

PLANNING REPORT

Vallances Road, Mullumbimby

Prepared for Byron Shire Council
By Planit Consulting Pty Ltd

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1 Introduction

This planning report has been prepared by Planit Consulting Pty Ltd on behalf of Byron Shire Council (BSC) to assist in the consideration of development and road upgrade options for land referred to as Vallances Road (the site). The site includes 7 land parcels classified as operational land and owned and managed by BSC.

BSC is currently investigating development options for the following land uses at the site including:

- Nursery;
- Natural Burial Ground;
- Affordable Housing;
- Sustainability Centre (Education); and
- Sewer Treatment Plant duplication and transfer from Ocean Shores, including constructed wetland.

It is understood that any or all options may be undertaken in full or possibly in a staged approach following further consideration of the development options by BSC.

The purpose of this planning report is to provide a general overview of planning constraints, approvals pathways and potential assessment requirements for each of the development options.

2 Project Location and Context

The site is located on the northern side of the Brunswick River, approximately 1 kilometre northeast of the Mullumbimby Town Centre. The site is approximately 113 hectares in area and comprises 7 land parcels including Lot 1 DP 952598, Lot 1 DP 129374, Lot 14 DP 251938, Lot 15 DP 251938, Lot 17 DP 251938, Lot 18 DP 251938 and Lot 19 DP 251938 (refer to Figure 2-1). This area of land is currently classified as operational land under provisions of the *Local Government Act 1993* and *Environmental Planning and Assessment Act 1979*.

The site currently features the Brunswick Valley Sewage Treatment Plant (BVSTP) located within Lot 1 DP 129374 in the east of the site and a cluster of buildings located on Lot 1 DP 952598 that features two dwellings and a disused nursery. The site is predominantly cleared and historically used for cattle grazing.

Stands of native vegetation occurs across the site and mostly associated with riparian areas of the Brunswick River. Sections of these riparian areas are mapped Coastal Wetlands under the State Environmental Planning Policy (Resilience and Hazards) 2021 (refer to Figure 2-2). The Coastal Wetlands areas are also mapped Biodiversity Values Land (BVL) under the *Biodiversity Conservation Act 2016* (BV Act). Parts of the site are mapped Koala Habitat under the Byron Coast Comprehensive Koala Plan of Management 2016 (CKPoM) as shown at Figure 2-3.

The Brunswick River is located on the southern boundary of the site and is mapped key fish habitat under the *Fisheries Management Act 1994* (FM Act). The river also forms part of the Cape Byron Marine Park as shown at Figure 2-5.

Topographic levels across the site varies from approximately 2m AHD at the banks of the Brunswick River to 48m AHD at the hilltop east of the former nursery. Review of NSW eSPADE online mapping identifies that the soil landscape across the site consists of Mullumbimby soil landscape across the floodplain and Burringbar soil landscape across elevated areas (above 8m AHD). The limitations of the Mullumbimby soil landscape include flood hazard, localised seasonal waterlogging and moderately erodible soil materials with high shrink-swell. The limitations of the Burringbar soil landscape includes hard setting, erodible, shallow, stony, sodic soils of low fertility with high erosion hazard, steep slopes and high mass movement hazard. Review of the ePlanning Spatial Viewer identifies that low lying areas of the site are mapped as being prone to acid sulfate soil (ASS).

The site is mapped as being flood prone under BSC online mapping (refer to Figure 2-7) with significant areas also mapped as high flood hazard and intermediate flood hazard category under the North Byron Floodplain Risk Management Study (refer to Figure 2-8).

Review of the BSC online mapping identifies that there are no cattle dip sites or registered contaminated land within 500 m of the activity area with the nearest site being located approximately 1.0 km northwest of the site. The EPA contaminated lands register identifies no registered contamination sites within the site and the nearest registered site is a dip site located at Left Bank Road (Lot 1 DP 300311) located 5km west of the site. The BSC DCP 2014 Chapter B6 recommends a buffer of 400m from a sewage treatment plant regarding residential accommodation and education establishments.

Forested areas of the site are mapped as bushfire prone land as shown at Figure 2-9. Low lying areas of Lot 1 DP 952598 is mapped Regionally Significant Farmland (non-contiguous).

The activity is located within the cultural heritage land boundary of the Tweed Byron Local Aboriginal Heritage Land Council. The site does not include Crown Land. Review of the Native Title register, and NSW

Native Title Vision identifies that the site is not subject to a native title claim. Search of the AHIMS database identified one Aboriginal site recorded within the general locality of the BVSTP. Searches of the State Heritage Register, Register of the National Estate and LEP Maps confirm that the site does not comprise State heritage, National heritage or a Local heritage item.

The site is accessed from Coolamon Scenic Drive via Vallances Road. Within the site Vallances Road forks off with the main section of the road linking into the BVSTP via a narrow sealed road formation with passing bays. The second road section off Vallances Road (referred to the Old Nursery Access Road) links into the former nursery with a narrow gravel formation.

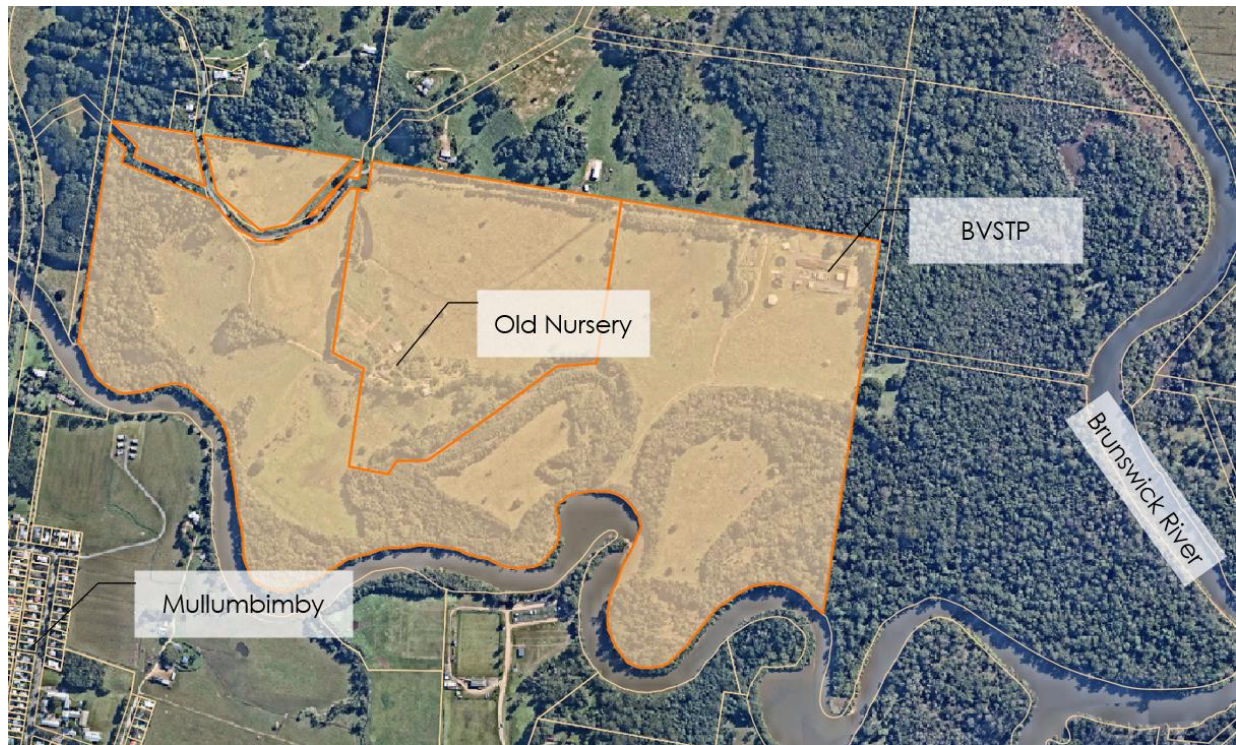


Figure 2-1 **The site.**

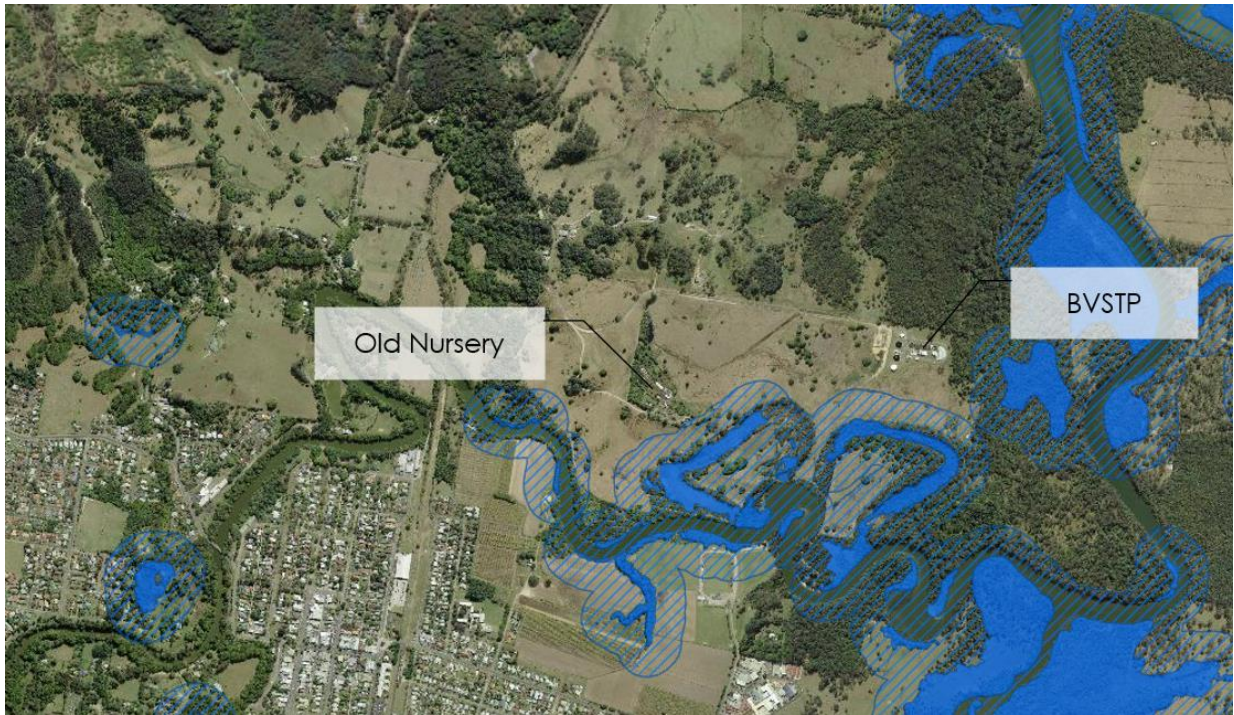


Figure 2-2 SEPP Coastal Wetland mapping.

(Source: ePlanning Spatial Viewer mapping)

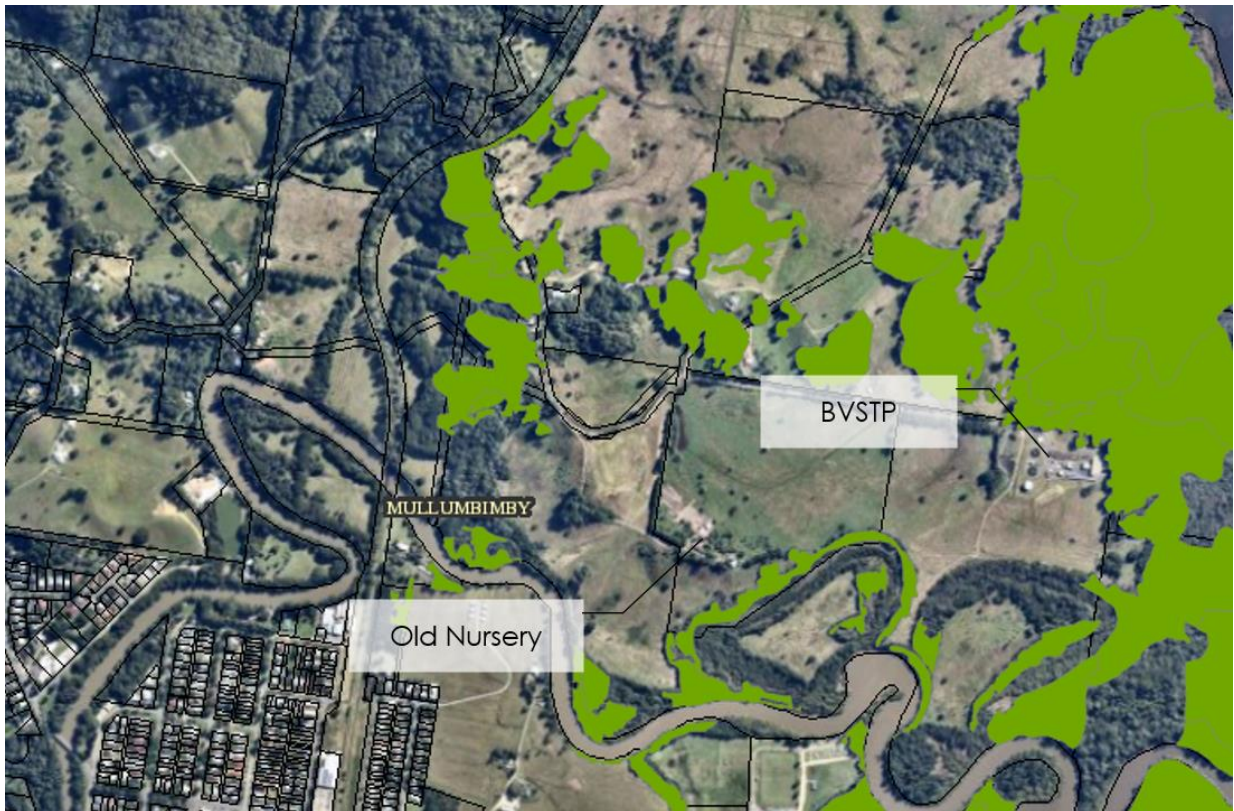


Figure 2-3 Koala Habitat mapping.

(Source: BSC Online mapping)

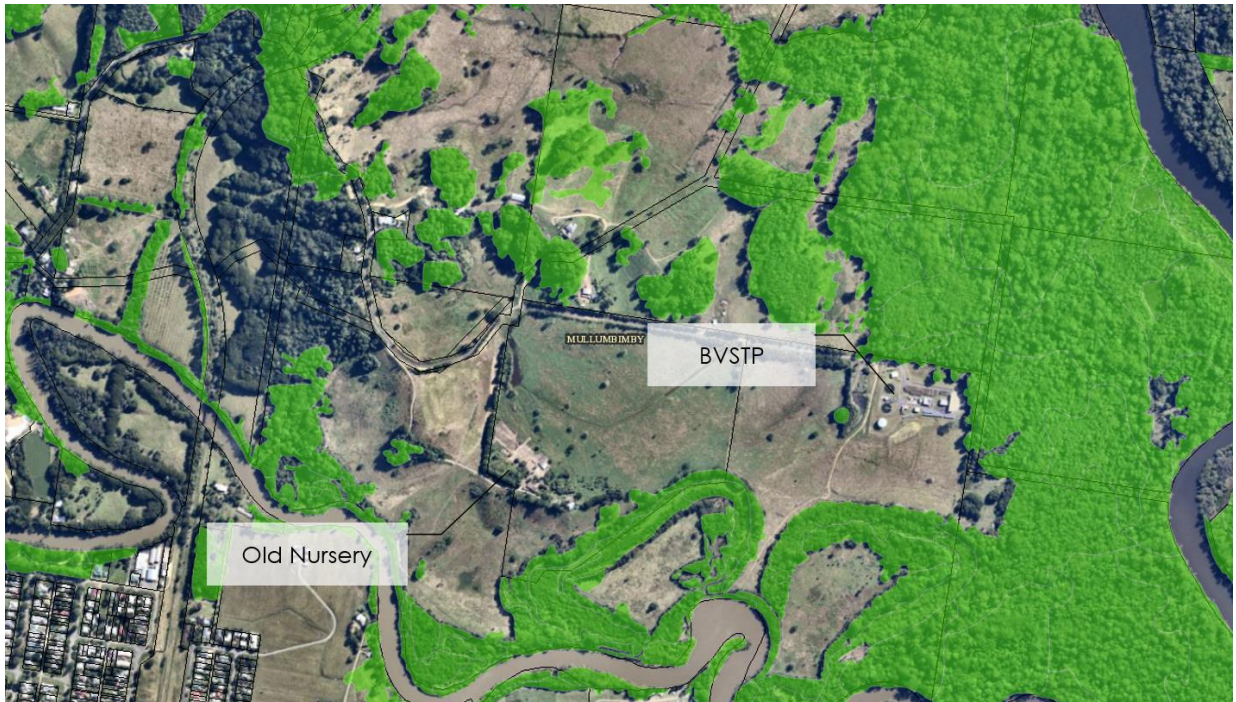


Figure 2-4 Area of High Environmental Value.

(Source: BSC Online mapping)

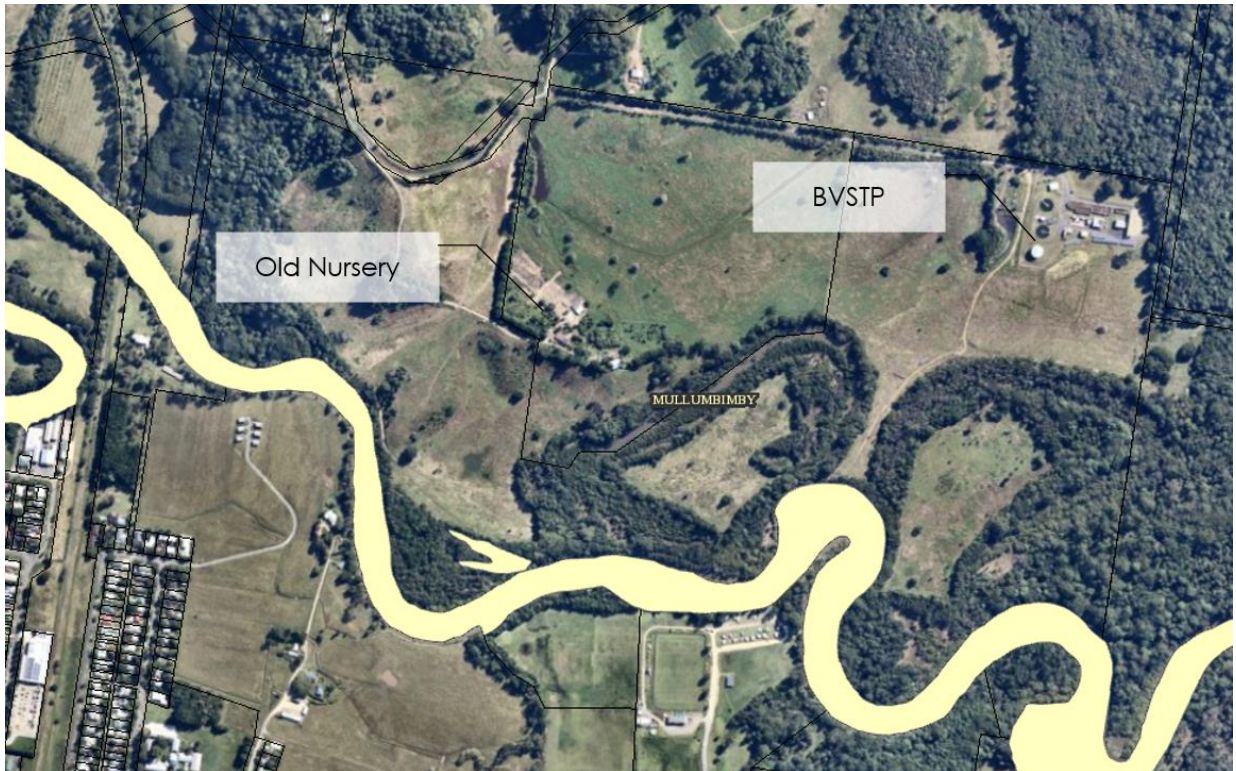


Figure 2-5 Cape Byron Marine Park Boundary.

(Source: ePlanning Spatial Viewer mapping)



Figure 2-6 Cape Byron Marine Park Boundary.

(Source: ePlanning Spatial Viewer mapping)

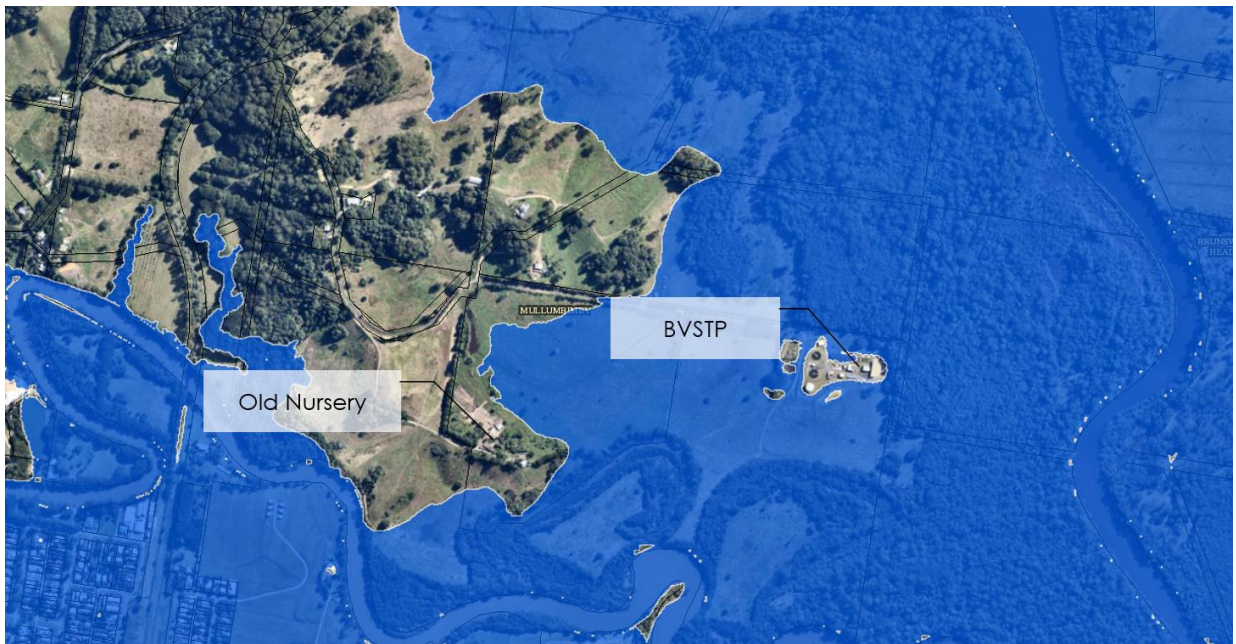


Figure 2-7 Flood Planning Area.

Source: BSC Online mapping)

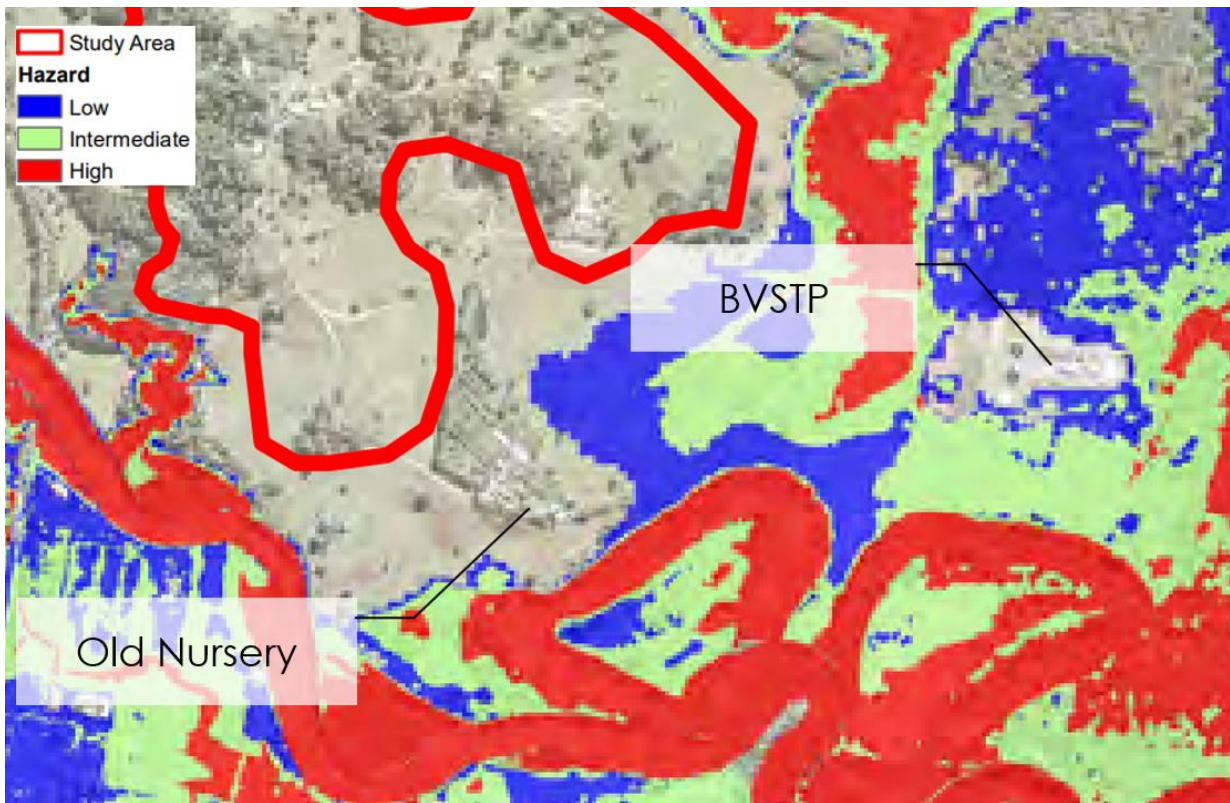


Figure 2-8 North Byron Floodplain Risk Management Study mapping.

(Source: North Byron Floodplain Risk Management Study)

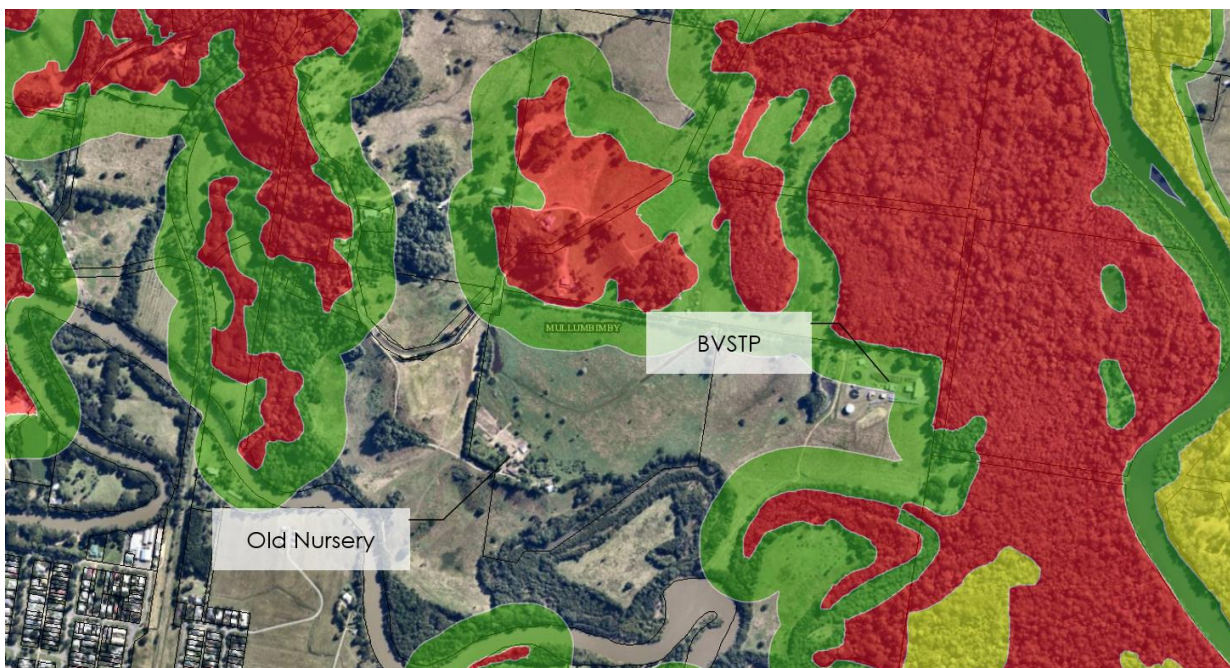


Figure 2-9 Bushfire Prone Land

(Source: BSC Online mapping)

3 Site Zoning

The site is zoned under both the Byron Local Environmental Plan 1988 (LEP 1988) and Byron Local Environmental Plan 2014 (LEP 2014). Under the LEP 2014 the site is zoned RU1 Primary Production, RU2 Rural Landscape and DM Deferred Matters. The DM areas of the site are zoned 1A General Rural, 1B1 Agricultural Protection and 7B Coastal Habitat under the LEP 1988. The site zoning is shown at Figure 3-1.

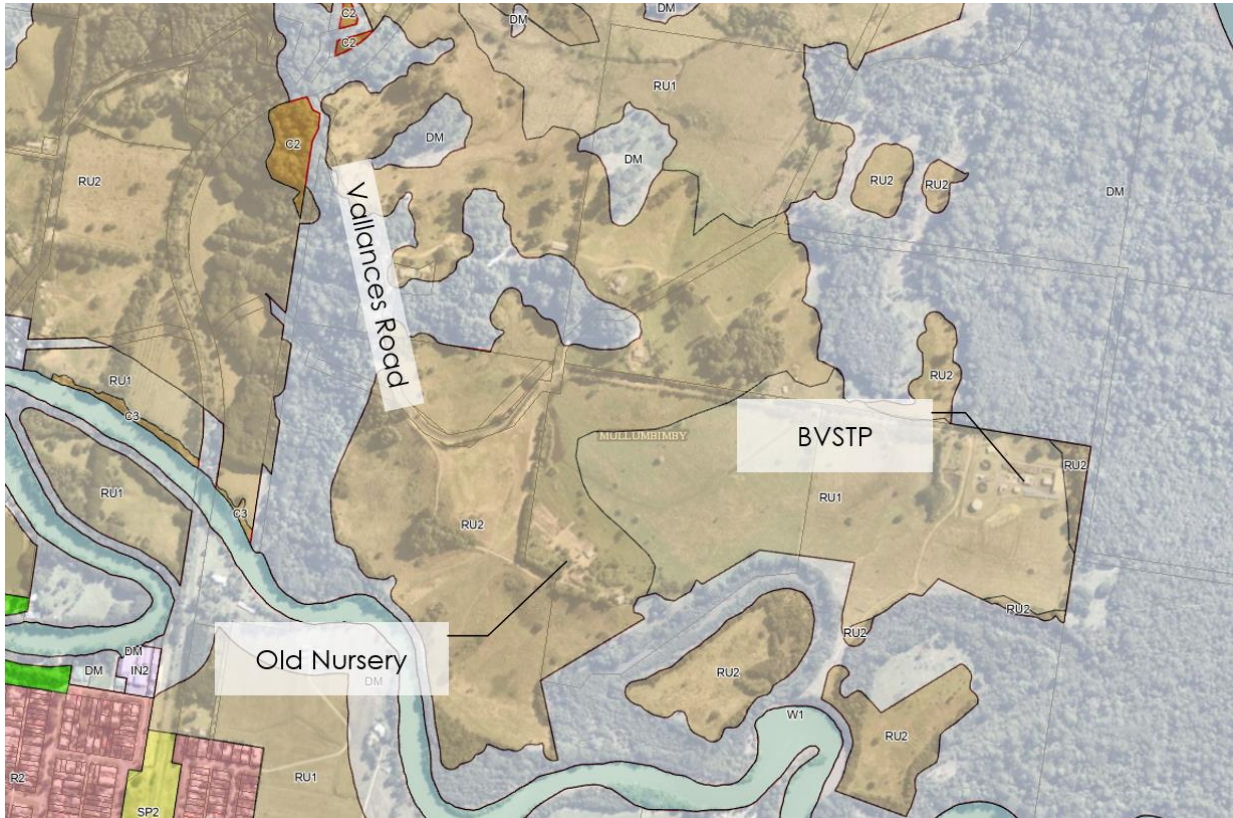


Figure 3-1 Site zoning.

(Source: BSC Online mapping)

4 Land Uses and Planning Definitions

BSC is investigating development options for the following land uses at Vallances Road including:

- Nursery;
- Natural Burial Ground;
- Affordable Housing;
- Sustainability Centre (education); and
- Sewer Treatment Plant duplication and transfer from Ocean Shores, including constructed wetland.

Table 4.1 identifies the applicable NSW planning definitions regarding the proposed development options being investigated by BSC.

Table 4.1 Land Use Definitions

Development Option	NSW Planning Definition	
Nursery	Plant Nursery (LEP)	means a building or place the principal purpose of which is the retail sale of plants that are grown or propagated on site or on an adjacent site. It may include the on-site sale of any such plants by wholesale and, if ancillary to the principal purpose for which the building or place is used, the sale of landscape and gardening supplies and equipment and the storage of these items Note: Plant nurseries are a type of retail premises
Natural Burial Ground	Cemetery (LEP)	means a building or place used primarily for the interment of deceased persons or pets or their ashes, whether or not it contains an associated building for conducting memorial services
Affordable Housing	Affordable Housing (LEP and EPA Act)	means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument. Note: residential accommodation means a building or place used predominantly as a place of residence
Sustainability Centre	Educational Establishment (LEP and State Environmental Planning Policy (Transport and Infrastructure) 2021)	means a building or place used for education (including teaching), being— (a) a school, or (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act. school means a government school or non-government school within the meaning of the Education Act 1990.
Sewer Treatment Plant duplication	Sewage Treatment Plant (LEP and State Environmental Planning Policy (Transport and Infrastructure) 2021 under parent definition of sewerage system)	means a building or place used for the treatment and disposal of sewage, whether or not the facility supplies recycled water for use as an alternative water supply.

It is noted that a community facility is defined under the NSW Planning framework as a building or place-

- a) owned or controlled by a public authority or non-profit community organisation, and
- b) used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an **educational establishment**, hospital, **retail premises**, place of public worship or **residential accommodation**.

Therefore, the community facility definition cannot be applied to the proposed sustainability centre, affordable housing, natural burial ground or nursery under the NSW planning framework.

Further detail on the application of planning constraints, development requirements and approvals relevant to each development for is identified at Section 5.

5 Development Options Planning Review

5.1 Nursery

Nursery – Plant Nursery	
Address	125 Vallances Road Mullumbimby
Lot/DP	Lot 1 DP 952598
Planning definition	Plant nursery
Site constraints	<ul style="list-style-type: none"> • Flood Prone land; • Bushfire Prone land; • Native Vegetation; • Koala Habitat; and • Regionally Significant Farmland (non-contiguous).
Development siting and scale	<p>Siting: It is assumed that BSC would establish the nursery in the general location of the former nursery and existing dwellings. This location already has road access and is suitably located regarding bushfire and flood hazard constraints. It is recommended that the footprint of any future plant nursery be located outside land mapped Regionally Significant Farmland to protect that area for agricultural uses.</p> <p>Scale: BSC has indicated that any future nursery will retain the same scale as previously operated. This is approximately 1.9 hectares in area.</p>
Planning Pathway	<p>Demolition of existing structures/buildings: State Environmental Planning Policy (Transport and Infrastructure) 2021 permits the demolition of buildings (non heritage) carried out by or on behalf of a council within operational land as development permitted without consent pursuant to clause 2.67 and 2.73 (3) of the SEPP. Requires preparation of a Review of Environmental Factors (REF) to be approved by BSC.</p>

Development indicative location shown green



Nursery – Plant Nursery

Plant nursery development

Development for the purpose of a plant nursery may be undertaken as **development permitted with consent** within the RU1 and RU2 zones under the LEP 2014. Requires a development application (DA) to be approved by BSC.

Note: Council related development over \$5 million is regionally significant development in accordance with State Environmental Planning Policy (Planning Systems) 2021.

Note: It is understood that the previous nursery operated on the site up until 2008. Therefore, that legal existing use has expired under provisions of the *Environmental Planning and Assessment Act 1979 (s4.66)*.

Approval documentation (to be confirmed by BSC)

REF for demolition works will require:

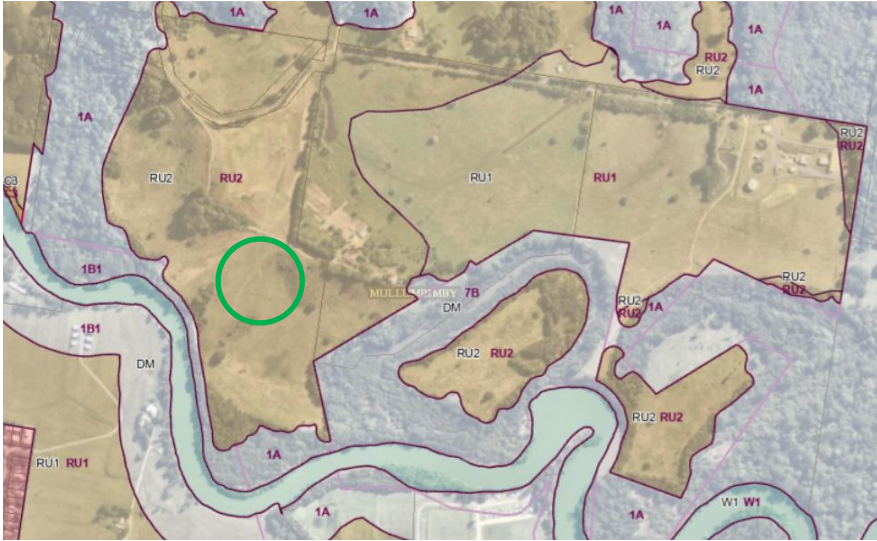
- REF report to be approved by BSC;
- Overall site plan (existing);
- Demolition plans; and
- Biodiversity assessment if tree removal required.

DA for Plant Nursery will require:

- Statement of Environmental Effect Report;
- Overall site plan (existing);
- Overall site plan (proposed);
- Architectural plans for buildings/structures;
- Biodiversity assessment if tree removal required;
- Traffic and parking assessment;
- Onsite sewer assessment;
- Aboriginal cultural heritage assessment;
- Site waste minimisation and management plan; and
- Bushfire hazard assessment.

5.2 Natural Burial Ground

Natural Burial Ground – Cemetery

Site Address:	125 Vallances Road Mullumbimby	Development indicative location shown green 
Site Lot/DP	Lot 1 DP 129374	
Planning definition	Cemetery	
Site constraints	<ul style="list-style-type: none"> • Flood Prone land; • Bushfire Prone land; • Native Vegetation; and • Koala Habitat. 	
Development siting and scale	<p>Siting: It is assumed that the proposed location of the natural burial ground is as outlined on the BSC website. This location has road access and is suitably located regarding bushfire and flood hazard constraints. The proposed location is also located within a cleared area. Noting that the siting of the cemetery is restricted to the RU2 zone (see comments below).</p> <p>Scale: BSC has indicated that up to 150 natural burial plots would be required. An assumption has been made that each plot would occupy an area of approximately 15m². This is based on online investigation identifying that natural burial plots are 1.2m wide by 2.4m long. An additional buffer of approximately 1 m has been added to the standard plot size to enable access to each plot for excavation. Therefore, an area of approximately 0.225 hectares would be required for the natural burial ground.</p>	
Planning Pathway	<p>Cemetery development Development for the purpose of a cemetery may be undertaken as development permitted with consent within the RU2 zone under the LEP 2014. Requires a development application (DA) to be approved by BSC. Noting that cemeteries are prohibited in the RU1 zones. Note: Council related development over \$5 million is regionally significant development in accordance with State Environmental Planning Policy (Planning Systems) 2021.</p>	

Natural Burial Ground – Cemetery

Approval documentation
(to be confirmed by BSC)

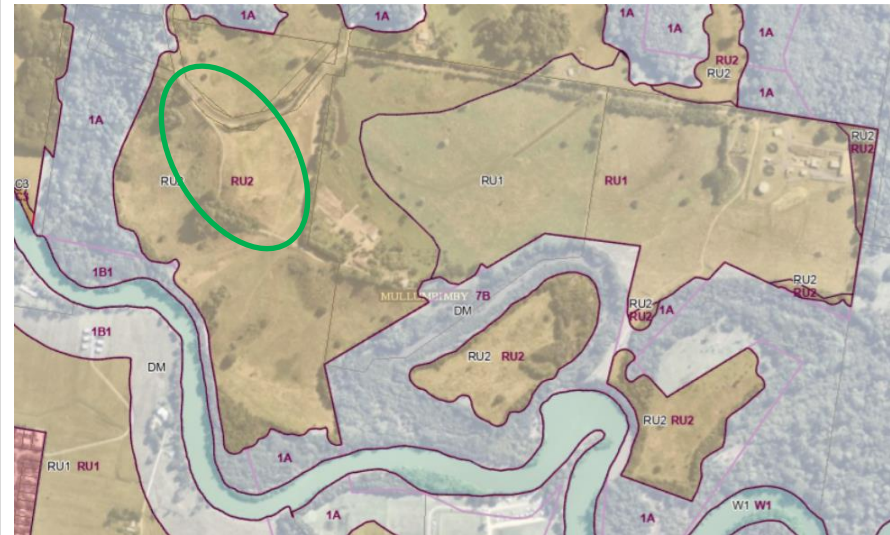
DA for Cemetery will require:

- Statement of Environmental Effect Report;
- Overall site plan (existing);
- Overall site plan (proposed concept);
- Architectural plans for any buildings/structures (if required);
- Biodiversity assessment if tree removal required;
- Traffic and parking assessment;
- Onsite sewer assessment (if amenities required);
- Aboriginal cultural heritage assessment;
- Site waste minimisation and management plan; and
- Bushfire hazard assessment (if buildings/structures required).

5.3 Affordable Housing

Affordable Housing	
Site Address:	125 Vallances Road Mullumbimby
Site Lot/DP	Lot 1 DP 129374 and/or Lot 1 DP 952598
Planning definition	Affordable Housing
Site constraints	<ul style="list-style-type: none"> • Flood Prone land; • Bushfire Prone land; • Native Vegetation; • Koala Habitat; • STP buffer 400m; and • Regionally Significant Farmland (non-contiguous).
Development siting and scale	<p>Siting: It is assumed that the most appropriate location for any affordable housing options will be adjoining the existing internal road network and outside areas identified as bushfire prone land, flood prone, koala Habitat, STP buffer and Regionally Significant Farmland.</p> <p>Scale: Due to current planning constraints affordable housing options are limited to the approval of dwelling houses, dual occupancy or dwelling house with secondary dwelling based on the limitation of dwelling entitlements afforded to the land (see below).</p>
Planning Pathway	<p>Affordable Housing options</p> <p>The sites RU1 and RU2 zoning precludes development options for affordable housing under the State Environmental Planning Policy (Housing) 2021. Similarly, the RU1 and RU2 zoning of the site does not permit caravan parks under the LEP and therefore a Manufactured Home Estate is prohibited under the provisions of the State Environmental Planning Policy (Housing) 2021 and the LEP.</p> <p>Dwelling houses, dual occupancies and secondary dwellings are permitted with development consent within the RU1 and RU2 zoning however the number of dwellings permitted within the site is restricted by the dwelling entitlements afforded to the site. Current dwelling entitlements for the property will require further investigation. Dwelling entitlements may be created by the subdivision of land and creation of new lots noting the site has a minimum lot size of 40 hectares and a total site area of approximately 113 hectares. Subdivision</p>

Development indicative location shown green



Affordable Housing

potential for the site is however restricted due to the site constraints and proposed duplication of the BVSTP. Any new dwelling houses, dual occupancies and secondary dwellings require a development application (DA) to be approved by BSC.

Complying development may also be pursued for rural dwelling houses where consistent with the requirements of Part 3A of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

It is possible to pursue a **planning proposal** to amend the LEP to permit affordable housing options at this site where the proposal is consistent with an existing adopted residential strategy and the proposal contains sufficient merit for affordable housing such as good access to services such as transit, day care, grocery stores and local clinics as well as open space.

The site is located approximately 1.1 km from the Mullumbimby town centre. There are no pedestrian access points from the site directly into town and direct access to town is also restricted by the Brunswick River. The town centre is approximately 3.5 km via local roads and this is not considered to be a suitable walking distance to the nearest commercial areas. There are no public transport services presently accessing the site. Given the restricted transport options to Mullumbimby town centre the site does not present a strong option for affordable housing.

It is noted that BSC has prepared a planning proposal to enable an amendment to the LEP 2014 that will permit moveable dwellings on Council owned land for purposes of temporary accommodation. If successful, the planning proposal may enable moveable dwellings to be located within the site providing temporary affordable housing options.

Note: Council related development over \$5 million is regionally significant development in accordance with State Environmental Planning Policy (Planning Systems) 2021.

Approval documentation
 (to be confirmed by BSC)

DA for Dwellings will require:

- Statement of Environmental Effect Report;
- Overall site plan (existing);
- Overall site plan (proposed concept);
- Architectural plans for any buildings/structures (if required);
- Biodiversity assessment if tree removal required;
- Traffic and parking assessment;
- Onsite sewer assessment (if amenities required);
- Aboriginal cultural heritage assessment;
- Site waste minimisation and management plan; and
- Bushfire Hazard Assessment.

5.4 Sustainability Centre - Education

Sustainability Centre - Education

Site Address:	125 Vallances Road Mullumbimby
Site Lot/DP	Lot 1 DP 129374 and/or Lot 1 DP 952598
Planning definition	Educational establishment
Site constraints	<ul style="list-style-type: none"> • Flood Prone land; • Bushfire Prone land; • Native Vegetation; • Koala Habitat; • STP buffer 400m; • Regionally Significant Farmland (non-contiguous).
Development siting	<p>Siting: It is assumed that the most appropriate location for the educational establishment will be adjoining the existing internal road network and outside areas identified as bushfire prone land and flood hazard constrained, Koala Habitat, STP buffer and Regionally Significant Farmland. Noting the siting of the educational establishment is restricted to the RU2 zone (see comments below).</p> <p>Scale: It is assumed that the education establishment would cater for up to 2 or 3 classes; up to 90 students. In order to comply with the National construction Code a classroom must have a minimum size of floor area of 65m². Therefore, to cater for up to 3 classes and administration the development footprint could be potentially 260m² and staffing requirements of up to 6 staff. It is assumed the education establishment would be reliant on buses to transport groups to and from the centre.</p>

Development indicative location shown green



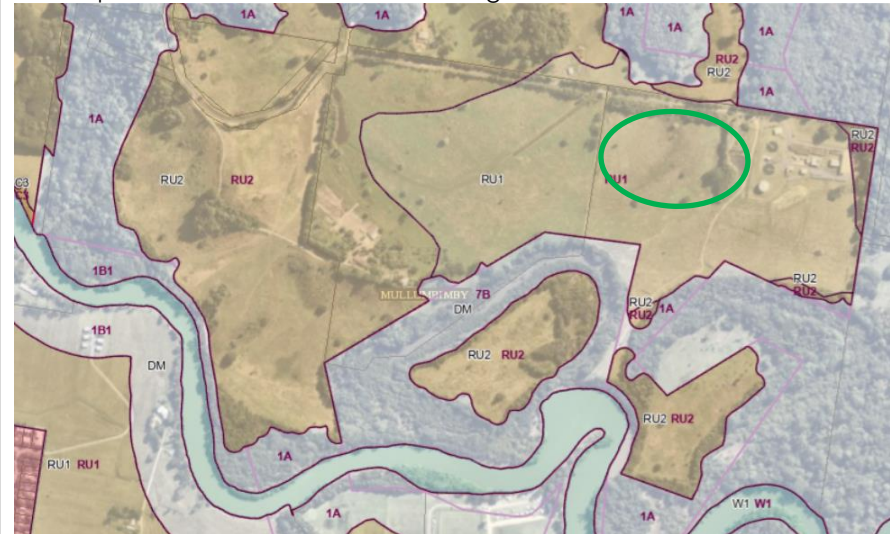
Sustainability Centre - Education

Planning Pathway	<p>Educational establishment</p> <p>Development for the purpose of a new school may be carried out by any person with development consent on land in the RU2 zone in accordance with clause 3.36 of State Environmental Planning Policy (Transport and Infrastructure) 2021. These provisions do not apply to the RU1 Zone under the SEPP.</p> <p>Development for the purpose of new university may be carried out by any person with development consent on land in the RU2 zone in accordance with clause 3.46 of State Environmental Planning Policy (Transport and Infrastructure) 2021. These provisions do not apply to the RU1 Zone under the SEPP.</p> <p>Note: Council related development over \$5 million is regionally significant development in accordance with State Environmental Planning Policy (Planning Systems) 2021</p>
Approval documentation (to be confirmed by BSC)	<p>DA for Education Establishment will require:</p> <ul style="list-style-type: none"> • Statement of Environmental Effect Report; • Overall site plan (existing); • Overall site plan (proposed concept); • Architectural plans for any buildings/structures; • Biodiversity assessment if tree removal required; • Traffic and parking assessment; • Onsite sewer assessment; • Aboriginal cultural heritage assessment; • Site waste minimisation and management plan; and • Bushfire Hazard Assessment.

5.5 Sewer Treatment Plant Duplication

Sewerage system	
Site Address:	125 Vallances Road Mullumbimby
Site Lot/DP	Lot 1 DP 129374
Planning definition	Sewerage treatment plant (sewerage system)
Site constraints	<ul style="list-style-type: none"> • Flood Prone land; • Bushfire Prone land; • Native Vegetation; • Koala Habitat; • Regionally Significant Farmland (non-contiguous).
Development siting and scale	<p>Siting: It is assumed that the STP duplications will adjoin the existing facility and the development area filled to address flooding issues at the site.</p> <p>Scale: It is assumed that the STP duplication will not result in a significant change in staffing with up to 3 permanent staff required at the facility.</p>
Planning Pathway	<p>Sewerage treatment plant (sewerage system) Development for the purpose of a sewage treatment plant or biosolids treatment facilities may be carried out by or on behalf of a public authority without consent on land in the RU2 zone in accordance with clause 3.36 of State Environmental Planning Policy (Transport and Infrastructure) 2021.</p> <p>However, pursuant to Schedule 3 of the Environmental Planning and Assessment Regulation 2021, development for the purposes of a sewerage system or works is designated development if the system or works have an intended processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day, or have an intended processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day and is located on a floodplain.</p> <p>As the sewage treatment plant will have an intended processing capacity for more than 20 persons and will be located on a floodplain the proposal is designated development requiring development consent and the preparation of an Environmental Impact Statement (EIS).</p>

Development indicative location shown green



Sewerage system

BSC will therefore be required to seek Secretary's environmental assessment requirements (SEARs) from the NSW Department of Planning and Environment. This will require lodgment of a scoping report to the Department who will later issue the SEARs that identify all information needed to be included within the EIS.

Note: Council related development over \$5 million is regionally significant development in accordance with State Environmental Planning Policy (Planning Systems) 2021.

Note: Sewerage treatment systems that process more than 2,500 persons equivalent capacity or 750 kilolitres per day (whichever is the greater) requires an Environmental Protection License under the *Protection of the Environment Operations Act 1997*.

Approval documentation
(to be confirmed via issue of SEARs)

To be confirmed via issue of SEARs



CONSULTING

