



DRAFT Planning Proposal 26.2018.3.1  
for Amendment of Byron Local Environmental Plan 1988  
Clause 32 Development within Urban Coastal Land (7f2)

**Byron Shire Council**

Public Exhibition Version

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***Document History***

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## Part 1 Introduction

### 1.1 Objective and intended outcomes

The objective of this Planning Proposal is to amend Byron Local Environmental Plan (LEP) 1988 to strengthen clause 32 in line with its intention to limit intensification of development in the urban coastal zone 7(f2) on lands likely to be affected by coastal processes.

Byron LEP 1988 continues to apply to a number of areas that are ‘deferred’ for the purposes of Byron LEP 2014. These areas retain the zoning applicable to them under LEP 1988 and include coastal areas within the Shire known to be subject to coastal hazards.

A review and assessment process is underway in regard to the deferred areas. At this stage, however, this ‘E-zone review’ is not programmed to address 7(f2) areas, as there is currently no equivalent zone within the Standard Template LEP that specifically addresses coastal hazards. It is likely, therefore, that the provisions of LEP 1988 will continue to apply to the Shire’s coastal hazard areas for some time.

Given the demand for development in the coastal areas, and the known risks associated with coastal processes, it is appropriate that the provisions within clause 32 of LEP 1988 are as robust as possible while ever that instrument continues to apply.

A recently lodged development application, seeking approval to subdivide land within a known coastal hazard area, has highlighted an anomaly in the current wording of clause 32.

The intended outcome of this Planning Proposal, therefore, is to amend clause 32(5)(a) in relation to that anomaly, to specify that subdivision carried out under the *Strata Schemes Development Act 2015* will not be permitted within the 7(f2) zone if it results in the creation of one or more vacant lots. This is to:

- prevent intensive development in the urban coastal 7(f2) zone;
- ensure that development is carried out in a manner which does not adversely affect coastal processes and which will not be adversely affected by coastal processes; and
- confirm the original intent of the clause 32 provisions, to limit additional residential uses within the coastal erosion precincts.

This amendment is supported by recent changes to Byron Development Control Plan 2010, Part J2.6, which states:

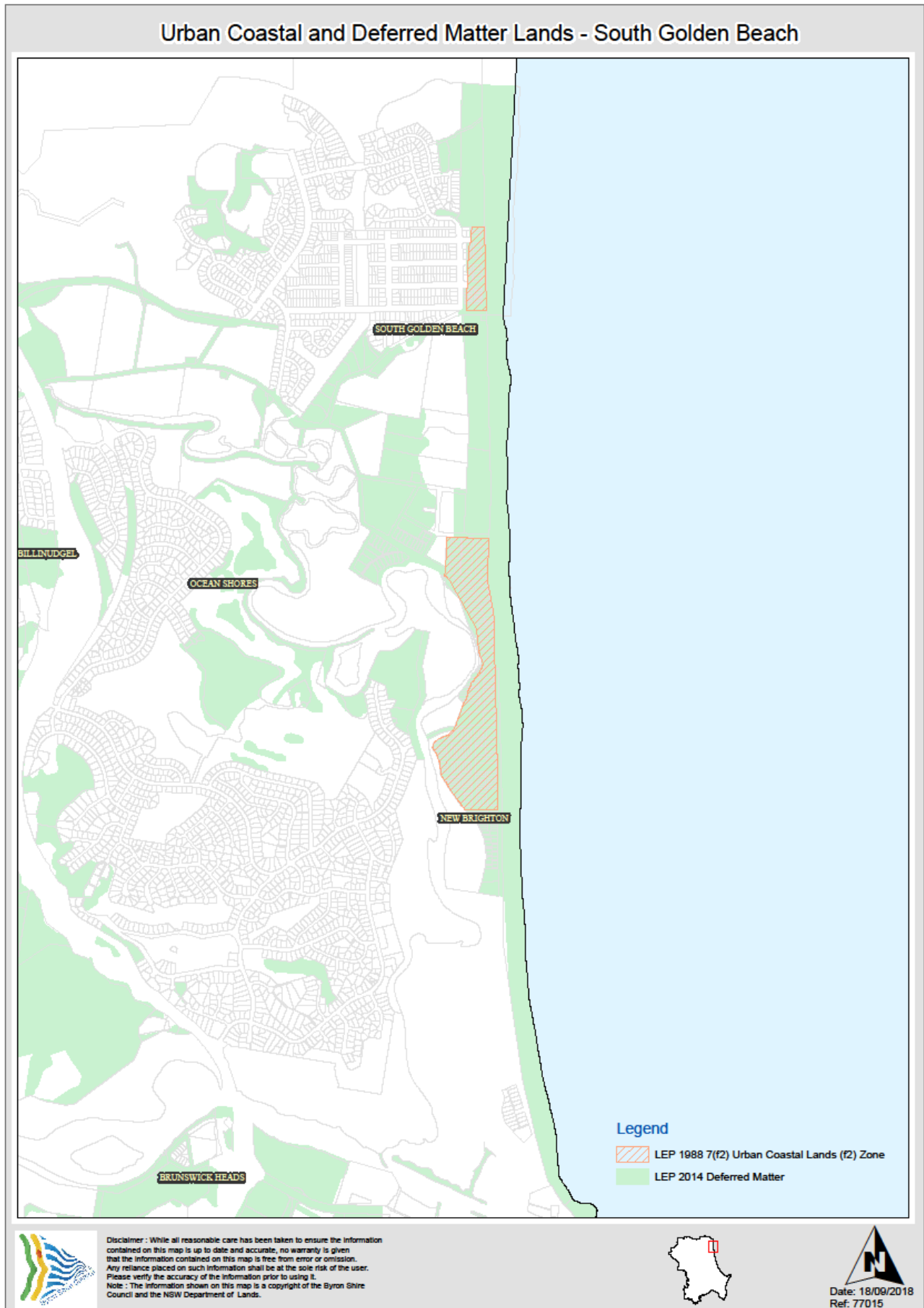
*Council will not consent to the subdivision of land in Zone No 7 (f2)—(Urban Coastal Lands (f2) Zone) that is located within Precincts 1 and 2 other than:*

*subdivision of an existing lawfully erected building (or buildings) under the Strata Schemes Development Act 2015, where no vacant lots result from the subdivision;*

### 1.2 Subject land

This Planning Proposal relates to land in Byron Shire that is currently zoned 7(f2) Urban Coastal zone under the LEP 1988.

Figures 1 and 2 show the location and extent of 7(f2) and across the Shire.



**Figure 1 – Subject Land Byron Shire North**

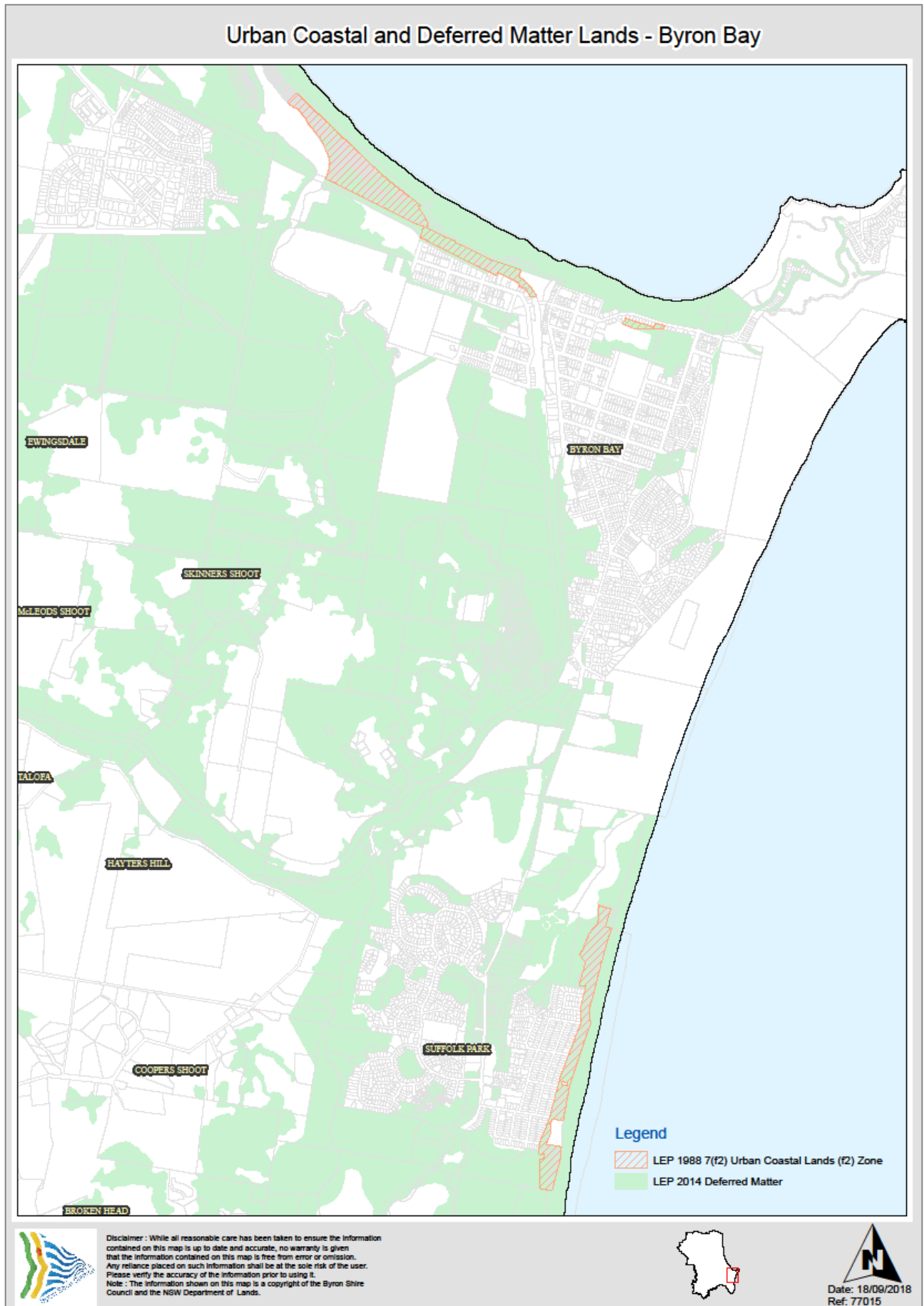


Figure 2 – Subject Land Byron Shire South

### 1.3 Background

Clause 32 of LEP 1988 relates to development of land zoned 7(f2). It specifies that consent is required for the development of land in that zone, and, in deciding whether to grant consent, Council shall consider:

- (a) *the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes,*
- (b) *the need to relocate buildings in the long term,*
- (c) *the need for the development consent to be limited to a particular period,*
- (d) *the form, bulk, intensity and nature of the development, and*
- (e) *continued safe public access to the site.*

Part 4 of the clause acts to prevent Council from granting consent to a number of nominated uses, which are in addition to the prohibitions contained in the 7(f2) development table.

Part 5 of the clause specifies that Council *shall not consent to the subdivision of land within Zone No. 7(f2), other than for the following:*

- (a) *a subdivision under the [Strata Schemes \(Freehold Development\) Act 1973](#), or*
- (b) *a subdivision to excise an allotment that is, or that the Council is satisfied is intended to be, used for a public purpose, or*
- (c) *a subdivision that, in the opinion of the Council, is only a boundary adjustment where no additional lots are created.*

In its entirety, clause 32 aims to restrict the intensity of development in locations subject to coastal hazards. In relation to subdivision, Part 5 aims to prevent the creation of new lots that would lead to additional development subject to those hazards, other than where the lot will be used for public purposes.

It is suggested that, in that context, the exemption relating to strata subdivision was intended to allow for the subdivision of existing lawfully approved buildings, rather than to allow the creation of vacant lots, as it makes no sense why subdivision to create vacant land would be prohibited for one form of titling but acceptable for another.

The current words of that part, however, do not clearly state that intent.

Council has previously approved a number of development applications that have resulted in the creation of vacant strata lots under the provisions of this clause. More recently, in relation to a proposal at New Brighton, Council resolved to refuse the application based on concerns that creation of an additional vacant lot, under the *Strata Schemes Development Act 2015*, was inconsistent with the intent of clause 32 in that it would intensify development in an area subject to known and significant coastal hazards.

In refusing the development application, Council also resolved to amend part 5(a) of clause 32 to clarify that subdivision under the strata legislation will only be approved where it does not result in the creation of any additional vacant lots.



## Part 2 Explanation of provisions

This Planning Proposal amends part 5(a) of clause 32 of Byron LEP 1988 in the following manner:

| <b>Current Wording:</b>  | <b>Proposed Wording (changes/ addition in red text)</b>   |
|--|---|
| <p>(5) The Council must not consent to the subdivision of land within Zone No 7 (f2) other than:</p> <p>(a) a subdivision under the <i>Strata Schemes (Freehold Development) Act 1973</i>, or</p> <p>(b) a subdivision to excise an allotment that is, or that the Council is satisfied is intended to be, used for a public purpose, or</p> <p>(c) a subdivision that, in the opinion of the Council, is only a boundary adjustment where no additional lots are created.</p> | <p>(5) The Council must not consent to the subdivision of land within Zone No 7 (f2) other than:</p> <p>(a) a subdivision of <b>an existing lawfully erected building or buildings</b> under the <i>Strata Schemes Development Act 2015</i>, <b>where no vacant lots result from that subdivision</b> or</p> <p>(b) a subdivision to excise an allotment that is, or that the Council is satisfied is intended to be, used for a public purpose, or</p> <p>(c) a subdivision that, in the opinion of the Council, is only a boundary adjustment where no additional lots are created.</p> |

The proposed amendment will achieve two aims:

1. Update the legislative reference in the clause from *Strata Schemes (Freehold Development) Act 1973* (since repealed) to the current *Strata Schemes Development Act 2015*; and
2. Clarify that Council will only consent to a subdivision of 7(f2) land by way of this strata legislation in relation to an existing lawfully erected building (or buildings) where the subdivision will not create a vacant lot suitable for further development.

This will prevent the intensification of existing uses in urban coastal areas, the majority of which are affected by coastal erosion hazards.

## Part 3 Justification

### Section A Need for the planning proposal

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

No. The Planning Proposal is a result of the assessment of a recently refused development application, which sought consent for the subdivision of land, by way of the *Strata Schemes Development Act 2015*, to create a vacant lot on land at New Brighton that is subject to known coastal hazards.

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

Yes. The Planning Proposal is considered the best means of achieving the stated objectives, to minimise the intensification of existing urban coastal areas subject to coastal hazards.

#### Alternative Options

The following options were considered and discussed during preparation of the Planning Proposal:

1. Address currently deferred 7(f2) areas within Byron LEP 2014, with appropriate zoning and (potential) local provisions and/or mapping overlays.



Work to pursue this outcome is programmed, but has not yet commenced. At this stage, Council's 'E-zone review' is addressing areas deferred for reasons associated with biodiversity values. There is a substantial amount of work in assessing all of those areas and determining appropriate LEP 2014 zoning, and it is anticipated that the process will take 12-18 months to complete, before resources can be put to a review of coastal lands.

That review, in itself, will require significant work to develop zoning and controls that adequately manage the level of coastal risks across different parts of the Shire.

In the interim, there are a substantial number of properties across the Shire, currently zoned 7(f2), that could be subject to development applications seeking to utilise the *Strata Schemes Development Act 2015* to create vacant lots, particularly given that LEP 1988 does not contain development standards limiting the minimum lot size within the 7(f2) zone.

2. Amend clause 32 part 5 to remove the exemption that allows Council to approve the subdivision of land by way of the *Strata Schemes Development Act 2015*.

Within the 7(f2) areas, there are existing lawfully approved dual occupancies or residential flat buildings that could be 'strata subdivided' without creating any additional structures or buildings, or otherwise changing the exposure to coastal hazards. Removing the ability to approve a strata subdivision would be unreasonable for those properties.

## **Section B Relationship to strategic planning framework**

### **Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (in this case the North Coast Regional Plan 2036)?**

Yes. The Planning Proposal is consistent with the [North Coast Regional Plan 2036](#), which is a 20-year blueprint for the future of the North Coast. The NSW Government's vision for the North Coast is to create the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.

To achieve this vision the Government has set four goals for the region:

- *The most stunning environment in NSW*
- *A thriving, interconnected economy*
- *Vibrant and engaged communities*
- *Great housing choice and lifestyle options.*

Byron Shire and the whole North Coast Region is recognised for its spectacular natural environment and its contribution to the area's high biological diversity and value. The North Coast Regional Plan places focus on the future to deliver sustainable land uses that will protect those environmental values.

As stated in the North Coast Regional Plan, the coastal strip covers 12% of the region and is home to 49% of the population and development pressure is expected to continue in this area.

Byron Shire is one of Australia's most visited local government areas, with stunning beaches, beautiful hinterland and vibrant centres. These factors continue to increase the attractiveness of the Byron Shire to visitors and new residents and this has a significant effect on the demand for residential land uses and places high values on urban coastal areas. The NSW Government recognises that tourism can both benefit and increase pressure on the environment and smaller communities.

In recognition of this, the North Coast Regional Plan talks of directing growth to locations that will not compromise the natural environment. The Plan states that the NSW Government and councils will manage growth of new land releases in the coastal strip by directing development to the mapped urban growth areas to help avoid pressure on the sensitive coastal environment.

In summary, this Planning Proposal particularly relates to the following regional priorities:

- Prevent intensification of development in the sensitive coastal strip
- Direct growth to the mapped urban growth areas
- Protect areas of environmental value
- Ensure local plans manage marine environments

**Q4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?**

Byron Shire Council has recently adopted Our Byron Our Future. Our Community Strategic Plan 2028.

The CSP is the highest level of strategic planning undertaken by a council and its community. Its purpose is to identify the community's main priorities and aspirations for the future, and to plan a clear set of strategies for achieving these goals. The CSP considers the issues and pressures that may affect the community over the next 10 years.

Based on extension community engagement, the Plan contains five key community objectives, which are addressed below in relation to this Planning Proposal:

**We have infrastructure, transport and services that meet our expectations**

The Planning Proposal aims to limit intensification of existing land use within coastal hazard areas, which will assist to ease pressure on infrastructure.

**We cultivate and celebrate our diverse cultures, lifestyle and sense of community**

The Planning Proposal does not raise any implications in this regard.

**We protect and enhance our natural environment**

The Planning Proposal assists the environment to be maintained and protected for future generations by restricting development that is subject to significant coastal hazards.

**We manage growth and change responsibly**

This Planning Proposal supports growth being directed to suitable areas away from the sensitive coastal strip.

**We have community led decision making which is open and inclusive.**

The Planning Proposal does not raise any implications in this regard.

On this basis the Planning Proposal is consistent with Council's CSP.

**Q5. Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?**

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

| State Environmental Planning Policy (SEPP) | Compliance of Planning Proposal  |
|--|--|
| SEPP 44 – Koala Habitat Protection         | SEPP 44 specifies that in order for a forested area to be classified as koala habitat, a minimum of 15% of the trees must be species of trees that provide food for koalas. There is no Koala habitat mapped by Council in the area affected by this Planning Proposal. The Planning Proposal is considered to be consistent with SEPP 44. |
| SEPP (Coastal Management) 2018             | All areas zoned 7(f2) are mapped as a combination of Coastal Management, Coastal Use Area and Coastal Vulnerability Area   |

| State Environmental Planning Policy (SEPP) | Compliance of Planning Proposal   |
|--|---|
|  | <p>under the SEPP (Coastal Management) 2018 (although there is currently no Vulnerability Area Map).</p> <p>The proposed changes to the LEP are directly consistent with the aims of the SEPP to:</p> <ul style="list-style-type: none"> <li>• manage development in the coastal zone and protect the environmental assets of the coast, and</li> <li>• establishing a framework for land use planning to guide decision-making in the coastal zone.</li> </ul> |
| SEPP Infrastructure (2007)                 | This Planning Proposal does not contradict or repeat the provisions of the Infrastructure SEPP.   |

**Q6. Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)?**

Consistency with the s117 Directions is assessed in the following table:

| <b><i>S117 Direction</i></b>       | <b><i>Application</i></b>  | <b><i>Relevance to this planning proposal</i></b>                                      | <b><i>Consistency with direction</i></b> |
|------------------------------------|--|--|--|
| <b>1. Employment and Resources</b> |  |  |  |
| 1.1 Business and Industrial Zones  | <p>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).</p> <p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>(a) encourage employment growth in suitable locations,</li> <li>(b) protect employment land in business and industrial zones, and</li> <li>(c) support the viability of identified strategic centres.</li> </ul> <p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) give effect to the objectives of this direction,</li> <li>(b) retain the areas and locations of existing business and industrial zones,</li> <li>(c) not reduce the total potential floor space area for employment uses and related public services in business zones,</li> <li>(d) not reduce the total potential floor space area for industrial uses in industrial zones, and</li> <li>(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.</li> </ul> | This Planning Proposal will not affect business and/or industrial zones.               | N/A                                      |
| 1.2 Rural Zones                    | <p>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).</p> <p>The objective of this direction is to protect the agricultural</p>   | This Planning Proposal does not affect land within an existing or proposed rural zone. | N/A                                      |

| <b><i>S117 Direction</i></b>                               | <b><i>Application</i></b>  | <b><i>Relevance to this planning proposal</i></b>   | <b><i>Consistency with direction</i></b> |
|--|--|---|--|
|  | <p>production value of rural land.</p> <p>Under this direction a planning proposal must:</p> <p>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</p>  |   |  |
| 1.3 Mining, Petroleum Production and Extractive Industries | <p>Applies when a relevant planning authority prepares a planning proposal that would have the effect of:</p> <p>(a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or</p> <p>(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.</p> | This Planning Proposal does not have any effect on the potential for mining, petroleum production or extraction of materials and resources. | N/A                                      |
| 1.4 Oyster Aquaculture                                     | <p>Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:</p> <p>(a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national 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>                            | This Planning Proposal has no effect on a Priority Oyster Aquaculture Area or other related uses.   | N/A                                      |
| 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</p>   | This Planning Proposal will have no effect on land within a rural or environment protection zone.   | N/A                                      |

| <b>S117 Direction</b>              | <b>Application</b>   | <b>Relevance to this planning proposal</b>   | <b>Consistency with direction</b> |
|------------------------------------|--|--|-----------------------------------|
|                                    | <p>(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 be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>. A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p> |  |                                   |
| <b>2. Environment and Heritage</b> |  |  |                                   |
| 2.1 Environment Protection Zones   | <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 a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “<i>Rural Lands</i>”.</p>                 | This Planning Proposal will clarify and strengthen existing provisions that prevent intensification of development on land subject to coastal hazards.   | Consistent                        |
| 2.2 Coastal Protection             | <p>This Direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.</p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <p>(a) the NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997,</p> <p>(b) the Coastal Design Guidelines 2003,</p>   | Strengthening provisions that prevent the subdivision of land in coastal hazard areas is consistent with the principles and objectives of the Coastal Policy and Management Manual in that it ensures that intensification of development does not occur in areas subject to the effects of coastal processes. | Consistent                        |

| <b>S117 Direction</b>        | <b>Application</b>  | <b>Relevance to this planning proposal</b>   | <b>Consistency with direction</b> |
|------------------------------|---|--|-----------------------------------|
|                              | (c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the NSW Coastline Management Manual 1990).  |  |                                   |
| 2.3 Heritage Conservation    | <p>A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(a) Items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and</p> <p>(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.</p> | This planning proposal does not impact on heritage conservation.   | N/A                               |
| 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> <p>(a) where the land is within an environment protection zone,</p> <p>(b) where the land comprises a beach or a dune adjacent to or adjoining a beach,</p> <p>(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:</p> <p>(i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of</i></p>  | This Planning Proposal does not enable land to be developed for the purpose of a vehicle recreation area (within the meaning of the <i>Recreation Vehicles Act 1983</i> ): | N/A                               |



| <b>S117 Direction</b>   | <b>Application</b>  | <b>Relevance to this planning proposal</b>  | <b>Consistency with direction</b> |
|---|---|---|-----------------------------------|
|   | <p><i>Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985, and</i></p> <p>(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></p>  |   |                                   |
| 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs | A planning proposal that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone or an overlay and associated clause must apply the proposed E2 Environmental Conservation or E3 Environmental Management zones, or the overlay and associated clause, consistent with the Northern Councils E Zone Review Final Recommendations.   | This Planning Proposal does not introduce or alter an E2 or E3 Zone or Environmental Overlays.  | N/A                               |
| <b>3. Housing, Infrastructure and Urban Development</b>                               |   |   |                                   |
| 3.1 Residential Zones   | <p>This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <p>(a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),</p> <p>(b) any other zone in which significant residential development is permitted or proposed to be permitted.</p> <p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <p>(a) broaden the choice of building types and locations available in the housing market, and</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>(d) be of good design.</p> <p>A planning proposal must, in relation to land to which this direction applies:</p> | This Planning Proposal does not affect land within a residential zone. Residential accommodation (urban development) is permitted with consent in the zone and this Planning Proposal only limit the creation of new vacant lots. | Consistent                        |

| <b>S117 Direction</b>                           | <b>Application</b>  | <b>Relevance to this planning proposal</b>   | <b>Consistency with direction</b> |
|---|---|--|-----------------------------------|
|   | <p>(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</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>  |  |                                   |
| 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> <p>(a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and</p> <p>(b) retain the zonings of existing caravan parks, or in the case of a new principal LEP, zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park.</p> <p>In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <p>(a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located,</p> <p>(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</p> <p>(c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community</i></p> | This Planning Proposal does not seek to identify suitable zones locations and provision for caravan parks. | N/A                               |

| <b>S117 Direction</b>                  | <b>Application</b>  | <b>Relevance to this planning proposal</b>   | <b>Consistency with direction</b> |
|--|---|--|-----------------------------------|
|  | <i>Land Development Act 1989</i> be permissible with consent.   |  |                                   |
| 3.3 Home Occupations                   | Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.  | This Planning Proposals does not seek to amend current Byron LEP 1988 provisions that permit home occupations to be carried out without the need for development consent.                      | N/A                               |
| 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> | This Planning Proposal will not create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. | N/A                               |

| <b><i>S117 Direction</i></b>            | <b><i>Application</i></b>   | <b><i>Relevance to this planning proposal</i></b>   | <b><i>Consistency with direction</i></b> |
|---|---|---|--|
| 3.5 Development Near Licensed Aerodrome | <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 licensed aerodrome.</p> <p>The main requirements of the Direction are that Council considers the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential purposes, and does not increase residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.</p>   | This Planning Proposal will not create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.   | N/A                                      |
| 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>  | This Planning Proposal does not relate to land adjacent to and/or adjoining an existing shooting range.   | N/A                                      |
| <b>4. Hazard and Risk</b>               |   |   |  |
| 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>Most coastal areas zoned 7(f2) are subject to the risk of ASS to some extent.</p> <p>The Planning Proposal seeks to limit the intensification of development in these coastal areas.</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> <p>(a) is within a mine subsidence district, or</p>   | Byron Shire is not in a mine subsidence district and the land affected by this planning proposal has not been identified as unstable land.  | N/A                                      |

| <b>S117 Direction</b> | <b>Application</b>  | <b>Relevance to this planning proposal</b>  | <b>Consistency with direction</b> |
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|                       | <p>(b) has been identified as unstable in a study, strategy or other assessment undertaken:</p> <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>   |   |                                   |
| 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 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,</li> </ul> | <p>Significant areas of land zoned 7(f2) is mapped as Flood Prone Land (1:100 Year Flood).</p> <p>Strengthening the provisions that prevent intensification of uses, as a measure to manage coastal risk, will also assist in preventing increases in the amount of development subject to flood risks.</p> | Consistent                        |

| <b>S117 Direction</b>                | <b>Application</b>   | <b>Relevance to this planning proposal</b>   | <b>Consistency with direction</b> |
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|                                      | <p>buildings or structures in floodways or high hazard areas), roads or exempt development.</p> <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 Floodplain Development Manual 2005 (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 (or an officer of the Department nominated by the Director-General).</p> |  |                                   |
| 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 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) have regard to <i>Planning for Bushfire Protection 2006</i>,</li> <li>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</li> </ul>   | Some areas of land zoned 7(f2) are mapped bushfire prone. Strengthening existing limitations on development also assist in reducing future bushfire risks. | Consistent                        |

| <b>S117 Direction</b> | <b>Application</b>  | <b>Relevance to this planning proposal</b> | <b>Consistency with direction</b> |
|-----------------------|---|--|-----------------------------------|
|                       | <p>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</p> <p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <p>(a) provide an Asset Protection Zone (APZ) incorporating at a minimum:</p> <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> <p>(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the <i>Rural Fires Act 1997</i>), the APZ provisions must be complied with,</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 fire fighting 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><i>S117 Direction</i></b>   | <b><i>Application</i></b>  | <b><i>Relevance to this planning proposal</i></b>   | <b><i>Consistency with direction</i></b> |
|--|--|---|--|
| <b>5 Regional Planning</b>   |  |   |  |
| 5.1 Implementation of Regional Strategies                                    | This direction applies to land to which the following regional strategies apply:<br>(a) South Coast Regional Strategy (excluding land in the Shoalhaven LGA)<br>(b) Sydney–Canberra Corridor Regional Strategy | Not Applicable  | N/A                                      |
| 5.2 Sydney Drinking Water Catchments   | Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.  | Not Applicable  | N/A                                      |
| 5.3 Farmland of State and Regional Significance on the NSW Far North Coast   | The planning proposal must not rezone land mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project for an urban use.  | Not Applicable  | N/A                                      |
| 5.4 Commercial and Retail Development along the Pacific Highway, North Coast | Not Applicable   | Not Applicable  | N/A                                      |
| 5.5 -5.7 Revoked   | -  | -   | N/A                                      |
| 5.8 Second Sydney Airport: Badgerys Creek                                    | Not Applicable   | Not Applicable  | N/A                                      |
| 5.9 North West Rail Link Corridor Strategy                                   | Not Applicable   | Not Applicable  | N/A                                      |
| 5.10 Implementation of Regional Plans  | Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.  | The consistency of this Planning Proposal with the North Coast Regional Plan is addressed in Section B above. | Consistent                               |
| <b>6. Local Plan Making</b>  |  |   |  |
| 6.1 Approval and Referral Requirements                                       | A planning proposal must:<br>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and                | The planning proposal does not propose the inclusion of any concurrence, consultation or referral provisions. | Consistent                               |

| <b><i>S117 Direction</i></b>           | <b><i>Application</i></b>   | <b><i>Relevance to this planning proposal</i></b>  | <b><i>Consistency with direction</i></b> |
|--|---|--|--|
|  | <p>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</p> <ul style="list-style-type: none"> <li>(i) the appropriate Minister or public authority, and</li> <li>(ii) the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General),</li> </ul> <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 and Environment (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and</li> <li>(ii) has obtained the approval of the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of 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 and Environment (or an officer of the Department nominated by the Director-General).   | This proposal does not create, alter or reduce existing zonings or reservations of land for public purposes. | N/A                                      |
| 6.3 Site Specific Provisions           | <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</p>   | This Planning Proposal does not seek to allow a particular development to be carried out.                    | Consistent                               |

| <b><i>S117 Direction</i></b> | <b><i>Application</i></b>   | <b><i>Relevance to this planning proposal</i></b> | <b><i>Consistency with direction</i></b> |
|------------------------------|---|---|--|
|                              | <p>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> |   |  |

**Q7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?**

No. This Planning Proposal aims to prevent development intensification and will not have any negative impact on any critical habitat, threatened species, populations or ecological communities.

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

No.

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

Limiting the ability to create new vacant lots on land subject to coastal hazards results in positive social and economic outcomes, by reducing the future demand to protect development when impacted by coastal processes.

## Section D State and Commonwealth interests

**Q.10 Is there adequate public infrastructure for the planning proposal?**

The Planning Proposal will not intensify development or need for public infrastructure.

**Q.11 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination**

State and Commonwealth public authorities have not been formally involved in this particular Planning Proposal as it is yet to receive Gateway Approval. At this early stage, it appears unlikely that there will be any issues of interest to Commonwealth authorities.

The NSW Office of Environment and Heritage will be consulted during the public exhibition period.

## Part 4 Mapping

The Planning Proposal will not require the amendment of any LEP maps.

## 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 considered to be low impact as outlined in the Department of Planning and Environment's *A guide to preparing local environmental plans*. A **28 day public exhibition period** is recommended.

Notification of the exhibited Planning Proposal will include, as a minimum:

- advertisement within a newspaper that circulates in the Byron LGA, which is the area affected by the Planning Proposal; and
- information uploaded on the web sites of Byron Shire Council and the Department of Planning and Environment.

## Part 6 Project timeline

The proposed timeline for the completion of the Planning Proposal is as follows:

| Estimated completion | Plan making step  |
|----------------------|---|
| October 2018         | Gateway Determination issued by Department of Planning and Environment. |

|               |   |
|---------------|---|
| November 2018 | Public exhibition of Planning Proposal.<br>Government agency consultation.  |
| December 2018 | Analysis of public submissions.<br>Preparation of Council report and amendments to Planning Proposal if required. |
| February 2019 | Endorsed Planning Proposal submitted to Department of Planning and Environment for finalisation.                  |

## Summary and conclusions

The intended outcome of this Planning Proposal is to amend clause 32(5)(a) to specify that subdivision carried out under the *Strata Schemes Development Act 2015* should not be permitted within the 7(f2) zone if it results in the creation of one or more vacant lots. This is to:

- prevent intensive development in the urban coastal 7(f2) zone.
- ensure that development is carried out in a manner which does not adversely affect coastal processes and which will not be adversely affected by coastal processes.
- prevent placing people at risk by allowing additional residential uses within the coastal erosion precincts.

Together with the remaining provisions of Clause 32, this will ensure that development of land subject to coastal hazards is appropriate to the level of risk.