

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.9 PLANNING - 26.2022.2.1 Gulgan North
Planning Proposal - BILS Area 5**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Steve Daniels, Project Officer - Planning Reforms
File No: I2023/142

Summary:

10 The purpose of this report is to present to Council an owner-initiated Planning Proposal (Attachment 1) for the land known as 66 The Saddle Road, Brunswick Heads, described as Lot 2 DP1159910. The subject land is identified as Area 5 in the Byron Shire Business and Industrial Lands Strategy.

15 The objective of the Planning Proposal is to enable the future subdivision of part of the subject land to create a combination of work/live employment land and a separate precinct for light industrial uses. The Planning Proposal also seeks rezone some rural areas for environmental conservation and management.

20 A 'letter of offer' (Attachment 10) has been submitted by the proponent to enter into a planning agreement to fund works associated with a proposed roundabout on Gulgan Rd, which will allow vehicle access to the site. Legal drafting of the planning agreement will take place prior to public exhibition.

Prior to requesting Gateway, Council must obtain an 'in-principle' agreement from Transport for NSW to reduce the speed zone on approach to the roundabout from 80km/h to 60km/h.

25 If the Planning Proposal proceeds, a site specific DCP will be prepared and exhibited concurrently with the Planning Proposal and Planning Agreement.

The planning proposal is consistent with the Business & Industrial Lands Strategy and the North Coast Regional Plan.

30 It is recommended that the submitted planning proposal be amended to include changes recommended in this report and forwarded to the Department of Planning and Environment for a Gateway Determination.

NOTE TO COUNCILLORS:

35 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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RECOMMENDATION:

That Council:

1. Notes the current deficit of available zoned and fit for purpose 'Business and Industrial Land' in Byron Shire, and that the Planning Proposal for Area 5 Gulgan North partly addresses this.
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2. Notes that the Planning Proposal provides for a mix of uses compatible to the site opportunity and constraints, including a new sub land use category of 'Work-Live' dwelling.
3. Accepts the applicant's letter of offer to enter into a Planning Agreement (Attachment 10 E2023/102502) with Council as part of this planning proposal and require that a draft Planning Agreement be prepared in accordance with the letter of offer.
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4. Amends the Planning Proposal land use zone mapping to accord with Figure 5 of this report.
- 20 5. Amends the Planning Proposal to identify the subject land on a Local Clauses Map, with that portion of the subject land proposed to be zoned E3 Productivity Support identified as a 'Work-Live precinct'.
6. Prior to requesting a Gateway determination:
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 - a) requires the proponent to submit an updated Cultural Heritage Assessment,
 - b) forwards the draft planning proposal and relevant studies to Transport for NSW to obtain an 'in-principle' agreement to a speed zone reduction at the approach to the proposed roundabout,
 - 30 c) forwards the draft planning proposal and relevant to studies to the Biodiversity Conservation Division of the NSW DPE for comment and any necessary changes to the Planning Proposal
7. Pending completion of '6, finalise and forward the planning proposal and supporting documents for the land known as Area 5 Gulgan North (informed by the Byron Shire Business and Industrial Lands Strategy) to the Department of Planning and Environment for the purpose of obtaining a Gateway Determination, and that Council exhibit the Planning Proposal in accordance with the Gateway Requirements.
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8. **Notes that a draft Development Control Plan to support the Planning Proposal will be prepared to manage building design and general site requirements and be exhibited alongside the Planning Proposal.**
9. **Notes that legal drafting of the draft Planning Agreement will be prepared and exhibited alongside the Planning Proposal.**

Attachments:

- 1 26.2022.2.1 Updated Gulgan Planning Proposal reduced_PP-2021-7471 (1) 230928, E2023/102500 
- 10 2 26.2022.2.1 Ecological Assessment_PP-2021-7471 Oct 23, E2023/102499 
- 3 26.2022.2.1 BUSHFIRE ASSESSMENT_PP-2021-7471, E2023/104135 
- 4 26.2022.2.1 TRAFFIC IMPACT STUDY by INGEN Rev I ref J1143_PP-2021-7471 230420, E2023/102501 
- 5 26.2022.2.1 CIVIL ENGINEERING Report PP-2021-7471, E2023/104136 
- 15 6 26.2022.2.1 Preliminary site contamination investigation report_PP-2021-7471, E2023/104137 
- 7 26.2022.2.1 Dip Exclusion Zone Assessment_PP-2021-7471, E2023/104139 
- 8 26.2022.2.1 LUCRA Gulgan Rd North Planning Proposal_final_PP-2021-7471, E2023/104140 
- 20 9 26.2022.2.1 Gulgan Road Industrial Estate - Agricultural report FINAL_PP-2021-7471, E2023/104142 
- 10 10 26.2022.2.1 Gulgan North VPA COMMITMENT LETTER_PP-2021-7471 (1) 230919, E2023/102502 

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Report

Background

Council adopted its Business and Industrial Lands Strategy (BILS) in October 2020.

5 [Final-STRATEGY-Business-and-Industrial-Lands-Strategy-October-2020-revision-of-E2019-64471-as-per-DPIE-approval-letter-E2020-78957 \(16\).pdf](#)

Business and Industrial land strategies provide the basis for future land use and infrastructure planning actions required to meet projected growth and provide for future local jobs in an LGA.

10 They are produced in the context of the relevant regional plans and translate the broader strategic context into a clear rationale to either continue or change the business and industrial zoning applied to different areas of land in an LGA.

The Department of Planning subsequently endorsed the Byron Shire BILS September 2020. This endorsement enabled the lodgement of Planning Proposals for individual sites as per the Actions and sites contained in the Strategy.

15 BILS Area 5, known as North Gulgan, is shown below in Figure 1.


Area Number	5.
Description	Part of Lot 2 DP 1159910 66 The Saddle Road, Brunswick Heads
Image of investigation area	
	

Figure 1 – BILS Area 5, North Gulgan

This Area is the subject of an owner-initiated Planning Proposal as discussed in this report.

- 5 The preferred role for this Area includes a business park type development and a traditional industrial estate.

10 The BILS identified certain planning matters requiring investigation for the purposes of this Planning Proposal. Those matters have been addressed in the Planning Proposal submission and associated documents by the proponent. Relevant commentary is provided below.

The Planning Proposal

The Planning Proposal (Attachment 1) relates to a single lot located at 66 The Saddle Road, Brunswick Heads, described as Lot 2 DP1159910 (Figure 2).

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A Planning Proposal is a document that explains the intended effect and justification of a proposed amendment to a LEP.

A number of technical studies/reports required to support the Planning Proposal have also been provided.

5 These studies/reports include:

- Ecological Assessment (Attachment 2)
- Bushfire Assessment (Attachment 3)
- Traffic Impact Assessment (Attachment 4)
- Civil Engineering Assessment (Attachment 5)

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- Contaminated Land Assessment (Attachment 6)
- Dip Exclusion Zone Assessment (Attachment 7)
- Land Use Conflict Risk Assessment (Attachment 8)
- Agricultural Assessment (Attachment 9)
- Culture & Heritage Assessment (to be finalised prior to Gateway)

15 Prior to requesting a Gateway determination, the following studies will be referred to relevant agencies for comment:

- Traffic Impact Assessment: comment required from Transport for NSW (TfNSW) to provide an 'in principle' agreement to reduce the speed zone on Gulgan Rd from 80km/h to 60km/h on approach to the proposed roundabout.

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- Ecological Assessment: general comment required from DPE Biodiversity Conservation Division (BCD).

25 A cultural Heritage assessment was undertaken for the site in 2019. The proponent is finalising an update to the assessment to include more recent consultation with relevant stakeholders. It is recommended that the Cultural Heritage Assessment be finalised prior to seeking Gateway and the planning proposal be amended to reflect the findings of the assessment if necessary.

Recommendation:

The Proponent provides Council with an update to the Cultural Heritage Assessment prior to requesting a Gateway determination. Staff are authorised to make any consequential changes to the Planning Proposal that result from the update.

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Following a Gateway determination, all studies will be exhibited with the planning proposal and referred to relevant public agencies for comment as per the statutory Gateway requirement.

5 The following table provides a summary of the LEP amendments proposed to support achieving the BILS objectives and intent for this site.

LEP Amendment	Explanation of Provisions
Zoning	<p>Rezoning the BILS Area 5 - Precinct A to Zone E3 Productivity Support and Precinct B to E4 General Industrial Zone (as per Figure 5 below).</p> <p>Increase (by some 215%) the extent of land zoned C2 Environmental Conservation and C3 Environmental Management in the proposed BILS Community Title precinct.</p>
Building Height	<p>Amending the maximum building height to 11.5m for only parts of the site to be used for E3 Productivity Support and E4 General Industrial Zones to support optimisation of the BILS precinct land use.</p>
Floor Space Ratio	<p>Introducing a Floor Space Ratio Map to provide a 0.9:1 Floor Space Ratio specific to BILS Precincts consistent with the typical Floor Space Ratios applying in the Byron Arts and Industry Estate locality.</p>
Lot Size	<p>Amending the Lot Size Map in relation to the applicant's land on both sides of the Pacific Motorway to facilitate the creation of a Community Title precinct for the BILS land and environs (as per Figure 6 below).</p> <p>Define the Minimum area of Torrens Title subdivision for the E3 and E4 zoned land to be 2000m².</p>
Local Clause	<p>Providing for work-live accommodation in the E3 precinct to support the employment land uses.</p>



Figure 2 – Subject Land

The subject land:

- 5 • has a total area of 52.45 ha
- has frontage and existing vehicular driveway access to Gulgan Rd and The Saddle Rd
- is largely cleared and contains areas of remnant vegetation

10 The objective of the Planning Proposal is to enable the future subdivision of part of the subject land to create a combination of work-live employment land and a separate precinct for light industrial uses. The Planning Proposal also designates areas for environmental conservation and management.

The total area of land proposed to be rezoned consists of 4 areas identified below in Figure 3.

- 15 • Area A – 4.63 ha Zone E3 Productivity Support (work-live) (previously B7 Business Park)
- Area B – 0.99 ha Zone E4 General Industrial (previously IN2 Light Industrial)
- Area C – 0.88 ha Zone E4 General Industrial
- Area D – 11.77 ha Mix of Rural & Environmental Zones

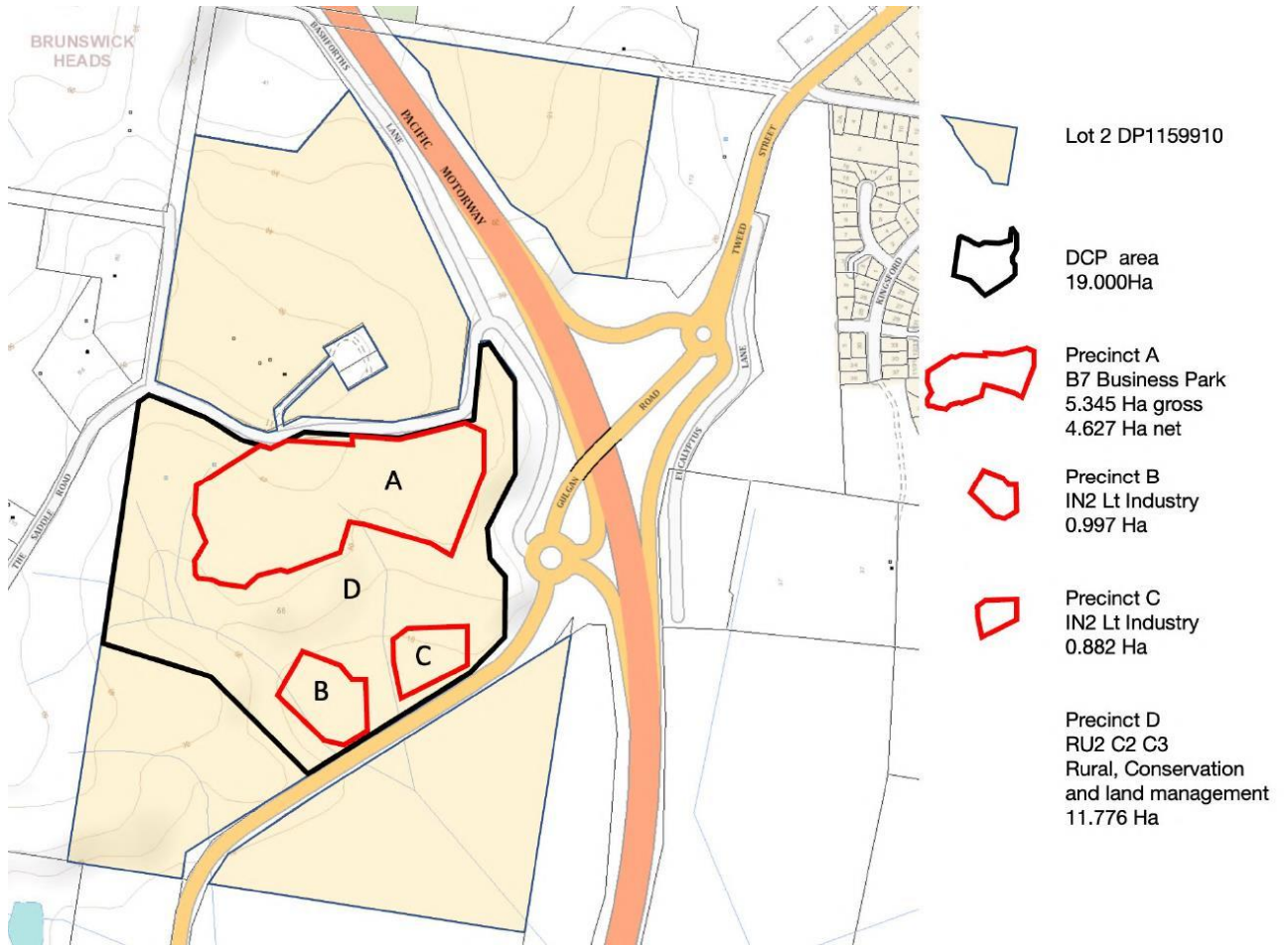


Figure 3 – Development Precincts

Current Zones and Controls

The subject land is mapped under the BLEP 2014 as follows and shown in Figure 4:

- 5
 - (Part) RU2 – Rural Landscape Zone
 - (Part) C2 – Environmental Conservation Zone
 - (Part) C3 – Environmental Management Zone
 - (Part) DM – Deferred Matter - Zone 1(a) under Byron LEP 1988
- 10
 - 9m maximum building height
 - 40ha minimum lot size

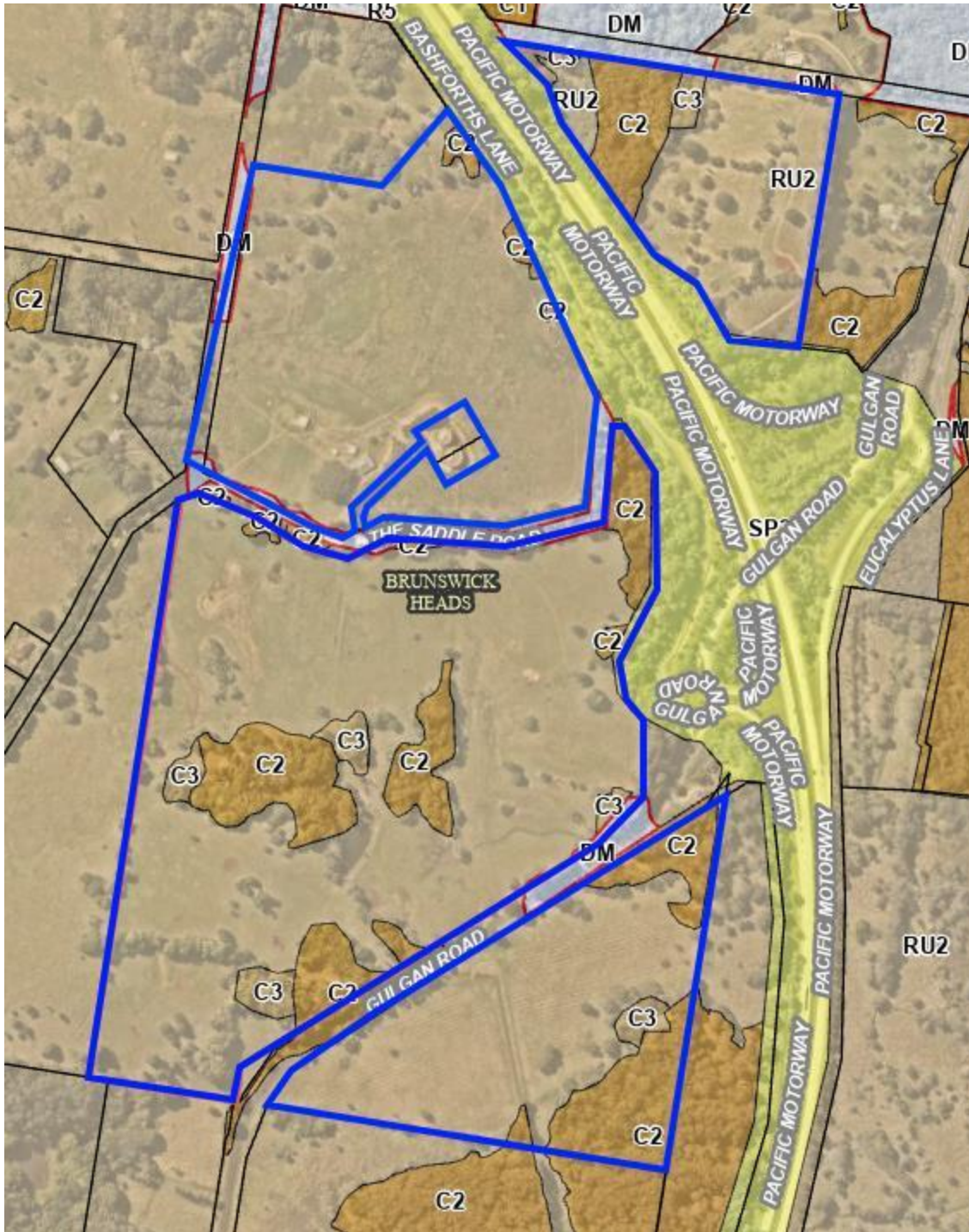


Figure 4 – Current BLEP 2014 Zone Map

Proposed Zones and Controls

The planning proposal will rezone the Areas as per Table 1 and Figure 5 below.

5 **Table 1** – Planning Controls

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Area	Existing BLEP 2014 Controls	Proposed BLEP 2014 Controls
Area A	Zone RU2 Rural Landscape	Zone B7 Business Park
	Minimum Lot Size - 40 ha	Minimum Lot Size – 2000m2
	Height of Buildings Limit – 9m	Height of Buildings Limit – 11.5m
	Not Applicable	Floor Space Ratio – 0.9:1
	Not Applicable	Work / Live Local Clause & Local Clauses Map
Area B	Zone RU2 Rural Landscape	Zone IN2 Light Industrial
	Minimum Lot Size - 40 ha	Minimum Lot Size – 2000m2
	Height of Buildings Limit – 9m	Height of Buildings Limit – 11.5m
	Not Applicable	Floor Space Ratio – 0.9:1
Area C	Zone RU2 Rural Landscape	Zone IN2 Light Industrial
	Minimum Lot Size - 40 ha	Minimum Lot Size – 2000m2
	Height of Buildings Limit – 9m	Height of Buildings Limit – 11.5m
	Not Applicable	Floor Space Ratio – 0.9:1
Area D	Zone RU2 Rural Landscape	Proposed additions to:
	Zone C2 Environmental Conservation	Zone C3 Environmental Management
	Zone C3 Environmental Management	Zone C2 Environmental Conservation

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Area	Existing BLEP 2014 Controls	Proposed BLEP 2014 Controls
	DM – Deferred Matter - Zone 1(a) under Byron LEP 1988	
	Minimum Lot Size - 40 ha	Minimum Lot Size - 10 ha
Consequential amendments to Residual Land	Minimum Lot Size – 40 ha	<p>Minimum Lot Size – 5 ha and 10 ha in relation to the residual rural and environmental protection zoned land; and</p> <p>Minimum Lot Size – 10ha in relation to land that will form part of the common lot under a Community Title Scheme (Area D).</p>

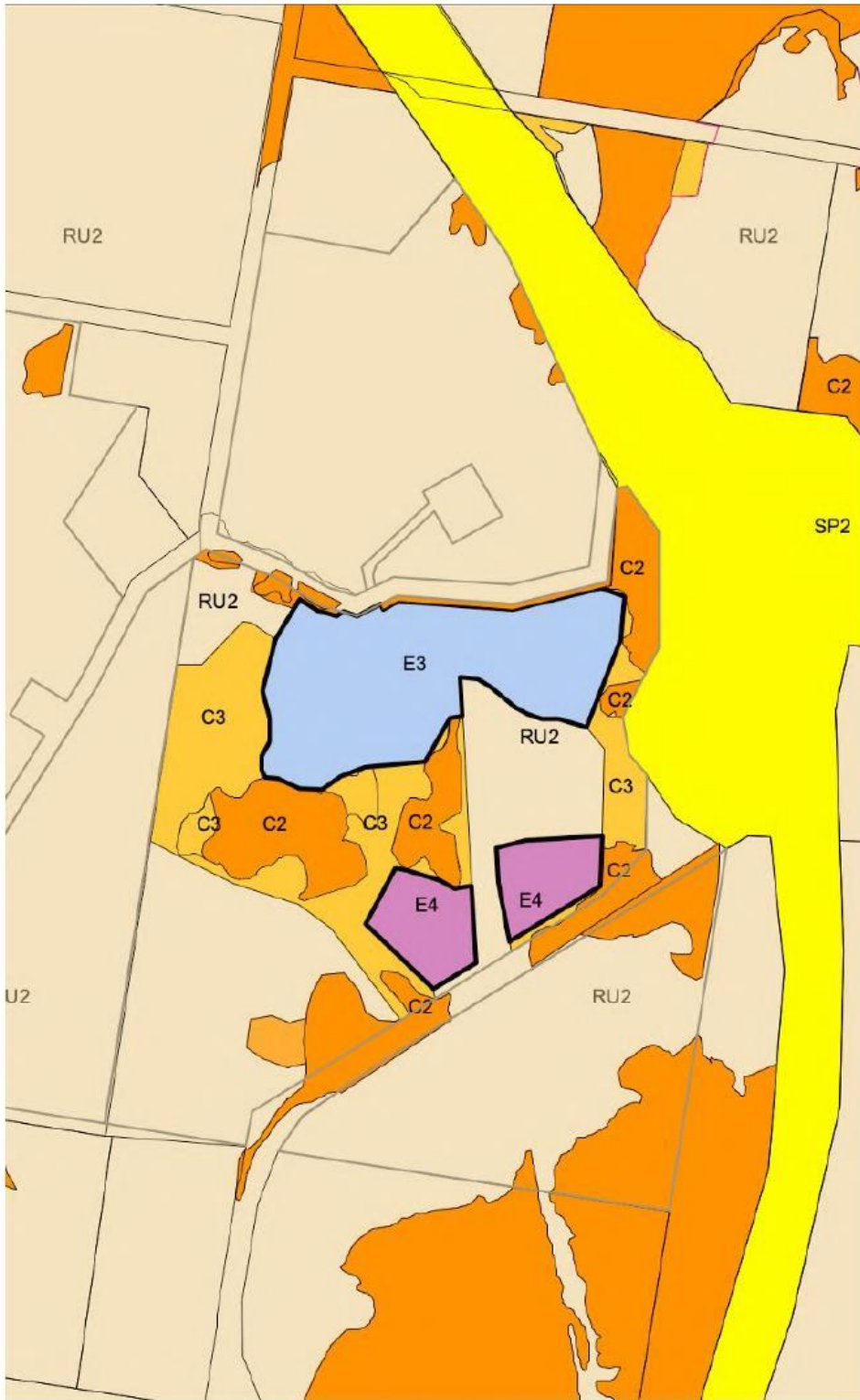


Figure 5 – Proposed BLEP 2014 Zone Map

Zoning Considerations

The Business Park (Area A) is proposed to be zoned E3 Productivity Support. Areas B & C are proposed to be zoned E4 to reflect the industrial use.

- 5 The proposal includes a significant increase in areas zoned C3 Environmental management within Area D. Area D will fall under the Community Title Scheme to secure a better management outcome.

NOTE: The submitted planning proposal (Attachment 1) has not mapped the existing C2 and C3 zoned land to the south of Area D. The planning proposal mapping will need to be amended to reflect the zoning scheme in Figure 5 above.

Recommendation:

Council amends the Planning Proposal mapping to show the existing C2 and C3 zoned land to the south of Area D as per Figure 5.

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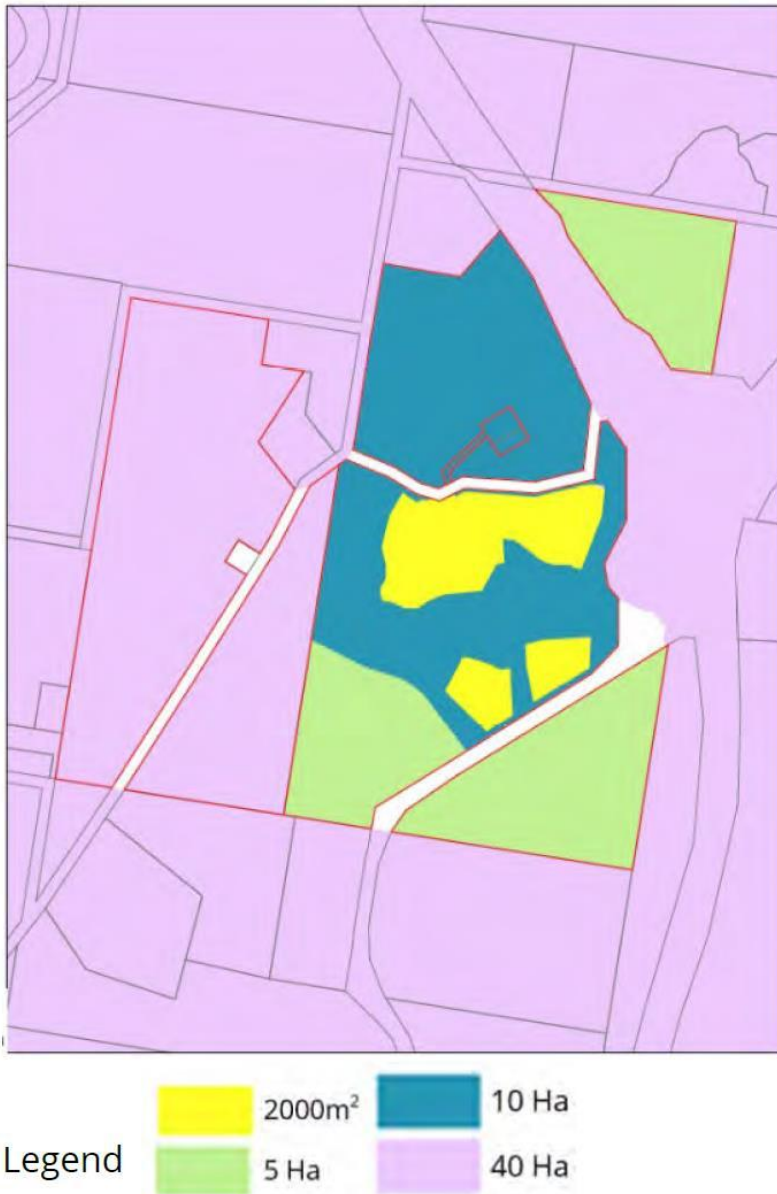


Figure 6 – Proposed BLEP 2014 Minimum Lot Size Map

Minimum Lot Size Considerations

5 The minimum lot sizes will inform a subdivision by way of a Community Title Scheme for Areas A, B, C, & D.

The residual areas outside of the CT Scheme have a 5ha and 10ha MLS. This allows these areas to be subdivided away from Area D but will not allow for any further subdivision.

Height of Buildings Considerations

10 As noted in Table 1, an 11.5m building height limit is proposed for Areas A, B and C.

The reason for this height is to facilitate and optimise the density of permitted development types on those areas zoned through flexible and site-specific design responses.

For example.

5 Light industrial buildings located in Areas B & C are proposed to feature surface level 'undercroft' car parking, enabled via the 11.5m height limit. Given the relatively small developable area, this arrangement would allow the employment generating floor space to be maximised while also providing greater flexibility when locating buildings, public spaces and responding to environmental constraints. Site specific DCP provision will be required to manage building design outcomes. The impact on visual amenity for Areas B & C is considered minor given that there are no neighbouring buildings for which overshadowing would be a concern, and tree planting/vegetation screening to Gulgan Rd could be incorporated via site specific DCP requirements.

15 Work-live buildings located in Area A will be constructed on sloping land. In accordance with Byron DCP 2014, building heights are measured from the lowest ground surface level. To accommodate a 2-storey building under the existing 9m height limit, the developer would need to cut into the sloping land to create a flat ground surface from which the measurement would be taken. However, by increasing the height limit to 11.5m, the need for earthworks would be minimised and the buildings could be constructed on poles that extend out from the sloping land. The buildings themselves would remain as 2 storeys with design considerations managed via site specific DCP provisions. The impact on visual amenity would be negligible.

Recommendation:

The Proponent prepares and submits to Council a site-specific Draft DCP to manage building design and general site requirements. Staff to assess the DCP once submitted.

Proposed Work-Live BLEP 2014 Provisions

25 Part (1) of the proposed clause below seeks to enable a work-live precinct on land proposed to be zoned E3 (Area A). The applicable area will be identified on the Local Clauses Map. The intention of the clause is to enable workers to both live and work in the same building.

Part (2) of the proposed clause relates to the entire site. It seeks to ensure that the wider road network is not impacted by any future development. Further detail is provided below in the 'Key Issues' discussion with respect to the Traffic Impact Assessment.

30 Proposed clause drafting (which will be subject to Parliamentary Counsel review post Gateway Determination):

The clause applies to land at 66 The Saddle Road, Brunswick Heads, being Lot 2 DP 1159910, identified on the Local Clauses map.

(1) For that part of the land identified as 'work live precinct' on the local clauses map, development for the purposes of attached dwellings, multi dwelling housing and residential flat buildings is permitted with consent only where:

(a). the 'dwelling':

- 5 (i) combines a workspace and living area within a single contiguous area dedicated to a type of work, use or industry permitted in the E3 Productivity Zone; or
- 10 (ii) each living area floor contains a shared workspace area or has direct access to a single contiguous workspace area dedicated to a type of work, use or industry permitted in the E3 Productivity Zone; and

(b) the ratio of living area is equal to, less than, or combined with the workspace area such that it remains subservient to the dominant work, use or industry permitted in the E3 Productivity Zone; and

15 (c) the living area is occupied and used by the proprietor or lessee undertaking the type of work, use or industry permitted in the E3 Productivity Zone, or the proprietor or lessee's employee/s, and or that person's household; and

(d) the uses do not compromise the objectives of the E3 Productivity zone.

20 (2) Development consent must otherwise not be granted to development for the purposes of subdivision unless the consent authority is satisfied that vehicular access to and from the site will not unreasonably impact pedestrian, cyclist or vehicular traffic movements on Gulgan Rd, Brunswick Heads.

Recommendation:

Council amends the Planning Proposal to identify the subject land on a Local Clauses Map, with that portion of the subject land proposed to be zoned E3 Productivity Support identified as a 'Work-live precinct' on the local clauses map.

Key issues

- Traffic Impact Assessment
- 25 ▪ Planning Agreement
- Ecological Assessment

Traffic Impact Assessment

The Traffic Impact Assessment (Attachment 4) explores four potential site access arrangements. Council engineers reviewed the options and found that Option B (Figure 7) delivered the best outcomes.

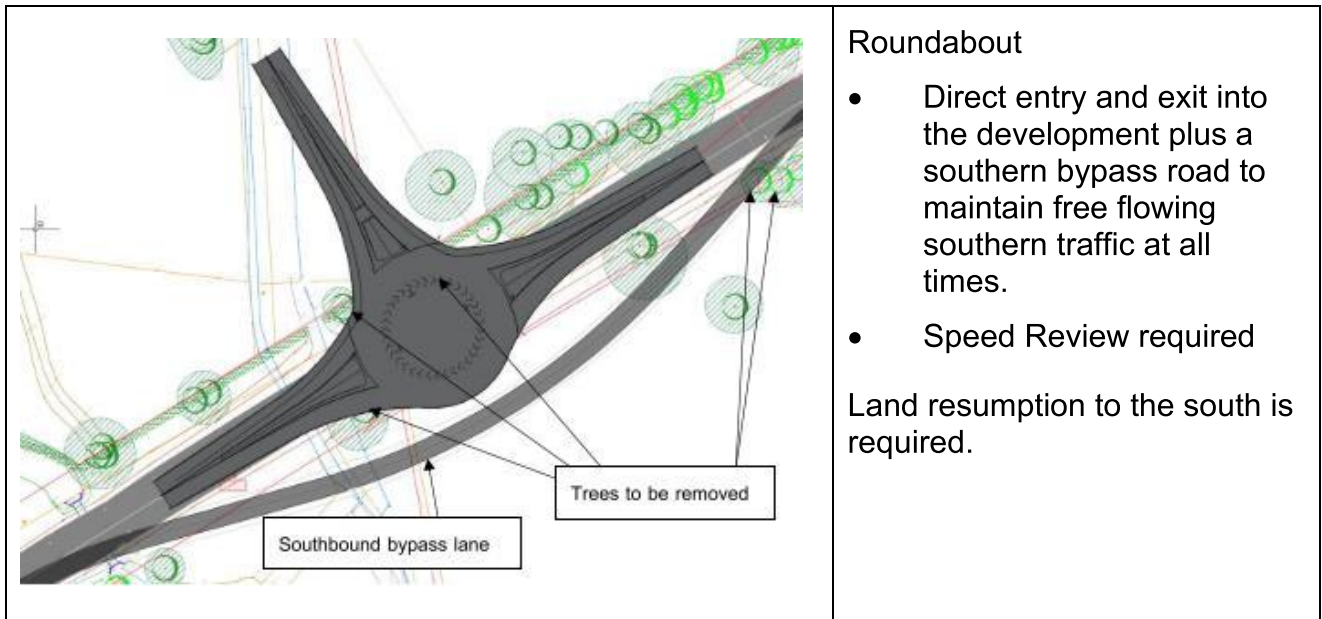


Figure 7 – Traffic Impact Assessment Option B

5 This access option resolves the issue of vehicle queuing between the site access and the roundabout at the Brunswick Heads M1 highway interchange to the northeast.

Future works may also be required to upgrade the Gulgan Rd / Mullumbimby Rd intersection further to south at Uncle Tom’s pie shop. This intersection is expected to fail within the next 10 years with or without the proposed BILS development. Council engineers have been considering options for a future upgrade of this intersection.

Therefore, the planning proposal includes provisions requiring that traffic implications for the Gulgan Rd / Mullumbimby Rd intersection be considered as part of any future DA approval for subdivision. To this end the following LEP clause is proposed:

15 (2) *Development consent must otherwise not be granted to development for the purposes of subdivision unless the consent authority is satisfied that vehicular access to and from the site will not unreasonably impact pedestrian, cyclist or vehicular traffic movements on Gulgan Rd, Brunswick Heads.*

20 Before requesting a Gateway determination, Transport for NSW needs to provide an ‘in principle’ agreement to a speed zone change at the approach to the roundabout (ie. From 80kmh to 60kmhr).

Recommendation:

Council forwards the Planning Proposal to Transport for NSW to obtain an ‘in-principle’ agreement to a speed zone reduction at the approach to the proposed roundabout. This

'in-principle' agreement must be obtained before requesting a Gateway determination.

Planning Agreement

5 The applicant has submitted a 'letter of offer' (Attachment 10) to enter into a Planning Agreement to fund the required works to deliver the roundabout (access option B) described above. The planning agreement is a voluntary offer and subject to mutual agreement.

The letter of offer precedes the drafting of a planning agreement between the landowner and Council. Once drafted, the planning agreement will be exhibited concurrently with the planning proposal.

Recommendation:

Council accepts the letter of offer and require the drafting of a Planning Agreement prior to public exhibition of the Planning Proposal. If the planning proposal progresses to public exhibition, it is recommended that the Planning Agreement be exhibited concurrently with the Planning Proposal.

Ecological Assessment

- 10 The Planning Proposal area has been designed as part of the Byron Shire BILS (2020) to largely avoid impacts on ecological features. That is, the Planning Proposal area has prioritised rezoning of exotic grassland areas (currently grazing paddocks) and largely avoids EECs, HEV vegetation, other patches of native vegetation, and significant habitat areas. Ecological buffers will be developed and assessed at the DA stage.
- 15 The landowner intends to revegetate and repair large tracts of land (i.e., the existing conservation zoned land and the proposed additional conservation land) that provide opportunities for revegetation to support rainforest, wet eucalypt forest, or forested wetlands. Such proposals will form part of the DA Vegetation and Riparian Zone Management Plan commitments of the proponent.
- 20 Vegetation removal will be required to facilitate future development. Such removal will likely include:
 - Removal of a small number of native trees across the site – mostly standalone paddock trees.
 - Removal of a portion of the disturbed wetland area in west of Precinct B
- 25 The small artificial drainage line through Precinct C will likely need to be either piped or realigned to facilitate development. This change is considered a minor in relation to the wider ecological values across the site. The associated impacts can be addressed during the DA phase of any future project.

Ongoing management of the land will take place under the community title scheme, with a detailed assessment and Plan of Management required at the DA stage. Prior to seeking gateway, comment should be sought from NSW DPE Biodiversity Conservation Division.

Recommendation:

Council forwards the Planning Proposal and relevant studies to the DPE Biodiversity Conservation Division for comment before requesting a Gateway determination. Staff are authorised to make any required changes to the Planning Proposal provisions that result from the feedback.

Next Steps

- 5
 - Receive an updated Cultural Heritage Assessment
 - Obtain agency comment from TfNSW and BCD and make any consequential changes to the studies and/or planning proposal.
 - Submit the planning proposal and studies to DPE for a Gateway determination.
 - Following Gateway, prepare a site-specific draft DCP.
- 10
 - Following Gateway, prepare a draft planning agreement for provision of a roundabout.
 - Publicly exhibit the planning proposal, DCP and planning agreement as per the statutory requirements.
- 15
 - Council report to consider the outcomes of public exhibition and agency consultation.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.5	Consider landowner planning investigations for possible new industrial and/or business park areas, as identified in the BILS

Recent Resolutions

- N/A

Legal/Statutory/Policy Considerations

5 Requirements under the Environmental Planning and Assessment Act and Regulation as applicable.

Financial Considerations

Owner initiated Planning Proposals are subject to full cost recovery via Council's Fees and Charges.

Consultation and Engagement

10 Pre-lodgement meetings held with DPE on technical studies/reports, agency referrals and draft Planning Proposal content.

All other Consultation will be carried out in accordance with Council's [Community Participation Plan 2019](#) and as directed by any future gateway determination from the Department of Planning and Environment

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