

General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Attention: Mr Sam Tarrant

Dear Mr Arnold

RE: Planning Proposal 150 Lismore Road, Bangalow (PP-2021-3615)

Thank you for your referral dated 6 April 2022 about the planning proposal to amend the Byron Local Environmental Plan 2014 to rezone part of Lot 4 DP 635505, 150 Lismore Road, Bangalow seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment and Heritage Group of the Department of Planning and Environment. I appreciate the opportunity to provide input.

We have reviewed the documents supplied and advise that several issues are apparent with the assessments for biodiversity and flood risk management. These issues are discussed in detail in **Attachment 1** to this letter.

In summary, the BCD recommends that before the planning proposal is finalised:

1. Given its EEC status, the wetland portion of the site has High Environmental Value (HEV). As a result, the wetland, including a 20m buffer measured outward from the high bank surrounding the wetland, should be zoned C2 – Environmental Protection.
2. As Maori Creek is mapped on the Biodiversity Values (BV) Map, which is a component of HEV, land on both sides of Maori Creek should be zoned to C3 – Environmental Management, for a distance of 20m. This would align with the riparian corridor included on the BV Map, and result in a total riparian corridor width of 40m.
3. The planning proposal should be revised to include reference to the HEV present within the planning area, along with the exclusion of HEV from zoning to IN1, and its zoning to C2 – Environment Protection and C3 – Environmental Management.
4. The flood impact assessment should be reviewed and updated to provide details regarding the model calibration that has been used to inform the flood modelling reliability and performance. If flood data are available from the recent February-March 2022 flood for Byron Creek at Bangalow, it is recommended this be used for model verification purposes.

The BCD requests an opportunity to review and comment on an updated report.

If you have any questions about this advice, please do not hesitate to contact Ms Rachel Lonie, Senior Conservation Planning Officer, at rachel.lonie@environment.nsw.gov.au or 6650 7130.

Yours sincerely

27 May 2022

GABRIELLE PIETRINI
Director, North East Branch
Biodiversity and Conservation

Attachment 1. Detailed BCD Comments – Planning Proposal to rezone Lot 4 DP 635505, 150 Lismore Road, Bangalow

Attachment 1: Detailed BCD Comments – Planning Proposal to rezone Lot 4 DP 635505, 150 Lismore Road, Bangalow

A. The Proposal

The planning proposal involves rezoning part of Lot 4 from RU1 Primary Production to IN1 General Industrial and rezoning of a 20 metre wide riparian corridor along Maori Creek to C3 Environmental Management as shown in Figure 5.4 in the planning proposal report (see below).

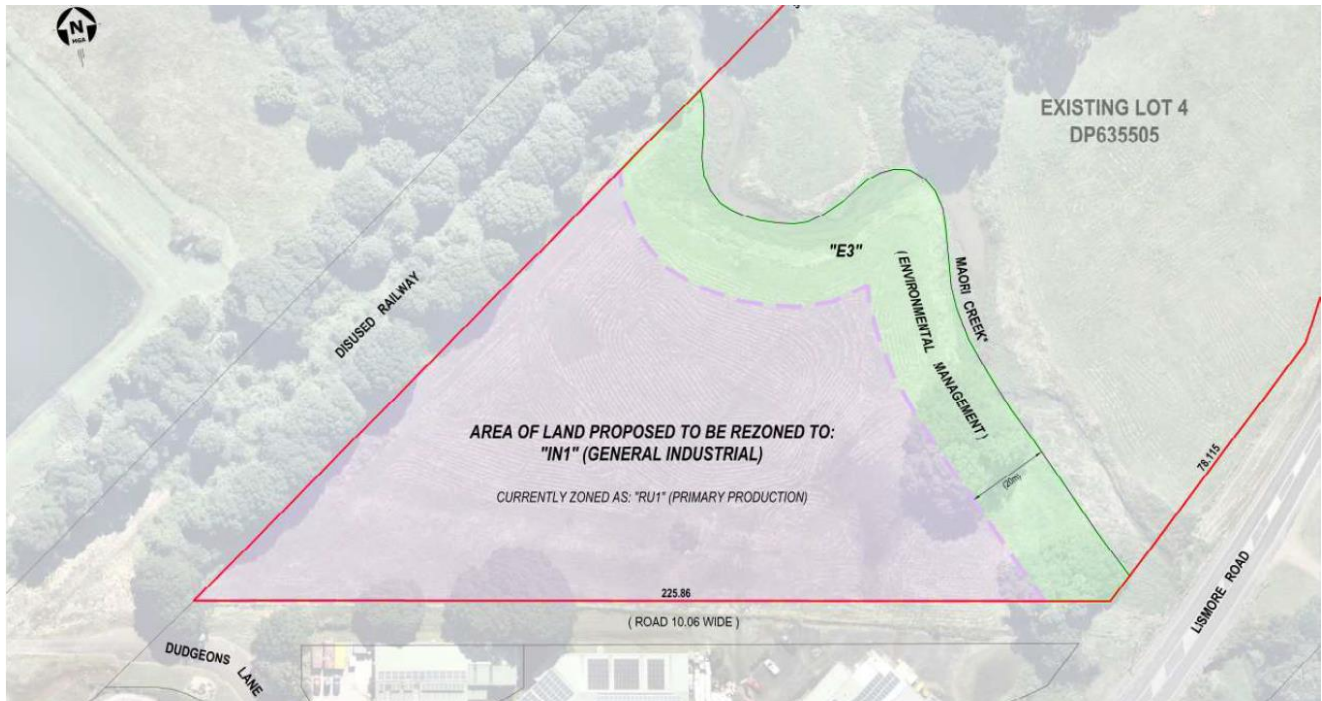


Figure 5.4 – Proposed Area to be Rezoned RU1 Primary Production and E3 Environmental Management

B. Biodiversity

BCD Planning Proposal Advice

In 2021, the BCD provided advice to the Council regarding the assessment of biodiversity in planning proposals. Step 1 in the assessment approach is that the planning area should cover the entire cadastral lot unless only a part of the lot is identified in a growth management strategy, in which case the planning area could be limited to just that part of the lot. The site is not currently mapped in the urban growth area. However, the area of land proposed to be rezoned is identified within Byron Shire's *Business and Industrial Lands Strategy 2020* as being potentially suitable for industrial development.

The BCD provided comment on the draft *Byron Bay Employment Lands Strategy* in 2018 and identified significant issues that we considered required addressing before the strategy was finalised. We note that the draft strategy we reviewed did not include the current planning area and we were not provided with an opportunity to comment on any revised strategy. We had a long history of involvement and it is disappointing that this site was not referred to us for assessment.

However, we acknowledge that this strategy has been finalised and that part of Lot 4 is identified in the strategy as being potentially suitable for industrial development. Despite this, the land still requires assessment of its suitability for such a land use.

Ecological Assessment – Bower Ecology Pty Ltd

We have reviewed the ecological assessment prepared in relation to the Planning Proposal by Bower Ecology, dated 15 May 2022. The ecological assessment was, in large part, prepared in response to the BCDs view that the planning area is potentially suitable for a range of threatened plant and animal species, including hairy-joint grass (*Arthraxon hispidus*) and koalas. We note that hairy-joint grass, nor any other threatened plant species, were observed within the planning area, despite a seemingly thorough examination of the site.

In addition, the planning area does not contain suitable koala feed trees. The dominant tree present across the planning area is camphor laurel.

Although no threatened flora or fauna species were observed, the ecological assessment identified a small portion of the south-eastern part of the planning area as a 'soak'. The assessment, despite the presence of several native wetland species, determined that the 'soak' is too small to form part of a wetland, and therefore, would not form part of a freshwater wetland endangered ecological community (EEC).

However, the NSW Scientific Committee's determination to list freshwater wetlands as an EEC does not include a minimum size for designation as freshwater wetland EEC. Therefore, it is our view that the soak, given it appears to be a natural system (i.e. not human made) and based on the mix of native wetland species present, is likely to comprise freshwater wetland EEC.

High Environmental Value (HEV) land

To achieve the North Coast Regional Plan's biodiversity goals, directions, and actions, the Planning Proposal must identify all areas of High Environmental Value (HEV) at the property scale.

Based on the information presented in the ecological assessment and the examination of the Biodiversity Values (BV) Map, the BCD considers two areas of HEV are presented on the site, as set out below.

BCD Recommendations:

1. Given its EEC status, the 'soak' wetland portion of the site comprises HEV. As a result, the wetland, including a 20m buffer measured outward from the high bank surrounding the wetland, should be zoned C2 – Environmental Protection.

The 20m buffer distance is based on the Strahler stream ordering system riparian buffer distances set out in Appendix E of the Biodiversity Assessment Method 2020.

2. As Maori Creek is mapped on the BV Map (see Figure 1 overleaf), which is a component of HEV, land on both sides of Maori Creek should be zoned to C3 – Environmental Management, for a distance of 20m. This would align with the riparian corridor included on the BV Map, and result in a total riparian corridor width of 40m.



Biodiversity Values Map and Threshold Tool

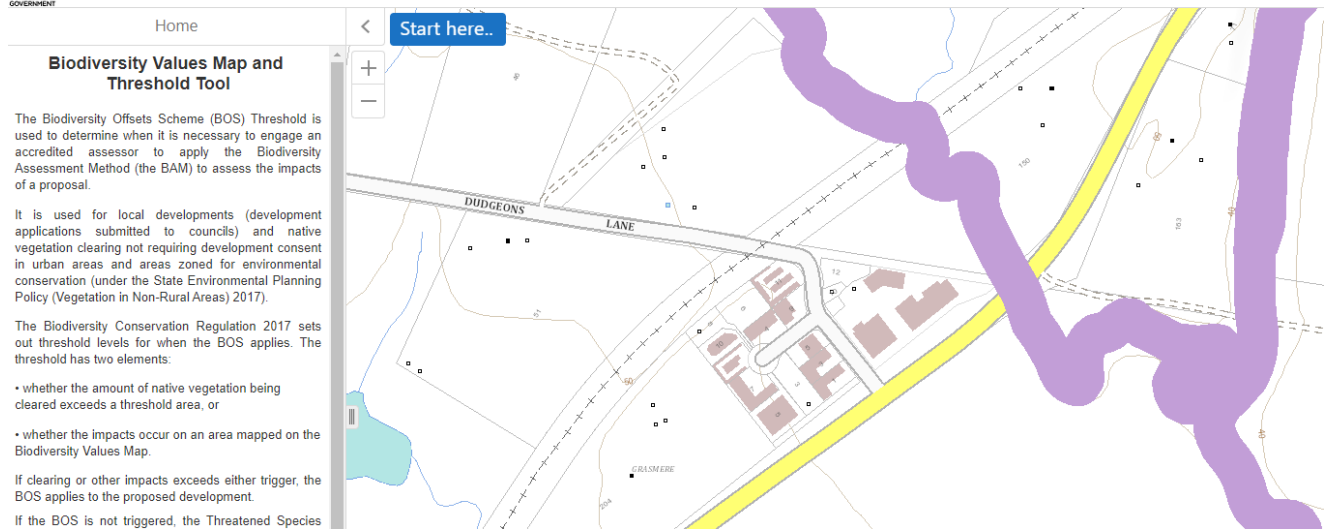


Figure 1. Extract from the Biodiversity Values (BV) Map showing Maori Creek is mapped as having BV values.

3. The planning proposal should be revised to include reference to the HEV present within the planning area, along with the exclusion of HEV from zoning to IN1, and its zoning to C2/C3.

As will be required by the Byron Development Control Plan at development application stage, we also support the revegetation of the creek line with native species, including koala feed trees. This would improve terrestrial fauna and fish habitat, as well as water quality more generally and provide other biodiversity values including connectivity.

C. Flood risk management

The BCD has reviewed the Flood Impact Assessment report prepared by BMT dated May 2021. The report indicates that the model had been calibrated to the March 2017 and February 2020 flood events in Byron Creek but no details regarding the calibration can be found in the report to support the reliability or performance of the models. For this reason, it is difficult to accept the findings of the design floods such as the 1%AEP and 5% AEP events.

The BCD understands that Byron Shire Council had been collecting flood data from the recent February-March 2022 flood and the data may include Byron Creek at Bangalow. If data exists, this flood event would be ideal for model verification purposes.

BCD Recommendation:

4. Before the planning proposal is finalised, the flood impact assessment should be reviewed, updated and resubmitted in light of the above comments.



Our Ref: C22/228

17 May 2022

The General Manager
Byron Shire Council
Via Planning Portal (PP-2021-3615)

Attention: Sam Tarrant

Dear Mr Tarrant

Re: Planning Proposal 26.2021.3.1 – Amendment of Byron LEP 2014 – Rezoning of part of Lot 4 DP 635505, 150 Lismore Road, Bangalow, Byron LGA

Thank you for providing DPI Fisheries with the opportunity to provide comment on Byron Shire Council's planning proposal to make amendments to the Byron Local Environmental Plan (LEP) 2014. Reference is made to your letter dated 6 April 2022 seeking consultation with DPI Fisheries on the subject planning proposal. The matter is of interest to DPI Fisheries as the proposal affects land adjacent to key fish habitat.

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is "no net loss" of key fish habitats upon which they depend. To achieve this, the Coastal Systems Unit assesses activities under Part 4 and 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the *Fisheries Management Act 1994* (FM Act), the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the FM Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)*. In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial fishing and aquaculture, quality recreational fishing and the continuation of Aboriginal cultural fishing within NSW.

It is understood that the objective of this planning proposal is to amend Byron LEP 2014 to rezone part of Lot 4 DP 635505, 150 Lismore Road, Bangalow from RU1 Primary Production to IN1 General Industrial and E3 Environmental Management.

The following comments are raised for Council's consideration with regard to the planning proposal.

Buffer distances between industrial development and key fish habitat

It is noted that the rezoning includes the inclusion of an E3 Environmental Management zone, between Maori Creek and the proposed new IN1 General Industrial zone, with a minimum 20m E3 Environmental Management zone buffer proposed for the site. To protect key fish habitats from the impacts of development, DPI Fisheries have a long established buffer policy outlined in the DPI Fisheries P&G which recommends a 50-100m buffer between developments and TYPE 1 *Highly Sensitive* key fish habitat, and at least 50m width adjacent to Type 2 *Moderately Sensitive* key fish habitat. It should be noted that the 4th order waterway Maori Creek is considered Type 2 key fish habitat but becomes Type 1 key fish habitat only 500m downstream at the junction of Byron Creek, where potential habitat for the threatened species Southern Purple Spotted Gudgeon is mapped.



Department of Primary Industries

Accordingly, DPI Fisheries recommends that the E3 Environmental Management zone, whose objective is to protect, manage and restore areas with special ecological, scientific, cultural and aesthetic values, is planned for and maintained consistent with the DPI Fisheries P&G buffer policy.

In addition, the provision of appropriate buffers between future industrial development and adjacent key fish habitat will ensure the retention and improvement to riparian vegetation communities. Built environments present threats in terms of water pollution as a result of inputs from industrial sites that generate high sediment, nutrient or chemical discharges. Healthy riparian vegetation communities assist in buffering land-based pollutants and weed incursion and serve an important role in stabilising waterways. Planning for and maintaining an appropriate buffer between future built industry and the waterway will assist in reducing pollution, sedimentation and the need for additional future erosion protection works.

If you have any queries, please contact me on 02 6626 1395 or annette.comerford@dpi.nsw.gov.au.

Yours sincerely

Annette Comerford
Fisheries Manager – Coastal Systems (North Coast)
Aboriginal Fishing and Marine and Coastal Environments, Primary Industries
NSW



Regional
NSW

Sam Tarrant
Town Planner
Byron Shire Council
70 Station St Street
Mullumbimby NSW 2482

Our ref: RDOC22/52898
Your ref: 26.2021.3.1 & E2021/140331

Emailed: Via C&R Portal

12 April 2022

Dear Sam,

Subject: Planning Proposal – Amendment to Byron LEP 2014 -150 Lismore Rd, Bangalow. .

Thank you for the opportunity to provide advice on the above matter. This is a response from the NSW Department of Regional NSW – Mining, Exploration and Geoscience (MEG) – Geological Survey of NSW (GSNSW).

MEG understands the rezoning comprising Lot 4 DP635505 is to amend the current zoning from RU1 (Primary Production) to a combination of IN1 (General Industrial) and E3 (Environmental management).

MEG has reviewed the subject area and has no mineral or extractive industry concerns to raise regarding the rezoning.

Queries regarding the above information should be directed to the MEG-GSNSW Land Use team at landuse.minerals@geoscience.nsw.gov.au.

Yours sincerely,

Steven Palmer
Manager, Land Use Assessment
Geological Survey of NSW – Mining, Exploration & Geoscience

30 May 2022

File No: NTH21/00223/02
Your Ref: PP-2021-3615

General Manager
Byron Shire Council
PO BOX 219
MULLUMBIMBY NSW 2482

Attention: Sam Tarrant

LISMORE ROAD (MR65): PLANNING PROPOSAL 26.2021.3.1 - AMENDMENT TO BYRON LEP 2014 TO REZONE PART OF LOT: 4 DP: 635505, 150 LISMORE ROAD, BANGALOW

I refer to the abovementioned Planning Proposal referred to Transport for NSW (TfNSW) via email on 11 April 2022 for comment in accordance with the Department of Planning and Environment request to consult with TfNSW.

TfNSW key interests are the safety and efficiency of the transport network, the needs of our customers and the integration of land use and transport in accordance with Future Transport Strategy 2056.

TfNSW has reviewed the referred documents and has no objection to the Planning Proposal. TfNSW preliminary comments dated 25 January 2022 remain relevant to Council's consideration of the Planning Proposal and any future development applications for the subject site. The following additional comments are provided to assist the Council in finalising the proposal;

1. TfNSW notes the response prepared by TGS Group and dated 18 February states: *"The rail corridor to which TfNSW refers has been rendered permanently inoperable. Consequently, the issues raised by TfNSW regarding stopping sight distance and queueing etc. relating to the rail crossing is not relevant to traffic engineering investigations or assessing the Application."*

Whilst the existing rail corridor is currently 'inactive', it may be used for transport-related uses in future. The Rail Infrastructure Manager (RIM), UGL Regional Linx, advises no current intention to re-open the corridor for the Country Rail Network, however they are aware of feasibility studies undertaken by Byron Shire Council to consider transport-related uses of the rail corridor.

2. TfNSW notes, that a Preliminary Site Investigation Report supporting the Planning Proposal concludes that negligible risks to human health or the environment exist at the site and that residual contamination would be more practicably addressed by development applications following subdivision.

TfNSW advises that it is currently conducting environmental assessments to identify contamination on the Country Regional Network. All railway corridors are generally deemed to be contaminated unless proven otherwise by sample testing. Contamination risk arises from both the construction (e.g., unknown fill used in rail construction) and operations (e.g., transportation of contaminated material, spills) of the railway. Potential contaminants could include, but are not limited to, heavy metals, PAHs, phenolics (boiler ash), Organochlorine Pesticides (OCPs) and Organophosphorus Pesticides (OPPs). TfNSW is committed to ensuring the health and wellbeing of the community. TfNSW is not currently aware of contaminants in the rail corridor or on the common boundaries with the development site.

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TfNSW understands that potential contamination and remediation will be considered by any future development application in accordance with s.4.6 of the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

On finalisation of the Planning Proposal, it would be appreciated if Council would notify TfNSW of the outcome. Should you require further information please contact Katrina Wade, Development Services Case Officer, on 1300 207 783 or by emailing development.north@transport.nsw.gov.au

Yours faithfully

Matt Adams
Team Leader Development Services
North Region | Community & Place
Regional & Outer Metropolitan

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OUT22/4478

General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482

Attention: Sam Tarrant
starrant@byron.nsw.gov.au

Dear Sir/Madam

Planning Proposal 26.2021.3.1 – 150 Lismore Rd, Bangalow

Thank you for providing the opportunity to make comment on the planning proposal seeking to amend Byron Local Environmental Plan (LEP) 2014 to rezone part of Lot 4 DP 635505, 150 Lismore Road, Bangalow, from RU1 Primary Production to IN1 General Industrial and E3 Environmental Management.

The NSW Department of Primary Industries (NSW DPI) Agriculture provides advice to consent authorities about the protection and growth of agricultural industries and the resources upon which these industries depend.

DPI Agriculture has reviewed the planning proposal and considered the nature of the proposal. No objection is provided given the strategic intent of the proposal, proposed zoning layout including the E3 zone between the site and the residue land, and relevant agricultural matters addressed within the Agricultural Capability Assessment.

Should you wish to discuss this matter further, please contact Agricultural Land Use Planning Officer, Selina Stillman, on 0412 424397.

Yours sincerely

21/4/22

Tamara Prentice
Manager, Agricultural Land Use Planning