

Bayside Residential Area Brunswick Heads

Investigation of biodiversity values of vacant land zoned 2(a) Residential under Byron LEP 1988 & recommendations for land use zoning under new Shire-wide LEP – Bayside Brunswick estate, Brunswick Heads

In response to a request for comment under Section 62 of the Act, the Department of Environment and Climate Change (DECC) identified a number of parcels of vacant land identified for urban development in the Far North Coast Regional Strategy that warranted investigation of biodiversity values. This response prompted more detailed investigations by staff in order to inform the preparation of the draft Shire-wide LES and LEP.

The following table outlines the results of these more detailed investigations and provides options and recommendations for consideration in the draft Shire-wide LEP.

Site: Undeveloped residential land at Bayside Brunswick estate, Brunswick Heads

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| Property Description | Lot 1 DP 871039 |
| Property Address | Kingsford Drive, Brunswick Heads |
| Area of existing 2(a) land | Approximately 22.5 ha Refer to attached Map 1 showing aerial photograph and zoning from LEP 1988. |
| Constraints | Bushfire prone land – whole site is vegetation category 2 Acid sulfate soils – whole site is class 3 Floodprone – large areas of the land in the flood planning area (1% AEP + 500mm), central and eastern parts of the site identified as flood prone land. Coastal zone – SEPP 71 |
| Biodiversity attributes | <p><u>Desktop analysis – Council records:</u></p> <ul style="list-style-type: none"> SEPP 14 wetlands on eastern side of the site currently zoned for environmental protection GIS data indicates that the 2(a) land contains a small area of tertiary koala habitat on the western side of the site and a larger area of secondary habitat on the eastern side. Site is situated directly west of the Tyagarah Nature Reserve and adjacent to part of the Cape Byron Marine Park. Parts of the site are mapped as wildlife corridor although the whole of the estate forms a 'hole' in the mapped corridor. Most of the middle section of the site is identified as 'eco wetlands'. Most of the site has been identified as high conservation value vegetation and habitats (HCV) (other than a small area adjacent to the developed area) based on updated vegetation mapping and Council's HCV model. The identification of the land as HCV is based on field verification and the product of the HCV model developed in accordance with the methodology in the <i>Byron Shire Biodiversity Conservation Strategy</i>. Parts of the site have been identified as containing a candidate endangered ecological community (EEC). Various threatened species records have been recorded on the site (refer to ecologist assessment). <p><u>Data from Settlement Planning Guidelines:</u> information to guide LEP preparation and DA assessment provided by Department of Planning.</p> <ul style="list-style-type: none"> Parts of the site have been identified as wet landscapes (high constraints) Parts of the far eastern side of the site currently zoned for environmental protection are identified as SEPP 14 wetland and 100m buffer. The eastern part of the site has been identified as being within an estuarine buffer |

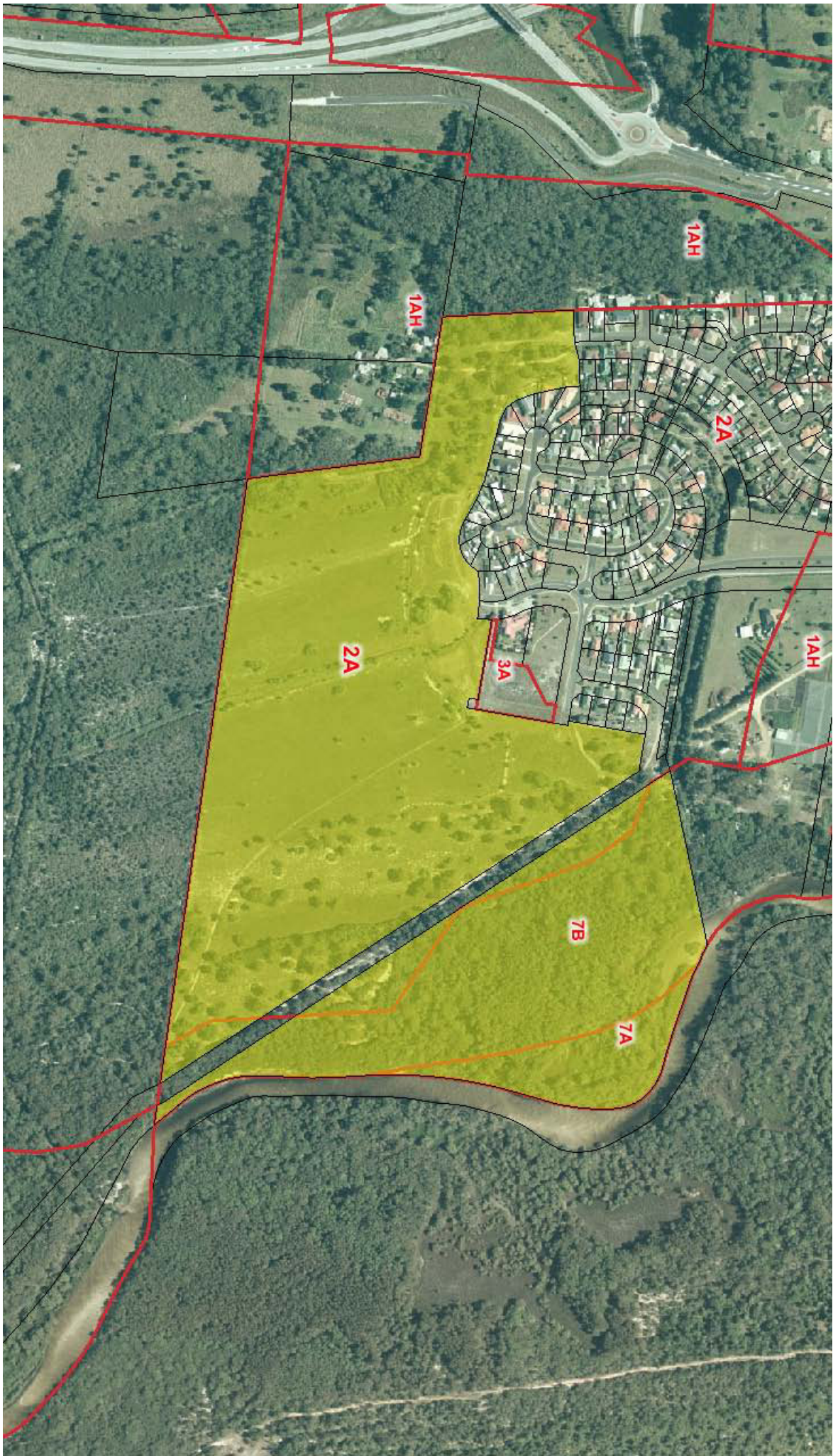
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| | <ul style="list-style-type: none"> • The entire site is identified as biodiversity high significance • The entire site has been identified as medium risk acid sulfate soils • Most of the site has been identified as containing significant groundwater • The entire site is identified as being within an inundation area. <p>[Note: the scale of use for this data is no larger than 1:100,000]</p> <p><u>Outcome of assessment by ecologist:</u></p> <p>An ecologist was requested to carry out a more detailed assessment of the biodiversity attributes of the subject land. Council's Shire-wide vegetation mapping and HCV modelling for the site were refined following this more detailed assessment.</p> <p>The ecologist's report (#743257) recommends the following:</p> <p><i>'Application of Council's Ecological Matrix results in most of the property's vegetation being recognised as being of High Conservation Value. Environmental protection zoning (E2 Environmental Conservation) would be the most appropriate response considering this outcome.</i></p> <p><i>The property's high biodiversity value is reinforced by the following:</i></p> <ul style="list-style-type: none"> • <i>The availability of diverse habitats for a wide range of threatened fauna, including old growth elements (hollows etc.) which are highly restricted in coastal Byron Shire.</i> • <i>Occurrence of Swamp Sclerophyll Forest EECs and likely occurrence of Freshwater Wetland EECs.</i> • <i>Occurrence of SEPP 14 Wetlands.</i> • <i>Landscape conservation significance as a mosaic of Wallum vegetation communities in good condition and contiguous with other Wallum communities. The Wallum ecosystem characterises coastal Byron Shire and this mosaic of vegetation communities has largely been converted to agricultural, residential or other higher order land uses where unreserved.</i> • <i>Occurrence of rare/vulnerable/endangered forest ecosystems and restricted vegetation associations, most of which are endemic and/or of limited extent in the shire and/or are inadequately reserved.</i> • <i>Highly diverse vegetation associations.</i> • <i>Surrounded by and contributing to habitat connectivity and wildlife corridor values at the local and regional scale.</i> <p><i>The practice of periodic slashing heathland and sedgeland communities and underscrubbing the Scribbly Gum association is reducing the value of these Wallum communities to some threatened fauna, however threatened fauna is still being recorded in these communities and in the case of Wallum Froglet in large numbers. All communities will respond well if slashing ceases and will afford habitat to a wider range of threatened fauna.</i></p> <p><i>In summary, there is a convincing argument for applying the highest form of zoning protection to most of the property's vegetation other than to the lower value grassland, sedgeland/fernland/grassland and sedgeland-grassland communities'.</i></p> |
| Approvals history | <p>The sewerage moratorium in Brunswick Heads was introduced on 24 March 1998. Council refused Development Application 5.1995.373.1 for a 256 lot subdivision on 14/10/97 on the basis that the development could not satisfy clause 45 of the Byron LEP 1988 relating to prior adequate arrangements for sewerage services. This decision was ultimately upheld by the Land and Environment Court in 1998.</p> <p>A Part 3A Major Projects application for a 208 lot residential subdivision is currently under consideration by the Department of Planning. The Minister authorised a concept plan could be lodged for the development in January 2007 pursuant to clause 75M of the Act. The Director General's Environmental Assessment requirements were provided to the proponent on 12 January 2007 (to expire in January 2009).</p> |

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| | <p>Discussions with DoP Major Projects staff on 30 May 2008 indicate that the proponent has not yet submitted the environmental assessment report required in accordance with the Director General's requirements and that the project has not advanced in the preceding 12 months. Given this, it is unlikely (but not impossible) that the Part 3A application will be approved prior to gazettal of the new Shire-wide LEP. When approving a Part 3A application the Minister can effect a rezoning simultaneously i.e. for environmental protection. In the absence of a decision about the outcome of the major projects application Council should choose a land use zone/s that are appropriate for the identified site constraints.</p> |
| Relevant Council resolutions, policies or strategies | <p>DCP No. 6 Bayside Brunswick currently applies to this land. This DCP commenced on 25 August 1992. It contains performance standards and specific controls for future subdivisions of the estate and stipulates that a minimum of 10% of allotments should be small lots (450 square metres) and at least 10% should be allocated for medium density housing. The Brunswick Settlement Strategy recommends that the DCP be reviewed <i>'to ensure it is consistent with the outcomes of this Strategy and contemporary best practice in environmental management'</i> (page 9).</p> <p>Extract from the Brunswick Heads Settlement Strategy (page 21) adopted 21 December 2004: <i>'There are approximately 22 hectares of land zoned 2(a) (Residential) in one contiguous area at Bayside Brunswick. This includes areas on the east which have regenerated with native vegetation since being zoned 2(a) (Residential Zone). Fragments of significant vegetation on the west – particularly scribbly gum – are contiguous with similar vegetation on adjoining properties and should be retained for their habitat value and contribution to a local wildlife corridor between land to the south and to the west'. Also 'the Bayside Brunswick subdivision area is flanked by areas of significant vegetation to the east, south and west. Future development of the estate should provide buffers to reduce human impact as well as to provide adequate fire source separation to dwellings. Buffers should be provided on the developer's land'</i> (page 25).</p> <p>The Strategy also states that in the absence of a floodplain management plan, <i>'No further development involving filling or a intensification of runoff should be permitted on floodprone land'</i> (page 25).</p> <p>Also in relation to the land release program (page 34), <i>'The Bayside Brunswick land adjoins environmentally sensitive habitats which are exhibiting rapid regeneration and development of natural ecosystems. The undeveloped parts of the Bayside subdivision area are known to contain habitat for the Wallum Froglet, a threatened species. In view of the potential for natural habitat to regenerate on this land, future subdivisions of this land should be restricted to a 5 year supply of allotments. This figure may be derived from past uptake rates as well as an estimate of 'pent up' demand during the sewerage moratorium (this may in fact indicate that the whole subdivision area could be consumed in 5 years). Further stages may be considered when the majority of the approved lots have been purchased and developed. This will limit speculative demand and should ensure reasonable consistency with contemporary planning controls. Outcome 12: Subdivision approval should be controlled to provide a 5 year supply of land, the area of which will vary depending on uptake rates'</i>.</p> <p>The Bayside Brunswick site is specifically mentioned in the <i>Byron Biodiversity Conservation Strategy</i>. The Strategy states that the lands directly abutting the southern extent of Bayside Brunswick are known to support native vegetation but were not mapped in the Byron Flora and Fauna Study (1999) (and subsequently not considered for mapping as HCV vegetation in the Biodiversity Conservation Strategy). Therefore the residential zoned land on the subject site was not identified as containing high conservation value vegetation and habitats in Map 1 of the Strategy. As the Strategy recommended the vegetation mapping has since been revised based on new aerial photography and ground truthing. This site was identified in that review</p> |

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| | <p>as containing HCV vegetation and habitats.</p> <p>A 50m buffer is recommended between residential development and native vegetation in the DPI publication 'Living and Working in Rural Areas'. Separation distances will be required if development proceeds to ensure appropriate asset protection zones. Smaller distances will require higher levels of construction and ultimately increase the cost of housing. Due to the sensitivity of the surrounding land and the need to manage drainage on and from the site adequate separation distances and other measures will be required to ensure that these areas aren't significantly impacted i.e. through ecological disturbance and pollution and runoff. Council's ecologist has identified a number of environmental and ecological considerations should development be considered on the site.</p> |
| Other information | <p>The site is identified in the Far North Coast Regional Strategy as part of the existing urban footprint of Byron Shire. In its correspondence dated 19 October 2007 the DECC state with regard to Bayside Brunswick, <i>'Area covered has been desktop assessed as almost entirely lands of State significance to biodiversity and includes regionally significant wetlands and Koala habitat. The area is part of a regional wildlife corridor and is adjacent to Tyagarah Nature Reserve. Should detailed investigation confirm these attributes, development of this area should be avoided'</i>.</p> <p>Council records indicate illegal vegetation clearing has occurred previously on the site and orders were subsequently imposed. The environmental values of the site were identified at this time by Council and the DECC.</p> |
| Discussion | <p>In making a decision whether to rezone this land, the following factors should be taken into account:</p> <ul style="list-style-type: none"> • The land is currently completely zoned for residential development and is identified within the existing urban footprint in the Far North Coast Regional Strategy • The existing sewerage moratorium has prevented development on the site since 1998. Additionally Council and the Court (Codlea Pty Ltd v. Byron Shire Council (1998) NSWLEC 305 (4 December 1998) refused consent for subdivision of the site previously on the basis of clause 45 of Byron LEP 1988 not being satisfied in relation to sewerage services. The moratorium is still in place and is likely to remain in place until mid 2010. • A Part 3A major projects application has been lodged for a 208 lot residential subdivision however assessment has proceeded slowly since the Director General's requirements were issued in January 2007 and the relevant environmental assessment documentation has not been prepared. It is unclear whether the landowner intends to pursue this concept plan application and subsequent future development of the site. The application is for concept plan approval and the DoP advise that they are able to approve a concept plan even though the sewerage moratorium remains in place. The DoP also advise there are savings provisions in relation to the zoning in place when the original concept plan application was lodged. • There is currently no other land for significant development identified in the Brunswick Heads locality and Council is required to meet dwelling targets under the Far North Coast Regional Strategy by 2031. • DECC raised the biodiversity importance of this land and may support Council should it wish to rezone the land. DECC is yet to be approached with the outcome of our assessments and has not made any commitments with regard to this matter. • Much of the land has been identified as high conservation value vegetation and habitats through revised vegetation mapping, site inspections and the modelling methodology adopted by the <i>Byron Biodiversity Conservation Strategy</i>. • The land has been identified through desktop analysis and site analysis as supporting threatened species habitat, having threatened species records, containing endangered ecological communities and supporting special biodiversity attributes. |

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| | <ul style="list-style-type: none"> • The land has been identified as being of high biodiversity significance in the State Government's data package associated with the Settlement Planning Guidelines. • The land currently constitutes a 'hole' in a significant regional wildlife corridor in the Biodiversity Conservation Strategy. • The site is constrained by bush fire risk on three sides. • Part of the land is flood prone and filling would need to occur in order for development to proceed. • The yield originally envisioned for the site (208 lots) is unlikely to be achievable given the constraints of the site. • Due to the sensitive location of the site, any development would need to be particularly responsive to environmental constraints i.e. incorporating water sensitive urban design systems. Also the recommendations in the ecologist report should be adopted should development proceed on the site. <p>An area of the site that could be considered for development has been identified. This area was used during consideration of options for the site.</p> <p>Revision of the current residential zoning of the site is entirely reasonable given the significant biodiversity attributes of the land and the constraints of the site.</p> |
| Options for Shire-wide LEP | <p>These four options have been considered:</p> <ol style="list-style-type: none"> 1) Zone most of the land E2 Environmental Conservation to reflect the extensive areas of HCV and the other restrictive physical characteristics of the land. 2) Retain a residential zoning over that part of the lot currently zoned for residential purposes through the use of the E4 Environmental Living zone or R2 Low Density Residential zone. 3) Zone the more ecologically significant parts of the site E2 and then zone the remaining areas for residential development using a number of residential zones i.e. E4, R2 and R3. 4) Zone part of the site for residential purposes (i.e. E4, R2 or R3) with the DECC to acquire the remaining part of the site from the landowner as an addition to Tyagarah Nature Reserve. Note that no discussions have taken place between Council and the DECC in relation to possible acquisition, nor has any commitment been given by DECC. |
| Recommendation | <p>Option 3 is recommended. It is recommended that the E4 zone to be considered for the western side of the lot with large lot sizes (i.e. 2000 square metres) applied on the Lot Size Map in the LEP. The objective is to maximise retention of the scribbly gum community. A combination of R2 and R3 should be applied in the central section including to the southern extent of the lot. E2 should be applied on the eastern side in the vicinity of the existing road access and on the significant vegetation in two areas on the western side of the land. The remainder should be zoned E2 including all of the areas currently zoned for environment protection.</p> |

Map 1 – Bayside Brunswick – Lot 1 DP 871039
Byron LEP 1988 Zoning



Disclaimer : While all reasonable care has been taken to ensure the information contained on this map is up to date and accurate, no warranty is given that the information is correct. The user of this map is advised to verify the accuracy of the information shown on this map is a copyright of the Byron Shire Council and the NSW Department of Lands.

Scale = 1:6,000
Metres 100 200 300 400

(Scale correct at A4 size)



23/07/2008