



Planning &
Environment

West Byron Bay Urban Release Area Assessment Report



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Department of Planning & Environment

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Glossary

AHD	Australian Height Datum
APZ	asset protection zone
ARI	average recurrent interval
ASS	acid sulphate soil
council	Byron Shire Council
CRG	community reference group
DA	development application
DCP	development control plan
DEC	Department of Education and Communities
department	Department of Planning & Environment
DP&E	Department of Planning & Environment
drainage reserve	Industrial Estate Drain (a constructed drain running NW to SE)
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
ha	hectares
LEP	local environmental plan
LGA	local government area
ML	megalitre (one million litres)
Minister	Minister for Planning
NOW	NSW Office of Water
NSW	New South Wales
OEH	Office of Environment and Heritage
PMF	probable maximum flood
proponent	Byron Bay West Landowners Association
RMS	Roads and Maritime Services
Secretary	Secretary of the Department of Planning & Environment
SEPP	state environmental planning policy
SILEP	Standard Instrument Local Environmental Plan
SSS	state significant site
the site	proposed West Byron Bay urban release area
STP	sewage treatment plant
vpd	vehicles per day
VPA	voluntary planning agreement

Executive summary

This report has been prepared to assess a proposal to rezone the West Byron Bay urban release area ('the site') for urban development. The 108.5 hectare site is located 2.5km west of Byron Bay town centre on the southern side of Ewingsdale Road, and west of Belongil Creek.

In October 2009, the former Minister for Planning gazetted the site as a potential State Significant Site ('SSS') in recognition of it being identified in the Far North Coast Regional Strategy (2006) as a future urban release area, and its potential to contribute towards the delivery of regional housing and employment targets.

In June 2011, the Byron Bay West Landowners Association submitted a State Significant Site study, a preliminary development control plan and accompanying material to the Department of Planning & Environment to support rezoning of the site.

Between 12 October 2011 and 14 December 2011, the proponent's SSS study was publicly exhibited. The department received 405 submissions, including 15 submissions from state government agencies and two from Byron Shire Council. Of the 388 public submissions, 253 (65%) were supportive and 135 (35%) objected or made comments.

The proponent prepared a response to submissions, modifying the proposal and submitting further detailed reports, which were made publicly available on the Department of Planning & Environment's website from May 2012.

The department considered the proponent's SSS study and response to submissions, and prepared draft documents to rezone the site by way of a draft state environmental planning policy. The department also negotiated a draft voluntary planning agreement to secure road upgrade funding and a vegetation management plan, and prepared a draft development control plan to establish objectives and controls for future development.

The department's proposal was exhibited for 64 days between 28 November 2013 and 31 January 2014. 428 submissions were received including from state government agencies and Byron Shire Council. Of the 418 public submissions, 171 (41%) were in support, and 247 (59%) were objections or provided comments.

Most submissions in favour supported provision of additional housing close to Byron Bay town centre, assisting housing supply and affordability for local residents.

The key issues raised in submissions are summarised as:

- the proposal would worsen existing traffic congestion on Ewingsdale Road
- there is inadequate infrastructure to support the additional population
- the scale and density of the proposal is out of character with Byron Bay
- impact on flora and fauna populations and habitat, particularly koalas
- water quality impacts on Belongil Creek and wetlands.

The department has carefully considered the proposal and issues raised in submissions.

The rezoning proposal has a number of benefits, in that it would:

- bring forward a site identified for potential urban development under the Far North Coast Regional Strategy (2006)
- contribute to the housing targets for Byron Shire and the Far North Coast by providing between 800 and 1,100 new dwellings
- enable greater housing diversity and affordability through the provision of medium density housing and smaller minimum lot sizes
- secure employment during construction and additional employment land supporting new jobs
- encourage future residents to use more sustainable transport options, such as walking and cycling, due to the site's mix of uses and proximity to the Arts and Industry Estate and Byron Bay.

The site is constrained with regard to traffic, flood risk and acid sulphate soils. Future development may also impact on waterways, flora, fauna and habitats. These matters have been assessed and considered, and to mitigate potential impacts the proposal would:

- secure funding of between \$5.6 million and \$7.7 million toward construction of the Byron Bay bypass to alleviate existing traffic congestion on Ewingsdale Road
- include approximately 40% of the site within environmental zones to protect Belongil Creek, SEPP 14 wetlands, and flora and fauna
- secure the preparation of a vegetation management plan to address the management and rehabilitation of land within the environmental zones
- include appropriate controls to manage environmental risks including flooding and acid sulphate soils.

Following its assessment and on balance, the department supports the proposal, subject to imposition of appropriate controls on future development to be secured under the Draft SEPP and Draft DCP.

The Department of Planning & Environment recommends that the Minister for Planning give her opinion that the site is of regional significance and refer the draft environmental planning instrument to the Governor to be made, rezoning the site as follows:

Proposed zone		Area (hectares)
R2	Low Density Residential	44.3
R3	Medium Density Residential	11.0
B1	Neighbourhood Centre	1.1
IN2	Light Industrial	7.5
RE1	Public Recreation	2.2
E2	Environmental Conservation	35.6
E3	Environmental Management	6.8
Total		108.5

1 Site overview

1.1 Location

The West Byron Bay urban release area ('the site') comprises approximately 108 hectares located west of Belongil Creek and on the southern side of Ewingsdale Road (Figures 1 and 2).

The site is 2.5kms west of the Byron Bay town centre, and situated entirely within the Byron Shire local government area.

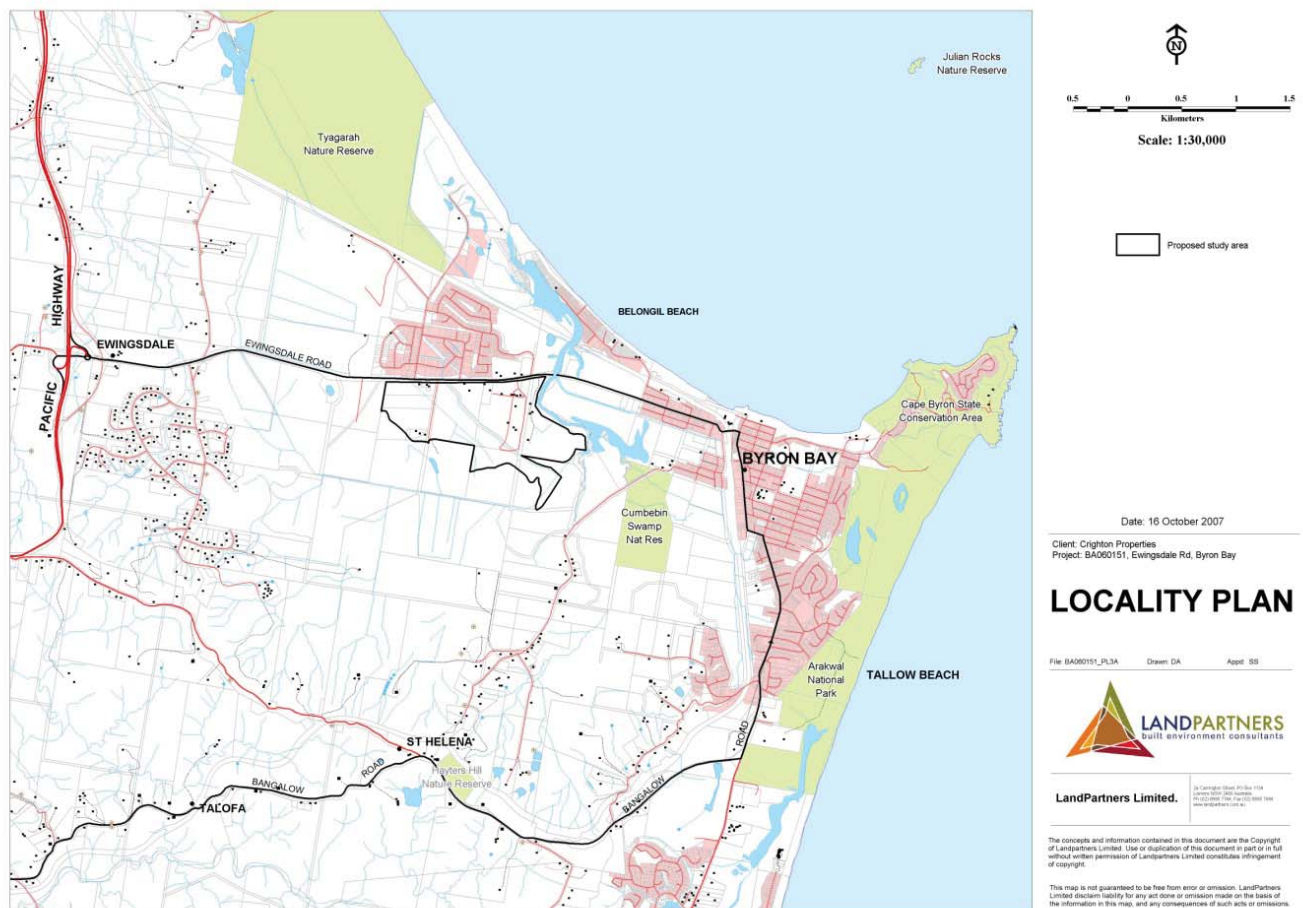


Figure 1 Location of West Byron Bay urban release area



1.2 Ownership

The legal description and ownership of the land that comprises the site is described in Table 1 and shown at Figure 3.

Table 1 Site ownership

	Lot	Plan	Owner	Area (ha)*
Developer	2	DP542178	Telicove Pty Ltd	21.9
	1	DP542178	NSPT Pty Ltd	21.7
	1	DP780242	Gousse Holdings Pty Ltd	20.1
	229	DP755695	NSPT Pty Ltd	7.8
	2	DP818403	A& J Smith, Fletcher Project Developments Pty Ltd	7.1
	227	DP755695	NSPT Pty Ltd	6.8
	6	DP622736	NSPT Pty Ltd	5.5
	5	DP622736	NSPT Pty Ltd	5.0
	1	DP520063	C & D O'Connor	1.6
	1	DP201626	Telicove Pty Ltd	1.1
	9	DP111821	NSPT Pty Ltd	0.2
	1	DP1166535	NSPT Pty Ltd	0.2
Sub-Total				99
Other lots	7020	DP1113431	Council	2.9
	Melaleuca Drive		Crown	2.2
	Unnamed Road		Council	1.8
	2	DP878549	Cosmic Arts Centre Pty Ltd.	1.0
	10	DP1143215	T & W Hochgrebe	1.0
	3	DP551947	Colin Ernest Smith	0.5
	2	DP551947	Neville Leslie Booth	0.1
Sub-Total				9.5
Total				108.5

** the land area shown for each lot is only the area within the site boundary. Some of the lots extend beyond the site.*

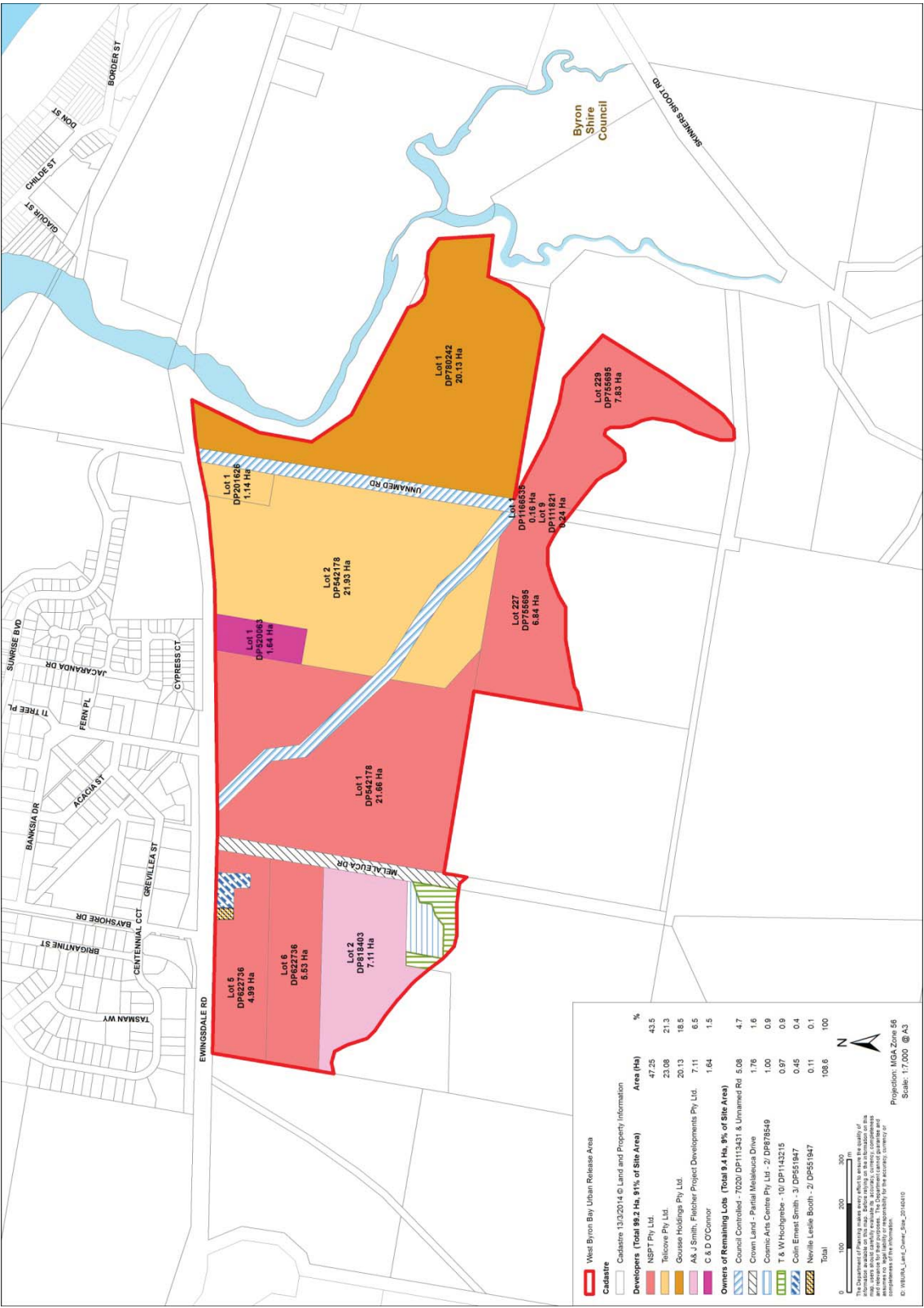


Figure 3 West Byron Bay urban release area site ownership

The majority of the landowners within the site joined to form the 'Byron Bay West Landowners Association' and comprised the proponent for the purpose of preparing the SSS study. Subsequently, a number of the proponent's landholdings changed ownership, and a landowner also went into receivership. The current owners of these original proponent's landholdings have agreed to enter in a VPA, and comprise the 'Developer' for the purposes of that VPA. The 'Developer' landholdings are identified at Table 1 and shown on Figure 3.

There are a number of other lots within the site area identified as 'Other lots' in Table 1 and Figure 3, which are a mix of private and public land.

1.3 Existing land uses

The majority of the site has been cleared of vegetation and is currently grassland. A number of sheds and associated farming structures remain on the site, along with several dwellings, fences, concrete slabs and waste piles. There are also tourism uses comprising Belongil Fields Caravan Park located on the central portion of the site, and Planula Bed & Breakfast and Temple Byron located at the southern end of Melaleuca Drive (Figure 4).

The site has been modified by construction of man-made drainage lines and roads. Vegetation clearing and land management has resulted in natural heath vegetation having largely been replaced with stock grazing grasses. Vegetation on the site comprises remnant native vegetation, regrowth native vegetation and pasture.

Melaleuca Drive is currently the only road into the site. The gravel road bisects the western portion of the site and extends from Ewingsdale Road to access to Planula and Temple Byron with the site, and to a private landowner further south and outside of the site. The road terminates around the southern boundary of the site, although an unconstructed 'paper road' extends further south into the wetlands. An unconstructed 'paper road' also runs along the eastern side of the site extending from Ewingsdale Road to the south of the site.

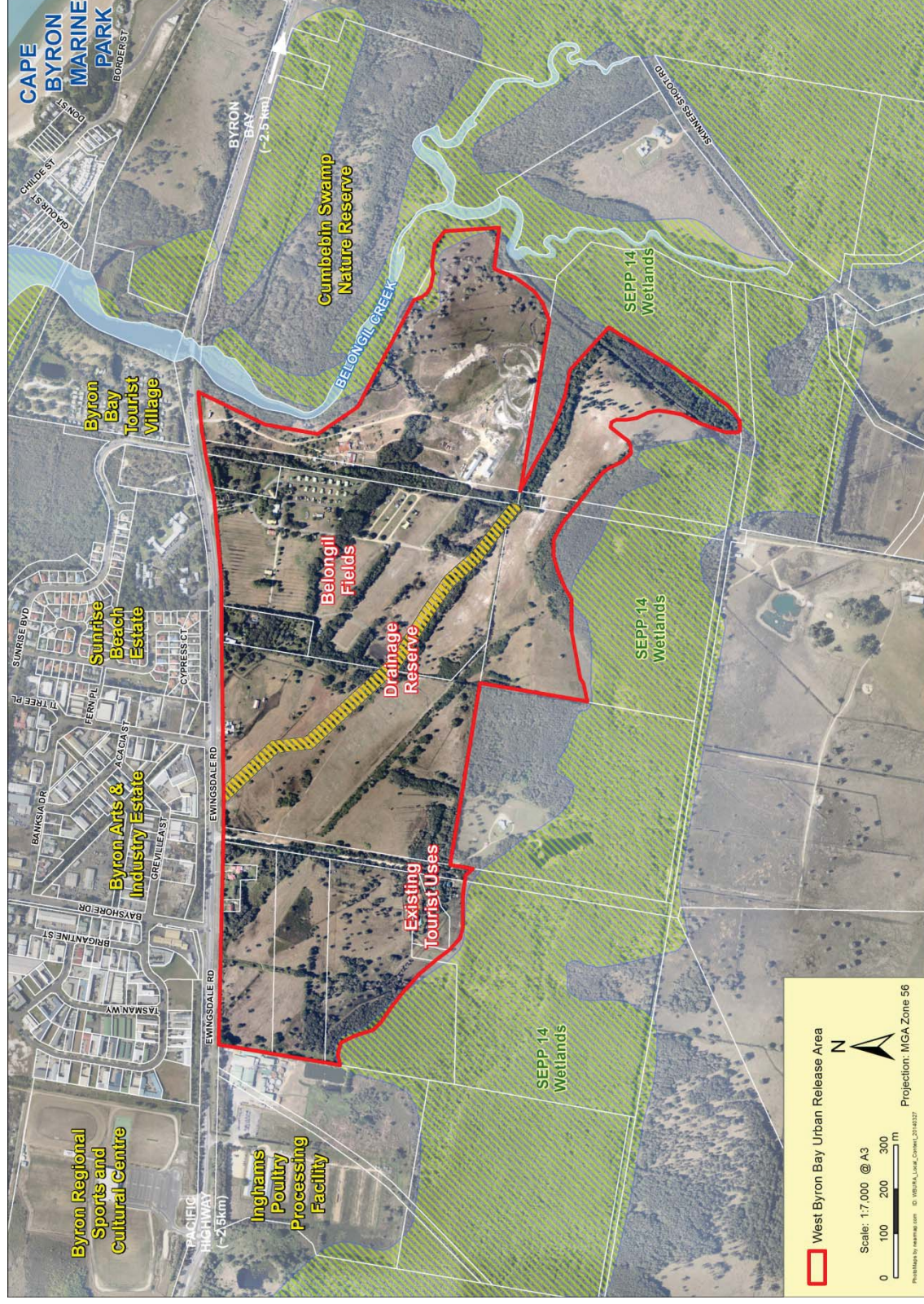
A large constructed drain known as the Industrial Estate Drain (referred to as the 'drainage reserve') runs diagonally through the site extending from the north west to the south east that drains to Belongil Creek (Figure 4). The site is generally flat and low-lying areas are prone to flooding.

1.4 Surrounding area

To the north of Ewingsdale Road is the Sunrise Beach residential area and the Arts and Industry Estate. The Arts and Industry Estate contains a mix of industrial uses and bulky goods retailing. The School of Audio Engineering on the northern side of Ewingsdale Road is situated opposite Belongil Fields Caravan Park.

The western boundary of the site adjoins a poultry processing facility operated by Inghams Enterprises.

To the east and south is coastal wetland identified in State Environmental Planning Policy No 14 – Coastal Wetlands, with a small area extending into the site in the far western corner and to the east flanking Belongil Creek. Belongil Creek is located east of the site outside of the study area. This creek forms part of the Cape Byron Marine Park. Further east is the Cumbebin Swamp Nature Reserve, which extends south from Ewingsdale Road (see Figure 4).



2 Planning context

This section sets out the planning context for the site. State and Commonwealth legislation also apply to the site as discussed further within section 6.

2.1 Existing zoning and Draft Byron LEP

The site is currently zoned 1(d) Investigation Zone under the Byron Local Environmental Plan 1988 ('Byron LEP 1988').

In September 2012, council exhibited its draft comprehensive local environmental plan ('Draft Byron LEP') which applies to the whole Byron local government area. The Draft Byron LEP is being finalised and it is anticipated to be made in 2014. In the Draft Byron LEP, the site is shown as a 'deferred matter', meaning that Byron LEP 1988 applies to the site, and will continue to do so after the Draft Byron LEP is made.

Council is also currently preparing a Shire-wide development control plan ('DCP'). This DCP will come into force at the same time as the Draft Byron LEP takes effect, and it will only apply to land to which the made Byron LEP applies.

Byron DCP 2010 will continue to apply to sites zoned under Byron LEP 1988.

2.2 Review of Far North Coast Councils' environmental zones

In September 2012, the former Minister for Planning and Infrastructure announced that the department would review the application of E2 Environmental Conservation and E3 Environmental Management zones, and environmental overlays in the Far North Coast of NSW which includes Byron Shire. Subsequently, the review was extended to include the E4 Environmental Living zone. The review was initiated following concerns that environmental zones were being applied to privately-owned rural and agricultural land without evidence of the environmental significance of the land, unfairly limiting agricultural and rural activities.

As a result, all E2, E3 or E4 zones exhibited in Draft Byron LEP 2012 are deferred, and maintain their current zoning under Byron LEP 1988. Following completion of the review the zoning of these lands may change.

Parsons Brinckerhoff prepared the 'Northern Councils EZone Review Interim Report' (30 September 2013), which is on exhibition until 5 June 2014. Parsons Brinckerhoff concluded that application of E2 and E3 zones should be based on evidence including validated environmental data sets, and recommends relevant criteria for each zone.

The rezoning proposal has been informed by detailed and site-specific ecological assessments including surveys, and considered the council's vegetation and environmental values mapping. The proposed E2 zones are on the southern and eastern peripheries of the site, adjacent to land zoned 7(a) Environmental Protection (Wetlands) and 7(b) Environmental Protection (Coastal Habitat) under Byron LEP 1988, which the Review recommends should be transferred directly to the E2 zones.

The proposed E2 zones (35.6ha) satisfy Parsons Brinckerhoff's recommended criteria as they incorporate:

- wetlands mapped in SEPP 14 Wetlands, and buffer zones to these wetlands
- an endangered ecological community (Coastal Cypress Pine Forest) listed under the *Threatened Species Conservation Act 1995*
- habitat for threatened fauna species listed under the *Environment Protection and Biodiversity Conservation Act 2000* and the *Threatened Species Conservation Act 1995*
- an Aboriginal cultural heritage site.

The relevant landowners have consented to inclusion of their land in proposed E2 zones, and they have also entered into a binding voluntary planning agreement requiring preparation of vegetation management plans for the E2 zones. These plans would provide for rehabilitation of vegetation and restoration of cleared land adjacent to SEPP 14 wetlands and Belongil Creek, in order to reinforce habitat and wildlife corridors.

The proposed E3 zones (6.8ha) comprise relatively small areas of the site that are environmentally sensitive, where existing activities preclude a more stringent designation as E2 zones and development would be unlikely to be supported. The proposed E3 zoned land contains:

- tourism uses within 100 metres of SEPP 14 – Wetland
- drainage reserves that are important for the improving water quality of Belongil Creek within the Cape Byron Marine Park
- fragmented threatened species habitat
- flood prone land.

The proposed E3 zones do not strictly satisfy Parsons Brinckerhoff's recommended E3 criteria, which require qualification under specified environmental datasets. However, the proposed E3 zones comprise limited areas with specific environmental constraints or qualities, where a range of uses would be permissible with consent including dwelling houses and eco-tourist facilities. Within the site's specific context the department considers it is appropriate to apply the proposed E3 zones.

Parsons Brinckerhoff also recommends that 'extensive agriculture' should be made permissible with consent in E2 zones and permitted without consent in E3 zones. The Draft SEPP prohibits 'extensive agriculture' in E2 zones and permits it with consent in E3 zones, as the primary purpose of these zones is environmental protection and extensive agriculture would not be appropriate, consistent with the views of DPI (NOW). Should the Minister adopt the report's recommendations, the council would have the opportunity to reconsider permissible uses in both zones also taking into account any amendments to the Standard Instrument LEP.

2.3 Far North Coast Regional Strategy

The department prepared the Far North Coast Regional Strategy in 2006 to guide development in the far north of NSW including in Byron Shire.

Regional challenges include protecting the environment, accommodating the estimated 51,000 additional dwellings required for the population growth and changing household structures, and providing an estimated 32,500 jobs by 2031. Two thousand six hundred (5%) of the targeted additional dwellings are projected to be accommodated in the Byron Shire LGA.

The strategy identifies the site as a proposed future urban release area. It is the largest opportunity site identified in proximity to Byron Bay town centre.

The strategy identifies a number of outcomes and actions that have been considered in the rezoning proposal, including the need to:

- protect and zone land with environmental values
- exclude urban development from environmental zones
- identify minimum lot sizes appropriate to zone objectives and the strategy
- encourage habitat and corridor establishment in environmental zones
- consider flood risk and minimise potential impacts
- integrate new housing with infrastructure and transport provision
- provide for a greater number of people and business in the most active part of centres
- accommodate a range of land uses and housing within walking distance to services and facilities
- ensure building design that is adaptable, reflects the local climate and character, and is sustainable
- provide access to natural features such as coastal foreshore and riparian land in a manner that is consistent with the maintenance of their ecological values
- facilitate local employment growth
- apply water sensitive urban design principles.

2.4 State environmental planning policies

The following State Environmental Planning Policies ('SEPPs') apply to the site and are addressed as relevant in section 6:

- SEPP 14 – Coastal Wetlands
- SEPP 44 – Koala Habitat Protection
- SEPP 55 – Remediation of Land
- SEPP 71 – Coastal Protection
- North Coast Regional Environmental Plan (deemed SEPP)

3 Statutory process

3.1 State significant site proposal

On 10 June 2009, the Byron Bay West Landowners Association requested that the then Director-General investigate the West Byron Bay urban release area as a potential State significant site ('SSS').

On 9 October 2009 the then Minister published a notice in the Gazette under clause 8(1A) of the SEPP (Major Development) 2005 ('MD SEPP'), advising of a proposal that Schedule 3 of the MD SEPP be amended to include West Byron Bay urban release area. The SSS study requirements were subsequently issued by the then Director-General on 3 November 2009.

The proponent submitted a SSS study to the department in June 2011 proposing to rezone the site for residential, commercial, mixed use, light industrial, tourism and environment conservation uses as shown in Figure 5. Table 2 compares the proponent's SSS proposal zones exhibited in 2011 and the department's Draft SEPP zones exhibited in 2013/2014.

Table 2 Comparison of proposed zones

Proposed zone		Proponent's exhibited SSS proposal 2011 land area (ha)	Draft SEPP exhibited 2013/2014 land area (ha)
R1	General Residential	49.8	N/A
R2	Low Density Residential	N/A	44.3
R3	Medium Density Residential	N/A	11.0
B1	Neighbourhood Centre	2.2	1.1
B4	Mixed Use	7.8	N/A
IN2	Light Industrial	5.3	7.5
RE1	Public Recreation	2.2	2.2
E2	Environmental Conservation	13.8	34.3
E3	Environmental Management	24.6	8.1
SP3	Tourist	2.8	N/A
Total		108.5	108.5

The department proposes a Draft SEPP to rezone the West Bryon Bay urban release area by listing it as a standalone section of the Byron LEP 1988, rather than by listing it as a state significant site in Schedule 3 of the MD SEPP. This is consistent with the government's policy of handing planning powers back to local government, particularly given that the site is wholly within the Byron Shire local government area and the department is unlikely to have an ongoing role with any future development of the site.

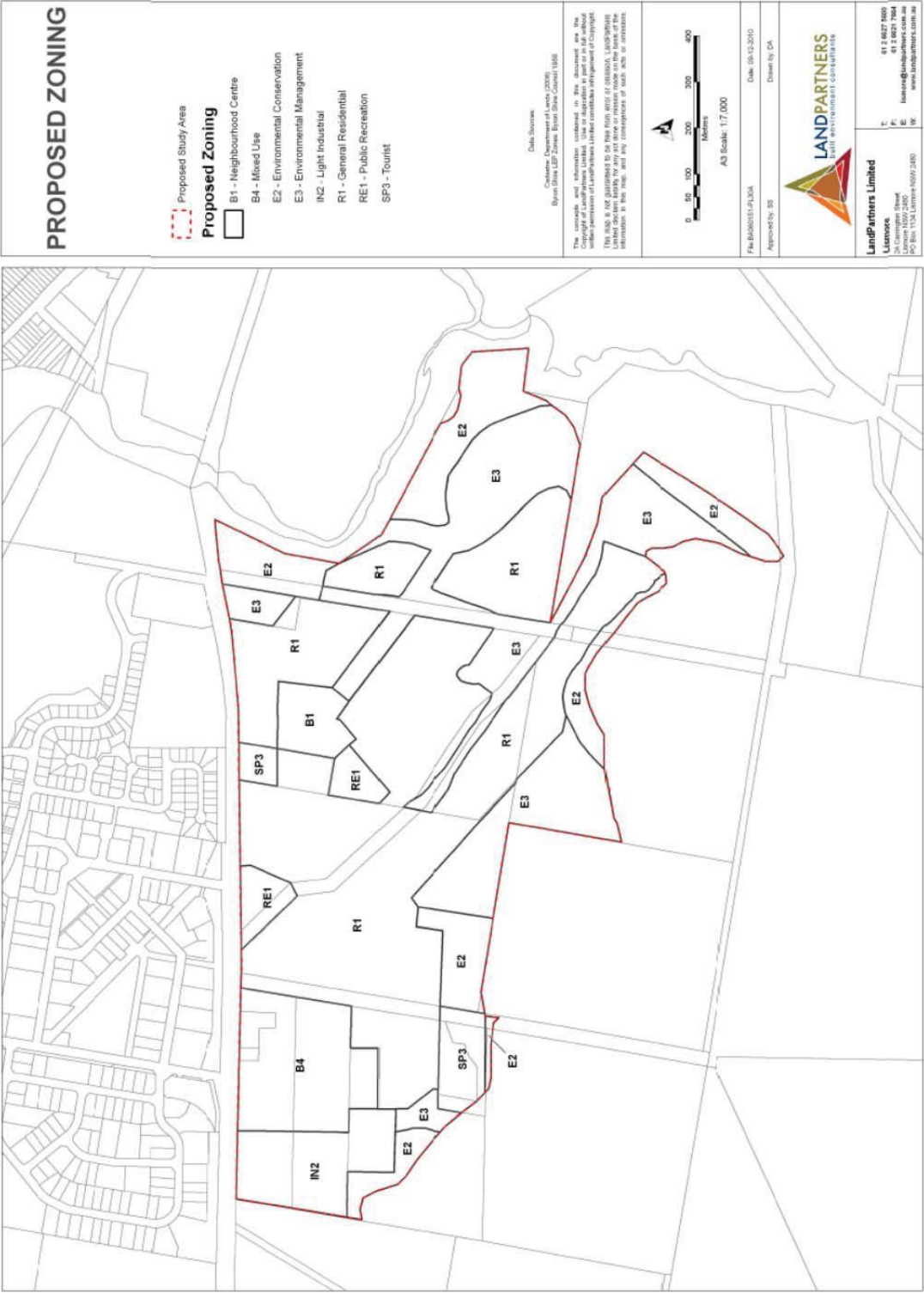


Figure 5 Proponent's SSS Study rezoning proposal

3.2 Statutory requirements for a SEPP

The Department of Planning & Environment has prepared a draft state environmental planning policy ('SEPP') to rezone the site. The statutory requirements for making a SEPP under the EP&A Act include:

- **Section 33A(9)** – the Minister is to determine the form and subject matter of draft environmental planning instruments
- **Section 37(2)** – the Governor may make a SEPP in respect of any matter that in the opinion of the Minister is of State or regional environmental planning significance
- **Sections 5C and 34A** – consultation is required if critical habitat or threatened species, populations or ecological communities, or their habitats will or may be adversely affected.

3.2.1 Form of the Proposed SEPP

Section 33A(9) of the EP&A Act provides that in the absence of a standard instrument, the Minister is to determine the form and subject matter of the draft environmental planning instrument. There is no prescribed form or standard instrument for SEPPs.

The Parliamentary Counsel's Office has provided an opinion that the proposed SEPP may be legally made.

3.2.2 State or Regional Environmental Planning Significance

Section 37(2) of the EP&A Act provides that the Governor may make a SEPP in respect of any matter which in the opinion of the Minister is of State or regional environmental planning significance.

The department considers the site to be of regional environmental planning significance on the basis that:

- the 108.5 hectare site represents a significant portion of land within the Byron Shire identified for potential urban development under the Far North Coast Regional Strategy (2006)
- the proposed rezoning would contribute towards alleviating pressures on housing supply and affordability in Byron Bay, with a proposed yield of up to 1,100 dwellings
- the employment land could accommodate up to 800 jobs, in addition to construction-related employment
- the site contains or is in close proximity to regionally important environments including Belongil Creek, Cape Byron Marine Park, Cumbebin Swamp Nature Reserve and SEPP 14 wetlands.

3.2.3 Section 5C and 34A consultation

Section 5C and 34A of the EP&A Act sets out special consultation procedures for the Director-General if critical habitat or threatened species, populations or ecological communities, or their habitats may be adversely affected by the proposed SEPP.

The department consulted with the Department of Premier and Cabinet and the Department of Primary Industries in accordance with section 5C and 34A of the EP&A Act, and their responses are summarised in Appendix F, and considered in section 6.

4 The proposal

This section describes the proposal for the site, to be established through a state environmental planning policy, voluntary planning agreement and development control plan. Combined, these documents would establish land uses, objectives and controls for future development of the site, and mitigate impacts in relation to that development.

4.1 Draft State Environmental Planning Policy

4.1.1 Description of the Draft SEPP

The department has prepared an environmental planning instrument in the form of a Draft SEPP, which would introduce new planning controls for the West Byron Bay urban release area by inserting a new part into Byron LEP 1988.

The new part would only apply to the West Byron Bay urban release area, and Byron Shire Council would be the consent authority. In preparing the Draft SEPP, the department has sought consistency with the council's comprehensive Draft Byron LEP.

The outcome of the environmental zones review is unknown, and it may have implications for the both the Standard Instrument Local Environmental Plan and the council's previously proposed E2, E3 and E4 zones which are now deferred from the Draft Byron LEP. Following the E zones review, the Council would be able to bring its deferred sites, including its E2, E3 and E4 zones and the West Byron Bay urban release area, forward into its made comprehensive Byron LEP.

The Draft SEPP comprises both the written instrument and referenced maps.

4.1.2 Proposed zones

The Draft SEPP would establish permitted and prohibited land uses through allocation of zones across the site as shown in Table 3 and Figure 6.

Table 3 Proposed zones

Proposed zone		Area (hectares)
R2	Low Density Residential	44.3
R3	Medium Density Residential	11.0
B1	Neighbourhood Centre	1.1
IN2	Light Industrial	7.5
RE1	Public Recreation	2.2
E2	Environmental Conservation	35.6
E3	Environmental Management	6.8
Total		108.5

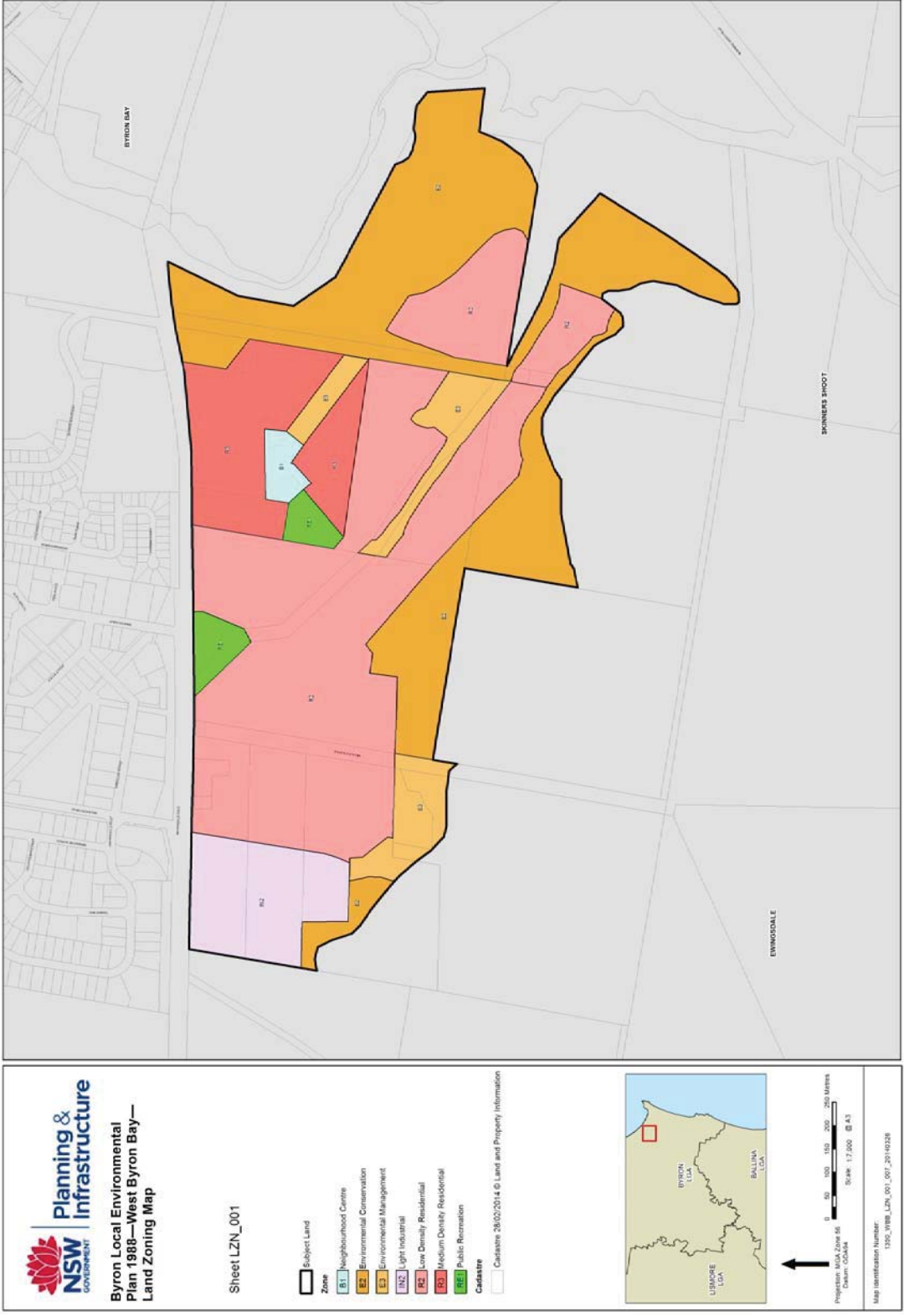


Figure 6 Draft Zoning Map

4.1.3 Proposed lot sizes

As shown in Figure 7, the Draft Lot Size Map establishes minimum lot sizes of 450m² in the R2 Low Density Residential zone, 200m² in the R3 Medium Density Residential and B1 Neighbourhood Centre zones and 400,000m² (40 hectares) in the E2 Environmental Conservation and E3 Environmental Management zones.

Written clauses in the Draft SEPP then permit smaller lot sizes in the R2 Low Density and R3 Medium Density residential zones by dwelling type, as summarised in Table 4. The smaller lot sizes would encourage a broader range of housing types and sizes in this accessible location, than could be accommodated on more traditional 600m² blocks.

Clauses in the Draft DCP would establish detailed layout and other controls for the small residential lots.

Table 4 Proposed minimum lot sizes for different dwelling types

Dwelling Type	Zone	Minimum Lot Size
Attached and semi-detached dwelling	R2, R3	150m ²
Detached dwelling	R2, R3	200m ²
Dual occupancy (attached)	R2, R3	300m ²
Dual occupancy (detached)	R2, R3	400m ²
Multi dwelling housing	R2, R3	450m ²
Residential flat building	R3	1000m ²

The estimated yield is up to 1,100 residential lots if the site is fully developed at the minimum lot size. The proponent is estimating a release of approximately 50 lots a year, at which rate it would take about 20 years to redevelop the site.

It is not considered necessary to apply minimum allotment sizes within the IN2 Light Industrial zone under the Draft SEPP. Chapter 17 of the Byron Shire DCP 2010 addresses industrial development, and establishes a guide minimum allotment size for industrial development of 1000m² with a minimum 25 metre frontage at the primary building line. Chapter 17 of Byron Shire DCP 2010 applies to the site under the Draft DCP provisions. However, the Draft SEPP does impose a restriction on the retail floor area of industrial retail outlets, which are expressly prohibited in all zones other than IN2 Light Industrial.

4.1.4 Other provisions

The Draft SEPP would also establish:

- a 9 metre maximum height of buildings across the site
- controls for miscellaneous permissible uses, including restricting the retail floor area of neighbourhood shops to a maximum of 200m²
- provisions relating to preservation of trees and vegetation, heritage conservation, bush fire hazard reduction, coastal development, and eco-tourist facilities consistent with the Standard Instrument
- acid sulphate soil provisions, consistent with the Draft Byron LEP
- flood planning provisions
- provisions for an urban release area, including the need to make satisfactory arrangements for designated State public infrastructure and public utility infrastructure, and for preparation of a development control plan.

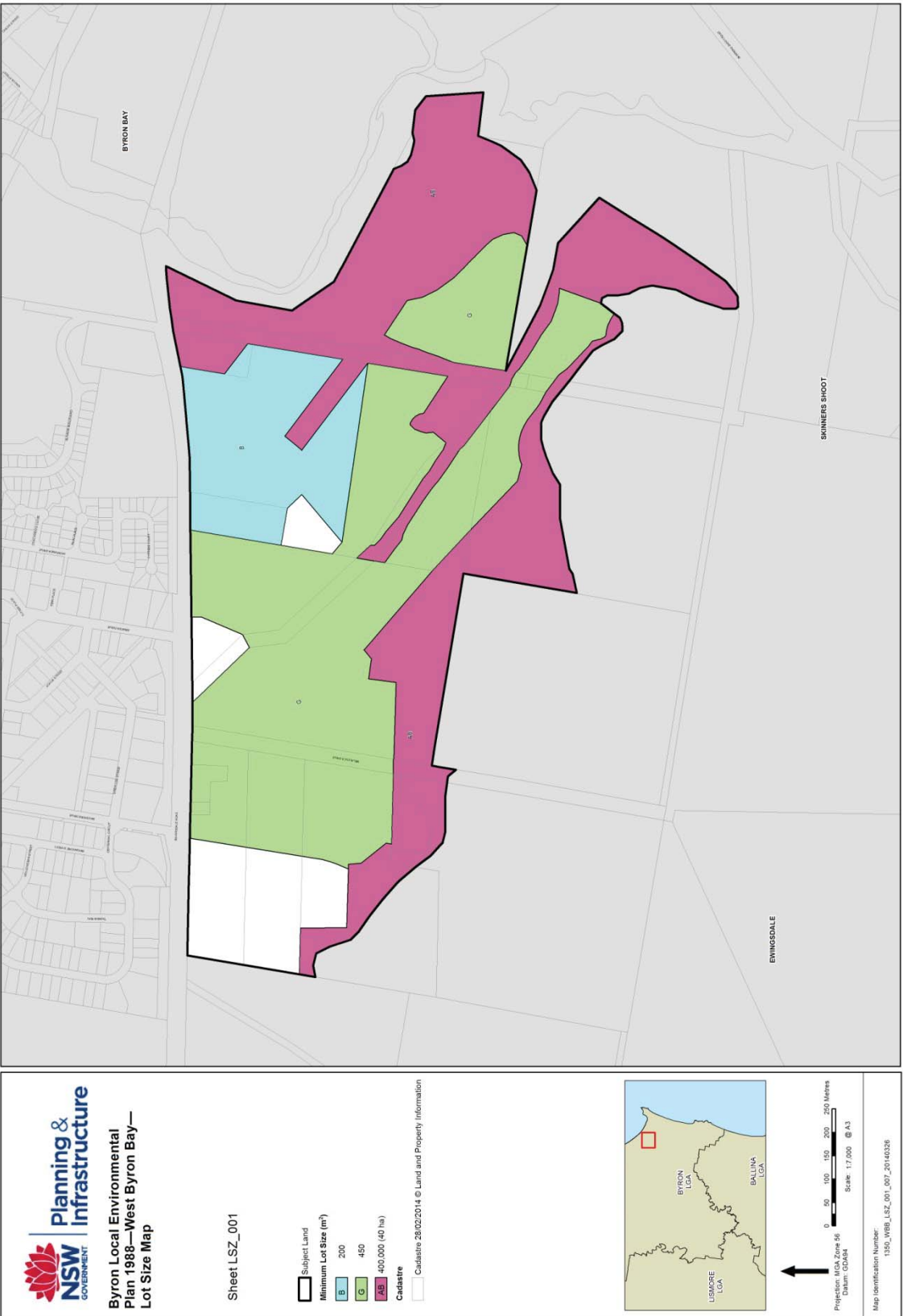


Figure 7 Draft Lot Size Map

4.1.5 Proposed amendments to the exhibited Draft SEPP

Following the department's review of the submissions received, the following changes were made to the Draft SEPP, including:

- rezoning an area in the south west of the site as E2 Environmental Conservation (previously proposed as E3 Environmental Management) to afford it better protection in accordance with a recommendation by OEH and as it is situated within 50 metres of SEPP 14 wetland
- prohibiting residential development in the E2 Environmental Conservation zone
- for 'extensive agriculture' to be permissible with consent in the E3 Environmental Management zone (previously permissible without consent)
- making amendments to provide consistency with the most recent Draft Byron LEP, including permissible land uses.

The revised Draft SEPP written instrument is at Appendix A and the revised Draft SEPP maps are at Appendix B.

4.2 Draft Voluntary Planning Agreement

Following the 2011 exhibition, the department reviewed submissions received and the proponent's SSS Study. This process identified existing traffic congestion and achieving long term rehabilitation and protection of the site's proposed environmental lands as two key issues, which could best be resolved through a legal agreement.

A number of landowners within the site, collectively comprising the Developer agreed to enter into a voluntary planning agreement with the Minister for Planning.

The Developer is the combined parties:

- NSPT Pty Ltd
- Telicove Pty Ltd
- Gousse Holdings Pty Ltd
- Anthony Roy Smith
- Julia Deborah Smith
- Fletcher Project Developments Pty Ltd
- David John O'Connor
- Carol Fay O'Connor

The binding agreement VPA signed by the Developer is at Appendix C, and it requires the Developer to:

- pay \$7,000 toward road upgrades for each residential lot upon subdivision
- prepare a vegetation management plan for the E2 Environmental Conservation zoned land prior to each Subdivision Certificate that includes any part of the E2 zoned land.

The \$7,000 per subdivided residential lot is intended to contribute funding toward a bypass of the Byron Bay town centre, to relieve traffic congestion on Ewingsdale Road. Based on an estimated yield of between 800 and 1,100 dwellings the site could contribute between \$5,600,000 and \$7,700,000 toward the bypass. This contribution would be reduced by any section 94 contribution made to the council specifically for the purpose of funding of a bypass.

As set out in the VPA, the vegetation management plan needs to include a program for proposed environmental management works and the identification, staging and methodology for the implementation of these works. Security for preparation of the plan is \$20,000.

Public notice of the Draft VPA was given between 28 November 2013 and 31 January 2014, concurrently with exhibition of the Draft SEPP.

4.3 Draft Development Control Plan

To support the proposed rezoning and to guide future development the department prepared a draft development control plan (DCP), which was exhibited alongside the Draft SEPP and Draft VPA. The Draft DCP as exhibited is available as Appendix D0.

The Draft DCP includes site specific controls relating to:

- rehabilitation and ongoing management of land with high conservation values
- management of environmental hazards including flooding, bushfire, noise, mosquitoes and odour
- investigation and management of Aboriginal artefacts
- water sensitive urban design provisions to improve water quality
- urban structure, urban design and future subdivision controls for residential lots (less than 600m²) including requirements for site coverage, setbacks, landscaping, private open space, garages/carports and car parking
- the development of the neighbourhood centre, drainage reserve and open space.

Under the Draft DCP, the subdivision and residential development controls under Byron Shire Development Control Plan 2010 would apply to lots of 600m² or greater (which is the minimum permissible lot size for most of Byron LGA).

The Draft DCP also included the proponent's indicative layout plan showing intended access points into the site, a potential route for the main spine road, noise buffers and a potential location for access to Belongil Creek.

It is expected that a number of amendments will be made to the Draft DCP to respond to issues raised in submissions, including those discussed in section 6. If the Governor makes the SEPP, the amended DCP would then be referred for a decision to the Secretary of the Department of Planning & Environment.

5 Consultation

The West Byron Bay urban release area proposal was exhibited on two separate occasions and a community reference group met three times, as described below in sections 5.1 to 5.3. Exhibition notification letters were also sent to nearby landowners and occupiers, Byron Shire Council and government agencies.

A range of views either supporting or rejecting the proposal were expressed in meetings and in submissions, as summarised below from sections 5.3 to 5.5. An assessment of the proposal against the key matters raised is in section 6.

5.1 2011 Exhibition – proponent’s SSS study

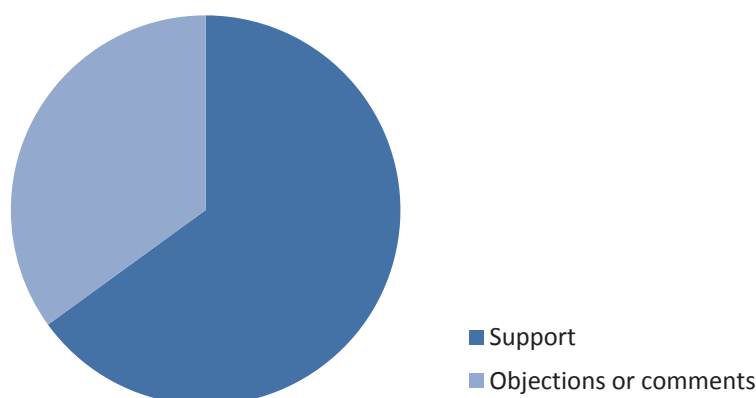
The proponent’s SSS study and supporting documentation were exhibited between 12 October 2011 and 14 November 2011, with the exhibition period subsequently extended through to 14 December 2011.

Advertisements for the public exhibition were placed in the Sydney Morning Herald, Daily Telegraph and the Byron Shire News, and the exhibition documents were made available at the department and council locations.

The department also sent letters to public authorities and approximately 800 land owners to inform them of the proponent’s proposal and exhibition details.

In response to the public exhibition, 405 submissions were received including 15 submissions from state government agencies and two from Byron Shire Council. Of the 388 public submissions, 253 (65 per cent) were supportive and 135 (35 per cent) objected or made comments, as shown in Figure 8.

Figure 8 Public response to 2011 exhibition



The proponent prepared a response to submissions, modifying the proposal and submitting further detailed reports. The proponent’s response and further information was made publicly available on the department’s website from May 2012.

5.2 2013/2014 Exhibition – Planning & Environment’s proposal

Following consideration of the proponent’s SSS study and submissions received in response to the 2011 exhibition, the following documents were prepared by the department and exhibited in accordance with the relevant provisions of the EP&A Act and EP&A Regulation between 28 November 2013 and 31 January 2014:

- a Draft SEPP, accompanied by a statement of intended effect
- a Draft Voluntary Planning Agreement, accompanied by an explanatory note
- a Draft Development Control Plan

These documents are explained in further detail in section 4.

The public exhibition was advertised in the Byron Shire News on 28 November 2013, and the exhibition documents were made available for public viewing at:

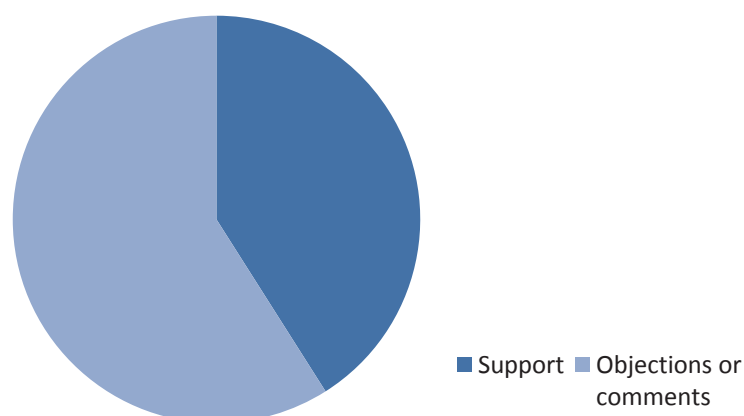
- Department of Planning & Environment, Information Centre, 23-33 Bridge Street, Sydney
- Department of Planning & Environment (Grafton Office), Level 3, 49 Victoria Street, Grafton
- Byron Shire Council, 70 – 90 Station Street, Mullumbimby
- Byron Bay Library, Corner of Lawson and Fletcher Streets, Byron Bay
- Department of Planning & Environment’s website

The department also again sent letters to public authorities, and land owners surrounding the site to inform them of the proposal and exhibition details.

The exhibition period ran for a total of 64 days between 28 November 2013 and 31 January 2014, having been extended in accordance with the department’s policy as school holidays fell within the exhibition period.

In response to the public exhibition, 428 submissions were received including from state government agencies and Byron Shire Council. Of the 418 public submissions, 171 (41%) were in support, and 247 (59%) were objections or provided comments, as shown in Figure 9. A petition generated through change.org addressed to Don Page, MP was also submitted to the department, with comments and approximately 1800 signatures.

Figure 9 Public response to 2013/2014 exhibition



5.3 Community reference group

To further facilitate stakeholder consultation during the rezoning process, a Community Reference Group (CRG) was established in 2010 that, following advice from council, invited representatives from the following organisations:

- Other landowners within the site
- Byron Shire Council
- Belongil Swamp Drainage Union
- Byron Bay Sports Field Association
- Byron Bird Buddies
- Byron Environment and Conservation Organisation (BEACON)
- Byron Environment Centre
- Byron Shire Progress Association
- Byron United
- Ewingsdale Progress Association and Byron Bicycle Users Group
- Ingham Enterprises
- Sunrise Residents Association
- Tourism Byron Bay.

The CRG met in October 2010 during the preparation of the SSS study to provide background and identify key issues for consideration in the study, and in October 2011 during the public exhibition of the proponent's SSS Study to enable the group to raise its concerns. A third CRG meeting was held in December 2013 where members raised a number of concerns about the proposal. Department of Planning & Environment representatives and the proponent also attended each meeting.

The concerns raised by CRG members were consistent with those raised in community submissions. The community reference group and community submissions are summarised in section 5.4 below, and addressed in section 6 of the report.

5.4 Summary of community submissions

Below is a summary of the community reference group's and the community's response to the 2013-2014/2014 exhibition documents, with the grounds for support and objection also generally consistent with the points raised in response to the proponent's SSS Study exhibited in 2011.

Following is a summary of reasons for support of the proposal as set out in community submissions:

- assist in addressing housing needs, diversity and affordability in Byron Bay
- provide additional employment for residents
- increase the local population and availability of local housing for employees, supporting existing businesses
- provide funding for the Byron Bay bypass to assist in resolving existing traffic congestion
- secure protection of the environment.

Following is a summary of the objections and issues as set out in community submissions:

- the proposal will exacerbate existing traffic congestion and no development should proceed until Ewingsdale Road has been upgraded and a bypass of Byron Bay town centre has been built
- impact on already restricted parking availability in the town centre
- scale, density and design of the proposal is inconsistent with the character of Byron Bay
- impact on threatened flora and fauna populations, and wildlife corridors

- impact on koalas
- impacts on Belongil Creek, Belongil Estuary and wetlands
- flooding impacts, including increase in offsite flooding due to proposed fill
- disturbance of acid sulphate soils and resulting water pollution
- odour impacts from the poultry processing facility
- lack of, and impact on infrastructure such as the sewage treatment plant, schools, emergency services, health services and community facilities
- economic impacts
- social impacts
- impact on Aboriginal cultural heritage
- the rezoning is not required and it will not assist local housing supply or affordability
- the process is flawed, and the decision should be made by the council
- impacts on adjoining eco-tourism facilities including visual, flooding and fill impacts, and the need for a buffer to ensure development does not occur immediately adjacent to adjoining properties.

These issues have been considered and addressed in section 6.

5.5 Byron Shire Council's submissions

Byron Shire Council considers that the rezoning of the land should not proceed until the Byron Bay town centre bypass and a roundabout at the intersection of Ewingsdale Road and Bayshore Drive are both constructed. Council advises it has neither the capacity nor intent to finance the road upgrade works, and requests that either the VPA is amended for the developers to advance funding or that state government advances this capital funding.

A list of the issues raised by council and the department's response is provided at Appendix E. The key issues are also discussed in section 6.

The council also attended the community reference group meetings and has met with the Department on at least four occasions.

5.6 State government & agency submissions

Submissions were received from the following state government agencies and service providers in response to the 2011 exhibition, the 2013/2014 exhibition, and in response to queries from the department:

- Ambulance Service of NSW
- Department of Education and Communities
- Department of Primary Industries including submissions from the NSW Office of Water, Cape Byron Marine Park Authority, Crown Lands Division and Fisheries NSW
- Fire & Rescue NSW
- Mineral Resources Board
- Northern NSW Health District
- Northern Rivers Catchment Authority
- NSW Environment Protection Agency
- NSW Police Force
- NSW Rural Fire Service
- NTSCORP Limited
- Office of Environment and Heritage

- Roads and Maritime Services
- Rous Water

A number of the above agencies responded to confirm state or regional contributions were not required.

Most agency concerns have been addressed in the proposed Draft SEPP, or can be addressed through amendment to the Draft DCP and future subdivision applications.

In some instances, such as the EPA's recommendation that the proposed IN2 Light Industrial zone is replaced with a vegetated buffer, the department considers that further amendment to the proposal is not required.

Section 6 provides an assessment of the proposal's impacts, and refers to specific agency comments or concerns as relevant. Appendix F provides a summary of the agency matters raised and the department's response.

6 The proposal's impacts

After consideration of the proponent's SSS study, follow up documents and submissions, the department has identified the following key considerations associated with the proposal:

- proposal need and justification
- traffic and access
- biodiversity
- flooding
- water quality
- acid sulphate soils
- contamination
- air quality
- noise
- bushfire hazard
- heritage impact
- visual impact
- economic impact
- social impact
- contributions
- utilities infrastructure

These issues are discussed below.

6.1 Proposal need and justification

A number of submissions queried the need for the proposal, on the basis that there is already sufficient land zoned for residential purposes to meet Byron Shire's growth targets, and that therefore, rezoning of the site is not required to meet future demand.

Department's conclusions

Evidence indicates that Byron Shire is facing a housing shortage and that this is continuing to place pressure on the housing market. The *Byron Shire Council Local Environmental Study* (Parsons Brinckerhoff, 2008) and the *Affordable Housing Options Paper* (Judith Stubbs and Associates, 2009) have both noted that there is a limited amount of land available for future residential development within the Shire.

While the population of Byron Shire has grown significantly since 1996, there has been limited supply of land available for new residential development, particularly in the Byron Bay area. Of the land that is available for residential development, the West Byron Bay urban release area is the most significant, representing over 30% of the land within Byron Shire that has been identified for potential urban development under the Far North Coast Regional Strategy (2006).

A further critical issue is the type of housing that is needed to meet the needs of a changing population. As the Local Environmental Study prepared for the council notes:

The shire has also undergone a change in the nature of households including the predicted growth in demand for single person accommodation... A range of appropriate housing is essential to avoid future shortages of essential workers in the hospitality, health, service and cultural industries that are major employers as well as contributors to the Shire lifestyle.

As well as helping to increase the supply of land available for residential development, the proposal will also provide for diversity in housing choice. The majority of housing in the residential area of Byron Bay is in the form of detached dwellings on large lots and strata units (dual occupancy or apartments). Demand for small lots, dwellings and units (one or two bedroom) is currently not adequately catered for in the region.

The Affordable Housing Options Paper also points out that housing affordability is a critical issue and likely to become far more serious over coming years:

Over the past decade, higher income families from Sydney and to a lesser extent Victoria have displaced younger people and lower income Byron residents, who typically move to other more affordable areas ... There has been a steep increase in rental and purchase prices in the Shire over the past 5 years.

The proposed rezoning would contribute towards alleviating current housing stress within the Byron Shire by releasing more land for development and offering a wider range of housing choices within the region.

For the reasons above, the department supports rezoning of the site to allow for future urban development, subject to being able to mitigate and minimise any significant impacts. The rezoning also provides an opportunity for smaller lots and different types of housing to be developed on the site, to assist in making housing more affordable and to ensure a variety of housing to cater for differing households.

6.2 Traffic and access

6.2.1 Surrounding road network

A major concern raised through the consultation process is the existing traffic congestion along Ewingsdale Road which is the main access road in and out of Byron Bay from the Pacific Highway. Traffic congestion has been increasing in Byron Bay for many years, and during high tourism seasons including Easter, Christmas and school holidays traffic levels on Ewingsdale Road increase by 30-50%. Council and the community consider traffic congestion needs to be resolved prior to any rezoning of the site.

Veitch Lister Consulting prepared a transport study (March 2011) and carried out additional modelling (March 2012). Between 1996 and 2008, traffic demand on Ewingsdale Road increased by more than 50% to 15,150 vehicles per day ('vpd') and it is forecast to increase a further 35% by 2028. Traffic modelling confirmed that queuing along Ewingsdale Road would continue to increase irrespective of whether the proposal proceeded, and that by 2028 queues could extend to the Pacific Highway during peak periods.

The transport study forecast that the proposal would increase traffic on Ewingsdale Road by an estimated 6,000 vpd when fully developed. This represents up to a 10% increase in the number of vehicles on Ewingsdale Road in the vicinity of the site during the low tourism season. The impact of this additional traffic generation is highest in the morning peak when the proposal would increase both eastbound and westbound traffic by up to 15%.

The transport study recommended road upgrade works including provision of two access points to the site with dual lane roundabouts on Ewingsdale Road, a bypass of the town centre, extension of the pedestrian/cycleway on the southern side of Ewingsdale Road and preservation of a road corridor for future widening of Ewingsdale Road.

Reliance on Lawson Street as the sole access route into the town centre from Ewingsdale is a primary cause of traffic congestion in Byron Bay. The need for a bypass of the Byron Bay town centre to alleviate traffic congestion was identified in a 2009 strategic road network study of Main Road 545 (which includes Ewingsdale Road) that was jointly funded by Byron Shire Council and the then Roads and Traffic Authority. Various bypass options have been considered, and council's preferred option known as the long bypass, would provide a second crossing of the disused rail line to Browning Street. The long bypass has been included in council's section 94 local infrastructure contribution plans. However, as the congestion is largely a pre-existing issue, there is limited capacity for council to secure the estimated \$8.2 million required for its construction through local infrastructure contributions alone. To date, council has collected approximately \$2.5 million toward the bypass through section 94 contributions.

Byron Shire Council, in its submission to the 2013/2014 exhibition of the revised proposal, requested that the bypass be funded by the developer and/or the state government to enable council to construct the bypass prior to subdivision.

Roads and Maritime Services is satisfied that there are mechanisms in place to provide the road infrastructure necessary to support the proposed land release.

Many public submissions raised concern that the traffic impacts of the proposal could be far greater than estimated by the transport study. This was mainly on the basis that the study assumed an increase of 855 dwellings as a result of the proposal, whereas the revised proposal identifies a development potential of between 800 and 1,100 dwellings.

Department's conclusions

The site proposes a mix of land uses and it is close to the Arts and Industry Estate and Byron Bay town centre, making cycling or walking a viable option for some trips.

In terms of traffic generation, the proposal would incrementally increase vehicle numbers on Ewingsdale Road in the vicinity of the site by up to 10% in 2028, which is not significant within the context of increasing day-to-day traffic demand on Ewingsdale Road. During the high tourism season, the proposal's impact would be proportionately less of the total traffic demand, and as a local residential/employment area it would not add to tourism-based traffic generation.

The department considers that it is unreasonable to expect the landowners to either construct or provide upfront funding for a bypass to address existing traffic congestion. However, in recognition that the proposal would add to traffic levels on Ewingsdale Road, a draft voluntary planning agreement (VPA) would require the developer to contribute \$7,000 per residential lot toward upgrading the road network.

Based on the estimated yields, the site's redevelopment could contribute between \$5.6 million and \$7.7 million to the bypass, being at least 68 per cent of the estimated bypass cost. The trigger for payment is issue of subdivision certificate(s) for the relevant lot(s). This means that the funds would be provided progressively as the site is redeveloped and the amount would depend on the yield.

The contributions under the Draft VPA would be significantly higher than the contributions for the bypass which could be collected under the Byron Shire Council Developer Contributions Plan 2012, being \$882 per lot or between approximately \$700,000 and \$970,000 across the entire development depending on the yield. Funding required under the VPA would be reduced by any section 94 contribution made to council toward the bypass.

The bypass funding generated by the proposal would far exceed the proposal's proportionate traffic impact on Ewingsdale Road, and it would bring forward construction of the bypass benefitting the existing and future Byron Bay community.

Concern was raised that the proponent's traffic study underestimated the development potential for the site. Whilst the development on the site may exceed the 855 dwellings used for the purposes of the transport study, the estimate of up to 1,100 dwellings is a maximum and assumes construction at smaller minimum lot sizes, which typically reduces household sizes and car ownership rates. The traffic modelling also assumed a 100% occupancy rate, leading to higher modelled traffic generation than may actually occur.

6.2.2 Local access network

Two new access points are proposed from Ewingsdale Road to the site. The western access is proposed to be located at the existing T-intersection at Ewingsdale Road / Bayshore Drive, and the eastern access opposite the School of Audio Engineering. These locations are supported by the West Byron Development Transport Study (Veitch Lister Consulting March 2011), which recommended that each intersection be upgraded to a roundabout with two circulating lanes, in order to provide desired levels of safety and capacity.

The transport study also recommended that a cycleway should be constructed alongside the site on the southern side of Ewingsdale Road to complete the existing cycleway between Ewingsdale and Byron Bay.

The Draft DCP includes a requirement for a traffic and access management plan to be prepared prior to any application for subdivision to identify:

- connections to and closures of the existing road network
- key access roads within the site
- pedestrian and cycle ways within the site and connections to the existing pedestrian and cycle network (along Ewingsdale Road)
- proposed bus routes that connect to the surrounding bus network, and associated bus stops.

The Draft DCP also requires access to the site from Ewingsdale Road to be restricted to the locations identified in the Indicative Layout Plan, and the proposed road network to be developed in accordance with relevant provisions of Byron Shire Development Control Plan 2010.

Council has raised concerns that the Draft DCP does not include details of the timing of the intersections with Ewingsdale Road, and the design and delivery of the local road network. Council also does not support the intersection location at the School of Audio Engineering and has stated a preference for an alternative location further to the east at the existing T-intersection of Ewingsdale Road / Sunrise Boulevard. In council's view, use of the existing T-intersection would result in a greater community benefit, less traffic impact, better traffic flow and management and potentially better road safety outcomes.

The independent flood planning review (see section 6.4.2) advised that a strategy for emergency access from the site needs to be developed which considers flooding up to and including the Probable Maximum Flood level, and the NSW Police Force also advised that emergency management and access during severe weather conditions needs to be considered.

Department's conclusions

The department is satisfied that the Draft DCP requires any landowner to establish that adequate arrangements can be made for the timing and delivery of the local road network prior to any subdivision approvals being granted.

The intersection location at Ewingsdale Road/Sunrise Boulevard is not supported as an alternative to the access at the School of Audio Engineering for the following reasons:

- topography (the elevation of the Ewingsdale Road pavement above adjoining land is an obstacle)
- flooding (high flood hazard in the area south of the Sunrise Boulevard intersection)
- existing infrastructure in this location (optic fibre cable, sewer main, water mains and bifurcation structure)
- environmental impact (ecological communities immediately south and southwest of the Sunrise Boulevard intersection)
- disturbance of acid sulphate soils
- cost.

The department considers that it is reasonable that the proponent provide a cycleway on the southern side of Ewingsdale Road adjacent to the site and upgrade the two intersections on Ewingsdale Road to provide access to the site. It is recommended that the Draft DCP be amended to clarify that these are required to form part of the traffic and access plan for the site.

The Draft DCP requires demonstration of emergency egress in flood events, and it is recommended that the Draft DCP is amended to ensure emergency access is addressed in the traffic and access plan.

6.3 Biodiversity

6.3.1 Ecological impact

The site has been largely cleared, with scattered remnant vegetation near the peripheries of the site, and along drainage easements and road reserves.

The vegetation communities across the site are identified at Table 5, and illustrated at Figure 10. Based on the SSS study, approximately 10 hectares of vegetation would likely be removed as a result of the proposal.

Table 5 Vegetation communities

Vegetation community	Within the site (ha)	To be cleared as a result of the proposal (ha)
Coastal Sclerophyll Forest (Cypress Pine) Endangered Ecological Community	0.16	-
North Coast Wet Sclerophyll Forest (Brush Box)	0.94	-
Coastal Swamp Forest (Swamp Mahogany)	2.74	0.47
Coastal Swamp Forest (Broad-leaved Paperbark)	71.50	5.90
Coastal Swamp Forest (Swamp Oak)	9.19	-
Saline Wetland (Grey Mangrove)	1.63	-
Wallum Sand Heath (Coast Banksia)	0.41	
Wallum Sand Heath (Teatree sp.)	6.15	1.65
Freshwater wetland	0.91	0.32
Regrowth (Sally Wattle, Satinwood)	0.60	0.38
Fernland	1.25	1.00
Saltmarsh	0.25	-
Mixed Fernland / grassland	5.38	-
Total	101.11	9.72



Figure 10 Vegetation communities

The ecological assessment (Australian Wetlands Consulting December 2010) establishes that various surveys carried out for the site have recorded one endangered ecological community, one threatened flora species, and thirteen threatened fauna species listed under the Threatened Species Conservation Act 1995.

The following recorded species are also listed as threatened under the Commonwealth *Environment Protection and Biodiversity Conservation Act 2000*: Grey headed flying fox, Olongburra Frog and Koala.

The endangered ecological community, Coastal Cypress Pine Forest comprises two small areas totalling 0.16 hectares, which are highly fragmented and disturbed. Both areas are proposed to be retained and zoned E2 Environmental Conservation.

The threatened flora species comprises two Coolamon trees which have been planted as part of landscaping works. The trees are not considered to have conservation significance as they are located outside their natural habitat.

The potential habitat of recorded threatened fauna species and those considered to potentially occur at the site has been mapped. The loss of habitat that would occur as a result of the proposal is set out in Table 6.

Further discussion on koala habitat is provided in section 6.3.2.

Table 6 Threatened fauna habitat impacts

Species	Habitat cleared (hectares)	Habitat retained (hectares)
Recorded species		
Wallum Froglet	3.24 primary habitat 1.42 secondary habitat	6.29 primary habitat 10.33 secondary habitat
Masked Owl	66.71 secondary habitat	35.54 secondary habitat
Koala	0.47 primary habitat	2.00 primary habitat
Common Blossom Bat	0.00 primary habitat 6.18 secondary habitat	0.70 primary habitat 8.40 secondary habitat
Grey-headed flying fox	7.25 primary habitat	12.97 primary habitat
Microchiropteran bats	2.80 primary habitat 64.7 secondary habitat	8.25 primary habitat 30.77 secondary habitat
Potential species		
Black Necked Stork and Brolga	9.60 secondary habitat	17.60 secondary habitat
Little lorikeet	0.47 secondary habitat	2.00 secondary habitat

To mitigate the impacts on native vegetation and habitat as a result of the proposal, the proponent identified 23 hectares of land at the east of the site adjacent to Belongil Creek and existing riparian vegetation which could be subject of revegetation and restoration, providing a consolidated area of habitat with linkages to surrounding vegetation. This land is within the E2 Environmental Conservation zone identified in the Draft SEPP.

The revised proposal for the site exhibited in 2013/2014 removed an area previously proposed by the proponent for residential purposes at the north east of the site adjacent to Belongil Creek (refer

Figure 5 and Figure 6). This 1.7 hectares is largely cleared, but increases the land available for rehabilitation as well as enabling a vegetation corridor of a minimum of 100 metres to be established along the western side of Belongil Creek. The consolidation of areas along Belongil Creek to be retained and rehabilitated within an E2 Environmental Conservation zone will afford greater protection in the long term, including ensuring that all stormwater infrastructure is located outside these areas. The Draft DCP requires buffer areas to be identified at subdivision stage within the development area alongside E2 and E3 zones.

The Draft VPA requires preparation of a vegetation management plan for land to be zoned E2 Environmental Conservation. Under the VPA, the vegetation management plan must be prepared prior to the issue of each subdivision certificate that includes any part of the land proposed to be zoned E2 Environmental Conservation.

The Draft DCP outlines matters to be addressed in the vegetation management plan including:

- identification of existing remnant vegetation to be retained
- any methodologies to be used to identify the types of vegetation management works that are likely to be required and how those works will be implemented
- an initial five year implementation program setting out habitat restoration, relocation and management works including strategies for planting, weed control and monitoring
- details of responsibility and protection in perpetuity following the initial five year implementation program.

Further, under the Draft DCP the vegetation management plan is to also include the following sub-plans:

- Threatened Species Habitat Management Plan
- Koala Plan of Management
- Koala Habitat Protection and Restoration Plan
- Belongil Creek Plan of Management.

In its submission to the 2013/2014 exhibition, OEH advised that it supported the revised E2 Environmental Conservation zone, and did not raise any issues with the proposed rezoning, with the exception of requesting that land at the south west of the site proposed to be zoned E3, be zoned E2, consistent with the proponent's original proposal. The department supports this amendment to the zoning, and has revised the zoning plan accordingly.

OEH also requested that:

- the DCP require that impacts on environmental values be mitigated as far as is practicable and any residual impacts compensated by the provision of suitable offsets by the proponent
- the requirement in the VPA for preparation of a vegetation management plan apply to E3 Environmental Management zone, as well as the E2 Environmental Conservation zone.

Department's conclusions

The department considers that impacts on biodiversity as result of the proposal would be minor and can be mitigated by rehabilitation and revegetation of land to be zoned for conservation. Further, the concentration of habitat in this location would result in an improved environmental outcome by providing high quality habitat with good connections to surrounding existing vegetation.

Details of the restoration and rehabilitation works, and how these works will be implemented will be required to be set out in the vegetation management plan to ensure impacts are appropriately mitigated. To address the concerns raised by OEH, the department considers that the Draft DCP can be amended to specifically require the vegetation management plan to demonstrate how impacts on

environmental values be mitigated as far as is practicable and how any residual impacts would be compensated through rehabilitation and revegetation works.

Whilst the EPBC Act is not triggered at rezoning stage, it is considered that subject to preparation of the vegetation management plan that the proposal would be unlikely to have a significant impact on species listed under the EPBC Act.

The department does not propose to amend the Draft VPA to require the vegetation management plan to apply to the E3 Environmental Management zone, as requested by OEH, noting the E3 zones predominantly contain either existing tourism uses or drainage reserves. However it is proposed to amend the Draft DCP to require that a comprehensive vegetation management plan applying to the entire site be prepared prior approval of any development.

6.3.2 Koala habitat

Targeted koala surveys have confirmed koala activity at the site, including recordings of two animals of unspecified gender (Biolink 2010) and three animals including one identified female (Australian Wetlands Consulting 2010).

The ecological assessment (Australian Wetlands Consulting 2010) has identified koala habitat within the site (see Figure 11) and advises that 0.47 hectares of habitat would be removed as a result of the proposal, but that 2.0 hectares would be retained. In addition to the retained habitat, the ecological assessment identified 1.5 hectares of land which is suitable for revegetation as primary koala habitat and a further 0.35 hectares for secondary habitat (Figure 12). The ecological assessment recommends that these revegetation and rehabilitation works be detailed through a Koala Plan of Management that addresses the following:

- placement of exclusion fencing around consolidated and restored habitat to reduce opportunities for Koalas to enter the development areas
- reduced vehicle speeds and traffic calming measures to reduce Koala fatalities
- management of impacts associated with dogs through public education and signage
- mitigation of potential for koalas drowning in pools through pool fencing, ropes in swimming pools, and stepped pool design.

The impacts of the proposal on koala habitat and the ongoing viability of koala populations in the area have been issues raised through the consultation process. Many submitters consider that a site specific Koala Plan of Management must be prepared prior to any rezoning under the requirements of State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP 44).

Both OEH and Council raised concerns about the impacts of the proponent's original proposal on koala habitat.

Council has highlighted that since the SSS study was prepared, it has undertaken a major study on koala habitat, particularly in the coastal portion of the LGA. Council also highlighted that the area mapped as koala habitat under this study, the Byron Coast Koala Habitat Study, differs from the mapping prepared by the proponent.

The study found two major koala population centres, being Myocum-Tyagarah and West Byron. The West Byron population cell was identified as extending through Cumbebin Swamp to the east of the site.

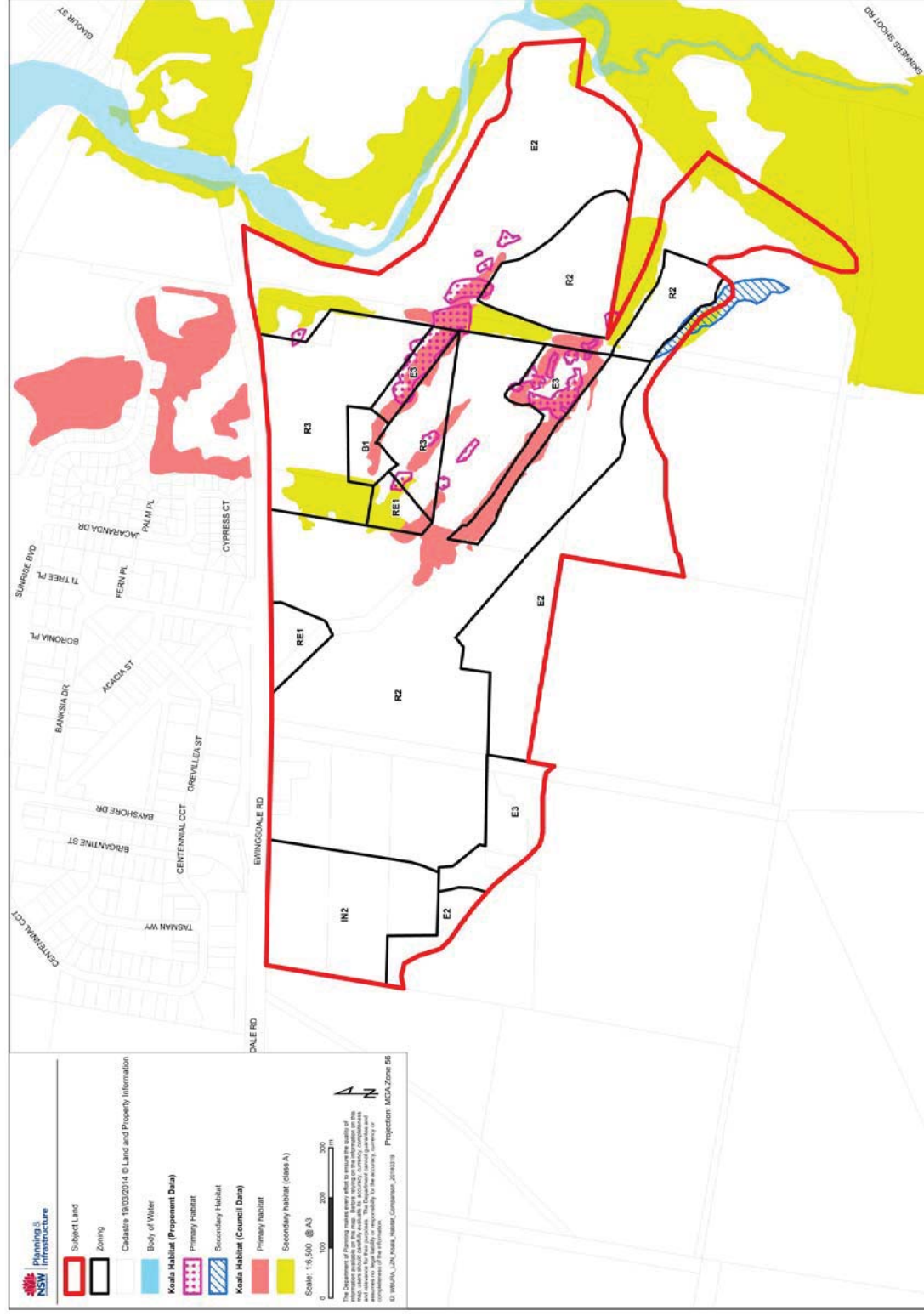




Figure 12 Koala habitat rehabilitation areas

The study notes that the persistence of koala populations is surprising given the extent of habitat fragmentation and the barriers to movement but also that these coastal populations may be unsustainable in the absence of improved connectivity and an increase in habitat cover. Road mortality is also identified as a major concern. The study recommends that priority be given to creating meaningful connectivity within and between existing coastal populations and reducing koala mortalities due to vehicle-strike.

In response to the study, Council and the OEH requested that the residential zonings in the east of the site be removed altogether and replaced with an environmental conservation zoning to improve connectivity for koalas moving around the periphery of the site. OEH also highlighted that any revegetation of koala habitat has a 10 year time lag, and that staging of the development should allow for habitat to be retained whilst the revegetation and rehabilitation is taking place.

To respond to issues raised by OEH and Council, further advice was provided (Austeco Environmental Consultants November 2012). This advice states that the koala habitat on the site is very small, highly fragmented, with a large edge to area ratio and isolated from surrounding habitat. Austeco considers that it is likely that Belongil Creek and the associated drainage canal which has steep banks prevents koalas travelling to the south. Austeco considers that it is likely that koalas entering the site from habitat to the north of Ewingsdale Road, would follow the banks of the creek back to Ewingsdale Road to the east of the site, as shown in Figure 13. Austeco concludes that currently, the site has potential to act as a 'sink' where mortality exceeds reproduction, given the absence of safe crossings of Ewingsdale Road and Belongil Creek.

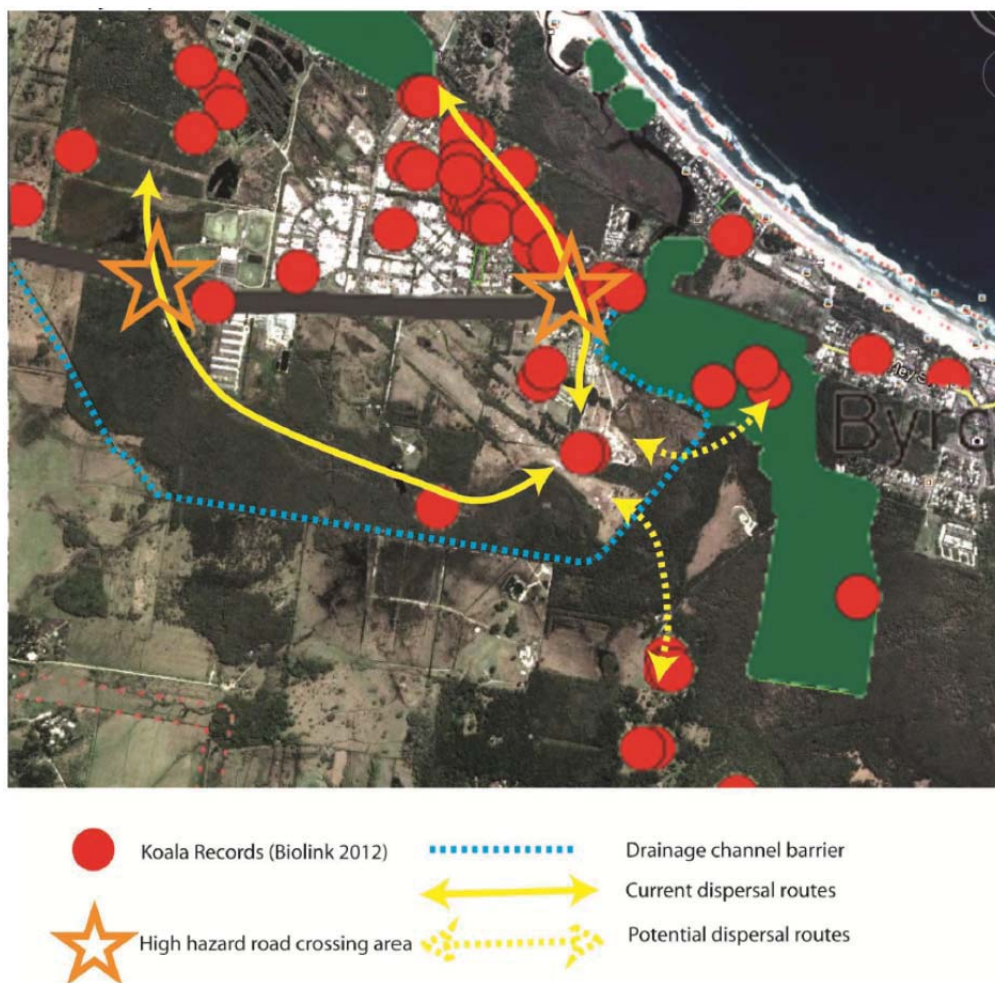


Figure 13 Likely koala dispersal routes

Austeco considers that the priorities for koalas and habitat on the site are to consolidate koala habitat into a new location outside the proposed residential area and adjacent to the vegetation corridor connecting across Ewingsdale Road, and improve the connectivity of this habitat by providing a koala bridge across Belongil Creek, and a safe koala under or over pass across Ewingsdale Road. Austeco also considers that standard koala habitat protection measures set out in a DCP or Koala Plan of Management, such as vehicle slowing devices, dog control measures and partial fencing, should be sufficient to minimise impacts on existing koala habitat whilst restored koala habitat matures.

In relation to the removal of areas proposed to be zoned residential, suggested by council and OEH, Austeco considers that most of this land would not be suitable for regeneration as primary koala habitat on the basis of historical mapping.

Notwithstanding this advice, the department amended the zoning plan to remove one of the three areas of residential land which was requested to be removed. This was to enable a 100 metre wide biodiversity corridor to be established along Belongil Creek, and to reduce the further fragmentation of one of the main areas of primary koala habitat on the site.

Council subsequently advised that given the discrepancies between the koala habitat mapping prepared on behalf of the proponent, and the Byron Coast Koala Habitat Study, that it updated the mapping as part of the preparation of the Draft Byron Coast Comprehensive Koala Plan of Management, including through ground-truthing. The Draft Plan of Management was publicly exhibited by council from 11 February to 21 March 2014.

The koala habitat identified by the proponent and the council is shown at Figure 11.

Further advice provided by the proponent (March 2014) advises that the mapping included in the Draft Byron Coast Comprehensive Koala Plan of Management relied upon on large scale vegetation mapping, which is based on aerial photographic interpretation and ground truthing. In contrast the proponent advises that its assessment of koala habitat is based on the findings of targeted field-based vegetation surveys.

A submission from Byron Environmental and Conservation Organisation (BEACON) refuted the proponent's assessment of impacts on koalas and including its assessment of extent and significance of koala habitat on the site, its claims that the Belongil Creek is an impediment to koala movements, and that the koala mortality may exceed reproduction on the site.

Department's conclusions

The department considers that the impacts on koala habitat can be adequately mitigated and supports the consolidation of habitat along Belongil Creek, with strengthened connections to surrounding areas of high quality habitat.

SEPP 44 does not require preparation of a Koala Plan of Management prior to rezoning of the site. Under SEPP 44, a Koala Plan of Management is required to be prepared prior to approval, where a development application is proposed on land that contains potential or core koala habitat. To ensure that priorities for koala protection which have been identified through the assessment process are secured, the department considers that the DCP should be amended to require the Koala Plan of Management to identify the following:

- details of koala friendly crossings at Ewingsdale Road and Belongil Creek, and how these would be delivered
- other measures to protect koalas including reduced vehicle speeds, fencing, dog control, and pool safety having regard to the recommended development controls set out in the Draft Byron Coast Comprehensive Koala Plan of Management
- measures to protect existing koala habitat whilst new habitat is being established.

6.3.3 SEPP 14 Coastal Wetlands and Belongil Creek

To the south and east of the site are SEPP 14 wetlands which marginally extend into the site area, as shown in Figure 14. To the east of the site is Belongil Creek which forms part of the Cape Byron Marine Park.

SEPP 14 does not contain any provisions relating to the rezoning of land within or adjoining a wetland. The small areas of SEPP 14 wetland within the site are proposed to be zoned E2 Environmental Conservation. This is consistent with the proposed zoning of the SEPP 14 wetlands surrounding the site under the Draft Byron LEP, although gazettal of E2, E3 and E4 zones is currently deferred in Far North Coast Councils including Byron Shire under a Ministerial direction (see section 2.2). The proposal provides for a minimum 50m buffer between development and the creek extending to 100 metres in most areas, and a minimum 50 metre buffer to the SEPP 14 wetland in most areas.

A number of public submissions recommended that a minimum 100 metre buffer should be established to the SEPP 14 wetland in accordance with *Living and Working in Rural Areas* – a handbook for managing land use conflict issues on the NSW north coast, which was prepared by the Centre for Coastal Agricultural Landscapes in partnership with the Northern Rivers Catchment Management Authority. A 100 metre buffer to the SEPP 14 wetland was also recommended by Department of Primary Industries – Fisheries and the NSW Office of Water.

Department's conclusions

The revised proposal exhibited in 2013/2014 removed a proposed residential precinct in the north-east corner of the site and recommended that this area be zoned E2 Environmental Conservation. This widened the riparian corridor to allow a 100 metre buffer to be provided to Belongil Creek and the SEPP 14 wetland in this location. Figure 14 shows the 50m and 100m buffers to the SEPP 14 wetland and the 100 metre buffer to Belongil Creek overlaid over the proposed zones.

The department considers that the proposal establishes appropriate buffers to Belongil Creek and the SEPP 14 wetland, noting that under the Draft DCP additional buffers are required to be identified between development within the residential, industrial and commercial zones, and the environmental zones. In addition, the Draft DCP requires that stormwater be managed through water sensitive urban design measures to ensure water quality in Belongil Creek is protected.

Low key passive recreation in limited locations along the creek is considered reasonable. The department is of the view that allowing controlled public access to the creek together with sensitive embellishment and signage will provide for better protection of the creek and its environs than prohibiting access which may result in uncontrolled illegal access. Appropriate provisions are proposed in the Draft DCP to guide future use and works in this location.

6.3.4 SEPP 71 Coastal Zones

SEPP 71 – Coastal Protection sets out a range of matters that must be considered when preparing a draft local environmental plan on land which is within the “coastal zone” within the meaning of the Coastal Protection Act 1979.

Department's conclusions

The site is located within the coastal zone and the proposal satisfies SEPP 71's clause 2 aims and 8 matters for consideration, as set out in Appendix G. The Draft SEPP incorporates SEPP 71 coastal planning objectives and heads of consideration for future development applications, and therefore excludes application of SEPP 71.



Figure 14 Buffers to Belongil Creek and SEPP 14 Coastal Wetlands

6.4 Flooding

The site is relatively flat and low lying with areas subject to flood hazard. Filling of land is required in some areas to enable future development to be located above the flood planning level. A detailed assessment of the flood hazard and flood mitigation requirements has been carried out, including an independent review prepared on behalf of the department to respond to concerns raised through the consultation process. These assessments are discussed below.

6.4.1 Proponent's assessment of flood hazard

The West Byron Flood Impact Assessment Report (BMT WBM, December 2010) was prepared on behalf of the proponent. The report undertook an impact assessment of the proposed development in the peak 20 and 100 year average recurrent interval ('ARI') flood event levels, including climate change inputs for increases in sea level and rainfall intensity. The assessment was subsequently revised (BMT WBM November 2011) to apply a 0.9 metre 2100 sea level rise allowance, rather than 0.4 metres to be consistent with the Byron Shire Council's *Climate Change Strategic Planning Policy 2009*.

The assessment concluded that the proposed design results in all developable lots being flood free for all events up to and including the Probable Maximum Flood ('PMF') event. Any urban development within high flood hazard areas has been avoided. However, a small area located within the south west of the site classified as being low and medium flood hazard is proposed for urban development (see Figure 15). The assessment also concluded that the proposed development of the West Byron Bay site has a negligible impact on offsite peak flood levels.

The assessment provided an approximate flood planning level ('FPL') of 3.6m AHD (2100 planning horizon 100 year ARI event peak flood level of 3.1m AHD plus 0.5 m freeboard). A modelled depth of fill plan to raise the site to this FPL is shown at Figure 16, noting this is one possible option and filling to a lesser level in combination with pole frame house construction could also meet the FPL minimum.

In response to the 2011 exhibition of the SSS study, council advised that no filling of flood liable lands should occur and that a 30% increase in rainfall should underpin the climate change scenario, noting 10% was used in the proponent's assessment.

6.4.2 Independent Review by WMA Water

In response to concerns raised in submissions regarding flooding, the department engaged WMA Water to undertake an independent review of the findings of the BMT WBM Flood Impact Assessment.

The review by WMA Water (June 2012) found that the use of a 30% rainfall increase on top of the 100 year ARI event as per council's policy had little justification. While the NSW Government policy, *Practical Considerations of Climate Change (2007)*, recommends the use of a 10, 20 and 30% increase in rainfall for sensitivity modelling purposes, no direct suggestion is made in regard to the adoption of these in setting flood planning levels. It is also clear that sensitivity runs using rainfall increases of up to 30% are based on locations other than the Northern Rivers for which the upper estimate of change (by 2070) is 10%. WMA Water advises that at most a 10% climate change rainfall increase should be used to set flood planning levels for greenfield and infill sites alike. This still takes a relatively conservative approach given uncertainties as to actual rainfall increases associated with predicted climate change.

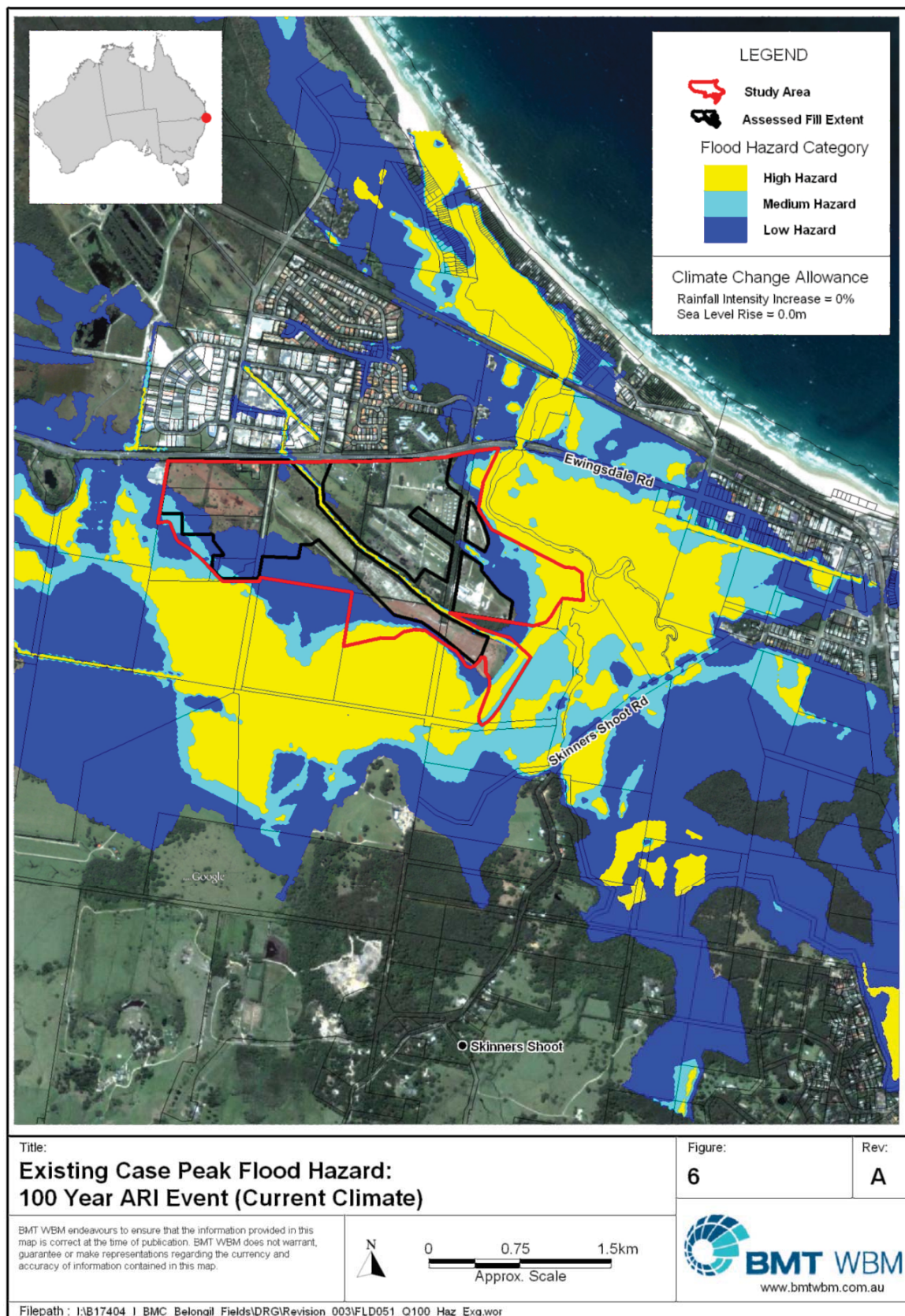


Figure 15 Flood hazard

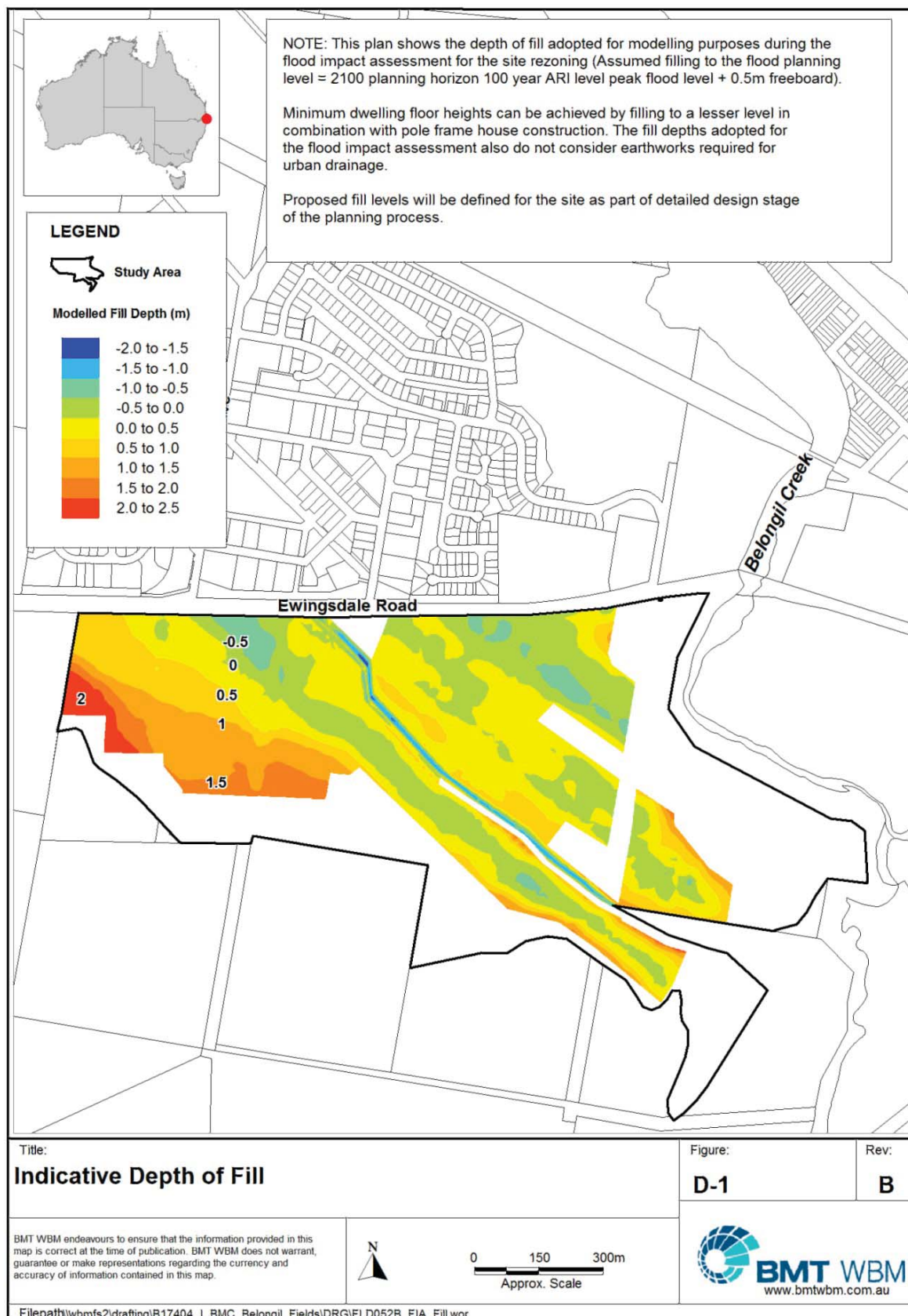


Figure 16 Modelled depth of fill

WMA Water also found that as currently proposed the development has no impact on modelled flood levels. This is because the volume of fill associated with the development is relatively small compared to the available storage in the entire study area (less than 1%). WMA Water advised that it was satisfied that impact modelling has been undertaken using an appropriate computer model and appropriate parameter settings and that the impact modelling represents best practice and may be relied upon.

WMA Water concluded that the current flood planning levels as determined by the proponent are appropriate and should be adopted, and that from a flooding perspective there appears to be no reasons for the development not to proceed. However, it does advise that a strategy for emergency access from the site needs to be developed which considers flooding up to and including the Probable Maximum Flood level.

In response to the WMA review, council has advised that a number of flood studies for various catchments have been completed based on a 30% increase in rainfall in accordance with council's policy. Council is particularly concerned that the use of two different measures will be unfair on current developments which are proceeding as approved under the 30% increased rainfall scenario. It has also raised concern that some sites which gain approval with the proposed 10% rainfall increase will be designated as "flood prone" on future Section 149 Certificates.

6.4.3 Proponent's Response to Submissions

The proponent's response to submissions dated 25 May 2012, responded to concerns raised during the 2011 exhibition process, as well as a draft version of the independent review by WMA Water commissioned by the department.

The Office of Environment and Heritage (OEH) provided the following advice with regard to the proponent's response to submissions:

It is noted that the OEH review and the proponent agreed that a 10% increase in rainfall due to climate change should be applied to this proposal but that Council has an existing policy based on a 30% modelled rainfall increase. The proponent's modelling has indicated that a 30% increase in rainfall would increase flood levels in Belongil Creek by only 0.1m. Accordingly OEH is satisfied with the 10% modelled rainfall increase in this instance. OEH may however suggest a different percentage modelled rainfall increase for other catchments in the Byron Shire.

The OEH also advised in this letter that it supports the proponent's methodology for assessment of the flood hazard and impacts.

6.4.4 Change to NSW Government Sea Level Rise Policy

The 2009 NSW Sea Level Rise Policy Statement is no longer NSW Government policy. The NSW Government advised that it would no longer prescribe state-wide sea level rise projections for use by councils, instead giving councils the flexibility to determine their own sea level rise projections to suit their local conditions.

The department requested its independent consultant WMA Water to provide advice on whether there were any implications of this policy change for the flood impact assessment at the site. WMA Water confirmed that the impact on the proposed development is likely to be nil for the following reasons:

- The design flood levels used in the proposed development are already relatively conservative. In assessing flooding impacts the West Byron Bay Flood Study considered Council's Climate Change Strategic Planning Policy which essentially adopted the former state's policy for sea level rise levels. Besides applying sea level rise as per the previously endorsed NSW Government guidelines,

a variety of other assumptions were made in regard to wave setup and storm surge which mean that flood levels used to determine flood planning levels are conservative, that is tending to exaggerate the flood risk.

- Byron Council sea level rise values will, as per recent NSW Government announcements, likely remain as per the NSW (2009) benchmarks until a future time when Council has new information to hand to inform new sea level rise estimates.

6.4.5 Issues raised through the exhibition of the revised proposal

Concerns have been raised about the safety of future occupants of the site during flood events, and well as the potential impacts of fill on the wider catchment during flood events. There are also concerns about the potential visual impacts of these filling works, particularly on the existing tourist uses within the site at the southern end of Melaleuca Drive.

In the Community Reference Group meeting held by the department during the 2013/2014 public exhibition process concern was raised that the recently released International Panel on Climate Change (IPCC) figures projections for sea level rise had not been considered in the flood assessment.

Department's conclusions

Based on the findings of the independent review and advice from OEH, the department is satisfied with the overall methodology and assumptions used in the flood impact assessment, and considers that the flood planning levels adopted by the proponent are appropriate for the development.

The department also sought further advice from flooding consultant WMA Water in regard to the recently released IPCC projections for sea level rise. The consultant advised that:

- the report released by the IPCC in 2013 provides a number of predictions based on various scenarios for warming
- of the 10 estimates provided from five scenarios, only one of the these – the maximum range of the highest emission scenario – exceeds 0.9 metres, and then only by approximately 10 per cent
- as such the West Byron modelling work in utilising the 0.9 m by 2100 estimate is reasonable from a risk management point of view. Particularly given other climate change considerations which are superimposed on the design levels including storm surge and wave setup.

The department considers the impacts of climate change on flood behaviour have been adequately considered in assessing the flood impacts on the site, and in determining appropriate flood planning levels.

The department acknowledges that further analysis and refinement will be required to ensure that future urban development is appropriately designed and located having regard to flood behaviour in the catchment and changes to sea levels as a result of climate change. In particular, subdivision applications will need to identify how the filling of land relates to the adjoining land, and ensure that runoff, visual and amenity impacts are mitigated.

The Draft SEPP includes flooding planning provisions which set out heads of consideration to ensure that flooding impacts associated with the proposal are managed.

Further guidance and controls relating to flooding are set out in the Draft DCP, including provisions:

- to ensure that safe evacuation can be provided during flood events for land up to the probable maximum flood level.
- for development to be in accordance with the NSW Flood Plain Development Manual
- to establish appropriate habitable floor levels and building design
- to ensure that the impacts of filling of land on adjoining properties are managed, including avoiding increasing flood risks, mitigating visual and amenity impacts.

6.5 Water quality

A water management report was completed by the Water Carbon Group for the SSS study. The report examines the implications of the proposed rezoning of land for water quality and quantity in the downstream wetlands and estuary. The report concludes that the development will have limited impacts on downstream aquatic environments, and may have a net benefit if appropriate treatment areas and water quality objectives are adopted at the site.

The site is traversed by a man-made drainage reserve which drains water from the industrial estate to the north of Ewingsdale Road. This drainage reserve is proposed to be modified to include water sensitive urban design features and appear like a natural stream (see Figure 17), forming a key feature of the urban design of the site.

The Draft DCP requires a water sensitive urban design strategy for the urban release area to be developed prior to any application for subdivision. The Draft DCP also requires further details on the drainage reserve to be provided prior to approval of any subdivision application.

Issues raised by agencies in relation to water quality impacts did not relate to the proposed rezoning, but some concerns were highlighted regarding the Draft DCP.

NSW Office of Water did not raise any concerns about the impacts of the proposed rezoning on water quality, but made some suggestions for minor amendments to the Draft DCP provisions relating to the detailed design of stormwater infrastructure to mitigate potential groundwater impacts.

Council also raised concerns about the Draft DCP in particular that that stormwater controls lack sufficient details about the treatment of riparian areas, and the trunk drainage system.

Water quality impacts, particularly on Belongil Creek, was a key concern raised in public submissions.

Department's conclusions

The department considers that the recommended stormwater treatment approach outlined in the Water Carbon Group's report is satisfactory subject to detailed analysis at the development application stage. Further, provisions in the Draft DCP would ensure an orderly delivery of stormwater infrastructure.

The department would address the issues raised by NSW Office of Water through the finalisation of the Draft DCP.

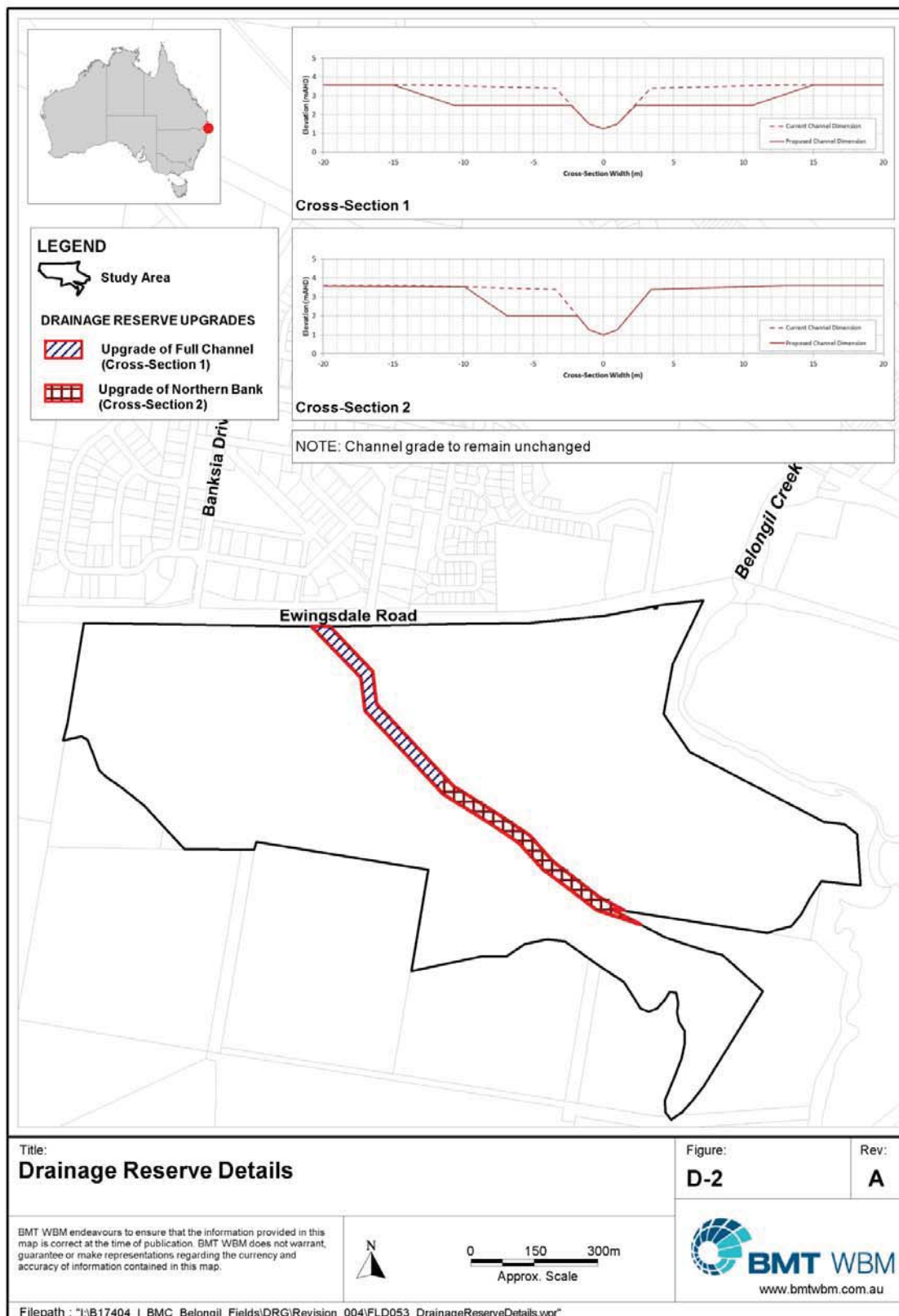


Figure 17 Drainage reserve location and upgrades

6.6 Acid sulphate soils

A Preliminary Acid Sulphate Soil Assessment Report was prepared by EAL Consulting Service (December 2010) as part of the SSS study.

A number of submissions from government agencies and the public in response to the 2011 exhibition raised concern regarding the lack of any investigations on acid sulphate soils (ASS), as the preliminary report was missing from the proponent's SSS study. The department subsequently made the report available on its website, and referred it to the EPA. Public submissions received in response to the 2013/2014 exhibition raised concern about the potential for disturbed ASS to pollute Belongil Creek and the wetlands, particularly through the proposed expansion of the existing drainage reserve.

Acid sulphate soils are common on coastal plains. The preliminary report confirmed the soils of the site are naturally acidic and the presence of localised occurrences of potential and actual ASS with risk areas identified by EAL Consulting Service shown in Figure 18. However, in general the report considers that the site is characterised by low levels of potential acidity which limit its net potential acid generating capability.

As noted by the EPA, the ASS is primarily concentrated around the periphery of the site on the lowest lying land, in areas proposed to be zoned as environmental lands and less likely to be disturbed. Limited excavation is expected across the developable areas as this land is proposed to be filled. The main potential for disturbance of ASS would arise from works to the drainage reserve, and excavation for utilities and stormwater control including retention basins.

The Preliminary ASS Assessment Report indicates that future development of the site involving the disturbance of soils can be suitably managed to mitigate ASS impacts. In circumstances where activities are proposed that intercept both the local groundwater and identified ASS, the report recommends the preparation of a site-specific Acid Sulphate Soil Management Plan (ASSMP) to suitably mitigate any impacts. The Preliminary ASS Assessment Report also recommends maintenance of existing water table heights during both the construction and operational phase of any proposed development of the site. The EPA advised it did not object to the report's recommendations.

Department's conclusions

The department considers that the Preliminary ASS Assessment Report adequately identifies and addresses management of actual and potential ASS on the site, and that no further assessment is required at this stage of the process.

The department's Draft SEPP includes an ASS map for the site, which is consistent with ASS mapping in the Draft Byron LEP and mapping by the Department of Land and Water Corporation. The draft ASS map for the site identifies Class 2 and Class 3 ASS on the site, with the majority of the higher sensitivity Class 2 being within the environmental zones. An associated draft ASS clause is included in the draft written instrument, which is consistent with the Draft Byron LEP ASS clause. Most of the developable area is identified as Class 3 and requires development consent and an acid sulphate soils management plan where works will extend more than 1 metre below the natural ground surface, and where the water table will be lowered by more than 1 metre below the natural ground surface.

The Preliminary ASS Assessment Report identifies potential ASS and groundwater at less than 1 metre below the natural ground surface, and the department recommends incorporating the Potential Acid Sulphate Soil Risk Areas map (see Figure 18) and specific ASS recommendations in the Draft DCP that would apply to future development applications.



Figure 18 Potential acid sulphate soil risk areas

6.7 Contamination

SEPP 55 – Remediation of Land requires consideration of contamination issues when rezoning land. If a rezoning allows a change of use that may increase the risk to health or the environment from contamination, then the planning authority must be satisfied that the land is suitable for the proposed use or can be remediated to make it suitable. If remediation is necessary, the planning authority must be satisfied that suitable planning controls are in place to ensure that this occurs.

As required under SEPP 55, a preliminary contaminated land assessment was undertaken by EAL Consulting Service (December 2010) as part of the SSS Study to determine if there is any contamination on the site.

The assessment involved a review of the site's history and land use as well as preliminary sampling and analysis. The preliminary investigation found that there are some areas on the site where contamination has occurred as identified in Figure 19. In locations where contamination is present above the adopted site assessment criteria, additional investigation works will be required to identify the extent and degree of the contamination, and advice provided (if necessary) regarding appropriate remediation.

With the exception of the areas identified in Figure 19, the report advises that the site is suitable for the proposed land use structure with no significant indications of surface soil contamination present across the majority of the site.

The EPA advised in its submission in response to the 2011 exhibition, that in those areas where contaminants have been identified and where residential development is proposed that investigation and quantification of the extent and risk of contamination, and commitment to a remediation plan, should be undertaken prior to any rezoning for residential purposes.

Department's conclusions

The department notes that following preparation of the preliminary contaminated land assessment, a portion of land identified as B4 Mixed Use zone (which permits residential) is now proposed as a R2 Low Density Residential zone. This area is currently identified in Figure 19 as requiring further investigation, and (if necessary) appropriate remediation to satisfy site assessment criteria relevant to residential purposes.

The department considers that the approach recommended in the preliminary investigation is appropriate and consistent with the requirements of SEPP 55, and that further contamination investigations prior to rezoning are not warranted.

In considering future development applications for subdivision and other development, council will be required to consider whether the land is contaminated, and if so, must ensure that it is appropriately remediated prior to development. This would mean that further investigations regarding potential contamination and appropriate remediation would be undertaken at the development application stage, consistent with the requirements of clause 6(1)(c) and 7 of SEPP 55.



Figure 19 Identified areas of concern

6.8 Air quality

An assessment of air quality constraints on the site was conducted by PAEHolmes in December 2010 as part of the SSS Study. The study focused on the possible effects of odour and particulate matter (dust).

The PAEHolmes report identified that the primary and significant air quality issue limiting the potential use of the site is odour generated as a by-product of the poultry processing facility located immediately to the west of the site on Ewingsdale Road.

The report assessed odour impacts and established a 250m buffer to the facility, which is based on the planning criterion of 2 odour units as shown in Figure 20. PAEHolmes recommends that only non-residential uses be permissible within this buffer zone, and outlines measures to reduce odour impacts including dense vegetation planting on the western boundary.

The PAEHolmes report also identified low level significant sources of odour, namely surf-craft manufacture (styrene emissions), baking, vehicle refuelling and wastewater treatment, originating from the industrial estate across Ewingsdale Road to the north and north-west of the site.

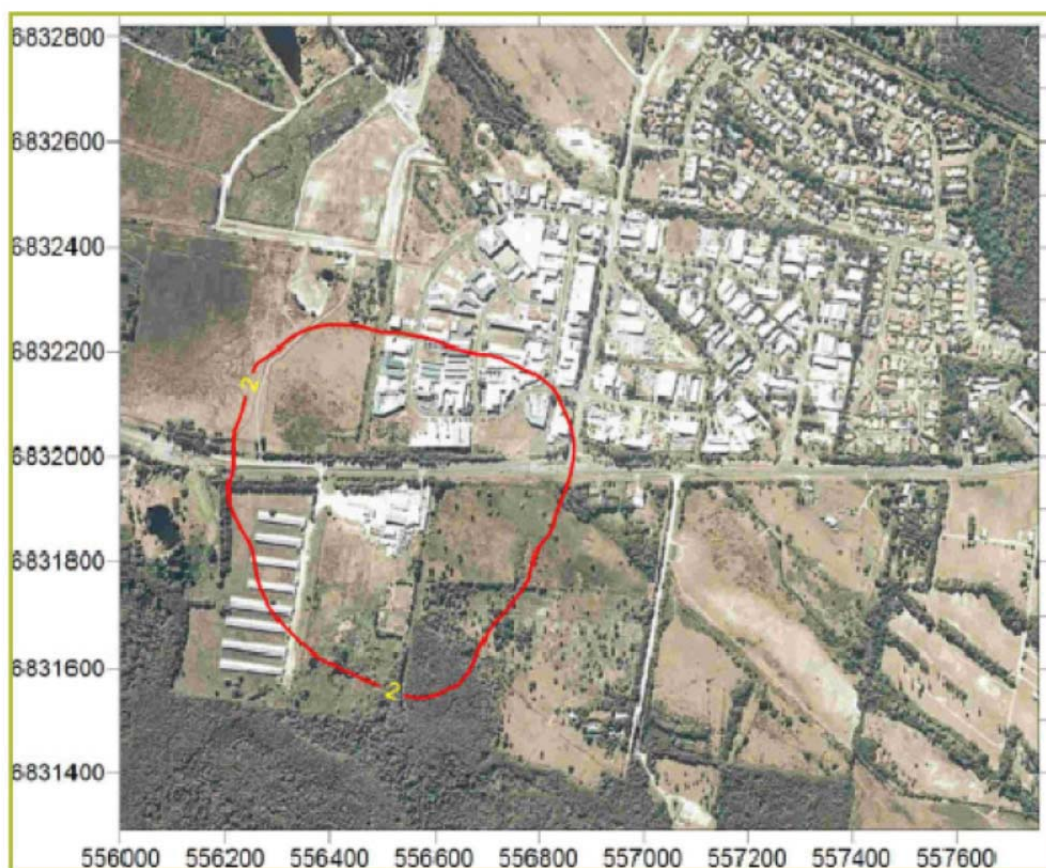


Figure 5.3: Predicted 2 ou ($C_{99, nrt}$) Contour for Sunnybrand Chickens based on Annual Data – Existing Situation.

Figure 20 Predicted 2 ou contour to the poultry processing facility

Submissions from council, OEH and the public in response to the proponent's original proposal raised concerns about odour from the poultry processing facility. In response, the department amended the proposal to zone all land within 250m of the processing facility IN2 Light Industrial to avoid undue land use conflicts between the poultry processing facility and the site. The proponent had proposed that this land be zoned a combination of B4 Mixed Use and IN2 Light Industrial. The department does not support the use of the B4 Mixed Use zone within 250 metres of the processing facility as it would allow for a greater density of commercial activity than light industrial uses, and it is likely that there would be less acceptance of odour impacts.

Concerns about the odour impacts associated with the poultry processing facility were also raised in response to the recent exhibition of the revised proposal by the EPA, Department of Primary Industries (Agriculture NSW) and members of the public. The operator of the facility Inghams Enterprises did not raise any concerns about the impact of the proposal on its operations.

The EPA noted that managing the odour issues at the poultry processing facility is complex and is not expected to be resolved in the short to medium term. EPA recommended that:

- the 250m buffer should be planted with dense foliage at all levels over most of the intervening distance between the facility and the closest development
- compatible uses such as car parks and similar short term usage areas could be considered for placement within the eastern edge of the buffer zone
- consideration could be given to reviewing the buffer zone once an effective odour reduction programme is in place.

The Department of Primary Industries considers that the IN2 Light Industrial zone is appropriate, but that the permissible uses within the zone should be limited to those that are compatible with the adjoining chicken processing facility, and in particular that uses relating to food preparation and food sales such as food and drink premises and neighbourhood shops would not be suitable. The Department of Primary Industries also raised issues in relation to the Draft DCP including:

- the need for a requirement for a Land Use Conflict Risk Assessment to be prepared in accordance with the Land Use Conflict Risk Assessment Guideline (Department of Primary Industries 2011) to support development applications to assess impacts associated with the facility
- that the requirement for a vegetation buffer should not be able to be varied by further modelling as it is also necessary to mitigate noise, visual and bio-security impacts associated with the facility.

The Mineral Resources Board has identified a small southern portion of the site is within 400m of the Skinners Shoot proposal transition area and so may be impacted in the future by sand mining.

Department's conclusions

As a general principle, the impacts of an activity should be appropriately ameliorated within its own site and managed in accordance with environmental regulations. However, the department also recognises that the operation is existing and it will be costly to retrofit improvements that will make a significant difference to odour impacts in the short to medium term.

Deferring the rezoning of land within the odour buffer for an indefinite period is not supported as it effectively sterilises land that could be used for a productive purpose. The department considers that light industrial uses within the buffer can be undertaken without creating undue adverse land use conflicts. While workers within an industrial area may be affected by occasional odour, there is a general acceptance that there are minor amenity impacts associated with light industrial uses. It is noted the existing Arts and Industry Estate industrial area, which is located to the north of Ewingsdale Road adjacent to the site, is also within the 2 odour unit contour.

The department does not support an amendment to further restrict uses in the IN2 Light Industrial zone, as the land use table for this zone has been prepared to be consistent with the Draft Byron LEP.

The suitability of specific uses within proximity of the facility would be considered through the development assessment process and in accordance with the relevant DCP controls.

The Draft DCP includes provisions to ensure that the impacts of odour are managed through the development assessment process, including:

- a requirement for details to be provided of a dense vegetation buffer along the western boundary, unless this is deemed unnecessary by future modelling
- restrictions on sensitive uses within the 2 odour unit contour
- a requirement for detailed odour modelling and mitigation strategies to be provided with development applications within the 2 odour unit contour.

The department supports the requested amendment to the Draft DCP to require preparation of a Land Use Conflict Risk Assessment. The department also agrees that the vegetated buffer along the western boundary should be required regardless of the results of further modelling, but it is considered appropriate that the extent and requirements of the buffer be informed by modelling. These matters will be addressed through the finalisation of the DCP.

With respect to other air quality impacts, studies of the odour impact from the West Byron sewage treatment plant, located north-west of the Industrial Estate, indicate that the treatment plant is too far from the site to pose any possible threat to the proposed land use.

The sand quarrying activities to the south east at Skinners Shoot pose a very low risk to the proposed land uses due to the nature of materials involved, and an existing dense vegetation buffer. Further the transition area identified by the Mineral Resources Board only affects an area proposed to be zoned E2 Environmental Conservation. Any future developments in the existing Arts and Industry Estate associated with a significant potential for air emissions would be subject to development consent and relevant conditions. Accordingly, it is unlikely that future developments across Ewingsdale Road would pose any greater constraints on land use options than at present.

6.9 Noise

An acoustic assessment was prepared by TTM Group (June 2010 and December 2010). This identified that the primary sources of noise affecting the site are traffic on Ewingsdale Road to the north and the operation of refrigeration containers at the poultry processing facility to the west.

Road traffic noise is predicted to affect areas of the site within 200 metres of Ewingsdale Road and noise impacts were modelled. At 70 metres from Ewingsdale Road, the noisiest daytime period (7am to 8am) is predicted to experience an average noise level of 61dB(A) based on a 80km/h speed limit along Ewingsdale Road. It is noted that the use of an 80km/h speed limit is a worst case scenario since it is possible the speed limit will be reduced as the locality becomes further developed.

The assessment confirmed that acoustic treatments would be required to reduce noise levels, and it established setback and barrier heights necessary to mitigate traffic noise impacts on residential areas against different traffic speed limits on Ewingsdale Road. Building layout options were also considered. The TTM Group et al (May 2011) subsequently prepared an urban design strategy including a range of treatment options that in combination would mitigate traffic noise and visual impact for development on Ewingsdale Road.

Noise associated with the poultry processing facility is predicted to have minimal impact on residential areas, with the IN2 Light Industrial zone providing separation between residential uses and the facility. Acoustic barriers are also proposed adjacent to the facility to satisfy the NSW Industrial Noise Policy (TTM Group June 2010).

In response to the 2011 exhibition, the EPA suggested providing a precautionary 50 metre noise buffer on the southern side of Ewingsdale Road zoned as E3 Environmental Management.

Council notes that a variety of mechanisms have been identified to ameliorate noise including setback distances, landscaped earth berms, acoustic walls, and façade treatments to protect future residents from the impacts of road noise. Council considers that these measures are acceptable subject to appropriate consideration being given to the visual impacts of such measures being located adjacent to the primary road into Byron Bay.

Department's conclusions

The department reviewed the proposal in response to the EPA's concerns, and it does not consider that the proposed 50m buffer area would satisfy Parsons Brinckerhoff's (2013) recommended criteria for application of an E3 Environmental Management zone (see section 6.9). The department also notes that opposite the site is a residential area with setbacks of about 25m-30m between rear building lines and Ewingsdale Road, with a vegetated buffer to the main road. The department concludes that noise mitigation measures could reasonably be accommodated within the site's proposed land use zones, subject to appropriate controls in the Draft DCP. The department discussed its conclusions with the EPA, which has agreed that noise mitigation can be achieved without implementation of an E3 zoned buffer.

There is a range of measures that singularly or in combination could be applied to the future subdivision and building layouts to mitigate noise impacts on residents. These include separation distances, acoustic walls, landscaped berms, and building orientation and design. In addition, noise attenuation can be achieved through the application of building treatments.

The Draft DCP requires future applications for dwellings to demonstrate compliance with noise criteria for development adjacent to busy roads set out in 'Development Near Rail Corridors and Busy Roads – Interim Guideline' (Department of Planning 2008). For residential uses, this policy applies a noise criteria of 35dB(A) to sleeping areas at night (10pm to 7am) and 40dB(A) to other habitable rooms at any time. The Draft DCP also requires application of a range of buffer treatments along Ewingsdale Road to resolve traffic noise and visual impacts.

Noise impacts on non-residential uses would be mitigated through appropriate building treatments to meet the relevant Australian Standard. The department considers that noise impacts associated with the poultry processing facility can be mitigated to comply with the NSW Industrial Noise Policy, noting any barriers would need to be considered in conjunction with the vegetated buffer required to mitigate odour impacts (see section 6.8).

6.10 Bushfire hazard

The site both contains and is adjacent to land identified as bushfire prone by council and as such the SSS study was required to include an assessment in relation to the Rural Fire Service's Planning for Bushfire Protection 2006. A Bushfire Assessment was prepared by Land Partners (December 2010).

The assessment determined that the bushfire risk to the site would be moderate, due to the extent of clearing and its proximity to wetland communities to the south. Subject to the recommendations, it concluded that the bushfire risk would not preclude residential development within the site.

The NSW Rural Fire Service has reviewed the proposal and provided the following general advice, noting there is no detailed land use or subdivision pattern at this stage:

- appropriate separation is required between residential and bushland, including regenerated areas
- residential zones in the eastern area of the site appear isolated by bushland corridors
- bushland corridors within the site potentially create a passage for bushfire into the area
- tourist facilities are classed as special purpose development and require greater fire protection
- the continued and further isolation of the existing development adjoining to the south of the site.

The RFS acknowledges the Bushfire Assessment's conclusion that the proposal would be able to comply with Planning for Bushfire Protection 2006 providing suitable design features and setbacks are adopted at an early stage of the design process.

The RFS will require any subdivision or development proposal for the site to satisfy the relevant bush fire specifications and requirements as applicable at the time of lodgement of any development application.

Department's conclusions

The department considers that the bushfire hazard can be managed and should not preclude rezoning of the site. The RFS's comments will need to be taken into consideration by the proponent in the detailed subdivision design in order to satisfy the relevant bush fire specifications and obtain a Bush Fire Safety Authority.

Provisions have been included in the Draft DCP to ensure appropriate consideration of bushfire issues in the detailed design of future development. The Draft DCP also includes provisions excluding asset protection zones ('APZs') from land zoned E2 Environmental Conservation, nor increasing the maintenance burden on public land. The department does not support specific exclusion of APZs from E3 Environmental Management zoned land, as broader land uses are permissible with consent including eco-tourist facilities.

6.11 Heritage impact

A Cultural Heritage Assessment was undertaken by Jacqueline Collins Consultant Archaeologist (December 2010) to assess the potential impact of the proposed rezoning on indigenous and non-indigenous heritage. In accordance with the SSS study requirements, the assessment included Aboriginal involvement and consultation, a field survey, background literature review and heritage register searches.

There is one registered Aboriginal heritage site located in the north-eastern section of the study area within a part of the site proposed to be zoned E2 Environmental Conservation. The Byron Bay Urban Areas 3 (#4-5-104) midden (see Figure 21) comprises two disturbed, low density surface scatters of fragmented and weathered pipi shell. The assessment indicated that the midden is highly disturbed, largely (if not entirely) confined to the surface, and contains a low density and diversity of cultural materials. The Cultural Heritage Assessment has provisionally assessed the shell midden (#4-5-104) as having low socio-cultural and scientific/archaeological significance.

An area to the south and south-east of Belongil Fields (see Figure 21) was identified as a place with some, albeit reasonably low, potential to contain subsurface materials. This area, a proposed R2 Low Density Residential zone, is on the southern side adjacent to a proposed E2 Environmental Conservation zone. The assessment recommends a precautionary approach to any future development disturbance of this area.

No other Aboriginal archaeological sites/materials or specific potential archaeological deposits were identified during the assessment although it was noted that the possibility for significant subsurface Aboriginal cultural heritage materials within the beach ridge plain area cannot be ruled out.

In its submission on the 2011 SSS study exhibition, the EPA noted the potential for impact or harm at the registered site as well as at the beach ridge plain area. It recommended that further assessment be conducted prior to rezoning to confirm that there is no significant impediment to urban development. It also notes that:

Where impacts to Aboriginal objects and places cannot be avoided, the proponent should develop appropriate processes to reduce the extent and severity of impacts and using appropriate

mitigation measures to achieve better outcomes for cultural heritage objects. Any measures proposed should be negotiated between the applicant and the local Aboriginal community.

In response to the 2013/2014 exhibition, a submission was received from NTSCORP acting for the Byron Bay Bundjalung People in relation to their native title determination application and processes under the *Native Title Act 1993* (Cth), as the site is within a native title claim area. This submission also recommended preparation of an ethnographic survey and expansion of consultation requirements in the Draft DCP.

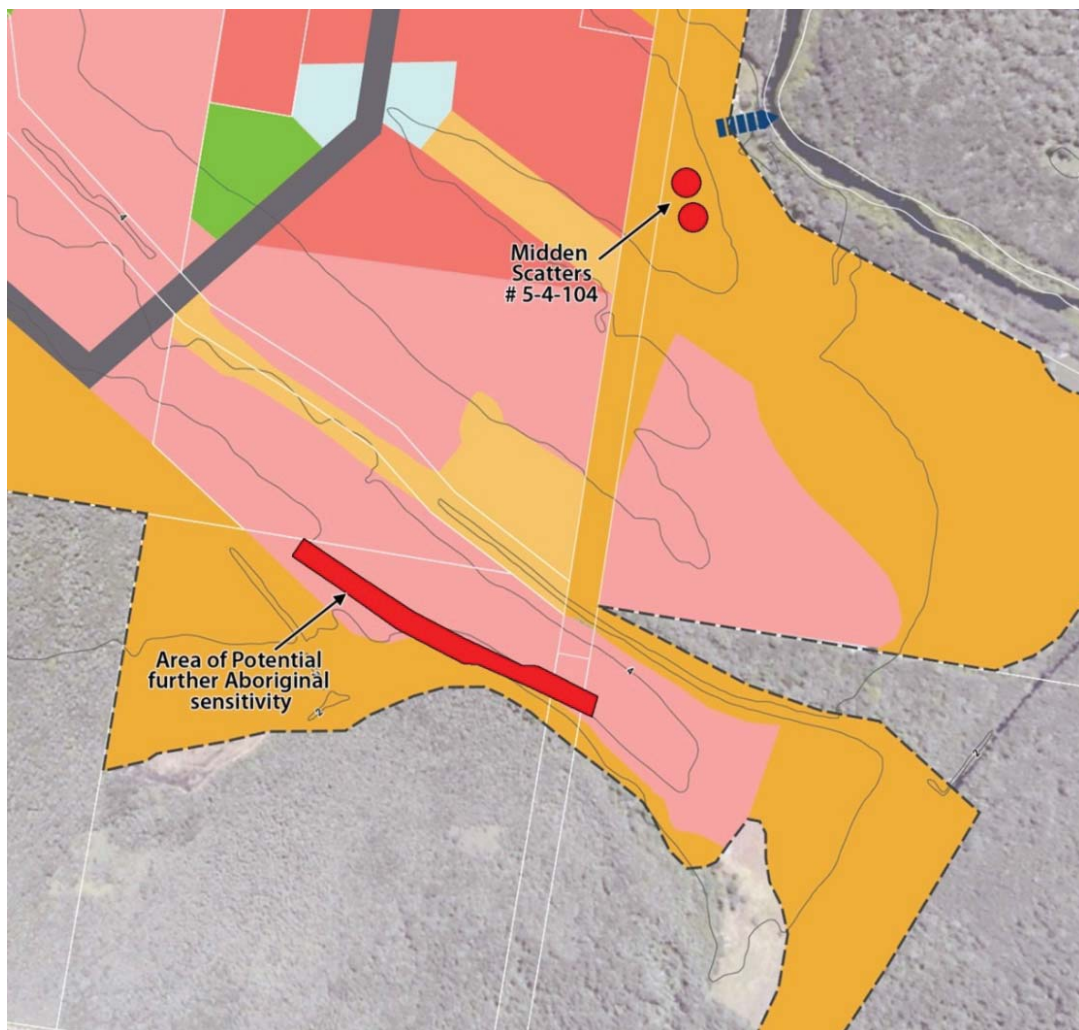


Figure 21 Identified and potential Aboriginal Heritage

The Cultural Heritage Assessment advises that notification of the SSS study and the proponent's intention to prepare an assessment was notified to Aboriginal groups, including the Bundjalung Elders Aboriginal Corporation, the Bundjalung Tribal Society and the Arakwal Aboriginal Corporation. The report also makes reference to a native title claim, noting it does not include freehold land where Native Title has been extinguished, and that it was confirmed by the then Native Title Services Corporation that the tenure makes it unlikely that any formal native title processes under the *Native Title Act 1993* (Cth) will be activated by the development.

NTSCORP confirmed with the department (telephone, 26 March 2014) that the native title claim should not impede rezoning of the site due to the extent of freehold, but that consultation provisions in the Draft DCP on Aboriginal cultural heritage matters require strengthening, and that there may be

future act requirements triggered at the development application stage. As requested, the proponent and council were provided a copy of the NTSCORP submission for their information.

There are no local or state items of non-indigenous heritage on the site. There are building remnants on the site relating to the local historical theme of 'agriculture, dairying and related industry' as well as the Belongil Union Drain which dates back to the early 20th century although it has since been modified which detracts from its historical significance.

Department's conclusions

The department is satisfied with the conclusions of the Cultural Heritage Assessment and considers that no further investigations are required prior to rezoning, noting areas of further assessment has been recommended and their location either within or directly adjacent to E2 Environmental Conservation zones.

The Draft SEPP includes standard heritage provisions. The Draft DCP requires archaeological test excavations for both the shell midden and the area of potential sensitivity prior to subdivision. The Draft DCP also requires consultation with Aboriginal stakeholders. However it is recommended these provision are reviewed following a decision on the rezoning.

6.12 Visual impact

The impact of the proposal on the character of Byron Bay was raised in a number of community submissions, particularly concerning the proposal's visual impact on Ewingsdale Road which is the main entry into Byron Bay from the Pacific Highway.

A Visual Assessment was undertaken by Ennismore Field Pty Ltd (undated) as part of the SSS study. The report assessed the visual impact of the proposed development on the existing landscape character and visual quality of the site and surrounding areas. The report found that the 'scenic quality' of the site is defined more by its overall backdrop of natural tones and open spaces than by intrinsic scenic value or inherent visual qualities. The highest visual impacts were identified as being on localised or foreground views along Ewingsdale Road. These views have the highest viewing populations consisting of daily commuters and travellers between the Pacific Highway and Byron Bay. Middle ground and distant views are not significant and low-moderate visual impacts are expected.

The Visual Assessment outlines urban design, landscape and architectural design considerations aimed at minimising negative visual impacts.

In addition, measures have been put forward by the proponent to resolve traffic noise, visual impact and urban design along Ewingsdale Road (Appendix Y, SSS study).

A number of public submissions raised concerns regarding the impact of urban development on the visual amenity and scenic character of the area, and a resultant impact on the tourism. In its submission, council noted that extensive landscape treatment should be introduced within and adjacent to the development site to reduce visual impacts of the proposal.

Department's conclusions

The proposed change in land use will inevitably result in a change to the existing landscape character of West Byron Bay as the site is transformed from a semi-rural character to a suburban area.

However, the measures detailed in the Visual Assessment and in Appendix Y of the SSS study are considered appropriate and will help to ameliorate adverse visual impacts, particularly along Ewingsdale Road where the highest visual impacts are anticipated. Accordingly, the design principles and mitigation measures outlined in the Visual Assessment have been incorporated into the Draft DCP controls.

The department supports the inclusion of a landscaped buffer along Ewingsdale Road, the details of which should be resolved in consultation with council through the subdivision application process. In doing so, consideration would also need to be given to the traffic noise impacts associated with Ewingsdale Road. Accordingly the Draft DCP requires development along Ewingsdale Road to be designed to resolve traffic noise and visual impacts and maintain urban design quality, including through landscape buffer treatments.

The Draft DCP also includes urban design provisions to minimise the visual impact of development as seen from further afield, such as avoiding continuous roof lines and use of natural colours and non-reflective surfaces.

6.13 Economic impact

A Retail and Commercial Demand Study was undertaken by Hill PDA (July 2010) for the SSS study. The study examined the potential of the site to cater for retail and commercial land uses and also considered likely economic impacts on surrounding centres.

The study found that:

- development of the urban release area warrants inclusion of a small scale cluster of shops to satisfy new residents on site, for example providing a general store and a few associated specialty shops such as a bakery or newsagent
- ideally, any neighbourhood centre should be located in the middle of a fairly high density residential area and located at a public transport node to facilitate ready access
- the viability of any neighbourhood centre is increased when located within walking distance of employment lands (e.g. light industrial)
- the impact of developing a neighbourhood centre on the site, to either existing retailers in the local Ewingsdale Trade Area or the larger Byron Bay Town Centre, would be negligible.

The study also found that there are a range of economic benefits associated with the rezoning including:

- employment generation both during construction and once developed
- contribution to dwelling targets
- provision of a mix of housing types
- improved retail offer and increased competition.

A number of submissions to the 2011 exhibition raised concern regarding the potential adverse impact of a new shopping centre within the site on the viability of other nearby centres. Some submissions also queried whether the proposal would meet the employment needs of future residents, and if not potentially lead to further unemployment in the area. Other submissions view the site's increase in population as beneficial in supporting existing businesses.

Department's conclusions

The B1 Neighbourhood Centre zone is proposed in the north-eastern area of the developable part of the site, near to Ewingsdale Road and intersected by the proponent's proposed route for the primary link road, making it accessible for convenience shopping irrespective of residents' mode of transport.

To minimise impacts on existing centres, the proposed B1 Neighbourhood Centre zone has been reduced from the proponent's original 2.2ha down to 1.1ha. The B1 Neighbourhood Centre zone permits with consent shop top housing and the immediately surrounding residential zone is R3 Medium Density Residential, both of which would encourage higher population densities with convenient access to the neighbourhood centre.

The range of permissible land uses in the B1 Neighbourhood Centre is consistent with the Draft Byron LEP. The Draft SEPP for the site restricts the retail floor area of neighbourhood shops to a maximum of 200 square metres, to ensure adequate safeguards against competition with supermarkets in Sunrise Beach and Byron Bay town centre.

The B1 Neighbourhood Centre zone can accommodate a range of uses including shops and small scale commercial enterprises. Based on Hill PDA's employment ratio for mixed uses of 1 job per 50m² of gross floor area (and assuming 30% land for roads, setbacks etc) the neighbourhood centre could generate approximately 150 jobs. The site may also be attractive for home based businesses.

It is considered that the light industrial area proposed in the north-west corner of the site will provide an opportunity for the establishment of new enterprises and expansion of existing enterprises within Byron Shire. Based on Hill PDA's employment ratio for industrial areas of 1 job per 80m² of gross floor area (and assuming 30% land for roads, setbacks etc), the light industrial zone could generate approximately 650 jobs when fully developed.

Employment would also be generated through the detailed planning and construction phases of the site, however it is not possible to estimate construction job numbers at this conceptual stage.

Having regard to the above, the department considers that the economic impacts of the proposed rezoning will be predominantly positive and will lead to an increase in employment and opportunities for the Byron community.

6.14 Social impact

A Social Impact Assessment was undertaken by BBC Consultant Planners (February 2011) for the SSS study. The assessment provides an overview of the likely demand for social facilities and services that would be generated from the development of the site, as well as an understanding of the potential social impacts which could arise.

The key findings of the assessment are:

- there is a clear mismatch between the available housing stock in the local government area (LGA) and the needs of some resident groups
- this housing mismatch has led to an unbalanced demographic and social structure forming in the LGA
- housing is clearly unaffordable in the Byron Shire, which also extends to the rental market and key workers cannot afford to live in the LGA

Council's Community Strategic Plan clearly identified the community's desire to increase affordable housing in a sustainable way and their concern that there was no avenue for the next generation to settle in the Shire, due to a lack of available land and increasing prices.

The assessment notes that there are relatively few community and recreation facilities and services which would be required to serve the West Byron Bay urban release area population alone.

However, the additional population would still generate demand, and it is important that these needs are able to be met.

Department's conclusions

The proposal would assist in meeting the region's needs, by increasing housing and employment land supply in a convenient location. The proposed small residential lots would also provide for a broader range of more affordable housing options.

Contributions towards the provision of community and recreation facilities will be required to be paid in accordance with the Byron Shire Developer Contribution Plan 2012, and the site's future population will increase the council's rates base to support existing facilities.

6.15 Contributions

The Far North Coast Regional Strategy 2006-2031 identifies that where development or rezoning increases the need for State infrastructure, the Minister for Planning may require a contribution towards the provision of such infrastructure. The strategy states that funds collected from contributions from major developments will be used for regional infrastructure, consistent with the State Infrastructure Strategy, and approved biodiversity outcomes. Funds collected by councils through section 94 contributions plans and levies will be used to fund local infrastructure and achieve any local biodiversity outcomes.

6.15.1 State and regional contributions

Planning Circular PS08-017 sets out the NSW Government's policy for state infrastructure contributions. This policy establishes that State infrastructure contributions can comprise road infrastructure, land for education, health and emergency service facilities, conservation, and planning delivery.

Consultation was carried out with relevant agencies to determine the state infrastructure contribution requirements for the proposal. The Northern NSW Health District, Ambulance Service of NSW, Fire & Rescue NSW and NSW Police Force advised that their current services would be able to accommodate demand generated by the proposed development at West Byron Bay, and as such did not seek any infrastructure contributions. Transport for NSW also indicated that no contributions would be required for state transport infrastructure.

The DEC confirmed that the population associated with the site along would not generate the need for an additional school, and that new enrolments can be directed into Byron Bay Primary School and Byron Bay High School. When previously consulted in 2011 DEC advised it would not seek any infrastructure contributions. However in 2014 it requested developer contributions to recover the costs of providing additional public education facilities, such as classrooms and supporting facilities, through the proposed Regional Infrastructure Contributions scheme as set out in the White Paper – A new planning system for NSW. The Planning Bill 2013 has not been enacted, and it cannot be used to secure regional infrastructure contributions at this point in time. Further, that recovery of costs for education facilities is not consistent with the NSW Government's current policy on State infrastructure contributions as set out Planning Circular PS08-017.

Department's conclusions

The proposal will not be subject of a State infrastructure contribution. However, under the Draft VPA the proponent is required to pay costs above section 94 contributions towards the Byron Bay bypass which involves the upgrade of a local road (Main Road 545).

6.15.2 Local contributions

Local infrastructure contributions in Byron LGA for the purposes of section 94 of the EP&A Act are set out in *Byron Shire Developer Contribution Plan 2012*, including for the West Byron Bay site. Development within the site will be required to pay contributions in accordance with this plan. It is noted that contributions made under *Byron Shire Developer Contribution Plan 2012* towards the Byron bypass, can be offset against the contributions towards the bypass required under the Draft VPA.

Department's conclusions

The department considers that adequate mechanisms are in place for the provision of State, regional and local infrastructure contributions for the site.

6.16 Utilities infrastructure

Advice provided by Cardno (April 2011) on the capacity of local utility infrastructure established that:

- the Byron West Sewage Treatment Plant (STP) has sufficient capacity to accommodate the West Byron rezoning subject to the provision of a new regional pump station and 2km rising main
- there is an existing need for the potable water storage reservoirs to be increased by a considerable amount for the existing population, and the additional storage required by the West Byron site of 1.9 megalitres (ML) can be assimilated into the upgrades required for the existing network
- electricity and communications infrastructure providers have indicated that they are able to service the site if rezoning proceeds.

Council has indicated that the design capacity of the STP is based on an assumption of 386 Equivalent Tenements (ET) at West Byron Bay. Council's analysis predicts that the STP will reach capacity in 2025 and on this basis the West Byron Bay urban release area will require that the current plant be augmented. Council has therefore advised that the development will require its own developer servicing plan and the charges should reflect an augmentation of the STP.

With respect to water supply, council has noted that a new 6ML reservoir is needed to provide a safe and reliable supply of water to Byron Bay and Suffolk Park. As noted in the Cardno report, a further 1.9 ML will be needed to supply West Byron. Pressure reduction devices will need to be installed to mitigate water demand and reduce service failures.

Council also consider that the DCP should incorporate a requirement that the developer provide appropriate water infrastructure within the development for a dual reticulation scheme to recycle water from the Byron Bay sewage treatment plant.

Rous Water Regional Water Supply has advised that it has sufficient unallocated capacity to supply West Byron should it proceed. However as noted above, Council will need to increase service reservoir capacity to ensure inappropriate demands are not placed on the water supply distribution network.

Public submissions received during the consultation process highlight community concerns about the impacts of development of the site on utility infrastructure in Byron Bay, and in particular regarding the capacity of the sewerage treatment plant.

Department's conclusions

Provisions in the Draft SEPP ensure that land at West Byron Bay cannot be subdivided unless council is satisfied that appropriate arrangements are in place for the provision of public utility infrastructure.

The department considers that any requirement for dual reticulation would need to be negotiated between any applicant and council, and should be resolved through the development assessment process.

7 Conclusion

The department has carefully considered the proposal and issues raised in submissions.

The rezoning proposal has a number of benefits, in that it would:

- bring forward a site identified for potential urban development under the Far North Coast Regional Strategy (2006)
- contribute to the housing targets for Byron Shire and the Far North Coast by providing between 800 and 1,100 new dwellings
- enable greater housing diversity and affordability through the provision of medium density housing and smaller minimum lot sizes
- secure employment during construction and additional employment land supporting new jobs
- encourage future residents to use more sustainable transport options, such as walking and cycling, due to the site's mix of uses and proximity to the Arts and Industry Estate and Byron Bay.

The site is constrained with regard to traffic, flood risk, acid sulphate soils and any development may potentially impact on waterways, flora, fauna and habitats. These matters have been assessed and considered, and to mitigate potential impacts the proposal would:

- secure funding of between \$5.6 million and \$7.7 million toward construction of the Byron Bay bypass to alleviate existing traffic congestion on Ewingsdale Road
- include approximately 40% of the site within environmental zones to protect Belongil Creek, SEPP 14 wetlands, and flora and fauna
- secure the preparation of a vegetation management plan to address the management and rehabilitation of land within the environmental zones
- include appropriate controls to manage environmental risks including flooding and acid sulphate soils.

Following its assessment and on balance, the department supports the proposal, subject to imposition of appropriate controls on future development to be secured under the Draft SEPP and Draft DCP.

The Department of Planning & Environment recommends that the Minister for Planning give her opinion that the site is of regional significance and refer the draft environmental planning instrument to the Governor to be made.