



**Planning Proposal  
for Amendment of Byron Local Environmental Plan 2014  
to introduce minimum lot size controls for ‘manor house’  
and ‘multi dwelling housing (terraces)’.**

Byron Shire Council

Authority ref: 26.2019.4.1

**V1 Gateway Version (#E2019/41032)**

**Date: June 2019**

**Document History**

Doc No.	Date Amended	Details Comments eg Resolution No.
E2019/41032	June 2019	V1 Draft Planning Proposal – reported to 20 June 2019 Council meeting for gateway

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# Part 1 Introduction

## Objective and intended outcomes

This planning proposal is made in relation to *4.1E Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings* of the *Byron Local Environmental Plan 2014* (LEP).

The objective of the planning proposal is to amend Clause 4.1E of Byron LEP 2014 to insert minimum lot size standards for manor houses and multi dwelling housing (terraces). This planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the two documents prepared by the NSW Department of Planning and Environment titled *A Guide to Preparing Planning Proposals* (August 2016) and *A Guide to Preparing Local Environmental Plans* (August 2016).

## Background

### 1) Low Rise Medium Density Housing Code (new)

On 6 April 2018 amendments were made to the NSW planning framework to facilitate the development of low rise medium density housing. The amendments came into effect on 6 July 2018 and introduced a range of changes to the following:

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP). The key change involves the introduction of the new *Low Rise Medium Density Housing Code* (the Code) which will form part of the Codes SEPP.
- *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument), which is the template for LEPs.
- *Environmental Planning and Assessment Regulation 2000* (the Regulation).

This code will allow one and two storey dual occupancies, manor houses and multi-dwelling (terraces) to be carried out under a fast track complying development approval. Low rise medium density housing is only allowed as complying development where the above development types are permitted under a council's local environmental plan.

Dual occupancies are defined in the Standard Instrument —Principal Local Environmental Plan as:

**dual occupancy (attached)** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

**dual occupancy (detached)** means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

Manor houses and multi dwelling housing (terraces) are defined in the Codes SEPP as:

**manor house** means a residential flat building containing 3 or 4 dwellings, where:  
(a) each dwelling is attached to another dwelling by a common wall or floor, and  
(b) at least 1 dwelling is partially or wholly located above another dwelling, and  
(c) the building contains no more than 2 storeys (excluding any basement).

**multi dwelling housing (terraces)** means multi dwelling housing where all dwellings are attached and face, and are generally aligned along, 1 or more public roads

For Byron Shire the new code applies to development in the R2 Low Density Residential Zone, R3 Medium Density Residential Zone and RU5 Village Zone in LEP 2014 (or their equivalent zone in LEP 1988). In the RU5 Village Zone this would only apply to an attached dual occupancy.

The new Code is supported by Design Criteria that are set out in the Low Rise Medium Density Design Guide. *Principle 1 - Context and neighbourhood character* of this guide requires consideration of how the development has responded to identified desirable elements of an area's existing or future character. Council or an accredited certifier can determine if a development application meets the relevant criteria contained in the code.

Council is preparing a residential strategy which will include local area residential character narratives setting out the desirable elements of the area's existing or future character. Concerns of the Code being pre-emptive of the residential strategy and potential character impact were raised with the DPE in May 2018. Council was then invited to submit a formal request to pause the implementation of this Code to Byron Shire until the residential strategy is finished.

To meet the Department's timeframe, staff wrote to DPE on 8 June 2018 requesting this pause. The purpose of the pause was to enable Council to determine the nature and extent of any impacts on its Residential Strategy (in preparation) and supporting planning controls.

At the 21 June 2018 Council Meeting, **18-357** resolved that Council:

2. *Note that staff have written to the Department of Planning (as requested) to seek a pause on the application of the Low Rise Medium Density Housing Code to Byron Shire until the Residential Strategy is finalised.*

Council received a letter from DPE on 13 July 2018 advising that in response to Council's request, the Code would be deferred in the Byron Shire LGA until 1 July 2019.

A subsequent request was made to the Minister to extend the deferment beyond 1 July 2019; however Council has not received a response to date. Preparation of a planning proposal to amend relevant minimum lot size controls is considered prudent in the absence of a favourable response to this request.

## **2) Community Consultation – Draft Residential Strategy Character Narratives**

As part of the draft Residential Strategy public consultation process, Council staff undertook a 'Shaping Our Neighbourhoods' discussion with the community to inform the 'residential character narratives' for each urban town and village. The narratives in turn will assist in updating residential design guidelines for neighbourhoods in Byron Shire. The implications of the Low Rise Medium Density Code were a key topic for discussion and feedback. Feedback was provided via:

- Written submissions
- Discussion board posts on Council's 'Have Your Say' website
- Online Surveys

- Interactive drop-in sessions held across the LGA between 30/4/19 and 13/5/19

Over 80% of survey respondents considered that low rise (2 storey) manor houses should only occur on lots 800m<sup>2</sup> or larger.

Also of note, specific concerns were raised regarding the effects of overshadowing resulting from low rise medium density development on small blocks (i.e. 600m<sup>2</sup>).

Concerns over the adequacy of car parking provisions were also raised. It was generally considered that the volume of cars parking on the street is already impacting on streetscapes and the character of neighbourhoods across the Shire, and that this issue would be exacerbated should densities increase due to the Low Rise Medium Density Code.

In addition to impacts on residential character, concerns have been raised over the adequacy of existing infrastructure to meet the demands of higher density development. It is anticipated that the fast track complying development approvals process via the new code may incentivise low rise medium density development and result in an upsurge in these types of applications. Relevant investigations are currently underway to inform the residential strategy with regard to infrastructure.

## Part 2 Explanation of provisions

The planning proposal seeks to amend Clause 4.1E of Byron LEP 2014 by:

- Adding the words ‘manor house’ and ‘multi dwelling housing (terraces)’ to the title of the clause.
- Table column 1 – adding ‘*manor house*’ and ‘*multi dwelling housing (terraces)*’ rows.
- Table column 2 – adding ‘*Zone R2 Low Density Residential, Zone R3 Medium Density Residential*’ in the corresponding rows in column 1 to ‘*manor house*’ and ‘*multi dwelling housing (terraces)*’.
- Table column 3 – adding ‘*1000 square metres*’ in corresponding rows in column 1 to ‘*manor house*’ and ‘*multi dwelling housing (terraces)*’ where Zone R2 is specified in column 2 .
- Table column 3 – adding ‘*800 square metres*’ in corresponding rows in column 1 to ‘*manor house*’ and ‘*multi dwelling housing (terraces)*’ where Zone R3 is specified in column 2 .

It is anticipated that the amended Clause 4.1E will appear in Byron LEP 2014 in a manner similar to that shown below. The proposed amendments are shown as inserted text coloured in *blue*:

### **4.1E Minimum lot sizes for dual occupancies, *manor houses and multi dwelling housing (terraces)*, multi dwelling housing and residential flat buildings**

- (1) *The objective of this clause is to achieve planned residential density in certain zones.*
- (2) *Development consent may be granted to development on a lot in a zone shown in Column 2 of the table to this clause for a purpose shown in Column 1 of the table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the table.*

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<i>Dual occupancy (attached)</i>	<i>Zone R2 Low Density Residential, Zone R3 Medium Density Residential</i>	<i>800 square metres</i>
<i>Dual occupancy (attached)</i>	<i>Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU5 Village, Zone R5 Large Lot Residential</i>	<i>4,000 square metres</i>
<i>Dual occupancy (detached)</i>	<i>Zone RU1 Primary Production, Zone RU2 Rural Landscape</i>	<i>4,000 square metres</i>
<i>Dual occupancy (detached)</i>	<i>Zone R2 Low Density Residential, Zone R3 Medium Density Residential</i>	<i>800 square metres</i>
<i>Manor house</i>	<i>Zone R2 Low Density Residential,</i>	<i>1,000 square metres</i>
<i>Manor house</i>	<i>Zone R3 Medium Density Residential</i>	<i>800 square metres</i>

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<i>Multi dwelling housing (terraces)</i>	<i>Zone R2 Low Density Residential</i>	<i>1000 square metres</i>
<i>Multi dwelling housing (terraces)</i>	<i>Zone R3 Medium Density Residential</i>	<i>800 square metres</i>
<i>Multi dwelling housing</i>	<i>Zone R2 Low Density Residential</i>	<i>1,000 square metres</i>
<i>Multi dwelling housing</i>	<i>Zone R3 Medium Density Residential</i>	<i>800 square metres</i>
<i>Residential flat building</i>	<i>Zone R3 Medium Density Residential</i>	<i>800 square metres</i>



## Part 3 Justification

The key objective of the planning proposal is to apply consistent minimum lot size standards to similar development types. The Codes SEPP definitions for manor houses and multi dwelling housing (terraces) state that:

- ‘manor house’ means a residential flat building; and
- ‘multi dwelling housing (terraces)’ means multi dwelling housing.

Therefore, for consistency in Byron LEP 2014, manor houses and multi dwelling housing (terraces) should reflect:

- The existing 800 square metre minimum lot size for residential flat buildings and multi dwelling housing in *Zone R3 Medium Density Residential*.
- The existing 1000 square metre minimum lot size for multi dwelling housing in *Zone R2 Low Density Residential*. Residential flat buildings are not a permissible use in the R2 zone so there are no minimum lot size controls, however multi dwelling housing is considered similar in terms of building heights, density and impact on neighbourhood character.

### Section A Need for the planning proposal

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

Yes.

The planning proposal responds to the amendments in the NSW planning framework to facilitate the development of Low Rise Medium Density Housing, as described in the background section of this report.

Additionally, the existing minimum lot size standards for residential flat buildings and multi dwelling housing were established as part of the investigation to transition Byron LEP 1988 to the new standard instrument LEP (Byron LEP 2014). The proposed amendment seeks to ensure consistency with existing minimum lot size provisions and zone objectives.

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

Yes.

The objective of the planning proposal is to amend Byron LEP 2014 to include minimum lot size standards for manor houses and multi dwelling housing (terraces). The best and only means of achieving this objective is through the planning proposal process.

#### 3 Is there a net community benefit?

The Net Community Benefit (NCB) Criteria are identified in the NSW Government’s publication *Draft Centres Policy, 2009*, which states that the Net Community Benefit Test should be used to assess the merits of rezoning in the following circumstances:

- proposals to develop within an existing centre where the current zoning does not permit the use

- proposals to develop outside an existing centre where the current zoning does not permit the use
- Proposals to create a new centre.

The main focus of the NCB Test is to ensure that centres remain compact and viable, and linked to existing and proposed transport networks (particularly public transport).

Assessment against the NCB Assessment Criteria is not required for a planning proposal that seeks to add minimum lot size standards for permissible uses in an existing zone.

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

### **1      Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (in this case the North Coast Regional Plan)?**

The planning proposal responds to the amendments in the NSW planning framework to facilitate the development of Low Rise Medium Density Housing, as described in the background section of this report.

Creating additional housing supply via infill development is a key component of the draft Byron Shire Residential Strategy. The proposed minimum lot size provisions support this objective and are consistent with the North Coast Regional Plan - Action 1.1 *“Focus future urban development to mapped urban growth areas”*.

Direction 20 requires that Councils *“Maintain the region’s distinctive built character”*. The proposed minimum lot size provisions support this objective by ensuring that the density of development is consistent with existing planning controls, and consequently the existing character of local neighbourhoods. Further work is being undertaken in preparation of the Byron Residential Strategy which will include local area residential character narratives articulating the desirable elements of an area’s existing or future character. The Code coming into effect on 1 July 2019 will pre-empt the residential strategy process, including the introduction of relevant LEP and DCP provisions that seek to manage the potential impact of the code.

This proposal to introduce minimum lot size provisions for manor houses and multi dwelling housing (terraces) is an initial step in this regard.

On this basis, the planning proposal is consistent with the NCRP.

### **2      Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plan?**

#### Draft Byron Residential Strategy

Refer to comments in Section B (1) above.

#### Community Strategic Plan - Our Byron Our Future

In 2018, Council adopted a 10 year + Community Strategic Plan 2028 (CSP). The planning proposal is consistent with the following community objective:

## **Community Objective 4: We manage growth and change responsibly**

### **4.2 Support housing diversity in appropriate locations across the Shire**

#### **4.2.1 Establish planning mechanisms to support housing that meets the needs of our community**

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

### **3 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 No 33 – Hazardous and Offensive Development	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 50 – Canal Estate Development	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 55 – Remediation of Land	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 64 – Advertising and Signage	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 65 – Design Quality of Residential Apartment Development	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 70 – Affordable Housing (Revised Schemes)	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Affordable Rental Housing) 2009	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Building Sustainability Index: BASIX) 2004	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Coastal Management) 2018	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Exempt and Complying Development Codes) 2008	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Housing for Seniors or People with a Disability) 2004	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP (Infrastructure)	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Miscellaneous Consent Provisions) 2007	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (State and Regional Development) 2011	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (State Significant Precincts) 2005	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Vegetation in Non-Rural Areas) 2017	Applicable. Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.

#### 4 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?

Consistency with 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).	The planning proposal does not contain a provision which is contrary to the operation of this direction.	N/A
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. (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).	The planning proposal does not contain a provision which is contrary to the operation of this direction.	N/A
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.	The planning proposal does not contain a provision which is contrary to the operation of this direction.-	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
1.4 Oyster Aquaculture	<p>Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:</p> <ul style="list-style-type: none"> <li>(a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or</li> <li>(b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses.</li> </ul>	<p>Priority Oyster Aquaculture Areas (POAA) exist in the lower parts of the Brunswick River. However, there is minimal likelihood that the planning proposal will have adverse impacts on them.</p>	Consistent
1.5 Rural Lands	<p>Applies when:</p> <ul style="list-style-type: none"> <li>(a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or</li> <li>(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.</li> </ul> <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>.</p> <p>The Rural Planning Principles are:</p> <ul style="list-style-type: none"> <li>(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,</li> <li>(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,</li> <li>(c) recognition of the significance of rural land uses to the</li> </ul>	<p>The planning proposal does not contain a provision which is contrary to the operation of this direction.</p>	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>State and rural communities, including the social and economic benefits of rural land use and development,</p> <ul style="list-style-type: none"> <li>(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,</li> <li>(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,</li> <li>(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</li> <li>(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,</li> <li>(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.</li> </ul> <p>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> <p>The Rural Subdivision Principles are:</p> <ul style="list-style-type: none"> <li>(a) the minimisation of rural land fragmentation,</li> <li>(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,</li> <li>(c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,</li> <li>(d) the consideration of the natural and physical constraints</li> </ul>		

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	and opportunities of land, (e) ensuring that planning for dwelling opportunities takes account of those constraints.		
2 Environment and Heritage			
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>	The planning proposal does not contain a provision which is contrary to the operation of this direction.	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 wetlands, littoral rainforests, 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>	The planning proposal does not contain a provision which is contrary to the operation of this direction.	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 planning proposal does not contain a provision which is contrary to the operation of this direction.</p> <p>Byron LEP14 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.		
2.4 Recreation Vehicle Areas	<p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <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 Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and</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>	This planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.	N/A
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> <p>(a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone;</p> <p>(b) that introduces or alters an overlay and associated clause.</p> <p>A planning proposal 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>	This planning proposal does not introduce an environmental zone or overlay. This is being dealt with by a separate planning proposal process.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
<b>3 Housing, Infrastructure and Urban Development</b>			
<b>3.1 Residential Zones</b>	<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>	The planning proposal does not contain a provision which is contrary to the operation of this direction.	Consistent
<b>3.2 Caravan Parks and Manufactured Home Estates</b>	<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</li> </ul>	This planning proposal will not alter the permissibility of caravan parks or manufactured home estates in Byron Shire.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>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 <i>Standard Instrument (Local Environmental Plans) Order 2006</i> 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 Land Development Act 1989</i> be permissible with consent.</p>		
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 in dwelling houses.	Consistent
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</p>	<p>The planning proposal does not contain a provision which is contrary to the operation of this direction.</p> <p>Manor house and multi dwelling housing (terraces) are new land use definitions that have been introduced at the State level without consultation with</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>with the aims, objectives and principles of:</p> <p>(a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and</p> <p>(b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).</p> <p>The 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> <p>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(b) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	<p>Councils on the capacity of existing transport infrastructure (or other critical infrastructure) to service higher density development.</p> <p>Proposed minimum lot size provisions seek to ensure consistency with existing local planning controls, and avoid adverse impacts of unplanned changes to residential densities.</p>	
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 alter provisions that affect land located in the vicinity of any aerodrome.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
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.	N/A
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>	Proposed changes apply to existing residential zoned land. Subsequent development on land containing acid sulfate soils can be managed at the development application stage.	Justifiably Inconsistent
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>	The planning proposal does not contain a provision which is contrary to the operation of this direction.	Consistent
4.3 Flood Prone Land	Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or	The planning proposal does not contain a provision which is contrary to the operation of this direction.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>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, 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-</p>		

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>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 (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 Division 3.4 of the Act, and prior to undertaking community consultation in satisfaction of Division 3.4 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 2006</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</li> </ul> </li> </ul>	The planning proposal does not contain a provision which is contrary to the operation of this direction.	Justifiably inconsistent (referral to RFS is required)



S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>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</p> <p>(ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,</p> <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 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>		
5 Regional Planning			
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	The planning proposal is not within this catchment.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
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.	The planning proposal does not contain a provision which is contrary to the operation of this direction.	N/A
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> <ul style="list-style-type: none"> <li>(a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway;</li> <li>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and</li> <li>(c) for the purposes of this paragraph, “within town” means areas which, prior to the draft local environmental plan, have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) and where the Pacific Highway speed limit is less than 80 km/hour.</li> </ul> <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</li> </ul>	This planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	greater.		
5.10 Implementation of Regional Plans	All planning proposals must be consistent with the applicable Regional Plan released by the Minister for Planning.	This planning proposal affects land subject to the NCRP. The planning proposal is consistent with the NCRP for the reasons cited in Section B (1) above.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
6. Local Plan Making			
6.1 Approval and Referral Requirements	<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 and Environment (or an officer of the Department nominated by the Director-General),</li> </ul> prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and</li> <li>(c) not identify development as designated development unless the relevant planning authority: <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 Division 3.4 of the Act.</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>	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
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).	The planning 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 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. <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p> </li></ul>	This planning proposal does not seek to allow a particular development to be carried out, or apply site specific provisions.	N/A

## **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. The planning proposal is not likely to adversely impact on critical habitats or threatened species, populations or ecological communities, or their habitats. The proposal will result in larger lot sizes for the construction of manor houses and multi dwelling housing (terraces) than would otherwise be required under the Codes SEPP and the DA Design Guide. It will not permit additional development in any areas with critical habitats or threatened species, populations or ecological communities, or their habitats.

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

No. There are no likely negative environmental effects associated with the planning proposal. The proposed amendments are administrative in nature and unlikely to result in any environmental effects. Development applications based on the proposed changes to the Byron LEP 2014 will be subject to a detailed assessment, where the environmental effects are considered. This assessment will consider consistency with the desired future character of the neighbourhood.

- 3      How has the planning proposal adequately addressed any social and economic effects?**

Yes. The planning proposal will have a positive social effect. The planning proposal will create consistency in development standards of the Byron LEP 2014 in that the minimum lot size standard for manor houses and multi dwelling housing (terraces) will reflect the existing minimum lot size of residential flat buildings and multi dwelling housing. This consistency will allow Council to meet the objective of Clause 4.1E of the Byron LEP 2014 to achieve planned residential density in certain zones.

It is not anticipated that the planning proposal will have any negative social and economic effects which need to be addressed as part of the proposal.

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

- 1      Is there adequate public infrastructure for the planning proposal?**

Yes. The proposed minimum lot size controls are consistent with existing densities already permissible in the R2 and R3 zones.

A review of infrastructure requirements as it relates to new residential development is being undertaken as part of the draft Byron Residential Strategy.

- 2      What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

The Gateway determination has yet to be issued. It is anticipated that the Office of Environment and Heritage, Rural Fire Service, Tweed Byron LALC and Arakwal Corporation will be contacted for comment during the public exhibition.

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.

## Part 4 Mapping

No mapping amendments are proposed.

## 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:

- a newspaper advertisement that circulates in the Byron LGA, which is the area affected by the planning proposal; and
- the web sites of Byron Shire Council and the NSW DPE.

## Part 6 Project timeline

The proposed timeline for the completion of the planning proposal is as follows:

Estimated completion	Plan making step
June 2019	Decision by Council to support the planning proposal and send for Gateway determination by the NSW DPE.
August 2019	Gateway determination issued by the NSW DPE.
September / October 2019	Public exhibition of planning proposal. Further government agency consultation.
November 2019	Analysis of public submissions. Preparation of Council report.
February 2019	Decision by Council to endorse the planning proposal and submit to the NSW DPE under delegation for finalisation.

## Summary and conclusions

On 1 July 2019, manor houses and multi dwelling housing (terraces) will be permissible in the *R2 Low Density Residential* and *R3 Medium Density Residential* zones in the Byron LGA. Consequently, appropriate controls and standards for these new dwelling types are required under Byron LEP 2014 and Byron DCP 2014.

Clause 4.1E of the Byron LEP 2014 relates to minimum lot sizes for housing types other than dwelling houses. The planning proposal amends this clause to include manor houses and multi dwelling housing (terraces).