



Our Ref: DOC21/525925-11  
Your Ref: #E2021/84765/PP 26.2019.1.1

General Manager  
Byron Shire Council  
PO Box 219  
Mullumbimby NSW 2450

Attention: Mr Alex Caras

Dear Mr Arnold

**RE: Planning Proposal – 31 Alidenes Road, Wilsons Creek, Byron Shire – Flood Comments**

Thank you for your letter dated 25 June 2021 about the Planning Proposal (PP) to facilitate a community title subdivision at Wilson's Creek, seeking comments from the Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry and Environment. I appreciate the opportunity to provide additional input regarding the likely implications of the PP on flooding and apologise for the delay in providing these comments.

We understand the objective of the PP is to permit the creation of a neighbourhood Community Title Scheme comprising 15 neighbourhood lots, with one dwelling permitted on each of those lots. One (association) lot is also proposed containing Yankee Creek and suitable riparian buffers.

Based on our review of the PP, the planning area is flood prone. Approximately 6.5 ha of the 12.27 ha site (55%) is above the 2100 Climate Change flood extent for the 1% AEP event and outside the minimum 30m riparian buffer. Given the BCD does not generally support the filling of land or the construction of levees, it is these parts of the planning area that are potentially suitable for dwellings and onsite wastewater disposal, excluding areas identified as containing HEV lands as set out in our letter dated 30 July 2021.

The nature of flooding in the planning area is that of a small steep catchment with quick response times and relatively small peak flows. The planning area contains land above the 100-year ARI flood extents suitable for residential development. Issues such as location of building envelopes, access to the overall site and individual building envelopes can be addressed at the development application stage.

Therefore, the BCD has no objection to the PP from a flood perspective.

If you have any questions about this flooding advice, please do not hesitate to contact Ms Nicky Owner, Senior Conservation Planning Officer, at [nicky.owner@environment.nsw.gov.au](mailto:nicky.owner@environment.nsw.gov.au) or 6659 8254.

Yours sincerely

Dimitri Young

4 August 2021

**DIMITRI YOUNG**  
**Senior Team Leader Planning, North East Branch**  
**Biodiversity and Conservation**



Our Ref: DOC21/525925  
Your Ref: #E2021/84765/PP 26.2019.1.1

General Manager  
Byron Shire Council  
PO Box 219  
Mullumbimby NSW 2482

Attention: Mr Alex Caras

Dear Mr Arnold

**RE: Planning Proposal - 31 Alidenes Road, Wilsons Creek, Byron Shire**

Thank you for your letter dated 25 June 2021 about the proposed amendment of the Byron Shire's Local Environmental Plan 2014 (LEP 2014) to facilitate a community title subdivision at Wilson's Creek, seeking comments from the Biodiversity and Conservation Division (BCD) of the Biodiversity, Conservation and Science Directorate in the Environment, Energy and Science Group of the Department of Planning, Industry and Environment. I appreciate the opportunity to provide input.

We understand the objective of the Planning Proposal (PP) is to permit the creation of a neighbourhood Community Title Scheme comprising up to 15 neighbourhood lots, with one dwelling permitted on each of those lots. One (association) lot is also proposed which would contain the Yankee Creek waterway and suitable riparian buffers.

We have reviewed the documents supplied and advise that several issues are apparent with the strategic biodiversity assessment. These are discussed in detail in **Attachment 1** to this letter.

In summary, the BCD recommends that:

1. The ecological assessment should be updated to reflect the intention of the PP to facilitate a community title subdivision, rather than a rezoning to R5 – Large Lot Residential.
2. Given the known areas of High Environmental Value (HEV) occurring in the planning area, the PP should rezone those areas to an appropriate environmental protection zone.
3. To accord with the Northern Council E Zone Review Recommendations Report:
  - a. A determination should be made as to the primary use of the land over the preceding two-year period; and
  - b. If the primary use of the land is identified as environmental conservation or environmental management, then the planning proposal should be amended to rezone those parts of the site with verified E zone criteria to the appropriate E2 and/or E3 zone; and

- c. If the primary use is not environmental conservation or environmental management and the landholder does not agree to an E zone, then the council should consider applying a suitable non-E zone, and, if appropriate, a biodiversity overlay, and/or another relevant overlay if the land is in a drinking water catchment, steep land and/or with coastal or flooding risk.
4. If the council determines that E zones are not an available (or suitable) option for the planning area, then a suitable planning mechanism, such as a planning agreement, should be identified and implemented as part of the PP to ensure that the association lot:
    - a. includes the highest biodiversity values present within the planning area, such as Yankee Creek and 30 m either side of the waterway, areas of less degraded rainforest, and those parts of the planning area that contain threatened flora species and their habitats; and
    - b. is subject to ongoing management, including the restoration and rehabilitation of degraded parts of the site. This should be formalised through a vegetation restoration and management plan.

Our comments on the flood assessment prepared for the PP will be provided under separate cover.

If you have any questions about this advice, please do not hesitate to contact Ms Nicky Owner, Senior Conservation Planning Officer, at [nicky.owner@environment.nsw.gov.au](mailto:nicky.owner@environment.nsw.gov.au) or 6659 8254.

Yours sincerely

Dimitri Young

30 July 2021

**DIMITRI YOUNG**  
**Senior Team Leader Planning, North East Branch**  
**Biodiversity and Conservation**

Enclosure: Attachment 1: Detailed BCD Comments – Planning Proposal 31 Alidenes Road, Wilsons Creek

## **Attachment 1: Detailed BCD Comments – Planning Proposal 31 Alidenes Road, Wilsons Creek**

The Biodiversity and Conservation Division (BCD) has reviewed the Planning Proposal (PP) for 31 Alidenes Road, Wilsons Creek, and the Ecological Assessment prepared by Biodiversity Assessments and Solutions, dated 30 November 2018, and we provide the following comments.

### **1. Background**

The PP relates to land located at Wilsons Creek and described as Lot 38 in DP 1059938, henceforth referred to as 'the planning area'.

The planning area is 12.27 ha, fronts Alidenes and Wilsons Creek Roads and is located approximately 4.5km south west of Mullumbimby. It is located immediately north of the old Mullumbimby (hydro-electric) power station.

The planning area is currently zoned RU2 Rural Landscape under the Byron Local Environmental Plan 2014 (LEP 2014) and has a minimum lot size of 40 hectares. It is set in a rural landscape, with zones comprising a mix of RU1 (Primary Production), RU2 (Rural Landscape), R5 (Large Lot Residential) and DM (Deferred Matter) in the immediate vicinity.

The *Byron Shire Rural Land Use Strategy 2017* indicates the site's potential for 'rural lifestyle living opportunities'.

### **2. Objective of the Planning Proposal**

The objective of the PP is to permit the creation of a neighbourhood Community Title Scheme comprising up to 15 neighbourhood lots, with one dwelling permitted on each of those lots. One (association) lot is also proposed which would contain the Yankee Creek waterway and suitable riparian buffers.

Should the PP result in an amendment to LEP 2014, according to the current proposal, the site would retain its RU2 zoning. However, amendments would be made that include the identification of the planning area on the LEP 2014's Multiple Occupancy and Community Title Map, along with a numerical label identifying the maximum number of neighbourhood lots permitted for subdivision (within the meaning of the *Community Land Development Act 1989*).

The PP does not propose a minimum lot size, rather the maximum number of lots and dwellings will be controlled by Clause 4.1B of LEP 2014 in conjunction with the Multiple Occupancy and Community Title Map.

### **3. Strategic Biodiversity Planning Framework**

Based on our review of the PP and the Ecological Assessment, we have identified a discrepancy between the PP and the ecological assessment.

While the PP documentation states its purpose is to amend the LEP 2014 to allow a 15 lot (plus one association lot) community title subdivision, the ecological assessment indicates the intention of the PP is to rezone the site to R5 large lot residential, with a minimum lot size of 3000 m<sup>2</sup>.

*BCD Recommendation:*

1. The ecological assessment should be updated to reflect the intention of the PP to facilitate a community title subdivision, rather than a rezoning to R5 – Large Lot Residential.

In addition, the ecological assessment demonstrates a general lack of understanding of the purpose of an ecological assessment in the context of a planning proposal. There has been no consideration of the strategic assessment requirements of the North Coast Regional Plan 2036 (NCRP) or the Northern Councils E Zone Review Final Recommendations Report (henceforth referred to as the E Zones Review), along with a lack of familiarity with the NSW Threatened Species Scientific Committee's Final Determinations.

### North Coast Regional Plan

The PP is required to demonstrate consistency with the strategic planning framework set out within the NCRP. The NCRP guides the NSW Government's land use planning priorities and decisions in NSW to 2036. Goal 1 of the NCRP seeks to protect the North Coast's biodiversity and environmental values. Under this goal, Direction 2 seeks to enhance biodiversity, coastal and aquatic habitats, and water catchments by using an evidence-based approach to identify areas of high environmental value (HEV) and then protecting these important assets to maintain biodiversity.

Furthermore, Action 2.1 of Direction 2 of the NCRP requires development to be focussed to areas of least biodiversity sensitivity in the region and the implementation of the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of HEV.

Based on information presented within the ecological assessment, spatial data, and following a roadside inspection of the site by the BCD's Mr Paul Houlder on 6 July 2021, we consider the planning area is known to contain several areas of HEV, including:

- i. Confirmed habitat for two threatened flora species.

The ecological assessment has confirmed the presence of the threatened flora species Red Boppell Nut (*Hicksbeachia pinnatifolia*) and Rough-shelled Bush Nut (*Macadamia tetraphylla*) within the planning area.

- ii. Degraded riparian vegetation adjacent to Yankee Creek, which is a third order stream.
- iii. Areas of degraded rainforest which is likely to be representative of the Lowland Rainforest in NSW North Coast Bioregion - Endangered Ecological Community (EEC).

Based on our examination of the floristic data presented within the ecological assessment we advise that much of the 'camphor laurel forest' identified within the planning area is likely to comprise lowland rainforest in NSW North Coast EEC in various condition states. While we acknowledge much of the lowland rainforest vegetation occurring on site is in poor to very poor condition, the NSW Scientific Committee's Final Determination indicates that lowland rainforest, despite the presence of a significant number of weeds, is still considered to comprise EEC.

Therefore, at present, the PP does not accord with the biodiversity directions of the NCRP, given no mechanisms are recommended to protect the HEV known to be present within the planning area. While we understand the Byron Shire Council is working through the zoning of deferred matter and other HEV lands to appropriate E zones as part of separate process, other planning proposals should still address these issues.

### *BCD Recommendation:*

2. Given the known areas of HEV occurring in the planning area, the PP should rezone those areas to an appropriate environmental protection zone.

### Northern Council E Zone Review Recommendations Report

We do, however, appreciate consideration would also need to be made to the requirements of the E Zones Review in determining whether the council is able to apply an E Zone to suitable parts of the planning area.

It is our understanding that the E Zones Review stipulates the primary use test is the first consideration for determining whether an E Zone is warranted on a site currently zoned RU2 – Rural Landscape.

The primary use of the relevant lots is to be identified during the preparation of the PP based on the main use for which the land has been used for the last two years, noting the primary use of the land may vary across a particular property depending on the characteristics of the land.

*BCD Recommendations:*

3. To accord with the Northern Council E Zone Review Recommendations Report:
  - a. A determination should be made as to the primary use of the land over the preceding two-year period; and
  - b. If the primary use of the land is identified as environmental conservation or environmental management, then the planning proposal should be amended to rezone those parts of the site with verified E zone criteria to the appropriate E2 and/or E3 zone; and
  - c. If the primary use is not environmental conservation or environmental management and the landholder does not agree to an E zone, then the council should consider applying a suitable non-E zone, and, if appropriate, a biodiversity overlay, and/or another relevant overlay if the land is in a drinking water catchment, steep land and/or with coastal or flooding risk.

Proposed Community Title Subdivision

It is also our view that in the absence of E Zones, a suitably planned Community Title Subdivision is a useful approach to achieving a suitable rural living lifestyle opportunity, along with the protection and management of HEV lands. To ensure this is achieved at the LEP amendment stage, several recommendations are made below.

*BCD Recommendations:*

4. If the council determines that E zones are not an available (or suitable) option for the planning area, then a suitable planning mechanism, such as a planning agreement, should be identified and implemented as part of the PP to ensure that the association lot:
  - a. includes the highest biodiversity values present within the planning area, such as Yankee Creek and 30 m either side of the waterway, areas of less degraded rainforest, and those parts of the planning area that contain threatened flora species and their habitats; and
  - b. is subject to ongoing management, including the restoration and rehabilitation of degraded parts of the site. This should be formalised through a vegetation restoration and management plan.



Our Ref: C21/393

5 August 2021

The General Manager  
Byron Shire Council  
*Via Planning Portal*

Attention: Mr Alex Caras

Dear Mr Bennett

**Re: PP-2021-2731 Amendment of Byron Local Environmental Plan 2014, Lot 38 DP 1059938, 31 Alidenes Road, Wilsons Creek**

Thank you for providing DPI Fisheries with the opportunity to provide comment on the subject Planning Proposal.

DPI Fisheries is responsible for ensuring that fish stocks are conserved and that there is “no net loss” of key fish habitats upon which they depend. To achieve this, the Coastal Systems Unit assesses activities under Part 4 and 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the *Fisheries Management Act 1994* (FM Act), the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the FM Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)* (DPI Fisheries P&G). In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial fishing and aquaculture, quality recreational fishing and the continuation of Aboriginal cultural fishing within NSW.

It is understood that the subject amendment seeks to amend the BLEP14 to permit a Community Title development comprising up to 15 neighbourhood lots/dwellings, and one lot for association property that includes the Yankee Creek waterway and suitable riparian buffers, with no more than one dwelling to be erected on each neighbourhood lot.

The subject land includes Yankee Creek which is key fish habitat. Key fish habitats are those that are crucial to the survival of native fish stocks. Key fish habitats are often sensitive areas that are highly susceptible to impacts from various factors, particularly development-related activities. Furthermore, the maintenance of good water quality is also an important factor in the survival of native fish stocks. Development-related activities and land use intensification can have negative consequences for water quality.

Examples of activities that may impact key fish habitat that may be associated with land use intensification adjacent to key fish habitat include the construction of new waterway bank revetment structures, waterway access points and pedestrian/vehicle waterway crossings. Examples of how water quality may be impacted by land use intensification include runoff from new development sites and increased freshwater inflows due to additional impervious surfaces. It should also be noted that degradation of native riparian vegetation along New South Wales water courses has been listed as a key threatening

process within the *Fisheries Management Act 1994*, and land use intensification adjacent to waterways is likely to increase the risk of this key threatening process occurring. The DPI Fisheries P&G (refer to section 3.2.4.2) outlines the following policy positions on buffers zones between development and riparian and freshwater vegetation:

- *DPI Fisheries will generally require riparian buffer zones to be established and maintained for developments or activities in or adjacent to TYPE 1 or 2 habitats or CLASS 1-3 waterways (see guidelines below). Riparian buffer zones shall be measured from the top of the bank/drainage depression along CLASS 1 to 3 waterways (see Table 2). Please note that this policy does not apply to developments involving maintenance to existing, or construction of new roads or bridges crossing a waterway, but may apply to developments involving roads that are adjacent to, but not crossing a waterway (e.g. new subdivisions, rezoning proposals involving new access roads, new road developments along a new alignment).*
- *DPI Fisheries will require the design of riparian buffer zones to incorporate the maintenance of lateral connectivity between aquatic and riparian habitat. Installation of infrastructure, terraces, retaining walls, cycle ways, pathways and grass verges within the riparian buffer zone shall be avoided or minimised.*

The DPI Fisheries guidelines for implementing the above policy positions include:

- *DPI Fisheries will assess the width of the riparian buffer zone based on the habitat TYPE and waterway CLASS (see Tables 1 and 2), the possible extent of the disturbance and the susceptibility of the riverbank to erosion. As a guide the following are recommended: TYPE 1, CLASS 1: 100 metres; TYPE 2, CLASS 2-3: 50 metres; TYPE 3, CLASS 3-4: 10-50 metres (Note: details on determining habitat type and waterway class can be found with Tables 1 and 2 of the DPI Fisheries P&G).*

**Given the above policy and guideline positions, DPI Fisheries has no objection to the proposed amendment provided that the riparian buffers to Yankee Creek within the lot for association property that includes the Yankee Creek waterway are consistent with the buffer requirements outlined in the DPI Fisheries P&G.**

If you have any queries, please contact me on 02 6626            or  
[jonathan.yantsch@dpi.nsw.gov.au](mailto:jonathan.yantsch@dpi.nsw.gov.au).

Yours sincerely

Jonathan Yantsch  
**Senior Fisheries Manager, Coastal Systems (North Coast)**  
**Aboriginal Fishing and Marine and Coastal Environments, Primary Industries NSW**