

Byron Shire Council

Planning Proposal 26.2023.7.1

Amendment of Byron Local Environmental Plan 2014 and Byron Local Environmental Plan 1988

West Byron Transition to Local Environmental Plan 2014

Public Exhibition Version #1

**Date: November 2023
#E2023/76729**



**BYRON
SHIRE
COUNCIL**

Document History

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Part 1 Introduction

1.1 Objective and intended outcomes

The objectives of this planning proposal are to rezone the land located within the West Byron Bay Urban Release Area (WBURA) currently zoned under the Byron Local Environmental Plan 1988 (LEP 1988) into the Byron Local Environmental Plan 2014 (LEP 2014) Zones, and to transition the relevant provisions of Part 4 West Byron Bay Site of the LEP 1988 into the Byron Local Environmental Plan 2014 (LEP 2014). The rezoning from a Deferred Matter zone to the equivalent Standard Instrument land use Zone will align with the development consents issued by the Land and Environment Court.

This planning proposal seeks to modify both the Local Environmental Plan 1988 and the Local Environmental Plan 2014. The amendments include policy and mapping changes with details of each amendment presented in part 2.

1.2 Subject land

This Planning Proposal relates to land in the West Byron Bay Urban Release Area legally described as the following land, and within the [Land Application Area West Byron Urban Release Area](#) shown below in Figure 1.

Real Property Description	Street Address
Part of Lot 2 DP 818403	Melaleuca Drive
Lot 6 DP 1269369	22A Melaleuca Drive
Lot 5 PD 1269369	22B Melaleuca Drive
Lot 2 DP 878549	46 Melaleuca Drive
Part of Lot 10 DP 1143215	50 Melaleuca Drive
Part of Lot 1 DP 1237582	50 Melaleuca Drive
Part of Lot 2 DP 1237582	53 Melaleuca Drive
Lot 7020 DP 1113431	Ewingsdale Road
Part of Lot 1 DP 111821	Ewingsdale Road

Part of Lot 229 DP 755695	Ewingsdale Road
Lot 2 DP 551947	300 Ewingsdale Road
Lot 3 DP 551947	310 Ewingsdale Road
Lot 1 DP 542178	342 Ewingsdale Road
Lot 1 DP 1166535	342 Ewingsdale Road
Part of Lot 227 DP 755695	342 Ewingsdale Road
Lot 1 DP 520063	364 Ewingsdale Road
Lot 1 DP 201626	394 Ewingsdale Road
Lot 2 DP 542178	394 Ewingsdale Road
Part of Lot 1 DP 780242	412 Ewingsdale Road.

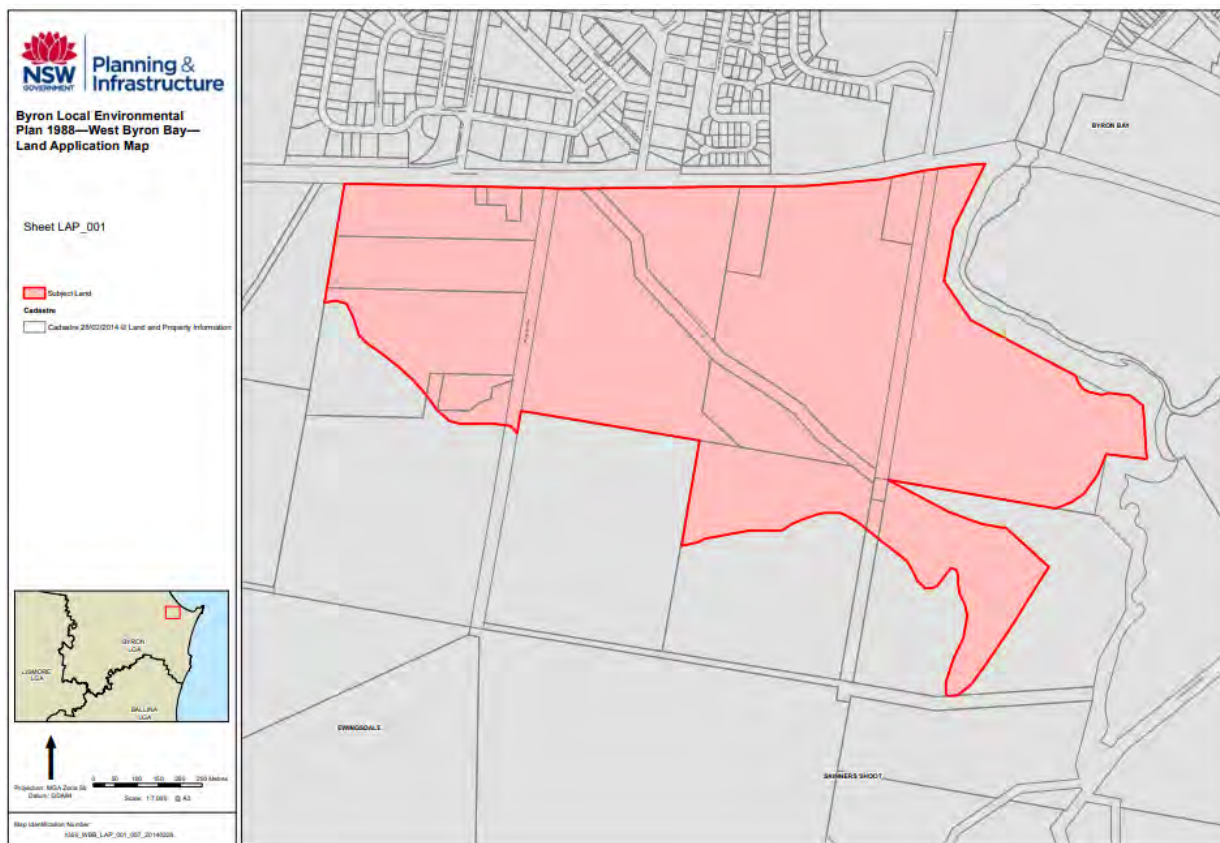


Figure 1: Current West Byron Urban Release Area - Land Application Area Map

The WBURA is currently a deferred matter zoning under the Byron Local Environmental Plan 2014 (LEP 2014), the area is currently zoned under the LEP 1988 comprising a mixture of land zoned R2 Low Density Residential, R3 Medium Density Residential, B1 Neighbourhood Centre, E2 Environmental Conservation, E3 Environmental Management, RE1 – Public Recreation, IN2- Light Industrial.

The Urban Release Area also contains a number of individual dwellings, and the Belongil Fields Caravan Park. A significant area of the land release area has been approved for subdivision for residential purposes under the development consents 10.2017.201.1 and 10.2017.661.1.

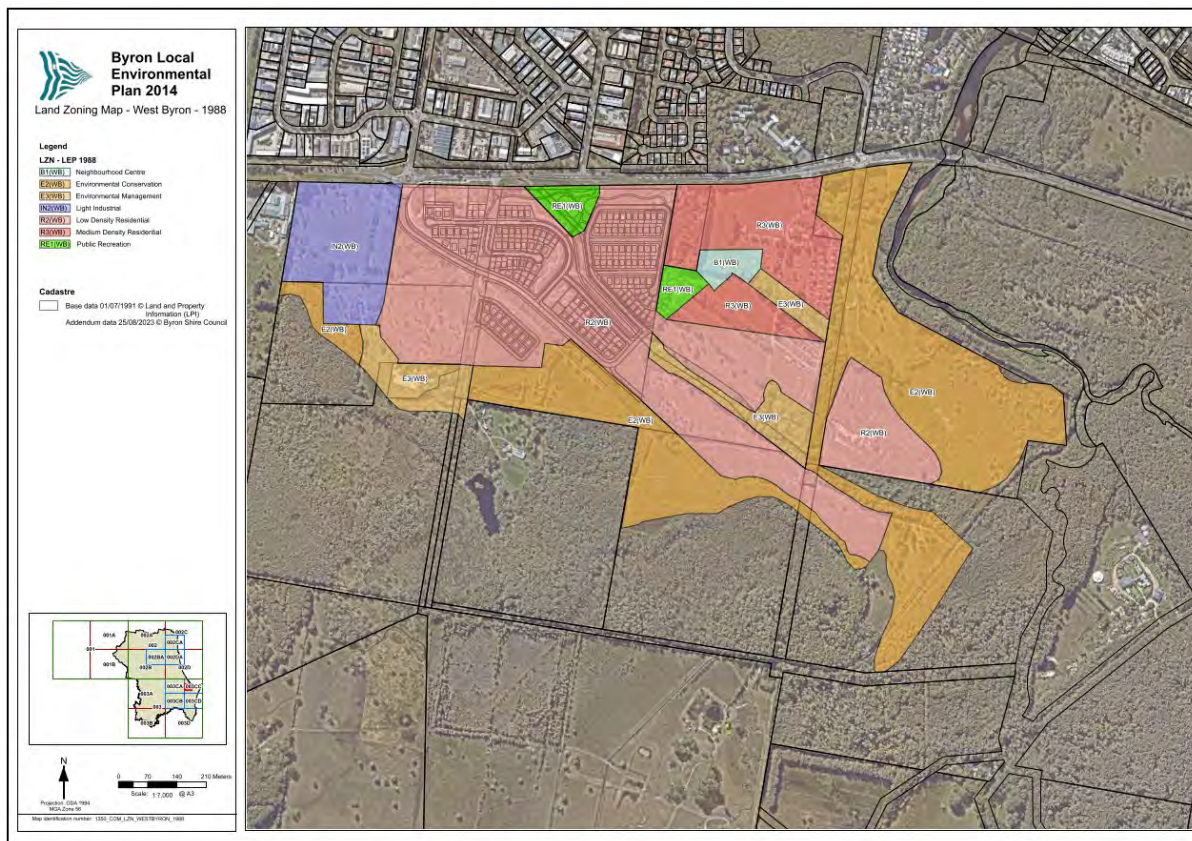


Figure 2: Current LEP 1988 Zone map

1.3 Background

At the 28 March 2019 Planning Meeting Council Resolved 19-137 that Council proceed with the preparation of a planning proposal to rezone the West Byron Urban Release Area (WBURA) as per the Alternate Zoning Map for submission to the Department of Planning for gateway determination. Following that resolution of Council, The Land and Environment Court acting as the consent authority, has issued two (2) Development Consents for the subdivision of the land and as a result, the subdivision layout is inconsistent with the alternate zoning map as previously considered by Council, and the current land zoning as gazetted under the LEP 1988.

This planning proposal was submitted for gateway determination on 15 December 2023. A Gateway was received on 26 February 2024 with conditions to include changes to the planning proposal to;

1. Remove the proposed savings provision,
2. Insert clauses [99](#), [100](#) and [101](#) of the Byron Local Environmental Plan 1988 into the LEP 2014 with appropriate numbering and,
3. Modify Clause 4.1C of the LEP 2014 to include for boundary adjustments between lots zoned C2 Environmental Conservation and C3 Environmental Management.

Point 3 is required by the Department of Planning as a part of the gateway determination.

The modification to Clause 4.1C to include the C2 and C3 zones is part of LEP Housekeeping amendment 26.2022.11.1. Council Resolved [24-088](#) at the 14 March 2024

Council (Planning) meeting to proceed to submit this housekeeping amendment for finalisation. It is a requirement that the Housekeeping LEP is finalised by 20 May 2024.

Subject to the finalisation of the housekeeping planning proposal, Council will seek an amended gateway determination to remove this condition for the West Byron Transition Planning Proposal, as once the LEP Housekeeping has been finalised this change would duplicate a change that is already in force.

As the change to clause 4.1C has already been exhibited with the housekeeping LEP proposal and likely in force during the exhibition of this planning proposal. Council as a part of seeking an amended gateway determination, will request the Department to waive the re-exhibition of the West Byron Transition planning proposal.

Part 2 Explanation of provisions

The planning proposal comprises land that is currently deferred from the Byron LEP 2014 and is subject to the provisions of the Byron LEP 1988. The deferred land is zoned a mixture of B1 Neighbourhood Centre, E2 Environmental Conservation, E3 Environmental Management, IN2 Light Industrial, R2 Low Density Residential, R3 Medium Density Residential, and RE1 Public Recreation.

The proposed drafting of the policy changes are shown in the planning proposal. The proposed drafting and numbering of these amendments are suggestions by Council and the final drafting and numbering is subject to approval by Parliamentary Counsel office and may change.

The planning proposal seeks the following mapping and policy amendments to the Byron LEP 2014:

- a)** Incorporate the subject site on the Byron LEP 2014 Land Application Map
- b)** Amend the Land Zone Map to rezone the site from Deferred Matter to equivalent Standard Instrument LEP 'like for like' zonings being E1 Local Centre, C2 Environmental Conservation, C3 Environmental Management, E4 General Industrial, R2 Low Density Residential, R3 Medium Density Residential, and RE1 Public Recreation; and rezone certain areas of the site to align with development approvals issued by the Land and Environment Court.
 - from R2 Low Density Residential to C2 Environmental Conservation, C3 Environmental Management, R5 Large Lot Residential, RE1 Public Recreation, RE2 Private Recreation, and SP2 Infrastructure Drainage;
 - from C2 Environmental Conservation to C3 Environmental Management and R5 Large Lot Residential; and
 - from RE1 Public Recreation to RE2 Private Recreation and SP2 Infrastructure Drainage.
- c)** Amend the Land Zoning Map for two small residual areas of Deferred Matter land within Lots 227 and 229 DP 755695 to C2 Environmental Conservation to resolve a minor mapping misalignment between the footprint of the West Byron Urban Release Area and the Byron LEP 2014 Deferred Matter footprint.

- d)** Incorporate associated Lot Size, Height of Buildings, and Acid Sulfate Soils Maps from the Byron LEP 1988, and resolve a minor mapping misalignment between the footprint of the West Byron Urban Release Area and the Byron LEP 2014 Deferred Matter footprint for these maps.
- e)** Amend the Lot Size Map for certain areas of the site from 450 square metres (sqm) to 2500sqm, 9000sqm and 40 hectares consistent with the proposed zone changes; and exclude RE1 Public Recreation, RE2 Private Recreation, and SP2 Infrastructure Drainage zoned land consistent with development approvals issued by the Land and Environment Court.
- f)** Insert an Urban Release Area map for the Byron LEP 2014.
- g)** Amend the Land Reservation Acquisition Map to align with development approvals issued by the Land and Environment Court.
- h)** Amend clause 4.1E 'Minimum lots sizes for certain residential accommodation' to permit greater residential densities for dual occupancy (attached and detached) in Zones R2 and R3 consistent with clause 82(2) of Byron LEP 1988.
- i)** Incorporate an equivalent provision to clause 83 of Byron LEP 1988 'Exceptions to minimum subdivision lot sizes for certain residential development' to ensure permitted densities for integrated housing are retained.
- j)** Insert clauses [99](#), [100](#) and [101](#) of the Byron Local Environmental Plan 1988 into the LEP 2014 with appropriate clause numbering.
- k)** Amend Clause 4.1C of the LEP 2014 to include for boundary adjustments between lots zoned C2 Environmental Conservation and C3 Environmental Management.

In relation the Byron LEP 1988, the planning proposal seeks deletion of Part 4 West Byron as it will no longer have any effect.

Part 3 Justification

Section A Need for the planning proposal

Q1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. This is a standalone Planning Proposal made as the result of a Council resolution, and two development consents granted by the Land and Environment Court for the subdivision of the land.

The amendments proposed relate to both mapping and policy and are specific to West Byron Urban Release Area and seek to align the land zoning to the approved subdivision layout as approved by the L&E Court. The changes are consistent with the Byron Residential Strategy as the provision of the residential land within the Urban Release Area was considered to ensure that Byron Shire will meet the dwelling land supply targets outlined within the Residential Strategy.

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

Yes. The a Planning Proposal is the best way to amend the Byron Local Environmental Plans.

Section B Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (in this case the North Coast Regional Plan 2041)?

The planning proposal is consistent with the North Coast Regional Plan 2041, which is a 20-year blueprint for the future of the North Coast. The NSW Government's vision for the North Coast is healthy and thriving communities supported by a vibrant and dynamic economy that builds on the regions strengths and natural environment.

The Planning proposal also seeks to amend the existing policy in relation to the minimum lot size for certain types of residential development. this includes the retention of site-specific provisions that will ensure that this Planning Proposal will not reduce the permissible residential density within the residential zoned land within the West Byron Urban Release Area.

The Planning Proposal will rezone land already identified and approved for residential subdivision into the LEP 2014. And is located within the Byron Urban Growth Boundary. No land that is to be rezoned is located within mapped important farmland. The Planning Proposal is consistent with the vision of objectives of the plan as it does not reduce the amount of developable land currently approved for residential, commercial, or industrial land uses. The proposed changes to the industrial and business zoned land are consistent with the recent Employment Zone reform as commenced 26 April 2023 and seeks to rezone current business and industrial zoned land to the equivalent land use as identified by the Department for the Byron Shire within the West Byron Bay site.

Q4. Is the planning proposal consistent with a LSPS that has been endorsed by the Planning Secretary or other local strategy or strategic plan?

Byron Shire LSPS was endorsed by Department of Planning in 2019. Ensuring Byron Local Environmental Plans are current and responsive is considered consistent with the objectives of Byron Shire LSPS.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

Not applicable

Q6. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
Biodiversity and Conservation 2021	<p>This planning proposal does not reduce conservation standards and is consistent with the aims chapters 3 and 4. Additionally the Likely impact of Koala habitat of this proposal has been considered during the development consents issued for the subdivision of the land.</p> <p>Council’s Comprehensive Koala Plan of Management contains mapped koala habitat on the land however this plan was adopted after the development consents for the subdivision of the land and did not apply at the time of issuing that consent.</p> <p>Future development of the land will be subject to the provisions of chapter 2.</p> <p>Chapters 5, 6 and 13 do not apply to the land.</p>
Housing 2021	<p>This planning proposal does not seek to reduce the permissible density of residential development within the land.</p> <p>Future development on the land may be subject to the provisions of this SEPP. The Planning Proposal does not seek to rezone additional lands that would allow for residential development, rather it seeks to transition the existing land into the LEP 2014 which will allow for greater applicability of the SEPP.</p>

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
<p>Industry and Employment 2021</p>	<p>Chapter 2 of this policy does not apply to the Byron Shire.</p> <p>Future development within land affected by this planning proposal will be subject to the provisions of Chapter 3 in relation to advertising and signage. This future development would be subject to Development Consent, or be permissible without development consent under the SEPP (Exempt and Complying Codes) 2008.</p> <p>This Planning Proposal is consistent with the aims and objectives of this SEPP.</p>
<p>No 65 – Design Quality of Residential Apartment Design</p>	<p>While not directly related to the changes proposed. The proposed rezoning and transition of this area into the 2014 LEP development standards may allow for development that would be subject to the application of this policy to occur within the West Byron Urban Release Area.</p> <p>This Planning Proposal does not interfere with the aims and objectives of this policy. Future Development within the Land affected would be assessed at that time.</p>
<p>Resilience and Hazards 2021</p>	<p>Chapter 2 Coastal Management</p> <p>The land is mapped within the Coastal Management SEPP area. The Development consent issued for the land took into account the then draft SEPP coastal Management 2018.</p> <p>Chapter 4 Remediation of land The potential for site contamination would have been considered as part of the Minister’s original zoning of the land under the State Significant Site pathway.</p> <p>This likelihood was also assessed during the assessment of the two Development Consents issued for the land a detailed investigation was required as part of the consideration for the development consent and, a remediation action plan was required as a condition of consent for the land. and suitably addressed the objectives of this chapter.</p> <p>This planning proposal does not contradict the objectives of this SEPP.</p>

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
Sustainable Buildings 2022	<p>This SEPP has been endorsed but is to commence on October 1, 2023. The planning proposal does not contradict the objectives of this SEPP.</p> <p>Future development within the area will be subject to the requirements of this Policy, and this Planning Proposal raises no inconsistencies with the policy.</p>
(Building Sustainability Index) BASIX	<p>This SEPP is to be repealed on 1 October 2023 with commencement of SEPP Sustainable Buildings 2022. This Planning Proposal is consistent with the policy.</p>
Transport and Infrastructure 2021	<p>This Planning proposal does not contradict or repeat the provisions of the Transport and Infrastructure SEPP.</p>

Q7. Is the planning proposal consistent with the applicable Ministerial Directions (s.9.1 directions)?

Consistency with the Local Planning Directions is assessed in the following tables:

1. Planning Systems

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
<p>1.1 Implementation of Regional Plans</p>	<p>Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary), that:</p> <p>(a) the extent of inconsistency with the Regional Plan is of minor significance, and</p> <p>(b) the planning proposal achieves the overall intent of the Regional Plan and does not undermine the achievement of the Regional Plan’s vision, land use strategy, goals, directions or actions.</p>	<p>The mapping and policy amendments proposed are consistent with the objectives of the North Coast Regional Plan 2041.</p> <p>The Amendments proposed allow for the land zoning and applicable planning controls to be consistent with the approved development consents. The amendments allow for the utilisation of up-to-date controls to be applicable to future development of the West Byron Urban Release Area.</p>	<p>Consistent</p>
<p>1.2 Development of Aboriginal Land Council Land</p>	<p>Applies when preparing a planning proposal for land shown on the Land Application Map of chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021.</p>	<p>(not currently applicable to Byron Shire)</p>	<p>Not applicable</p>

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
1.3 Approval and Referral Requirements	<p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (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"> i. the appropriate Minister or public authority, and ii. the Planning Secretary (or an officer of the Department nominated by the Secretary), prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act 	Not applicable	Not applicable
1.4 Site Specific Provisions	Applies when preparing a planning proposal that will allow a particular development to be carried out.	The planning proposal seeks to transition an existing site-specific planning provision for the West Byron Urban Release Area that allow for Integrated housing to be constructed into the LEP 2014. This site-specific provision is currently in force as applicable to the land and is only retaining a current provision. The change proposed does not alter the current development	Justifiably inconsistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
		<p>standards or requirements of how this provision currently would operate.</p> <p>Further, the control is permissive and allows additional development to be carried out on the land and allows for the existing residential density to be preserved, and is consistent with Ministerial Direction 6.1.</p> <p>The Gateway determination has confirmed the inconsistency is justified.</p>	
<p>Exclusion of Development Standards from Variation</p>	<p>Applies when a planning proposal authority prepares a planning proposal that proposes to introduce or alter an existing exclusion to clause 4.6 of a Standard Instrument LEP or an equivalent provision of any other environmental Planning Instrument</p>	<p>The planning proposal does not propose to exclude a development standard from variation under clause 4.6 of the Byron LEP 2014</p>	<p>Consistent</p>

3. Biodiversity and Conservation

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
3.1 Conservation Zones	<p>(1) A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>(2) A planning proposal that applies to land within a conservation zone or land otherwise identified for environment conservation/protection purposes in a LEP must not reduce the conservation 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 Direction 9.2 (2) of "Rural Lands".</p>	<p>Part of the land is proposed to be rezoned from C2 Environmental Conservation to C3 Environmental Management and R5 Large Lot Residential</p> <p>The Gateway determination has confirmed that this inconsistency is of minor significance as these changes affect only a small portion of the site to reflect the primary use of the land and or to correct a zoning anomaly, and any reduction in environmental standards is negligible</p> <p>Expansion to the conservation zone areas within the West Byron Bay Site does not include any rural land affected by Direction 9.2(2) of "Rural Lands"</p>	Justifiably inconsistent
3.2 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>	The planning proposal does not impact existing heritage provisions within Byron LEP.	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, 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>		
3.3 Sydney Drinking Water Catchments	Not applicable to Byron Shire	N/A	N/A
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	A planning proposal that introduces or alters an C2 Environmental Conservation or C3 Environmental Management zone or an overlay and associated clause must apply that proposed C2 Environmental Conservation or C3 Environmental Management zone, or the overlay and associated clause, in line with the Northern Councils E Zone Review Final Recommendations.	<p>The planning proposal introduces new areas that are proposed to be zoned C2 or C3 and amendments to the areas already zoned as C2 or C3.</p> <p>These changes are consistent with the E Zone Review Final Recommendations and the subdivision consent issued by the Land and Environment Court for the “Harvest Estate” subdivision Development consent reference 10.2017.201.1.</p>	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
3.5 Recreation Vehicle Areas	A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the Recreation Vehicles Act 1983).	The planning proposal does not enable land to be developed for a recreational vehicle area.	Consistent

4. Resilience and Hazards

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
4.1 Flooding	This direction applies when preparing a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	The Gateway determination has confirmed that The inconsistency of the proposal with this direction is considered to be of minor significance as the proposal is a minor housekeeping amendment which does not seek to provide any increased development potential and aligns with existing development approvals issued by the Land and Environment Court. Any potential flood issues associated with future development can also be appropriately addressed at the DA stage for any of the other lands with the West Byron Urban Release Area.	Justifiably inconsistent
4.2 Coastal Management	This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as	The Gateway determination has confirmed that the inconsistency of the proposal with this direction is considered to be of minor significance as the proposal is a minor housekeeping amendment which does not seek to provide any	Justifiably inconsistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	defined under the Coastal Management Act 2016.	increased development potential and only reflects existing development approvals issued by the Land and Environment Court	
4.3 Planning for Bushfire Protection	<p>(1) In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&A Act, and take into account any comments so made.</p> <p>(2) A planning proposal must:</p> <ul style="list-style-type: none"> (a) have regard to Planning for Bushfire Protection 2019, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the Asset Protection Zone (APZ). 	<p>The Gateway determination identified this direction was unresolved subject to consultation with the Commissioner of the NSW Rural Fire Service has occurred.</p> <p>To resolve this, a written response from the NSW RFS will be obtained during the exhibition of this planning proposal.</p>	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
<p>4.4 Remediation of Contaminated Land</p>	<p>This direction applies to:</p> <ul style="list-style-type: none"> (a) land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997, (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out, (c) the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes, or for the purposes of a hospital – land: <ul style="list-style-type: none"> i. in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and ii. on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge). <p>(1) A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any</p>	<p>This planning proposal does not enable additional development on contaminated land. The development consents issued for the subdivision of land took into account the likelihood of site contamination. The site suitability for rezoning was also considered during the State Significant</p>	<p>Consistent</p>

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>land to which this direction applies if the inclusion of the land in that zone would permit a change of use of the land, unless:</p> <p>(a) the planning proposal authority has considered whether the land is contaminated, and</p> <p>(b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and</p> <p>(c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose.</p> <p>In order to satisfy itself as to paragraph 1(c), the planning proposal authority may need to include certain provisions in the local environmental plan.</p> <p>(2) Before including any land to which this direction applies in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land</p>		

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>carried out in accordance with the contaminated land planning guidelines</p>		
<p>4.5 Acid Sulfate Soils</p>	<p>Applies when preparing 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 held by the Department of Planning and Environment.</p> <p>A relevant planning authority must not prepare a planning proposal 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 relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Planning Secretary prior to undertaking community consultation in satisfaction of clause 4 of Schedule 1 to the Act.</p>	<p>This planning proposal does not enable additional development on land mapped as containing acid sulfate soils.</p> <p>As part of the development consents issued for the subdivision of the land, the site is required to be filled to achieve compliance with flood planning controls and will not be likely to encounter potential acid sulfate soils.</p> <p>The potential to encounter acid sulfate soils was also considered during the development applications for the subdivision of the land.</p>	<p>Consistent</p>
<p>4.6 Mining Subsidence and Unstable Land</p>	<p>This direction applies when a relevant planning authority prepares a planning proposal that permits development on land that is within a declared mine subsidence district in the Coal Mine Subsidence Compensation Regulation 2017 pursuant to section 20 of the Coal Mine Subsidence Compensation Act 2017, or has</p>	<p>The planning proposal does not apply to land within a mine subsidence district or land identified as unstable.</p>	<p>Consistent</p>

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	been identified as unstable in a study, strategy or other assessment undertaken by or on behalf of the relevant planning authority or by or on behalf of a public authority and provided to the relevant planning authority.		

5. Transport and Infrastructure

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
<p>5.1 Integrated Land Use Transport</p>	<p>This direction applies when preparing 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>1) 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> <p>(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</p> <p>(b) The Right Place for Business and Services – Planning Policy (DUAP 2001).</p>	<p>The area has already been zoned for residential purposes. The planning proposal is consistent with the Court approved subdivision layout and zoning and is consistent with this direction.</p>	<p>Consistent</p>
<p>5.2 Reserving Land for Public Purposes</p>	<p>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 Planning Secretary (or an officer of the Department nominated by the Secretary).</p>	<p>The proposal seeks to rezone parts of land for public purposes to RE1 and RE2. This rezoning is required as a result of the subdivision development consents approvals which required this land be dedicated to Council for public purposes as RE1, or utilised as private recreation for other parts of the subdivision as RE2.</p> <p>The Gateway determination has confirmed that This inconsistency is considered to be of minor significance as the zone changes only reflect the</p>	<p>Justifiably inconsistent</p>

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
		outcomes of the development approvals and reflect the future nature for this area of the site and there will be an overall increase in future public open space.	
5.3 Development Near Regulated Airports and Defence Airfields	Applies when preparing a planning proposal that will create, alter or remove a zone or a provision relating to land near a regulated airport which includes a defence airfield.	Not applicable	Not applicable
5.4 Shooting Ranges	Applies when preparing 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	Not applicable	Not applicable

6. Housing

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
6.1 Residential Zones	<p>Applies when preparing a planning proposal that will affect land within an existing or proposed residential zone (including the alteration of any existing residential zone boundary).</p> <p>(1) A planning proposal must include provisions that encourage the provision of housing that will:</p>	<p>The planning proposal seeks to amend maps and policies applying to residential land.</p> <p>The proposal does not contain requirements 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 or contain</p>	Justifiably inconsistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<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>(2) A planning proposal must, in relation to land to which this direction applies:</p> <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>	<p>provisions which will reduce the permissible residential density of land.</p> <p>This planning proposal seeks to align the zoning of the land in accordance with the development consents issued for the land and by doing so do retain the permissible residential density of the land.</p> <p>The West Byron Urban Release area currently does not have a floor space ratio control (FSR) applied under a LEP other than for dual occupancy development. This planning proposal does not seek to introduce a FSR control or map for this area and will effectively increase the density by allowing more flexibility in the provision of residential development to assist with achieving the planned residential density within the urban release area.</p> <p>The Gateway determination has confirmed that this inconsistency is of minor significance as the zone and lot changes do not substantially reduce any potential residential densities in the URA as they are consistent with the Land and Environment Court development approvals including the area proposed as R5 Large Lot Residential with each lot only to have a dwelling house or dual occupancy</p>	

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
6.2 Caravan Parks and Manufactures Home Estates	Applies when a planning proposal affects land for Caravan Parks and Manufactured Home Estates.	The planning proposal will rezone a part of an existing caravan park to a mixture of R3 Medium Density Residential, C3 Environmental Management and E1 Local Centre. The proposal is consistent with the direction as the zone changes do not alter the current land use zoning, only the instrument by which they are applied. Other than for changes created by the Employment Zones reform but do not fundamentally change the permissibility of the existing caravan park.	Justifiably inconsistent

7. Industry and Employment

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
7.1 Employment Zones	<p>This direction applies to all relevant planning authorities when preparing a planning proposal that will affect land within an existing or proposed Employment zone (including the alteration of any existing Employment zone boundary). For the purpose of this Direction, Employment zones means the following zones.</p> <ul style="list-style-type: none"> • Employment • Mixed Use • W4 Working Waterfront 	<p>The planning proposal seeks to rezone land from IN2 and B1 to E4 General Industrial and E1 Local Centre.</p> <p>The rezoning of the land to the employment zones is consistent with the equivalent land zones as identified within Equivalent zone tables (nsw.gov.au).</p> <p>The rezoning retains the areas and locations of Employment zones, and does not reduce or</p>	Consistent

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<ul style="list-style-type: none"> • SP4 Enterprise • SP5 Metropolitan Centre <p>A planning proposal must:</p> <p>(a) give effect to the objectives of this direction,</p> <p>(b) retain the areas and locations of Employment zones,</p> <p>(c) not reduce the total potential floor space area for employment uses and related public services in Employment Zones.</p> <p>(d) not reduce the total potential floor space area for industrial uses in E4, E5 and W4 zones, and</p> <p>(e) ensure that proposed employment areas are in accordance with a strategy that is approved by the Planning Secretary.</p>	<p>modify the zone area of the existing light industrial or local centre zoned land.</p> <p>This planning proposal does not seek to modify any floor space ratio controls.</p>	
<p>7.2 Reduction in non-hosted short-term rental accommodation period</p>	<p>This direction applies to Byron Shire Council when the council prepares a planning proposal to identify or reduce the number of days that non-hosted short-term rental accommodation may be carried out in parts of its local government area.</p>	<p>Not applicable</p>	<p>Not applicable</p>

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Applies to land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.	Not Applicable	Not Applicable

8. Resources and Energy

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
8.1 Mining, Petroleum Production and Extractive Industries	<p>This direction applies to all relevant planning authorities when preparing a planning proposal that would have the effect of:</p> <ul style="list-style-type: none"> (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. 	Not applicable	Not applicable

9. Primary Production

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
9.1 Rural Zones	<p>Applies when a planning proposal will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).</p> <p>A planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone</p>	<p>Not applicable. This planning proposal does not affect land within an existing or proposed rural zone.</p>	<p>Not applicable</p>
9.2 Rural Lands	<p>Applies when a planning proposal:</p> <p>(a) will affect land within an existing or proposed rural or conservation zone (including the alteration of any existing rural or conservation zone boundary) or</p> <p>(b) changes the existing minimum lot size on land within a rural or conservation zone.</p> <p>A planning proposal must:</p> <p>(a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Planning Secretary, and any applicable local strategic planning statement</p>	<p>This planning proposal will have the effect of increasing the extent of conservation zones across the West Byron Bay Urban Release area and increasing the minimum lot size within the C2 zoned land.</p> <p>An extension to the existing C2 Environmental Conservation zone is proposed within the two Large lots within the South-east of the land. the application of these zones is consistent with the preservation of the adjacent wetland.</p>	<p>Consistent</p>

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>(b) consider the significance of agriculture and primary production to the State and rural communities</p> <p>(c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources</p> <p>(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions</p> <p>(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities</p> <p>(f) support farmers in exercising their right to farm</p> <p>(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land use</p> <p>(h) consider State significant agricultural land identified in chapter 2 of the State Environmental Planning Policy (Primary</p>		

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
	<p>Production) 2021 for the purpose of ensuring the ongoing viability of this land</p> <p>(i) consider the social, economic and environmental interests of the community.</p> <p>(2) A planning proposal that changes the existing minimum lot size on land within a rural or conservation zone must demonstrate that it:</p> <p>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</p> <p>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains</p> <p>(c) where it is for rural residential purposes:</p> <p>i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres.</p> <p>ii. is necessary taking account of existing and future demand and supply of rural residential land.</p>		

S. 9.1 Direction	Application	Relevance to this planning proposal	Consistency
9.3 Oyster Aquaculture	Applies when preparing a planning proposal in 'Priority Oyster Aquaculture Areas'	Not applicable.	Not applicable
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	Applies to land mapped as mapped as State significant farmland, regionally significant farmland, or significant non-contiguous farmland.	Not applicable. The land is not mapped as State significant farmland, regionally significant farmland, or significant non-contiguous farmland.	Not applicable

Section C Environmental, social and economic impact

Q8. 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?

The West Byron Urban Release Area has been approved for greenfield subdivision development comprising Residential, Industrial and Employment lands. A large part of the Urban Release Area is covered by two development consents for subdivision.

When development consent was issued for the subdivision of the lands, these Development Applications took into account the likely impact of critical habitat, threatened species or ecological communities or their habitats. This planning proposal does not seek to enable an increase in development, but will retain the footprint of the existing approved subdivisions.

The planning proposal will increase the Conservation zoned land throughout the site currently the areas that will be rezoned to C2 include areas currently zoned as 7(a) Wetlands Zone and 1(d) Investigation Zone under the LEP 1988. This land is located adjacent to existing C2 zoned land and in some instances appears to be minor mapping errors that resulted in land not being zoned in full. These areas are isolated from the existing residential zoned land. No land was previously rural zoned and will assist in minimising any likely impact on habitat.

Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The proposal does not allow enable an increase in development beyond what has been approved by Development Consents applicable to the land and is not anticipated to have any adverse environmental effects. Approval for the subdivision of the land considered the likely environmental impacts were considered when Approval for the Subdivision of the land was granted.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The development application process considered the likely impact of the subdivision may have on European or Aboriginal cultural heritage to the land. The planning proposal is not anticipated to have any adverse social or economic impacts. The proposal will enable the construction of additional housing, business and industrial opportunities within a greenfield setting.

Section D Infrastructure

Q11. Is there adequate public infrastructure for the planning proposal?

Yes, Approval of the subdivision of the land was subject to pre-requisite conditions that were to be satisfied prior to the approval of those Development Consents. In addition the existing Clauses 99 and 100 of the LEP 2014 required arrangements of State public infrastructure, and Public utility infrastructure. As well as the essential infrastructure required for each lot created by the subdivision approval.

Section E State and Commonwealth Interests

Q12. What are the views of state and Commonwealth public authorities consulted in order to inform the Gateway determination?

Consultation has yet to occur with state agencies. Consultation should be undertaken with the following state agencies.

- NSW Rural Fire Service

Further consultation with other state agencies will be undertaken in accordance with the gateway determination.

Part 4 Mapping

The Planning proposal will transition the Byron LEP 1988 Maps into Byron LEP 2014, as they relate to the West Byron Bay Urban Release Area.

Amendments also will be required to the following Byron LEP 2014 Map sheets.

- LZN_003CC
- HOB_003CC
- LSZ_003CC
- ASS_003CC
- LRA_001
- LAP_001

The following map is to be created for the Byron LEP 2014 Map sheet.

- URA – Urban Release Area Map

The existing LEP 1988 West Byron Urban Release Area Mapping and proposed LEP 2014 maps are contained in Appendix 1.

Part 5 Community consultation

Community consultation will be conducted in accordance with the Gateway determination.

Notification of the exhibited planning proposal will include:

- updates to Council’s website
- referral to relevant State agencies
- notification in writing to affected landowners.

The Gateway Determination requires that the planning proposal be made publicly available for a minimum of 20 days.

Part 6 Project timeline

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

Plan making step	Estimated completion
Gateway Determination	26 February 2024
Agency Consultation	March – April 2024
Public Exhibition Period	May – June 2024
Submissions Assessment	May- June 2024
Council Report / Submission of endorsed LEP to DPIE for finalisation (non-delegated)	May – June 2024
Submission of endorsed LEP amendment to Parliamentary Counsel for drafting (delegated authority)	July 2024
LEP amendment notification	September – November 2024

Conclusion

This Planning Proposal seeks to

- (i) Amend the West Byron Urban Release Area (WBURA) zones in Byron LEP 1988 to reflect the court approved subdivisions for Harvest Estate (development consent 10.2017.201.1) and Site R&D (Development Consent 10.2017.661.1); and
- (ii) Transition all relevant LEP 1988 maps and site-specific provisions into Byron Local Environmental Plan 2014 (LEP 2014) and,
- (iii) Delete Part 4 of the Byron Local Environmental Plan 1988 in its entirety as it will no longer apply to any land within the Shire, and
- (iv) Bring forward existing West Byron specific provisions within Part 4 of the LEP 1988 into the LEP 2014 for the West Byron Urban Release Area Land relating to minimum lot sizes for certain types of development.

No further specific studies are required to accompany the Planning Proposal as the impacts of the rezoning has been considered as part of either the original state significant site rezoning, or as part the Development Application process for the subdivision of the land.

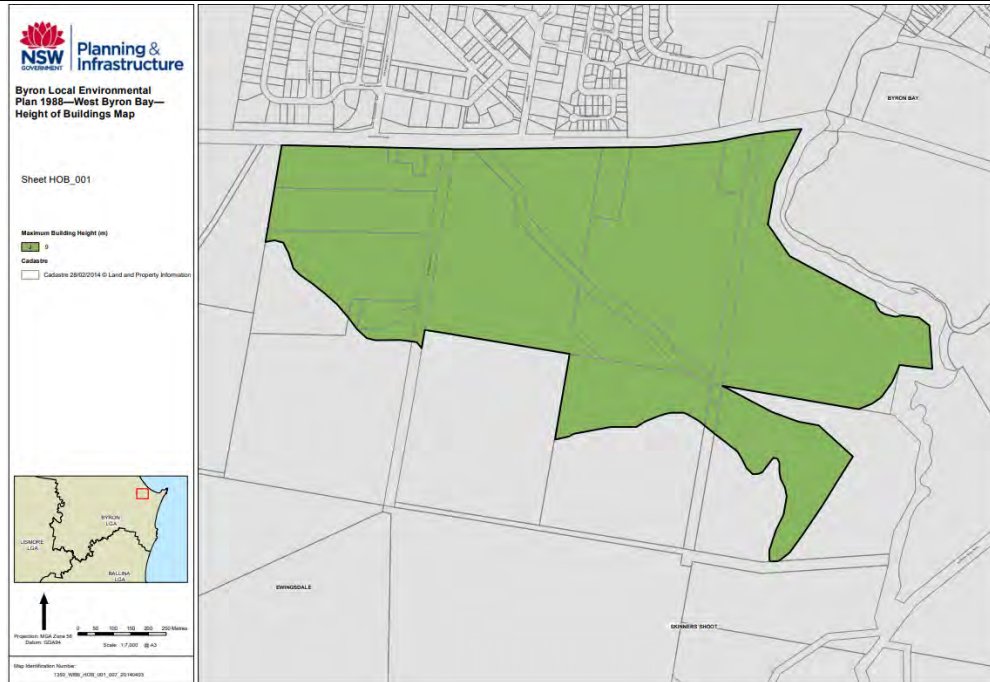
By aligning the land use zoning of this land in accordance with the development consents issued for the subdivision of the land and will assist in further housing opportunities within the Byron Shire

There is sufficient information to seek a Gateway determination and proceed to public exhibition.

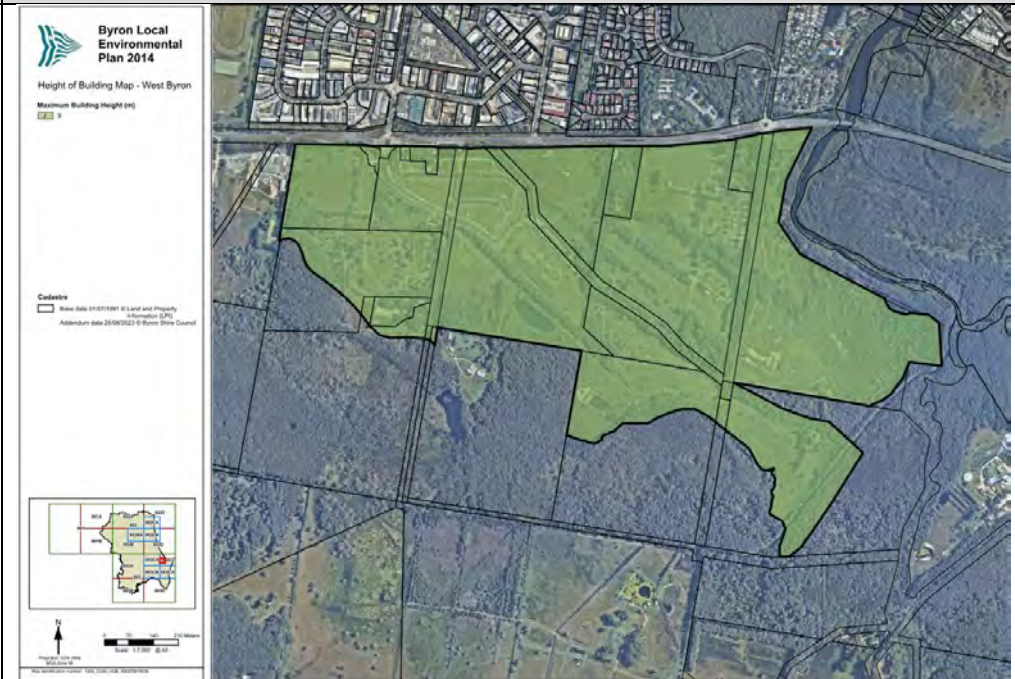
Appendix 1

Existing 1988 LEP mapping (Left) and proposed LEP 2014 maps (right).

Existing LEP 1988 West Byron Urban Release Area – Existing Height of buildings map

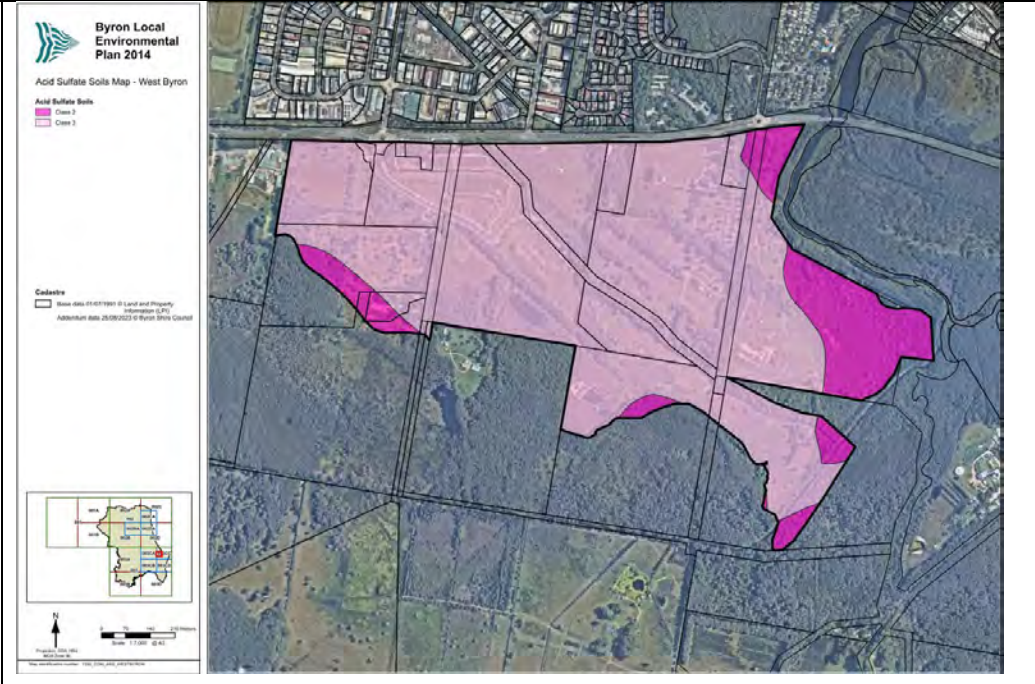
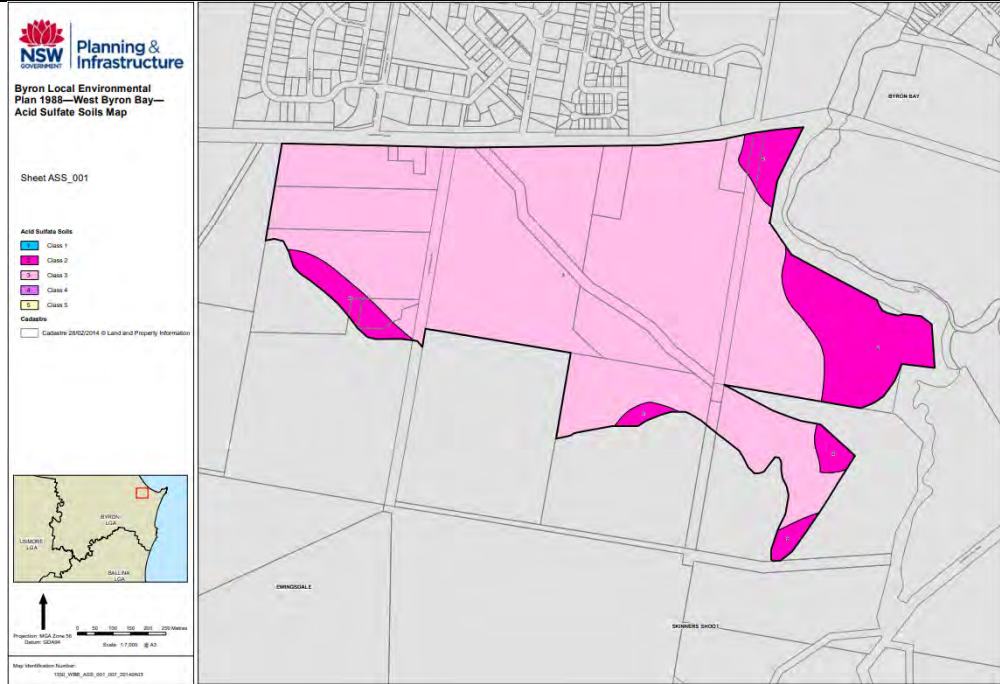


Proposed 2014 LEP – Height of Buildings map

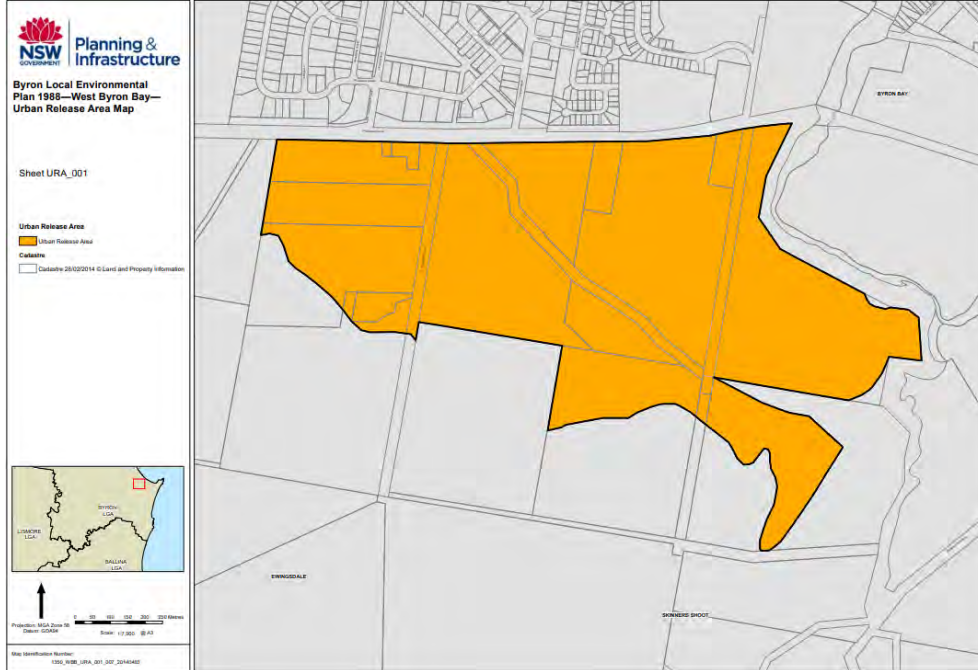


Existing LEP 1988 West Byron Urban Release Area – Acid Sulfate Soils Map

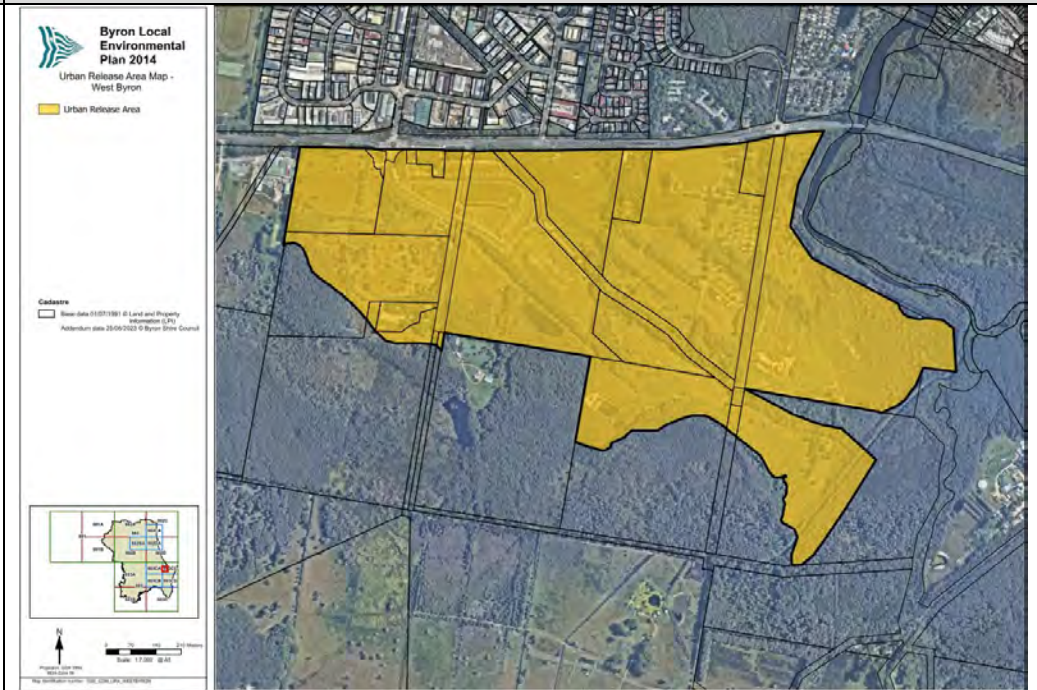
Proposed 2014 LEP – Acid sulfate soils map



Existing LEP 1988 West Byron Urban Release Area – Urban Release Area map

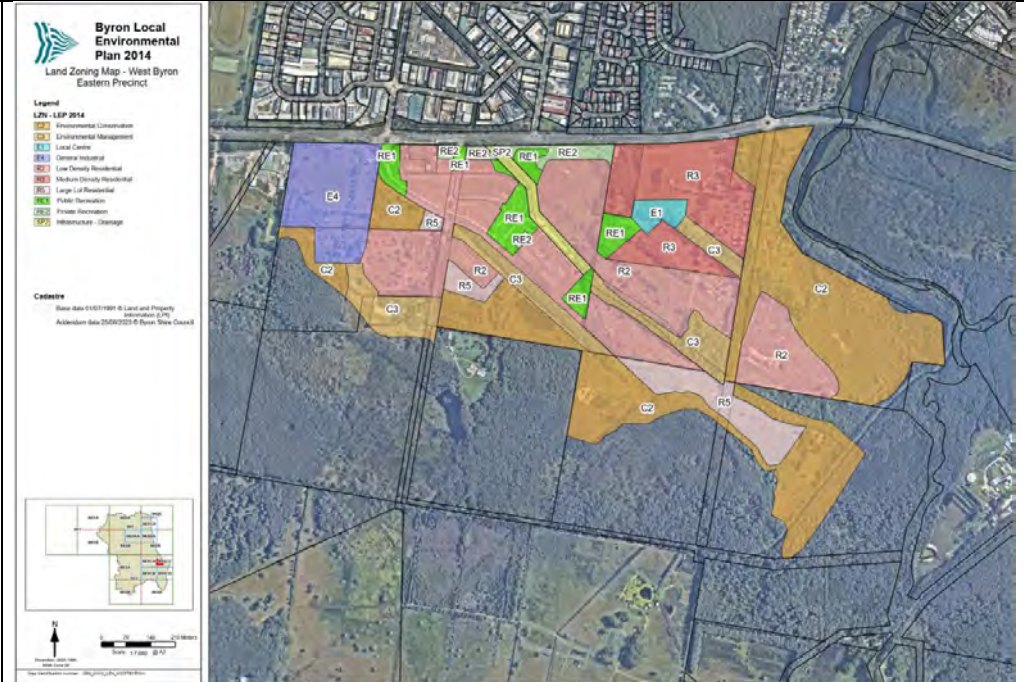
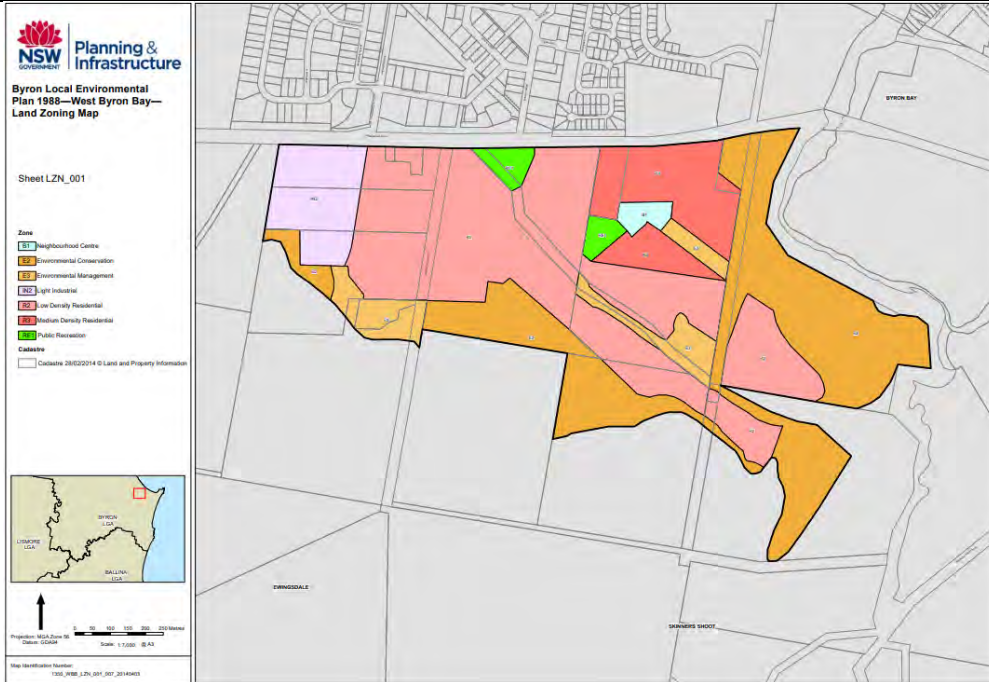


Proposed 2014 LEP – Urban Release Area Map



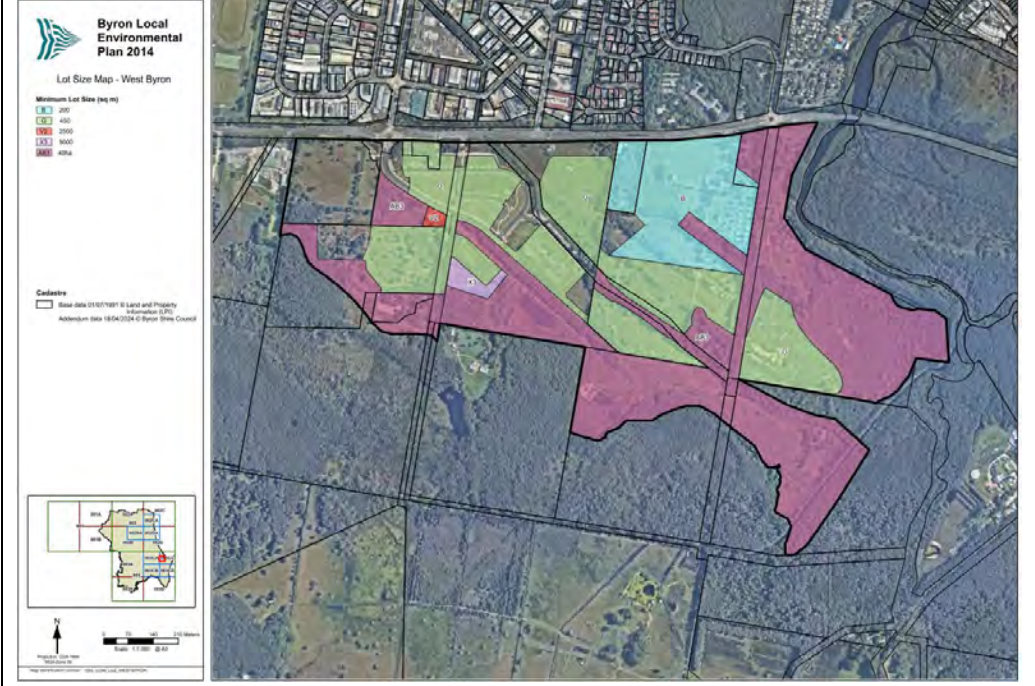
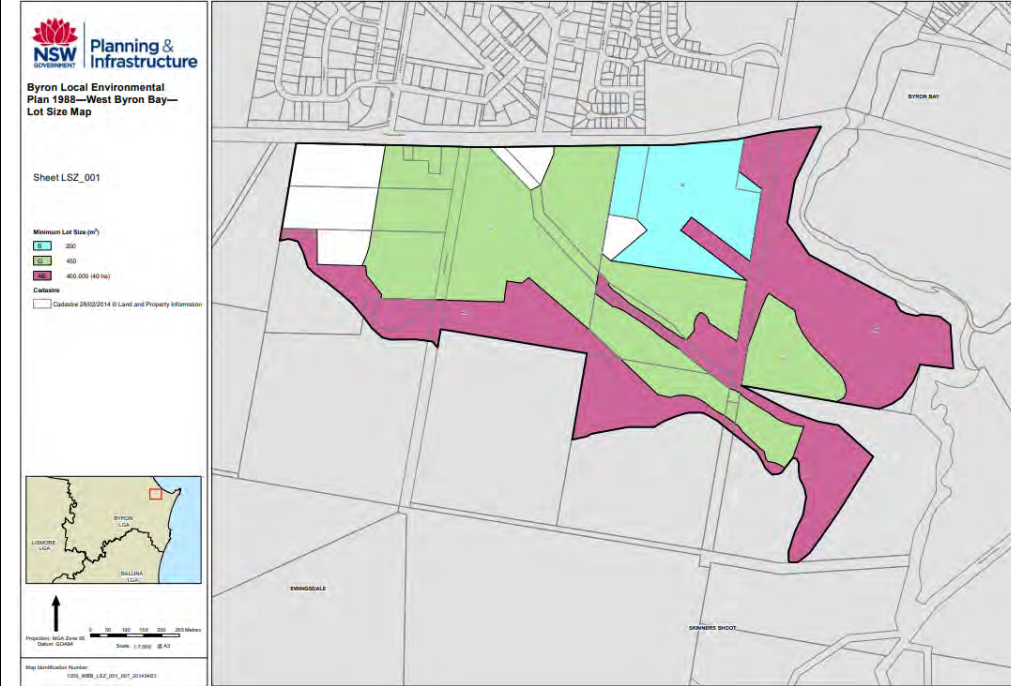
Existing LEP 1988 West Byron Urban Release Area – Land Zoning Map

Proposed 2014 LEP – Land Zoning Map



Existing LEP 1988 West Byron Urban Release Area – Minimum Lot Size Map

Proposed 2014 LEP – Minimum Lot Size Map



Existing LEP 1988 West Byron Urban Release Area – Land Reservation Acquisition Map

Proposed 2014 LEP – Land Reservation Acquisition Map

