subject site is an underused part of Byron Bay that is surplus to railway needs and can be used to activate the southern end of the CBD.

On this basis, the planning proposal is consistent with Council’s CSP.

Council adopted the Byron Shire Local Strategic Planning Statement (LSPS) in September 2020 which presents an overarching vision and framework for land use within Byron Shire.

This planning proposal is broadly consistent with key priorities from the LSPS, in particular *LP2 Create great places that support and encourage an active, healthy and connected community* and *TP3 Promote and support local business development, education and employment opportunities*.

The rezoning to enable a car park on this land supports the Byron Town Centre Masterplan providing car parking spaces on the edge of town enabling people to park and walk into town. Car parking in this location will support full use of the

adjacent business zoned land, provide local employment opportunities and enable foot traffic to other businesses along Jonson Street.

**5 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 Coastal Management 2018	SEPP Coastal Management applies to the subject land because it contains a small area of coastal wetland and is entirely mapped as being within 100 metres of a coastal wetland. The applicant has verbally agreed that the area mapped as coastal wetland should be zoned E2 Environmental Conservation under Byron LEP 2014.  This planning proposal complies with the SEPP.

**6 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.	NA
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.	This planning proposal will not affect land within an existing or proposed rural zone.	NA
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 permit a car park. This use will be incompatible with the use of the site for development of resources or extractive industry. The site is not identified as containing extractive or mineral resources. The inconsistency is considered to be of minor significance.	Justifiably inconsistent
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	No Priority Oyster Aquaculture Area (POAA) exists in the Belongil catchment.	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>parks estate”, or</p> <p>(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.</p>		
1.5 Rural Lands	<p>Applies when:</p> <p>(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</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:</p> <p>(a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement</p> <p>(b) consider the significance of agriculture and primary production to the State and rural communities</p> <p>(c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources</p> <p>(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions</p> <p>(e) promote opportunities for investment in productive,</p>	<p>This planning proposal will not affect land within a rural zone. It will create environmental zones over a small area of coastal wetlands (E2) and a buffer and rehabilitation area (E3). An MLS will be applied to these environmental zones the same as to other such zones in the LGA.</p> <p>These actions will protect the remnant environmental values of the site and add to biodiversity through offsetting of vegetation to be cleared by a future development.</p> <p>No State or regional agricultural land is located on or near the site and no rural residential development is proposed. No commercial farming activity is carried out on or near the site.</p>	Consistent



S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>diversified, innovative and sustainable rural economic activities</p> <p>(f) support farmers in exercising their right to farm</p> <p>(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses</p> <p>(h) consider State significant agricultural land identified in <i>State Environmental Planning Policy (Primary Production and Rural Development) 2019</i> for the purpose of ensuring the ongoing viability of this land</p> <p>(i) consider the social, economic and environmental interests of the community.</p> <p>A planning proposal to which clause (b) applies must demonstrate that it:</p> <p>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</p> <p>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains</p> <p>(c) where it is for rural residential purposes:</p> <ol style="list-style-type: none"> <li>i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres</li> <li>ii. is necessary taking account of existing and future demand and supply of rural residential land.</li> </ol> <p>A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in clause 5.16 of Byron LEP 2014.</p>		

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>The Rural Subdivision Principles require that the following matters are to be taken into account:</p> <ul style="list-style-type: none"> <li>(a) the existing uses and approved uses of land in the vicinity of the development,</li> <li>(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,</li> <li>(c) whether or not the development is likely to be incompatible with existing or approved uses in the vicinity of the development,</li> <li>(d) any measures proposed by the applicant to avoid or minimise any incompatibility with existing or approved uses in the vicinity of the development.</li> </ul>		
<b>2 Environment and Heritage</b>			
<b>2.1 Environment Protection Zones</b>	<p>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 an 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 "Rural Lands".</p>	<p>This planning proposal does apply an E2 Environmental Conservation zone to an area of coastal wetland. This will facilitate the protection of this area.</p> <p>An E3 Environmental Management zone will be applied to a buffer around the wetland and an area to be rehabilitated to offset EEC vegetation removal from other parts of the site.</p> <p>No environmental standards will be reduced by the proposed LEP changes.</p>	Consistent



S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
2.2 Coastal Protection	<p>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 wetland, littoral rainforest, coastal environment or coastal use area.</p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> <li>(a) the objects of the <i>Coastal Management Act 2016</i>, and</li> <li>(b) the <i>NSW Coastal Management Manual</i> and associated Toolkit, and</li> <li>(c) the <i>NSW Coastal Design Guidelines 2003</i>, and</li> <li>(d) any relevant Coastal Management Program certified by the Minister.</li> </ul> <p>A planning proposal must not rezone land which would enable increased development or more intensive land use on land identified as being affected by current or future coastal hazard.</p>	<p>The subject land is not affected by the coastal environment area or coastal use area and is not subject to coastal hazards.</p> <p>It is affected by a small area of coastal wetland mapping and this land will be protected by applying an E2 Environmental Conservation zone.</p>	Consistent
2.3 Heritage Conservation	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> <li>(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,</li> <li>(b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and</li> <li>(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</li> </ul>	<p>The site has no European heritage items located on it that are listed in Byron LEP 2014. The Former Norco Butter Factory and Jasmine House are located approximately 125 metres and 60 metres to the north (respectively) and they are the nearest listed heritage items. The future development of the subject land is unlikely to impact on either of these buildings.</p> <p>A condition of the Gateway determination was to prepare a cultural heritage assessment which the applicants have provided.</p> <p>This assessment was in consultation with BoBBAC (Arakwal) and concluded that it is reasonable to assume that the proposal will not impact on</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p>	<p>Aboriginal objects.</p> <p>Arakwal and TBLALC will be invited to provide comment on the planning proposal during public exhibition.</p> <p>An inspection could also be undertaken at the DA stage if that is preferred by the TBLALC.</p> <p>BLEP14 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire. Sites and relics are also protected under State legislation.</p>	
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 <i>Recreation Vehicles Act 1983</i>):</p> <ul style="list-style-type: none"> <li>(a) where the land is within an environment 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 <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and</li> <li>(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>.</li> </ul> </li> </ul>	<p>This planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.</p>	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	<p>This Direction applies when a relevant planning authority prepares a planning proposal:</p> <ul style="list-style-type: none"> <li>(a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone;</li> <li>(b) that introduces or alters an overlay and associated clause.</li> </ul> <p>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.</p>	<p>This planning proposal introduces the E2 and E3 environmental zones to the subject land. This has been agreed by the applicant and is consistent with the Northern Councils E Zone Review Final Recommendations.</p> <p>The E2 zone represents the coastal wetlands that affect the site. This meets the criteria listed in the Final Recommendations.</p> <p>The E3 zone does not meet the criteria listed in the Final Recommendations but is required as a buffer to the coastal wetlands and as an area where disturbed EEC vegetation removed as part of this development can be offset and maintained by the land owners. This inconsistency is justified as it is acceptable to the current owners.</p>	Consistent
2.6 Remediation of Contaminated Land	<p>This Direction applies when a relevant planning authority prepares a planning proposal to include land in a zone that would permit a change of land use on that land and it is land that is in an investigation area; or is land that has been used for a potentially contaminating land use; or is being proposed for a sensitive land use and there are gaps in the history of past land use. In these circumstances:</p> <ul style="list-style-type: none"> <li>(a) the planning proposal authority has considered whether the land is contaminated, and</li> <li>(b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and</li> <li>(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that</li> </ul>	<p>The land is known to have been filled without Council consent and the geotechnical report undertaken by the applicant shows 0.6 metres to 1.5 metres of fill in two out of three boreholes located on the site. It is not known if this fill is clean or contaminated.</p> <p>The site was also owned by NSW Rail for an extended period and has evidence of past sheds and clearing. All sheds have now been demolished. Rail yards are a potentially contaminating land use and sheds can also generate lead paint and asbestos upon demolition or removal.</p> <p>Although the proposed use of the site as a car park is not a sensitive land use, it will be a construction site to create the car park and a medium density residential development is located to the east across a 20-metre road reserve. Dust and disturbance at this site could affect adjacent property.</p>	Consistent



S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>the land will be so remediated before the land is used for that purpose.</p> <p>Before changing a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.</p>	<p>The applicant has provided a contaminated land study. The study found the presence of contaminants of potential concern, thought to be associated with buried anthropogenic refuse on the site. Levels were below the adopted assessment criteria based on the sites use a carpark.</p> <p>The study concluded that the soil and groundwater at the site is suitable for the proposed development and recommends:</p> <ol style="list-style-type: none"> <li>1. The occurrence of buried anthropogenic refuse through the central and northern portions of Lot 51 will need to be considered relative to the proposed works (e.g. potentially from a geotechnical perspective).</li> <li>2. The preliminary waste classification indicates the majority of the material would be considered 'General Solid Waste (GSW)', however asbestos was detected in one location (S7), hence this material is likely to be classifiable as 'Asbestos Waste' (non-friable) if excavated. If any of the buried anthropogenic refuse is to be excavated, ENV recommends that it be undertaken under the supervision of a suitably qualified environmental scientist.</li> </ol> <p>Given the above it is considered appropriate to rezone this site to enable a non residential land use. Further assessment and consideration regarding the need for any excavation or remediation will need to be considered at the development application stage.</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
		<p>Staff have reviewed the study and acknowledge that any remediation required will be possible, but cannot be properly determined until the development application stage.</p> <p>SEPP 55 enables Council to ensure that any remediation required be considered before granting development consent.</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
3	Housing, Infrastructure and Urban Development		
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> <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>	<p>This planning proposal does not involve any residential land and will not allow residential accommodation as a land use.</p>	NA



S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
3.2 Caravan Parks and Manufactured Home Estates	<p>Applies when a relevant planning authority prepares a planning proposal.</p> <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 <i>Standard Instrument (Local Environmental Plans) Order 2006</i> that would facilitate the retention of the existing caravan park.</li> </ul> <p>In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> <li>(a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located,</li> <li>(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</li> <li>(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.</li> </ul>	This planning proposal will not alter the permissibility of caravan parks or manufactured home estates on the subject land.	NA
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.	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
3.4 Integrating Land Use and Transport	<p>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.</p> <p>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> <ul style="list-style-type: none"> <li>(a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and</li> <li>(b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).</li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</li> <li>(b) increasing the choice of available transport and reducing dependence on cars, and</li> <li>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</li> <li>(d) supporting the efficient and viable operation of public transport services, and</li> <li>(e) providing for the efficient movement of freight.</li> </ul>	<p>This planning proposal will permit a car park on the subject land. This will focus cars on this location that have previously parked elsewhere.</p> <p>The site is walking distance to shops, offices, employment and services. Public transport runs past the site along Jonson Street and Browning Street. The car park may be used to allow freight to access adjacent business zoned land.</p> <p>Overall, it will have a positive impact as locating a car park on the southern edge of the CBD will allow Council to make the CBD more pedestrian friendly.</p> <p>Car users will have to leave their car here and access the shops on foot or by bus.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
3.5 Development Near Regulated Airport and Defence Airfields	<p>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 regulated airport or defence airfield.</p> <p>The main requirements of the Direction are that Council consults with the relevant airport authority/operator and the Department of the Commonwealth responsible for airports. Major considerations are the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential or other purposes, and any increase to residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.</p>	This planning proposal will not alter provisions that affect land located in the vicinity of any regulated airport or defence airfield.	NA
3.6 Shooting Ranges	<p>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.</p> <p>A planning proposal must not seek to rezone land adjacent to and/or adjoining an existing shooting range that has the effect of permitting more intensive land uses in the area.</p>	There are no shooting ranges in the vicinity of this planning proposal.	NA
3.7 Reduction in non-hosted short term rental accommodation period	This Direction applies only to Byron Shire Council. It 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 carried out in parts of its local government area.	This planning proposal will not alter provisions that affect non-hosted short-term rental accommodation that may be carried out in Byron Shire.	NA



S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
4	Hazard and Risk		
4.1 Acid Sulfate Soils	<p>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 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.</p>	<p>The land to which this planning proposal applies is mapped as containing partly class 2 and partly class 3 acid sulfate soils.</p> <p>The applicant has undertaken a basic ASS study including soil tests which acknowledge the presence of the ASS and prescribe a treatment regime for any soil disturbed.</p> <p>The geotech report recommends that the car park be a slab on deep piers so minimal disturbance of natural ground is likely.</p> <p>An ASS management plan will be required at DA stage.</p>	Consistent
4.2 Mine Subsidence and Unstable Land	<p>Applies when a relevant planning authority prepares a planning proposal that permits development on land that:</p> <ul style="list-style-type: none"> <li>(a) is within a mine subsidence district, or</li> <li>(b) has been identified as unstable in a study, strategy or other assessment undertaken: <ul style="list-style-type: none"> <li>(i) by or on behalf of the relevant planning authority, or</li> <li>(ii) by or on behalf of a public authority and provided to the relevant planning authority.</li> </ul> </li> </ul>	<p>This planning proposal does not impact on any mine subsidence area.</p> <p>The site is not steep or potentially unstable.</p> <p>The area identified for a car park is relatively flat.</p>	Consistent
4.3 Flood Prone Land	<p>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 <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).</p> <p>A planning proposal must not rezone land within the flood</p>	<p>This planning proposal applies to land that is partly flood affected at its southern extent. However, it is not in a floodway or high hazard area. Most of the flood affected land will be included in an environmental zone.</p> <p>A stormwater assessment supplied with the planning proposal identifies that the land is affected in 1:100-year flood events but makes minimal comment about the flooding of the proposed car park site and the</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>planning areas from Special Use, Special Purpose, Recreation, Rural or Environment Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</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 a significant increase in the development of that land,</li> <li>(d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or</li> <li>(e) 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.</li> </ul> <p>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).</p> <p>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 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</p>	<p>impact of any development to other sites in the floodplain.</p> <p>Council accepts that the land has development potential as a car park and nuisance flooding of the lower car park level is not a major issue.</p> <p>Council's view is that flood-free access to and around the site is available and it has sufficient flood-free land for vehicles to escape flood water if required.</p> <p>The planning proposal will not permit dwellings on flood prone land. The issue of flooding can be further addressed at the DA stage.</p> <p>The revised planning proposal is consistent with this Direction.</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	(or an officer of the Department nominated by the Director-General).		
4.4 Planning for Bushfire Protection	<p>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 3.34 of the Act, and prior to undertaking community consultation in satisfaction of Schedule 1, clause 4 of the Act, and take into account any comments so made.</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) have regard to <i>Planning for Bushfire Protection 2019</i>,</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: <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> </ul> </li> <li>(b) for infill development (that is development within an</li> </ul>	<p>The subject land is partly classified as affected by bushfire hazard vegetation category 1 and a bushfire buffer.</p> <p>A Bushfire Hazard Report has been provided relevant to this planning proposal.</p> <p>It is infill development in a largely developed location. The future car park development will result in more land clearing on the site, reducing its ability to sustain a fire. A concrete car park will also be relatively fire resistant. It is not an inappropriate use in a hazardous area.</p> <p>The planning proposal will not prohibit bushfire hazard reduction.</p> <p>The planning proposal (and Bushfire Hazard Report) will still need to be referred to the Rural Fire Service. The inconsistency remains until that occurs.</p>	Inconsistent (referral to RFS is required)



S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>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,</p> <p>(c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p>		
<b>5 Regional Planning</b>			
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 urban or rural residential purposes.	None of the subject land is identified as State or regionally significant farmland under the Northern Rivers Farmland Protection Project. None of the land is mapped as Biophysical Strategic Agricultural Land (BSAL).	NA
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	<p>A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that:</p> <p>(a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway;</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, “within town” means</p>	This planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway.	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>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.</p> <p>A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and</li> <li>(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.</li> </ul>		
5.10 Implementation of Regional Plans	All planning proposals must be consistent with the applicable Regional Plan released by the Minister for Planning.	<p>This planning proposal affects land subject to the North Coast Regional Plan (NCRP).</p> <p>The subject land is mapped in the NCRP as being located immediately on the edge (but not in) the existing urban growth area. The proposed use of the site as a car park is an urban use but its previous railway related uses were also urban. However, as it is neither mapped in an urban growth area nor an investigation area, it is inconsistent with the NCRP.</p> <p>This inconsistency can be justified because it is (a) of minor significance (the whole site is approximately 0.6 hectares); and (b) the planning proposal achieves the overall intent of the NCRP and does not</p>	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
		<p>undermine the achievement of its vision, land use strategy, goals, directions or actions. Achieving the intent (etc) of the NCRP is demonstrated by consistency with actions 6.4 and 6.5 of the NCRP:</p> <p><i>6.4 Focus retail and commercial activities in existing centres and develop place-making focused planning strategies for centres.</i></p> <p>The <i>Byron Bay Town Centre Masterplan</i> is a place-making strategy that encourages CBD edge parking areas.</p> <p><i>6.5 Promote and enable an appropriate mix of land uses and prevent the encroachment of sensitive uses on employment land through local planning controls.</i></p> <p>The use of this site for parking will allow more efficient use of adjacent employment lands.</p> <p>An assessment against the NCRP Variation to Growth Area Principles is at Appendix A.</p>	
<b>6. Local Plan Making</b>			
<b>6.1 Approval and Referral Requirements</b>	<p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</li> <li>(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: <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),</li> </ul> </li> </ul>	<p>This 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.</p>	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>prior to undertaking community consultation in satisfaction of section 57 of the Act, and</p> <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 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.</li> </ul>		
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 (or an officer of the Department nominated by the Director-General).	<p>This planning proposal alters an existing zone for public purposes.</p> <p>The site has been sold by Transport for NSW as it is surplus to its needs. This action constitutes approval from the rail authority. The current SP2 Rail Infrastructure zone is no longer relevant to its current or future land use.</p> <p>The DPIE can indicate its support for the zone changes when it considers the Gateway determination.</p>	Justifiably inconsistent



S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
<p>6.3 Site Specific Provisions</p>	<p>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 planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</li> <li>(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.</li> </ul> <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>	<p>This planning proposal will allow a car park as a nominated land use in the SP2 zone. A small area will be identified for environment protection.</p> <p>The planning proposal does not contain schematic drawings.</p>	<p>Consistent</p>

## 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. Approximately 1,000 m<sup>2</sup> of native vegetation remains on the site in the form of a scattered and degraded swamp paperbark forest. Several years ago, this area was significantly larger with aerial photographs suggesting that it was more like 2,000 m<sup>2</sup> of native vegetation. It is identified by Byron Shire Council as being part of a wildlife corridor and containing High Conservation Vegetation.

A flora and fauna assessment recently undertaken by the current owners found that:

*The study area contains two (2) vegetation communities. No flora species recorded within the site has been listed as endangered or vulnerable under the TSCA (1995) or the EPBCA (1999).*

*One (1) recorded vegetation community is considered to potentially be reflective of an Endangered Ecological Community under the BCA (2016). No threatened ecological communities scheduled under the EPBCA (1999) were recorded.*

*The fauna survey of the site (and immediately adjacent areas) conducted by Planit resulted in the recording of forty (40) species of birds, five (5) species of mammals, three (3) species of reptiles and four (4) species of amphibians.*

*While no threatened species were recorded during the site survey, three species (Grey-headed Flying fox, Little Bent-wing Bat & Koala) were subject to a 'Test of Significance'. The assessment concludes that the impacts of the proposed development are unlikely to threaten the viability of any local populations of the nominated species/communities. A species impact statement is therefore not required.*

The subject land was assessed for Mitchell's Rainforest Snail and it was not found. The vegetated areas were assessed as not being suitable habitat for the snail.

### 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 land is partly flood prone at its southern edge but part of this area is to be included in an environmental zone. Flooding can be further assessed at the DA stage but the anticipated use of the site as a car park is resilient to minor flood inundation in any case.

If surface water is properly managed through water sensitive urban design principles and good quality on-site wastewater management is implemented then water quality leaving the site could be improved. It is important that the proposed car park does not further degrade any wetland in the locality.

### 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 a disused railway site that is no longer required for rail purposes. It is an appropriate location for a car park to service the southern edge of the CBD. The proposed car park will be separated from a medium density residential development to the east by the 20-metre wide unmade Jonson Street road reserve. This should minimise

impacts of fumes; however, noise and visual impact will need to be managed if the car park has an upper level. This can be addressed at the DA stage.

## Section D State and Commonwealth interests

### 1 Is there adequate public infrastructure for the planning proposal?

The proposed use of the site as a car park will require a basic water connection for fire-fighting and cleaning purposes and may also include a sewer connection for a toilet at the complex. Water and sewer are connected to adjacent land and can be extended. Power is available to the site for lighting and security. Part of the unmade section of Jonson Street can be constructed by the car park owners to provide access.

There is adequate public infrastructure to accommodate the proposed car park 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 was received on 18 December 2020.

The planning proposal will be sent to a number of agencies for consultation including

- Rural Fire Service,
- Department of Planning, Industry and Environment (Biodiversity and Conservation division,
- Transport for NSW,
- Heritage NSW
- Tweed Byron LALC
- Arakwal

At this early stage, it appears unlikely that there will be any issues of interest to Commonwealth authorities. 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
Department of Planning, Industry and Environment	Consideration of ecology and Aboriginal archaeological matters; flooding; and strategic planning merit.
Transport for NSW	Confirm no concerns with adjacent rail line and proposed car park use.
Rural Fire Service	Bushfire issues.
Tweed Byron LALC and Arakwal Corporation	Aboriginal cultural heritage and archaeological matters.



## Part 4 Mapping

The planning proposal will amend Byron LEP 2014 maps by inserting a new sheet for the area that covers the subject land and identifying it on that map:

- Land Use Zone Map – Sheet LZN\_003CC
- Lot Size Map – Sheet LSZ\_003CC

The proposed maps are shown at Figures 9 and 10.

## 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* because it is inconsistent with some section 9.1 Directions. A 28-day public exhibition period is recommended.

Notification of the exhibited planning proposal will include:

- the websites of Byron Shire Council and the NSW DPIE

The supporting studies and information supplied with the planning proposal submission will 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 2020	Decision by Council to support the planning proposal and submit for Gateway determination by the NSW DPIE.
December 2020	Gateway determination issued by the NSW DPIE.
Aril 2020	Public exhibition of planning proposal. Further government agency consultation.
June 2020	Analysis of public submissions. Preparation of Council report.
August 2020	Decision by Council to endorse the planning proposal and submit to the NSW DPIE under delegation for finalisation.

## Summary and conclusions

The planning proposal seeks to amend BLEP14 to permit a car park on the subject land with Council consent. This will be achieved by changing the zone of the subject land from SP2 Infrastructure (Rail corridor) to part SP2 Infrastructure (Car park). The land mapped as coastal wetlands will be included in an E2 Environmental Conservation zone, and a buffer and vegetation offset area will be included in the E3 Environmental Management zone under Byron LEP 2014. The car park will be restricted to the land zoned SP2. The current SP2 Infrastructure (Rail corridor) zone is redundant.

The site is on the southern edge of Byron Bay CBD and is walking distance to shops, offices, employment and services. Public transport runs past the site along Jonson Street and Browning Street. The car park may be used to allow freight to access adjacent business zoned land. Overall, it will have a positive impact as locating a car park on the southern edge of the CBD will allow Council to make the CBD more pedestrian friendly. It is consistent with the *Byron Bay Town Centre Masterplan*.

SEPP Coastal Management applies to the subject land because it contains a small area of coastal wetland and is entirely mapped as being within 100 metres of a coastal wetland. The applicant has verbally agreed that the area mapped as coastal wetland should be zoned E2 Environmental Conservation under Byron LEP 2014. The planning proposal identifies an area to offset the loss of native vegetation from this site (at least in part) plus a buffer to the coastal wetlands that will protect it from edge effects.

The planning proposal is justifiably inconsistent with the North Coast Regional Plan. An assessment of the planning proposal indicates that it is consistent with relevant SEPPs. It is consistent with most of the relevant section 9.1 Directions; and where inconsistencies occur, they can be justified or addressed with further information.

It is appropriate that it be sent to the NSW DPIE for a Gateway determination in order that the planning proposal can proceed to public exhibition (subject to compliance with any Gateway conditions).

Further information and studies that are required prior to public exhibition and agency consultation include:

- A study of the site's Aboriginal heritage completed by a qualified person or the TBLALC.
- A preliminary contaminated land investigation, which includes sufficient soil test information to identify if there are any potential issues on this site with past rail use or fill material. Any report will need to allow Council to determine that the site is suitable for its proposed use and, if contaminated, that disturbance will not pose a threat to neighbouring dwellings during development.
- A Bushfire Hazard Report that addresses the use of the site as a car park and as it is infill development (that is, development within an already subdivided area), where an appropriate APZ cannot be achieved, provides for an appropriate performance standard.

## **Appendix A**

### **Urban Growth Area Variation Principles** (from *North Coast Regional Plan 2036*)



## Urban Growth Area Variation Principles (from North Coast Regional Plan 2036)

### Policy

*The variation needs to be consistent with the objectives and outcomes in the North Coast Regional Plan 2036 and any relevant Section 9.1 Directions and State Environmental Planning Policies, and should consider the intent of any applicable local growth management strategy.*

**Comment:** The planning proposal will not permit residential development or business uses. It will be restricted to being used as a car park and for environment protection and restoration. This is consistent with the NCRP in that the areas of Coastal Wetlands will be retained and enhanced by offsetting of vegetation to be removed from the balance of the site. The use of this site for parking will allow more efficient use of adjacent employment lands. It is also consistent with the *Byron Bay Town Centre Masterplan* (a place-making strategy) that encourages CBD edge parking areas.

### Infrastructure

*The variation needs to consider the use of committed and planned major transport, water and sewerage infrastructure, and have no cost to government. The variation should only be permitted if adequate and cost-effective infrastructure can be provided to match the expected population.*

**Comment:** The planning proposal will allow a car park to be located south of the Jonson Street/Browning Street intersection, which is a roundabout intersection with the new Byron Bay bypass. This means that traffic can access the car park via the bypass or from south of town without entering the CBD. This is consistent with this major piece of transport infrastructure. The car park will require minimal water and sewer infrastructure (possible toilet and fire fighting), and will not generate any population growth of itself. It will not add to infrastructure costs or demands. A car park in this location will be an important piece of local infrastructure itself. The site is no longer required for rail related uses.

### Environmental and farmland protection

*The variation should avoid areas:*

- of high environmental or heritage value;
- mapped as important farmland, unless consistent with the interim variation criteria prior to finalising the farmland mapping review.

**Comment:** The planning proposal will enable a car park on the mostly disturbed land and protect the Coastal Wetlands in an E2 zone. An E3 zone will serve as a buffer to the wetlands and an area for offsetting vegetation removed from the other parts of the site. The site is not important farmland and is not mapped as State or regionally significant farmland or on BSAL mapping.

### Land use conflict

*The variation must be appropriately separated from incompatible land uses, including agricultural activities, sewage treatment plants, waste facilities and productive resource lands.*

**Comment:** The location of a car park near a railway line is unlikely to generate land use conflict even if the trains resume using the currently abandoned line. A road reserve separates the site from a medium density residential area to the east and this should be sufficient to buffer any light or noise impacts. If the car park does not have 24-hour access this will further reduce any chance of conflict. There are no agricultural areas nearby and adjacent business uses will rely on the car park to enable shoppers to access their sites on foot.

### Avoiding risk

*The variation must avoid physically constrained land identified as:*

- flood prone;
- bushfire-prone;
- highly erodible;
- having a severe slope; and
- having acid sulfate soils.

**Comment:** The land has some minor flooding at its southern end and this will mostly be in environmental zones. A car park is compatible with minor flooding in any case. The site is bushfire prone but a car park is substantially compatible with this hazard as cars can be easily moved out of oncoming fire. The site is affected by ASS and this will need to be addressed at the DA stage where the location and depth of soil disturbance will be known. The site is not erodible or steep.

## Heritage

*The variation must protect and manage Aboriginal and non-Aboriginal heritage.*

**Comment:** The Tweed Byron LALC has not been invited to inspect the subject land and undertake a cultural heritage assessment. An AHIMS search was undertaken in October 2020 and shows that there are no registered Aboriginal sites on the subject land or in proximity to it for 200 metres. Given the disturbance history on this site, it is reasonable that a cultural heritage assessment be undertaken as a condition of the Gateway determination. If any sites are located then they will be protected or an AHIP will be required.

The site has no buildings and does not contain any listed non-Aboriginal heritage sites or relics.

## Coastal area

*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.*

**Comment:** The site is located east of the Pacific Highway and is therefore in the NCRP definition of Coastal Area. It is a minor variation to the urban growth area affecting only 0.619 hectares of land (approximately). This land is already in an SP2 zone. It is only the primary special purpose that is changing from Rail corridor to Car park. It is contiguous with the current urban growth area that is located on the northern boundary of the subject land.