



Planning Proposal
for Amendment of Byron Local Environmental Plan 2014
– Lot 38 DP 1059938
31 Alidenes Road, Wilsons Creek

Byron Shire Council

Authority ref: 26.2019.1.1

V4 REVISED Gateway Version (#E2021/29384)

for 11 March 2021 Planning Meeting

Date: February 2021

[Key changes shown as ~~strike through~~ for deletions or highlighted **yellow** for revised wording]

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Part 1 Introduction

Objective and intended outcomes

The objective of this planning proposal is to permit the creation of a neighbourhood Community Title scheme comprising up to 15 neighbourhood lots/dwellings, and one lot for association property that includes the Yankee Creek waterway and suitable riparian buffers on the subject land. No more than one dwelling will be permitted on each lot.

Property details and existing zones

This planning proposal relates to land located at Wilsons Creek next to the old power station, approximately 4.5 kilometres from Mullumbimby (Figure 1). The land is described as Lot 38 DP 1059938. It is an irregular shaped lot with an area of 12.27 hectares. The street address is 31 Alidenes Road, Wilsons Creek. The subject land has approximately 550 metres frontage to Alidenes Road and approximately 170 metres frontage to Wilsons Creek Road. However, much of the Wilsons Creek Road frontage is occupied by an access road to the adjacent old Mullumbimby power station.

The site is burdened by a 10-metre wide Right of Carriageway that provides access to Lot 1 DP 701525 (a neighbouring lot) from Alidenes Road. It is also burdened by two 10-metre wide easements for pipelines that stem from the old power station and run along the Wilsons Creek Road boundary.



Figure 1: Subject land – 31 Alidenes Road, Wilsons Creek

The subject land is currently zoned entirely RU2 Rural Landscape under Byron LEP 2014 (BLEP14) (see starred ★ area in Figure 2).

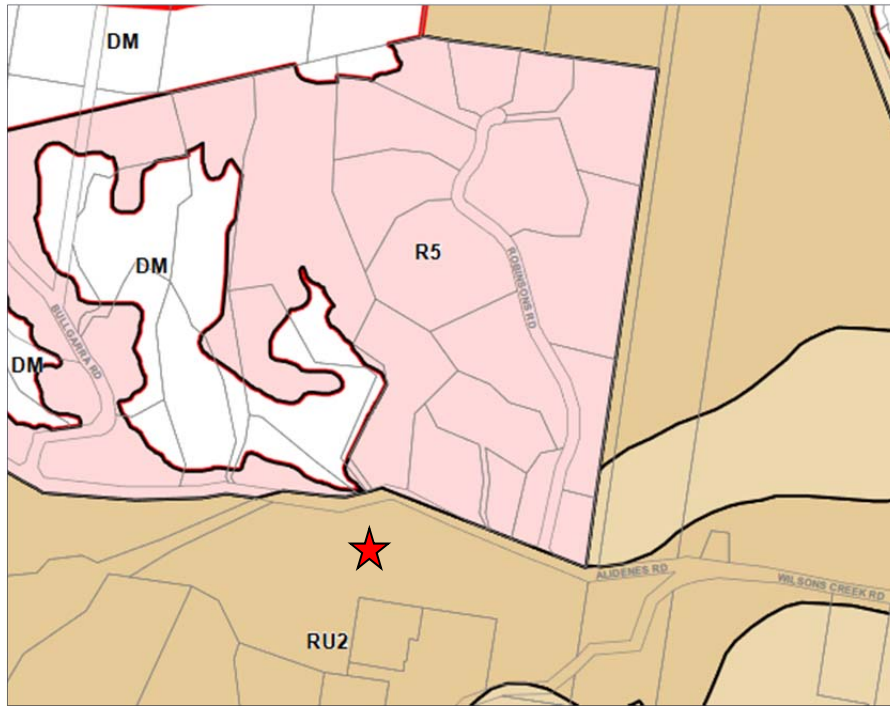


Figure 2: Existing land use zones under Byron LEP 2014 – RU2 Rural Landscape

The land subject to BLEP14 has a building height limit of 9 metres (Figure 3) and a Minimum Lot Size of 40 hectares (Figure 4).

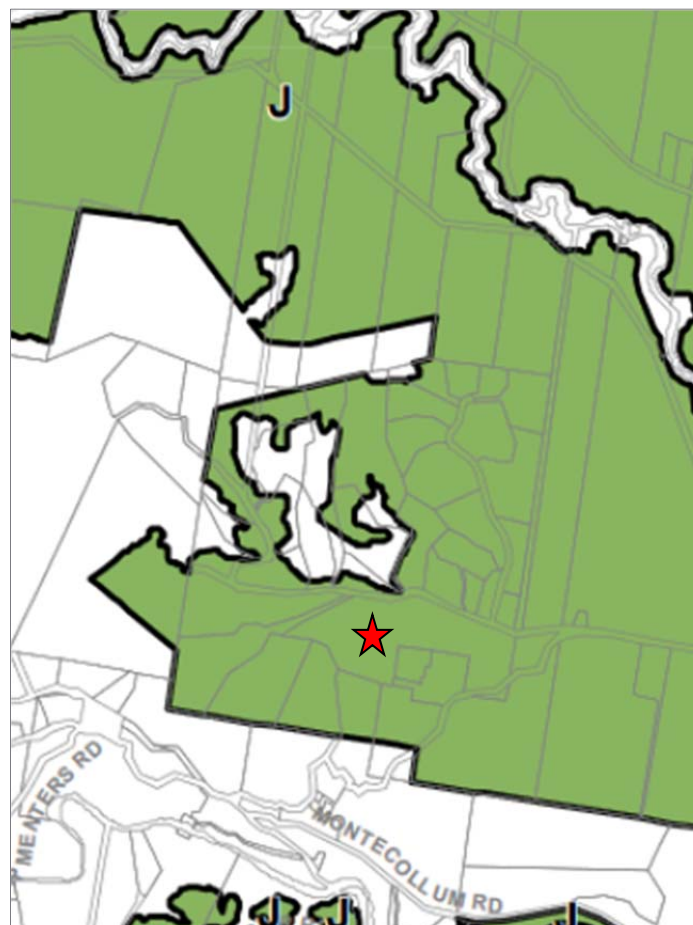


Figure 3: Height of Buildings Map under Byron LEP 2014 – site is 9 metres

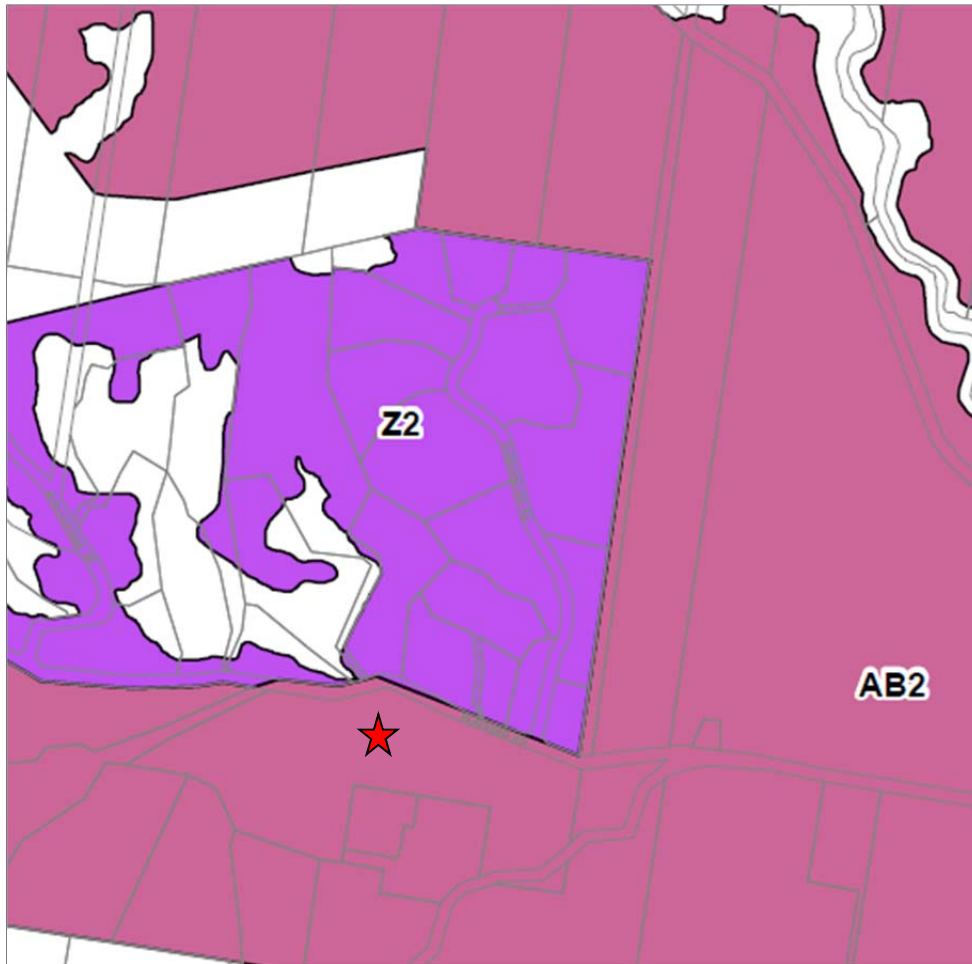


Figure 4: Minimum Lot Size Map under Byron LEP 2014 – site is 40 hectares

The subject land is not identified as being within the Wilsons River Drinking Water Catchment. It is in the Brunswick River catchment.

Background

The subject land has been largely cleared of native vegetation in the past. It includes an old farmhouse located near Alidenes Road, which has been knocked down recently, and an old farm house and dairy near Wilsons Creek Road. It has been used for dairy farming and grazing since the mid-1960s with no evidence of intensive horticulture. A small part of the site at its eastern edge is mapped as regionally significant farmland under the Northern Rivers Farmland Protection Project (Figure 5). It is crossed by the upper reaches of Yankee Creek. Parts of the site are flood prone in 1% AEP storm events when modelled for the 2100 climate change scenario (Figure 6). The old Mullumbimby hydro-electric power station (constructed in 1925) is located immediately to the south of the subject land. It no longer produces hydro-electric power, but is used as a relay station on the wider electricity grid and houses a diesel back-up generator.

In July 2018, the (then) NSW Department of Planning and Environment (DPE) endorsed the *Byron Shire Rural Land Use Strategy 2017*. Map 3 of the Strategy includes the subject land as a potential area for 'rural lifestyle living opportunities'.

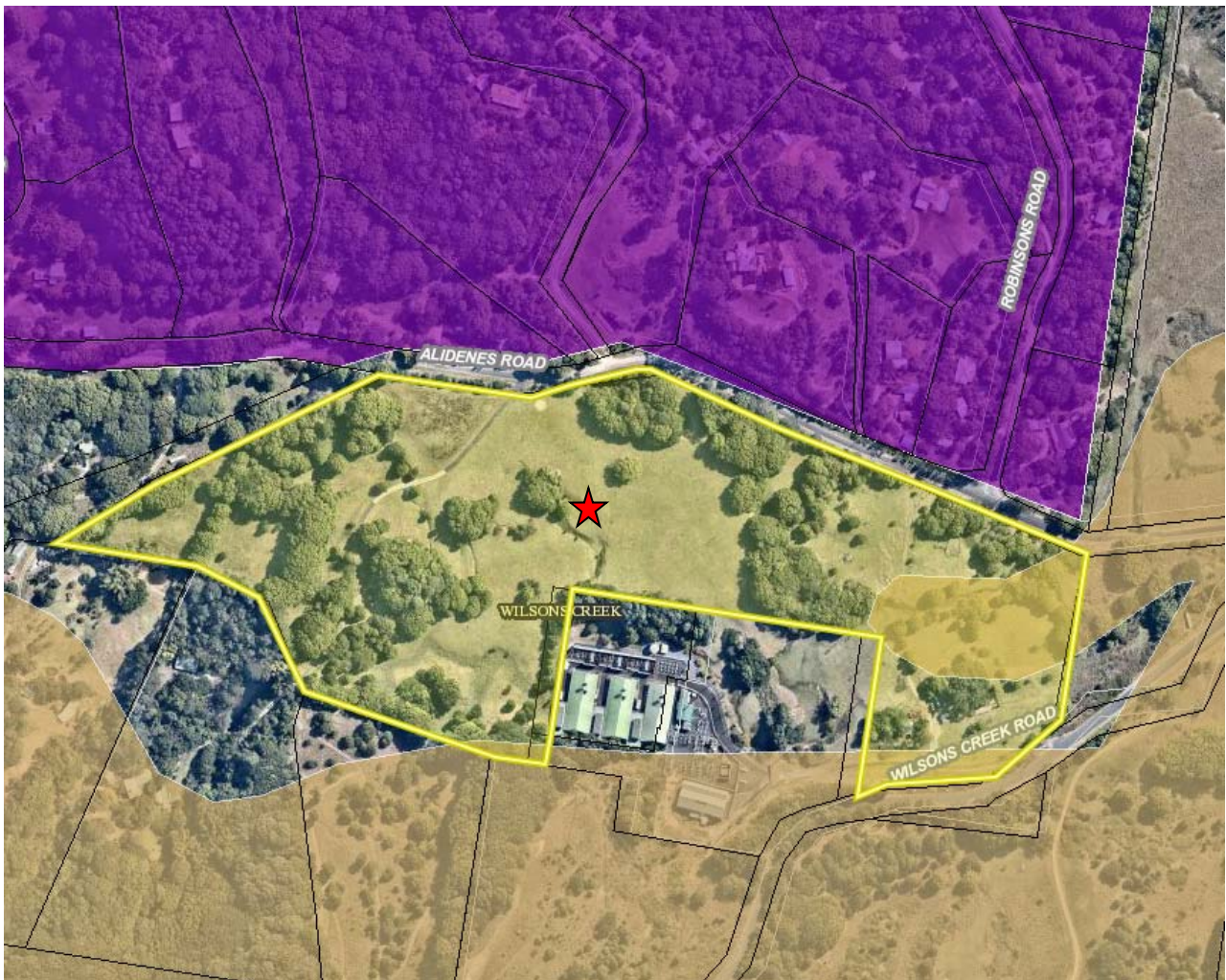


Figure 5: Northern Rivers Farmland Protection Project mapping – brown is regionally significant land



Figure 6: 2100 Climate Change flood extent for 1% AEP event

Part 2 Explanation of provisions

The planning proposal seeks to amend ~~Schedule 4~~ of 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. The association lot will include the main waterway on the site. No more than one dwelling will be erected on each neighbourhood lot. The subject land will be identified on the relevant map to BLEP14 (Additional Permitted Uses) [Multiple Occupancy and Community Title Map](#) to BLEP14 along with a numerical label specifying the maximum number of neighbourhood lots (within the meaning of the Community Land Development Act 1989) permitted for subdivision (Figure 7).

The current [RU2](#) zoning of the subject land will not be changed by this planning proposal. The inclusion of the subject land on the [Multiple Occupancy and Community Title Map](#) application of ~~Schedule 4~~ means that the proposed development can be permitted despite anything to the contrary in the Land Use Table, or other provision of this plan, in accordance with BLEP14 clause [4.1B – Minimum subdivision lot size for multiple occupancy or rural community title developments](#).

[Clause 4.1B](#) (3)(b) will also be broadened to include *environmental protection works* to reflect the intended use of the association lot containing the Yankee Creek waterway and suitable riparian buffers, defined as follows (BLEP 2014):

environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.

It is not intended to introduce a floor space ratio (FSR) provision to the site (none currently applies to the site), and the current Height of Buildings (9 metres) provision will be retained. It is not proposed to apply a minimum lot size because the maximum number of lots and dwellings ~~is included~~ will be controlled by clause 4.1B in conjunction with the [Multiple Occupancy and Community Title Map](#).

A potential draft Schedule 1 amendment might read as follows:

~~This clause applies to land at Lot 38 DP 1059938, Alidenes Road, Wilsons Creek (and identified as “Area F” on the [Additional Permitted Uses Map](#)), for the purpose of a rural community title settlement but only if the council is satisfied that:~~

- ~~(i) the land is to be subdivided under the [Community Land Development Act 1989](#) to create a neighbourhood scheme under which a maximum of 15 neighbourhood lots and one lot that is neighbourhood property, and~~
- ~~(ii) the neighbourhood lots are to be developed for large lot residential purposes, and no more than one dwelling is to be erected on each of the neighbourhood lots, and~~
- ~~(iii) the neighbourhood property must include the main body of Yankee Creek (and a riparian buffer) and may only be developed for the purpose of environmental repair and utilities or infrastructure, and~~
- ~~(iv) no part of the neighbourhood property is to be developed (including by further subdivision) for the purpose of holiday cabins or rural tourist facilities, and~~

~~(v) development of the land is in accordance with a neighbourhood management statement that includes provisions for environmental management and enhancement.~~

A “Plain English” version of the clause is as follows:

~~What Land Does it Apply to?~~

~~Land at 31 Alidenes Road, Wilsons Creek.~~

~~What Additional Development will be Permitted?~~

~~A rural Community Title subdivision creating a total of up to 15 lots (each with a dwelling permitted) that can be separately owned. The balance of the land will be held as one lot in shared ownership and this will include Yankee Creek waterway and suitable riparian buffers. Each privately owned lot can contain only one dwelling. No dwelling is permitted on the shared lot.~~

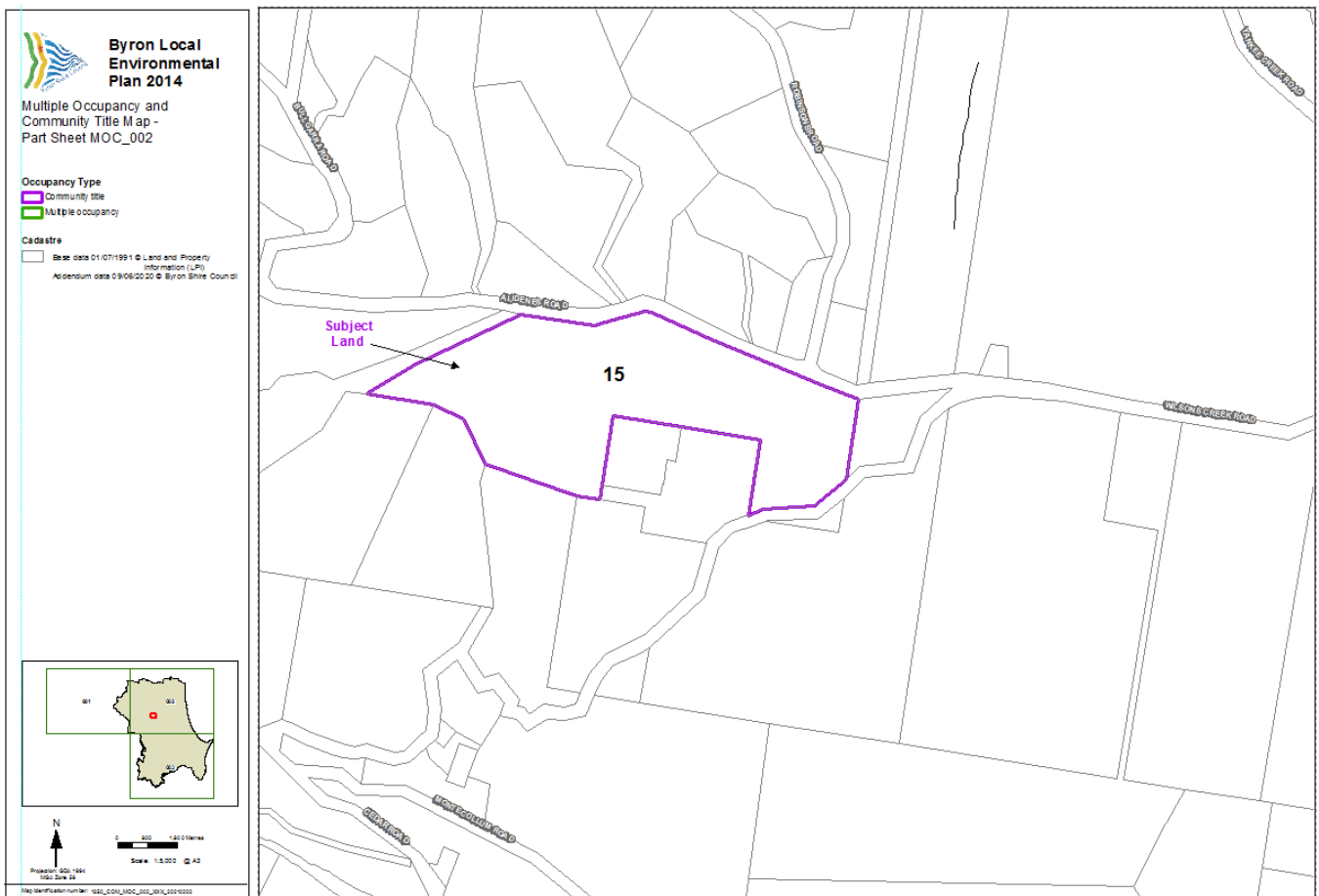


Figure 7: Proposed amendment to the Additional Permitted Uses Multiple Occupancy and Community Title Map (Byron LEP 2014)

Part 3 Justification

Section A Need for the planning proposal

1 Is the planning proposal a result of any strategic study or report?

Yes. The *Byron Shire Rural Land Use Strategy 2017* identifies the subject land as part of an area identified for “priority sites for future rural lifestyle living opportunities”. This strategy was endorsed by the NSW DPE in July 2018. The subject land forms part of a slightly larger area identified in the Strategy as having a potential dwelling yield of 15–30.

Figures 8 and 9 show the subject land (and part of adjoining properties) as identified in the *Byron Shire Rural Land Use Strategy 2017*. It occupies the majority of Area 2.

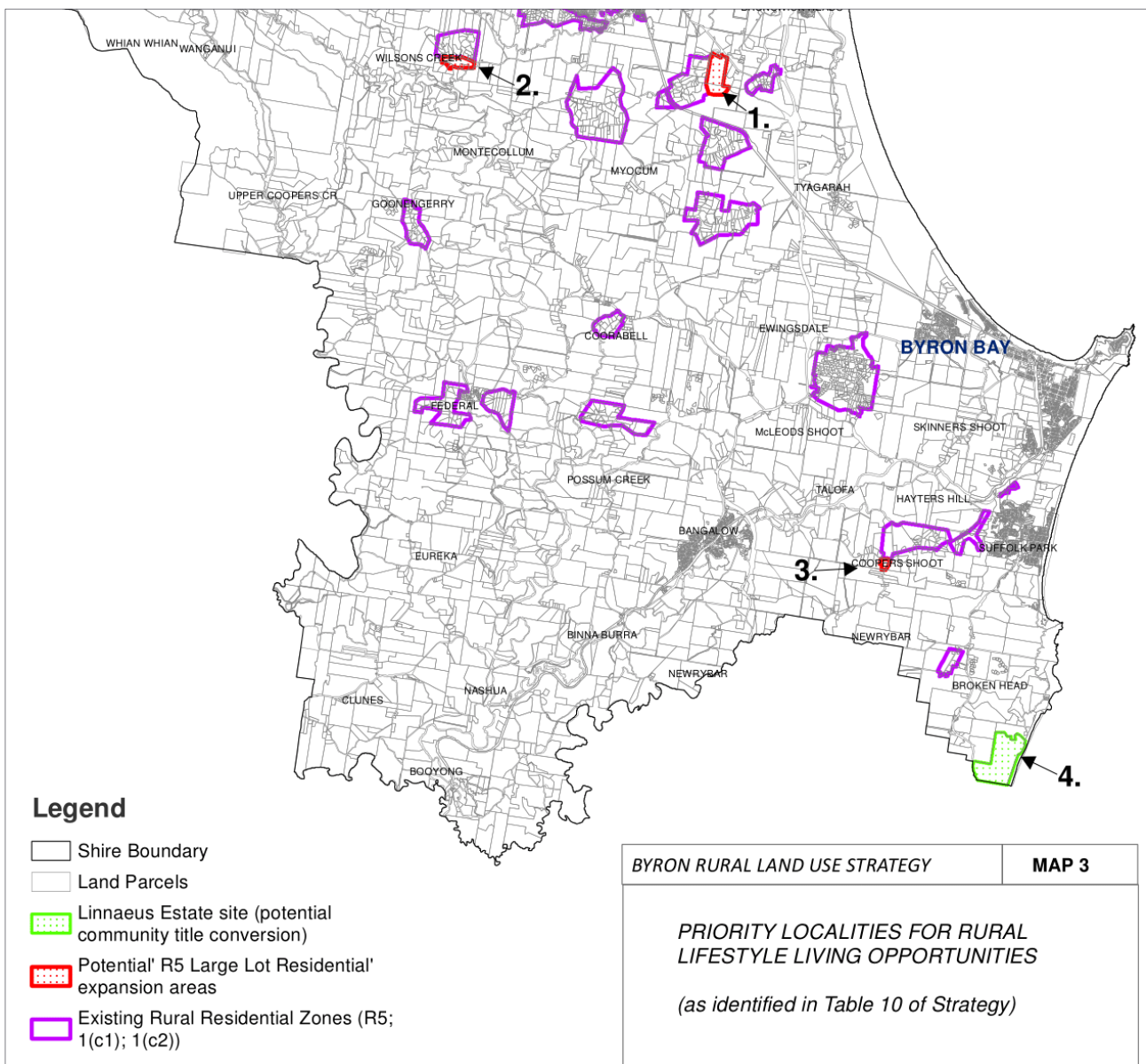


Figure 8: Extract from the *Byron Shire Rural Land Use Strategy 2017* – the site is part of Area 2 shown red

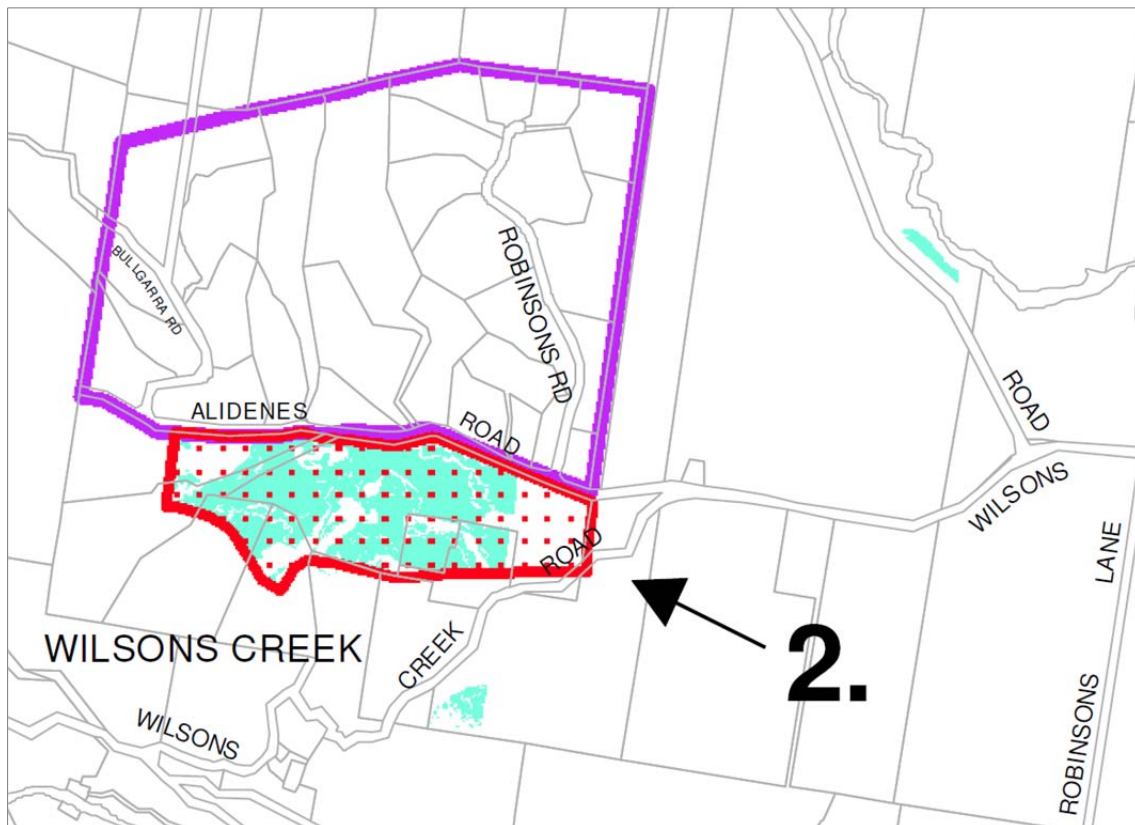


Figure 9: Extract from the Byron Shire Rural Land Use Strategy 2017 – the site is part of Area 2 shown red

2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The planning proposal is the best means of achieving the objectives of: (i) permitting community title rural residential development on the subject land; (ii) ensuring a coordinated and effective management framework is in place for Yankee Creek; and (iii) providing greater flexibility and opportunities for shared internal access roads and waterway crossings, collective onsite wastewater management systems and disposal areas, suitable buffers to Yankee Creek and 'private' lot sizes.

3 Is there a net community benefit?

The Net Community Benefit (NCB) Criteria are identified in the NSW Government's publication *Draft Centres Policy 2009*, which states that the Net Community Benefit Test should be used to assess the merits of rezoning in the following circumstances:

- proposals to develop within an existing centre where the current zoning does not permit the use
- proposals to develop outside an existing centre where the current zoning does not permit the use
- proposals to create a new centre.

The main focus of the NCB Test is to ensure that centres remain compact and viable, and linked to existing and proposed transport networks (particularly public transport).

Assessment against the NCB Assessment Criteria is not appropriate for a planning proposal that deals with an LEP amendment to enable a community title rural residential development.

Section B Relationship to strategic planning framework

1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (in this case the North Coast Regional Plan)?

The subject site is located outside of the Urban Growth Area boundary and Urban Land Investigation Area under the *North Coast Regional Plan 2036* (NCRP). It is not located in the coastal strip, being located west of the Pacific Highway.

The NCRP states (page 56) that rural residential development needs to be planned strategically. Action 24.1 states:

Facilitate the delivery of well-planned rural residential housing areas by:

- *identifying new rural residential areas in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment; and*
- *ensure that such proposals are consistent with the Settlement Planning Guidelines: Mid and Far North Coast Regional Strategies (2007) or land release criteria (once finalised).*

The subject land is identified in the *Byron Shire Rural Land Use Strategy 2017*, which was endorsed by the NSW DPE in July 2018.

On this basis, the planning proposal is consistent with the NCRP.

2 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

The planning proposal is consistent with the following planning priorities in Council's [Local Strategic Planning Statement](#):

- *SP1. Protect and enhance our biodiversity, ecosystems and ecology*
- *LP3. Support Housing diversity and affordability with housing growth in the right locations*

The *Byron Shire Rural Land Use Strategy 2017* identifies the subject land (within Area 2 – Wilsons Creek/Alidenes Road) in Table 10 as part of a priority site for future rural lifestyle living opportunities (Figure 10). The strategy notes that the site (which is slightly larger than the subject land) has a potential dwelling yield of 15 to 30 lots. The strategy also notes that minimum lot sizes to calculate yield are not expected to go below 0.5 hectares. The applicant has suggested a 0.3-hectare MLS based primarily on achieving the maximum yield of 30 lots.

Despite the strategy identifying a potential R5 zoning of the land, the preliminary studies have confirmed that it would be more appropriate to retain a RU2 zoning and permit limited rural residential through a Community Title scheme in order to deliver more positive environment outcomes for Yankee Creek.

Council considers that, based on supporting information (in particular flood prone land and minimum riparian buffers), the site would yield a maximum of 15 dwelling sites at a rural residential density. The waterway (and a curtilage) will be required to remain in one lot with communal ownership and management. The environmental Policy Directions of *Byron Shire Rural Land Use Strategy 2017* (pages 13 and 14) include:

Future rural development will not be supported on sites, or areas within a site [mapped as in the] 1:100 year flood risk and climate change lands;

Future rural lifestyle living opportunities will serve to repair and enhance the land's natural values in a manner which more than offsets the full impact of the site's population and pressures on the environment;

Future rural lifestyle living opportunities will preserve scenic amenity, minimise environmental impacts and better manage natural or man-made hazard risks.

The planning proposal (as revised to reflect the strategic directions and assessment above) is consistent with the strategy.

Table 10: Priority sites for future rural lifestyle living opportunities

Map 3 Reference	Locality	Potential Dwelling Yield (c)	Intersection requiring assessment
1.	McAuleys lane / Bilin Road, Myocum	25-45	Intersection of McAuleys Lane and Mullumbimby Road
2.	Wilsons Creek / Alidenes Rd	15-30	Intersection of Alidenes Road and Wilsons Creek Road
3.	Coopers Shoot Road, Coopers Shoot	- (a)	Not applicable
4.	Linnaeus Estate site Broken Head Road, Broken Head	- (b)	Not applicable
	TOTAL (approximate)	40-75 dwellings	

- (a) Expansion of adjoining R5 zone over subject land for a maximum of 5 lots (as per current community title subdivision approval).
- (b) Community Title conversion of approved accommodation units only (i.e. no additional dwelling yield).
- (c) This represents a conservative estimate based on the following assumptions:
 - 20% of unconstrained/assessable land area required for infrastructure (eg internal roads);
 - only 50% of assessable land can be developed; and
 - lot sizes on land suitable for development ranging from 0.5ha (low end) to 1ha (high end), rounded to nearest multiple of '5' (except where potential dwelling yield < 5).

Figure 10: Extract from the *Byron Shire Rural Land Use Strategy 2017*

In 2012, Council adopted a 10 year + *Community Strategic Plan 2022 (CSP)*. The plan is based on five key themes being Corporate Management, Economy, Environment, Community Infrastructure, Society and Culture. Four of those themes or objectives are relevant to this planning proposal:

Economy: <i>A sustainable and diverse economy which provides innovative employment and investment opportunities in harmony with our ecological and social aims</i>	The planning proposal supports the economy through development and investment in the rural residential opportunities on the subject land, which will create economic growth and demand without major ecological or social concerns.
Environment: <i>Our natural and built environment is improved for each generation</i>	The planning proposal ensures the environment and its resources will be maintained and protected for future generations by restricting development to land with no major environmental significance. The site has the opportunity for important riparian repair that can be achieved along with the development.
Community Infrastructure: <i>Services and infrastructure that sustains, connects and integrates our communities and environment</i>	The site has good road access options to Alidenes Road. Access to Wilsons Creek Road will not be permitted. Power is connected to the site. Water and sewerage are able to be dealt with on-site.
Society and Culture: <i>Resilient, creative and active communities with a strong sense of local identity and place</i>	The subject site is approximately 4.5 kilometres from Mullumbimby. Although this is remote from services such as schools, shops and health facilities, this is often the case in rural residential lifestyle-based communities.

On this basis, the planning proposal is consistent with Council's CSP.

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

The State Environmental Planning Policies relevant to this planning proposal are as follows:

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP (Koala Habitat Protection) 2020	This Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. The ecological assessment found the site does not contain any primary koala feed trees, nor would it be considered to contain habitat important to this species. No koalas were observed using the site and no physical evidence was observed. The <i>Byron Coast Comprehensive Koala Plan of Management</i> does not include the subject land in a koala management precinct and does not identify it as having potential koala habitat. No clearing of native vegetation is anticipated to implement the planning proposal outcomes beyond any clearing that has been approved in the past. This planning proposal complies with the SEPP.

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP (Primary Production and Rural Development) 2019	<p><i>The aims of this Policy are as follows:</i></p> <ul style="list-style-type: none"> <i>(a) to facilitate the orderly economic use and development of lands for primary production,</i> <i>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</i> <i>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</i> <i>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</i> <i>(e) to encourage sustainable agriculture, including sustainable aquaculture,</i> <i>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</i> <i>(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</i> <p>The subject land is zoned RU2 Rural Landscape under Byron LEP 2014. A small part of the eastern edge of the subject land is regionally significant agricultural land in the Northern Rivers Farmland Mapping Project. None of it is State significant.</p> <p>Future agricultural use of the site once subdivided will be minimal. The site is generally isolated from commercial agriculture by its location and surrounding small lot subdivision and the old power station. This should minimise the likelihood of significant impact on surrounding rural land from the future rural residential use of this site.</p> <p>This planning proposal is consistent with the SEPP.</p>

4 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?

Consistency with the s9.1 Directions is assessed in the following table:

Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
1	Employment and Resources		
1.1 Business and Industrial Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).	This planning proposal will not affect the boundaries or extent of business or industrial zones.	NA
1.2 Rural Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). Under this Direction a planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	This planning proposal will amend the planning controls affecting approximately 12.27 hectares of RU2 zoned land, permitting up to 15 dwellings based on a Community Title scheme. This is inconsistent with the Direction. However, the land is specifically identified in the <i>Byron Shire Rural Land Use Strategy 2017</i> for closer rural settlement. This strategy was endorsed by the NSW DPE in July 2018. The inconsistency is justified by the land being identified in the endorsed strategy.	Justifiably inconsistent
1.3 Mining, Petroleum Production and Extractive Industries	Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	This planning proposal will permit small lot subdivision and subsequent use of the lots for dwellings. The dwellings will be incompatible with the use of the site for development of resources or extractive industry. The site is not identified as containing extractive or mineral resources. The land is identified in an endorsed strategy which has been through a thorough public and agency consultation process. The inconsistency is considered to be of minor	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
		significance.	
1.4 Oyster Aquaculture	<p>Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:</p> <p>(a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or</p> <p>(b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate” and other land uses.</p>	<p>Priority Oyster Aquaculture Areas (POAA) exist in the lower parts of the Brunswick River. Yankee Creek drains into the Brunswick River and poor water quality could affect downstream oyster production. However, there is minimal likelihood that the planning proposal will have adverse impacts on them as long as water sensitive urban design is implemented in the future development of the site and high quality on-site wastewater disposal systems are implemented.</p> <p>Retaining the waterway in communal ownership will assist with consistent rehabilitation and potentially improved water quality.</p>	Consistent
1.5 Rural Lands	<p>Applies when:</p> <p>(a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or</p> <p>(b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.</p> <p>A planning proposal to which clauses (a) and (b) apply must:</p> <p>(a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement</p> <p>(b) consider the significance of agriculture and primary</p>	<p>This planning proposal will affect land within an RU2 Rural Landscape zone. Listing it in a schedule Identifying it on the Multiple Occupancy & Community Title Map will have the effect of altering the minimum lot size for the land to allow subdivision into small rural residential lots, each with a dwelling permitted.</p> <p>This planning proposal is consistent with the <i>Byron Shire Rural Land Use Strategy 2017</i> and therefore with the <i>North Coast Regional Plan 2036</i>.</p> <p>Historically, the Wilsons Creek locality was cleared for dairy production on lower slopes and floodplain areas and then steeper slopes were used for bananas or other tropical and subtropical fruit. Agriculture is now very limited with almost no bananas in production due to prices and disease. There are no commercial dairy farms in the vicinity of</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>production to the State and rural communities</p> <p>(c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources</p> <p>(d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions</p> <p>(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities</p> <p>(f) support farmers in exercising their right to farm</p> <p>(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses</p> <p>(h) consider State significant agricultural land identified in State Environmental Planning Policy (Primary Production and Rural Development) 2019 for the purpose of ensuring the ongoing viability of this land</p> <p>(i) consider the social, economic and environmental interests of the community.</p> <p>A planning proposal to which clause (b) applies must demonstrate that it:</p> <p>(a) is consistent with the priority of minimising rural land fragmentation and land use conflict, particularly between residential and other rural land uses</p> <p>(b) will not adversely affect the operation and viability of existing and future rural land uses and related enterprises, including supporting infrastructure and facilities that are essential to rural industries or supply chains</p>	<p>the subject land and grazing is limited to small numbers of beef cattle on hobby farms.</p> <p>Environmental values of the site are limited with an ecology report identifying 8 hectares as exotic grassland and 4 hectares as camphor laurel dominated with some native rainforest species. Improving water quality and riparian habitat values is the key issue with this site.</p> <p>Surrounding land use is characterised by rural residential land (zoned and developed) to the north across Alidenes Road. The old Mullumbimby power station is to the south. Beyond this, there are ex-banana plantations that are now lifestyle lots with open areas regrowing with weeds and limited native vegetation. Conflict with commercial agriculture is expected to be unlikely.</p> <p>No State significant agricultural land is located on the site. However, a small area of Biophysical Strategic Agricultural Land is located along Yankee Creek at the eastern end of the site. This correlates with a small area of regionally significant farmland under the Northern Rivers Farmland Protection Project. The 0.8 hectares of regionally significant farmland would likely be lost from production if this planning proposal proceeds. This is not a significant amount of land.</p> <p>The development that will result from this planning proposal will not undermine the rural economy; it will not impact negatively on agriculture on the land adjacent to it; it will not impact on the surrounding rural land use generally; it balances the social and environmental interests of the site; the development should be used to improve the biodiversity and water</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>(c) where it is for rural residential purposes:</p> <ul style="list-style-type: none"> i. is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres ii. is necessary taking account of existing and future demand and supply of rural residential land. <p>A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in clause 5.16 of Byron LEP 2014.</p> <p>The Rural Subdivision Principles require that the following matters are to be taken into account:</p> <ul style="list-style-type: none"> (a) the existing uses and approved uses of land in the vicinity of the development, (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development, (c) whether or not the development is likely to be incompatible with existing or approved uses in the vicinity of the development, (d) any measures proposed by the applicant to avoid or minimise any incompatibility with existing or approved uses in the vicinity of the development. 	<p>resources of the site; it will provide for a reasonable number of housing opportunities in a rural setting; it will not impact on water and sewer infrastructure that are largely provided by the future site residents.</p> <p>It is within 5 kilometres of Mullumbimby and will relate to that centre for schools and shopping, etc. The nearest hospital is now Ewingsdale.</p> <p>The provision of up to 15 small lots on this site is consistent with the supply and demand analysis in the <i>Byron Shire Rural Land Use Strategy 2017</i>.</p> <p>There is a recognised demand for rural residential land and this site is one of only two significant “greenfield sites” endorsed by Council in its strategy.</p> <p>In relation to the Rural Subdivision Principles, the development that will result from this planning proposal is largely consistent with surrounding land use and is likely to be compatible with it. The dominant land use in this locality is “lifestyle lots” that produce very little. Both Alidenes Road and Wilsons Creek Road provide a physical buffer to surrounding lands. The power station is set back 20 to 40 metres on its own lot with vegetation separating it from the subject land. Conflict with surrounding rural land uses is unlikely.</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
2 Environment and Heritage			
2.1 Environment Protection Zones	<p>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 "Rural Lands".</p>	<p>This planning proposal does not alter or remove any environment protection zone. No environmental standards will be reduced by the proposed LEP changes.</p> <p>In Byron Shire, environmental zones are being dealt with as a separate process, including for riparian land.</p>	Consistent
2.2 Coastal Protection	<p>This Direction applies when a relevant planning authority prepares a planning proposal that applies to land identified on SEPP (Coastal Management) 2018 maps as coastal wetland, littoral rainforest, coastal environment or coastal use area.</p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> (a) the objects of the <i>Coastal Management Act 2016</i>, and (b) the <i>NSW Coastal Management Manual</i> and associated Toolkit, and (c) the <i>NSW Coastal Design Guidelines 2003</i>, and (d) any relevant Coastal Management Program certified by the Minister. <p>A planning proposal must not rezone land which would enable increased development or more intensive land use on land identified as being affected by current or future coastal hazard.</p>	<p>The subject land is not affected by coastal environment area, coastal use area, coastal wetland and littoral rainforest mapping.</p>	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
2.3 Heritage Conservation	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> (a) Items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people. 	<p>The site has no European heritage items located on it that are listed in Byron LEP 2014. The old Mullumbimby power station next door is listed as a heritage item. However, the future development of the subject land is unlikely to impact on the power station, which is set back 20 to 40 metres from the shared boundary. It is also screened by vegetation. The rural residential use is not incompatible with the mostly disused power station. If it was at some time re-used for another purpose, this would be considered on merit.</p> <p>The Tweed Byron LALC was invited to inspect the subject land and undertake a cultural heritage assessment. It declined, stating that it would prefer to inspect the site as part of the DA process when ground disturbance was likely. An AHIMs search was undertaken and shows that there are no registered Aboriginal sites on the subject land or in proximity to it for one kilometre.</p> <p>The planning proposal is inconsistent with this Direction until a study of its environmental heritage is completed by a qualified person or the TBLALC. Given an effort to achieve this has been undertaken, the inconsistency is justified. An inspection can be undertaken at the DA stage, as suggested by the TBLALC.</p> <p>BLEP14 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire. Sites and relics are also protected under State legislation.</p>	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
2.4 Recreation Vehicle Areas	<p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>):</p> <ul style="list-style-type: none"> (a) where the land is within an environment protection zone, (b) where the land comprises a beach or a dune adjacent to or adjoining a beach, (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration: <ul style="list-style-type: none"> (i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and (ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</i>. 	This planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.	NA
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	<p>This Direction applies when a relevant planning authority prepares a planning proposal:</p> <ul style="list-style-type: none"> (a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone; (b) that introduces or alters an overlay and associated clause. <p>A planning proposal must apply the proposed E2 Environmental Conservation or E3 Environmental Management zones, or the overlay and associated clause, consistent with the Northern Councils E Zone Review Final Recommendations.</p>	This planning proposal does not introduce an environmental zone or overlay. This is being dealt with by a separate planning proposal.	NA
2.6 Remediation of Contaminated Land	This direction applies when a planning proposal authority prepares a planning proposal applying to land specified in	The site has a history of use for dairy farming and grazing and no apparent use for intensive	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>this <u>direction</u>.</p> <p>A planning proposal must not include in a particular zone (within the meaning of the local environmental plan) any land specified in <u>paragraph (2)</u> if the inclusion of the land in that zone would permit a change of use of the land, unless:</p> <ul style="list-style-type: none"> (a) the planning proposal authority has considered whether the land is contaminated, and (b) if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and <p>if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose.</p>	<p>horticulture or a cattle tick dip site. The information provided to Council to support the planning proposal includes a preliminary contamination assessment, which indicates that the site is not contaminated from past land use. This planning proposal is consistent with the SEPP.</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
3 Housing, Infrastructure and Urban Development			
3.1 Residential Zones	<p>This Direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <ul style="list-style-type: none"> (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary), (b) any other zone in which significant residential development is permitted or proposed to be permitted. <p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <ul style="list-style-type: none"> (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. <p>A planning proposal must, in relation to land to which this Direction applies:</p> <ul style="list-style-type: none"> (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land. 	<p>This planning proposal will allow approximately 12.27 hectares of the subject land to be subdivided and used for rural residential development of up to 15 lots. This will provide housing choice, albeit at a very low density. It will not reduce the permissible residential density of land.</p> <p>BLEP 2014 already includes a requirement that adequate services be available for the type of development proposed.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
3.2 Caravan Parks and Manufactured Home Estates	<p>Applies when a relevant planning authority prepares a planning proposal.</p> <p>In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP, zone the land in accordance with an appropriate zone under the <i>Standard Instrument (Local Environmental Plans) Order 2006</i> that would facilitate the retention of the existing caravan park. <p>In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located, (b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the <i>Community Land Development Act 1989</i> be permissible with consent. 	This planning proposal will not alter the permissibility of caravan parks or manufactured home estates on the subject land.	NA
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.	This planning proposal will not alter the permissibility of home occupations on the subject land.	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
<p>3.4 Integrating Land Use and Transport</p>	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes. A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <ul style="list-style-type: none"> (a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001). <p>The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <ul style="list-style-type: none"> (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight. 	<p>This planning proposal will permit rural residential use of the subject land. This will increase traffic on local roads over time as dwellings are constructed. The site is not walking distance to jobs and services and there is no public transport. Rural residential development is inherently car dependent. It is not a freight generating land use.</p> <p>Overall, it will not have a significant impact on transport in the locality as long as Alidenes Road and the key intersections are able to safely handle the volumes.</p>	<p>Consistent</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
3.5 Development Near Regulated Airport and Defence Airfields	<p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a regulated airport or defence airfield.</p> <p>The main requirements of the Direction are that Council consults with the relevant airport authority/operator and the Department of the Commonwealth responsible for airports. Major considerations are the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential or other purposes, and any increase to residential densities in areas where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.</p>	This planning proposal will not alter provisions that affect land located in the vicinity of any regulated airport and defence airfield.	NA
3.6 Shooting Ranges	<p>Applies when a relevant planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/or adjoining an existing shooting range.</p> <p>A planning proposal must not seek to rezone land adjacent to and/or adjoining an existing shooting range that has the effect of permitting more intensive land uses in the area.</p>	There are no shooting ranges in the vicinity of this planning proposal.	NA
3.7 Reduction in non-hosted short term rental accommodation period	This Direction applies only to Byron Shire Council. It applies when the council prepares a planning proposal to identify or reduce the number of days that non-hosted short-term rental accommodation may be carried out in parts of its local government area.	This planning proposal will not alter provisions that affect non-hosted short-term rental accommodation that may be carried out in Byron Shire.	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
4 Hazard and Risk			
4.1 Acid Sulfate Soils	<p>Applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.</p> <p>A council shall not prepare a draft LEP that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the council has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils.</p>	The land to which this planning proposal applies is not mapped as containing acid sulfate soils.	NA
4.2 Mine Subsidence and Unstable Land	<p>Applies when a relevant planning authority prepares a planning proposal that permits development on land that:</p> <p>(a) is within a mine subsidence district, or</p> <p>(b) has been identified as unstable in a study, strategy or other assessment undertaken:</p> <p>(i) by or on behalf of the relevant planning authority, or</p> <p>(ii) by or on behalf of a public authority and provided to the relevant planning authority.</p>	<p>This planning proposal does not impact on any mine subsidence area.</p> <p>The site is not steep or potentially unstable.</p> <p>The area identified for rural residential development is predominantly flat.</p>	Consistent
4.3 Flood Prone Land	<p>Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.</p> <p>A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).</p> <p>A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose,</p>	<p>This planning proposal does apply to land that is partly flood affected. The subject land is in the Yankee Creek drainage catchment.</p> <p>A flood and stormwater assessment supplied with the planning proposal identifies that the land is affected in 1% AEP storm events when modelled for the 2100 climate change scenario (Figure 6). The catchments feeding the waterways are small so floods rise fast but also disappear quickly.</p> <p>Council accepts that the land has some development</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>Recreation, Rural or Environment Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.</p> <p>A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> (a) permit development in floodway areas, (b) permit development that will result in significant flood impacts to other properties, (c) permit a significant increase in the development of that land, (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or (e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development. <p>A planning proposal must not impose flood related development controls above the residential flood planning level for residential development on land, unless a relevant planning authority provides adequate justification for those controls to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-General).</p> <p>For the purposes of a planning proposal, a relevant planning authority must not determine a flood planning level that is inconsistent with the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>) unless a relevant planning authority provides adequate justification for the proposed departure from that Manual to the satisfaction of the Director-General (or an officer of the Department nominated by the Director-</p>	<p>potential but this is significantly less than the 30 dwellings originally mooted by the applicant.</p> <p>Council's view is that:</p> <ul style="list-style-type: none"> ▪ Flood free access to and around the site is not available, however sufficient flood free land is available on the site to enable some rural residential subdivision/development. ▪ The duration of flooding impact to access roads should be included in the final flood study version that goes to exhibition, to allow SES to understand how long access would potentially be cut. ▪ All dwellings should be clearly located outside the 1% 2100-year climate change flood extent, at rezoning stage. ▪ All access culverts on-site should be designed in accordance with Council standards (DA stage). ▪ Upgrade to the main causeway on Alidenes Road should be considered as a condition of consent in order to improve the flood immunity for access to the development (DA stage). <p>On this basis, the planning proposal will not be permitting dwellings in the floodway or on flood prone land. Therefore, there will be no significant change to flood impacts on other properties.</p> <p>Flood related controls will not apply to land that is not flood affected.</p> <p>The revised planning proposal is consistent with this Direction.</p>	

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	General).		
4.4 Planning for Bushfire Protection	<p>Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p> <p>In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway determination under Division 3.4 of the Act, and prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and take into account any comments so made.</p> <p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) have regard to <i>Planning for Bushfire Protection 2006</i>, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ. <p>A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: <ul style="list-style-type: none"> (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road, (b) for infill development (that is development within an already subdivided area), where an appropriate APZ 	<p>The subject land is partly classified as affected by a bushfire buffer in the western half.</p> <p>A Bushfire Hazard Report has been provided relevant to this planning proposal and it recommends that small APZs (9 to 11 metres) be applied in some locations in combination with provision for firefighting water on-site and adequate access for firefighting vehicles.</p> <p>The planning proposal will still need to be referred to the Rural Fire Service.</p> <p>Consultation with the Rural Fire Service has not yet taken place and the inconsistency remains until that occurs.</p>	Inconsistent (referral to RFS is required)

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the <i>Rural Fires Act 1997</i>), the APZ provisions must be complied with,</p> <p>(c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks,</p> <p>(d) contain provisions for adequate water supply for firefighting purposes,</p> <p>(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,</p> <p>(f) introduce controls on the placement of combustible materials in the Inner Protection Area.</p>		
5 Regional Planning			
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	The planning proposal must not rezone land mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project for urban or rural residential purposes.	<p>A small part of the subject land (approximately 0.8 hectares) is identified as regionally significant farmland under the Northern Rivers Farmland Protection Project. The same area is also mapped as Biophysical Strategic Agricultural Land (BSAL).</p> <p>A planning proposal may be inconsistent with the terms of this Direction if it is consistent with the <i>North Coast Regional Plan 2036</i> (NCRP).</p> <p>The NCRP states that rural residential uses should be directed away from important farmland (Action 11.1). However, it also recognises that agricultural production may not be suitable on some small areas of mapped farmland due to non-physical factors. Important farmland variation criteria can be used to assess the suitability of this land for non-agricultural land uses (NCRP page 38). An</p>	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
		<p>assessment of the proposed rural residential land against these criteria is at Appendix 1. This assessment shows that the proposed rural residential land that is regionally significant farmland is small and not suitable for agricultural production due to its isolation from broader agricultural lands as well as proximity to other rural residential areas.</p> <p>The subject land is also within an adopted rural residential strategy that has been endorsed by the NSW DPE and this is consistent with the NCRP (Actions 24.1 and 24.2).</p>	
<p>5.4 Commercial and Retail Development along the Pacific Highway, North Coast</p>	<p>A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that:</p> <ul style="list-style-type: none"> (a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway; (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and (c) for the purposes of this paragraph, “within town” means areas which, prior to the draft local environmental plan, have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) and where the Pacific Highway speed limit is less than 80 km/hour. <p>A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that:</p> <ul style="list-style-type: none"> (a) new commercial or retail development must not be established near the Pacific Highway if this proximity would be inconsistent with the objectives of this Direction; (b) development with frontage to the Pacific Highway must consider the impact the development has on the safety 	<p>This planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway.</p>	<p>NA</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>and efficiency of the highway; and</p> <p>(c) for the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80 km/hour or greater.</p>		
5.10 Implementation of Regional Plans	All planning proposals must be consistent with the applicable Regional Plan released by the Minister for Planning.	<p>This planning proposal affects land subject to the NCRP. The subject land is identified in the <i>Byron Shire Rural Land Use Strategy 2017</i>, which was endorsed by the NSW DPE in July 2018. The planning proposal is therefore consistent with Actions 24.1 and 24.2 of the NCRP.</p> <p>The future rural residential use of the site will affect a small area of regionally important farmland and this is inconsistent with Action 11.1. However, the land that is regionally significant farmland is small (0.8 hectares) and not suitable for agricultural production due to its isolation from broader agricultural lands as well as proximity to other rural residential areas. The inconsistency is minor and justified.</p>	Consistent
6. Local Plan Making			
6.1 Approval and Referral Requirements	<p>A planning proposal must:</p> <p>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</p> <p>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</p>	This planning proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority. It does not identify development as designated development.	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<ul style="list-style-type: none"> (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General), <p>prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and</p> <ul style="list-style-type: none"> (c) not identify development as designated development unless the relevant planning authority: <ul style="list-style-type: none"> (i) can satisfy the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of Division 3.4 of the Act. 		
6.2 Reserving Land for Public Purposes	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General).	The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.	NA

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
<p>6.3 Site Specific Provisions</p>	<p>Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out.</p> <p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>	<p>This planning proposal will permit a (maximum) 15-lot Community Title subdivision for rural residential purposes.</p> <p>The site contains a waterway (Key Fish habitat) and small floodplain that needs to be managed as a single unit and not subdivided into separate lots. This can be most effectively achieved with a Community Title subdivision. Listing it in Schedule 4 <u>Identifying the site on the Multiple Occupancy & Community Title Map</u> also permits the maximum number of dwellings to be nominated, commensurate with the carrying capacity of the land and the traffic impacts on local roads and intersections.</p> <p>By contrast, the option of applying an R5 Large Lot Residential Zone and a Minimum Lot Size (MLS) map to the subject land would have the following shortcomings:</p> <ul style="list-style-type: none"> • an R5 zone allows for additional development such as dual occupancies, secondary dwellings and other <u>unsupported</u> land uses <u>on the site</u> that cannot be controlled by Schedule 1 in BLEP 2014; • once rezoned to R5 Council cannot legally require community title subdivision over any part of the R5 zone (significantly reducing the ability to ensure a coordinated management framework is in place for Yankee Creek); and • limits opportunities for shared internal access roads and waterway crossings, collective onsite wastewater management systems and disposal areas, a more clustered settlement pattern and greater flexibility for 'private' lot sizes. <p>The planning proposal does not contain any schematic drawings.</p>	<p>Justifiably inconsistent</p>

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Section C Environmental, social and economic impact

1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

No. The planning proposal will allow the creation of up to 15 lots over land that has been used for grazing for many years. Minimal clearing will be involved (if any) as the site has minimal native vegetation.

A vegetation assessment found that the vegetation at the site is characterised by small fragmented forest patches of the noxious and invasive weed, camphor laurel, with infrequent to occasional native rainforest species. Mature native vegetation is rare to occasional across the site, and generally directly adjacent to the second and third order streams.

All vegetation structural layers across the site within camphor forest are dominated by exotic species, with only small patches having a reasonable diversity of native species. Approximately 8 hectares of the 12.27 hectare site remain substantially cleared grazing pasture with isolated camphor laurel paddock trees.

Two (2) threatened flora species listed in Schedule 1 of the BC Act were recorded at the site. These were:

- Red Boppel Nut (*Hicksbeachia pinnatifolia*); and
- Rough-shelled Bush Nut (*Macadamia tetraphylla*).

A BioNet Atlas record for Durobby (*Sygium moorei*) occurs in association with the Red Boppel Nut and Rough-shelled Bush Nut, however, no individuals of Durobby were located during the site assessment. Both the individuals of Rough-shelled Bush Nut and single individual of Red Boppel Nut occur in direct association with Yankee Creek.

The Yankee Creek waterway is identified in the NSW Biodiversity Values map (Figure 11). The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offsets Scheme will be triggered for local developments. The threshold has two elements:

- Whether the amount of native vegetation being cleared exceeds a threshold area, or
- Whether the impacts occur on an area mapped on the Biodiversity Values map published by the Chief Executive of the NSW Office of Environment and Heritage.

If development is proposed that affects the land mapped in purple on Figure 11 then the Biodiversity Offsets Scheme will apply.

Ecological mapping over the site and the environmental zones that flow from it is the subject of a current review by Council. Some riparian land on this site may be considered for inclusion in an E zone at some time in the future. The creek is potential native fish habitat and is the most environmentally significant feature of the site. No environmental zones are being altered in this planning proposal as they are being dealt with in a separate planning proposal that needs to run its course. Any future development applications for either subdivision or dwellings will be subject to the planning controls that prevail at the time and dealt with on merit.

It is highly unlikely that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of this planning proposal. This conclusion is based on the waterway (and curtilage inclusive

of the Red Boppel Nut and Rough-shelled Bush Nut) remaining in one lot to be managed and rehabilitated consistently by the future owners of lots in the enclave.

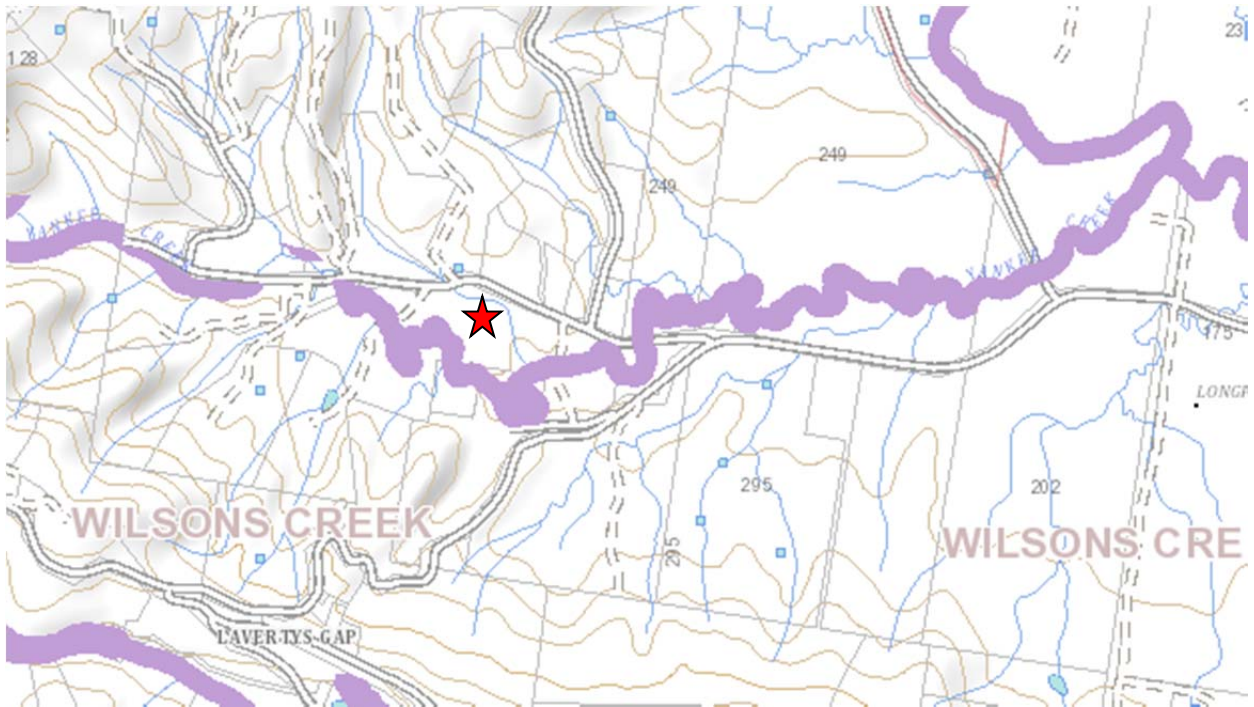


Figure 11: Extract from the NSW Biodiversity Values Map

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

No.

The subject land is more flood prone than anticipated when it was included in the BRLS. Approximately 6.5 ha of the 12.27 ha site (55%) is above the 2100 Climate Change flood extent for 1% AEP event and outside the minimum 30m riparian buffer. This is the area that is potentially suitable for dwellings and onsite wastewater disposal. Flood affected land will not be used for rural residential purposes. Filling of land or constructing levees will not be acceptable.

If surface water is properly managed through water sensitive urban design principles and good quality on-site wastewater management is implemented then water quality leaving the site in Yankee Creek could be improved. The subject land is currently used for grazing, including the cattle having unrestricted creek access. Discontinuing this practice and implementing riparian revegetation of rainforest could improve habitat values as well as water quality. Retaining the waterway in one communal lot is an important outcome to facilitate future management.

3 How has the planning proposal adequately addressed any social and economic effects?

The planning proposal will have minimal social and economic effects as the site is an extension of an already well established rural residential enclave. Any housing that may come onto the market will not be affordable to average income earners but will likely suit “tree changers” or investors. Construction of up to 15 new dwellings will be a positive impact for the local industry if local persons are used. Building and property maintenance will be required on an ongoing basis. Home-based businesses may result if 15 dwellings are permitted on the site.

Section D State and Commonwealth interests

1 Is there adequate public infrastructure for the planning proposal?

Existing and future rural residents will be responsible for water supply and on-site wastewater disposal. Public roads will be used to access the site but Council will not be accepting dedication of any internal roads or bridges needed to access proposed dwelling locations. The traffic work undertaken by the applicant indicates that some of the proposed dwellings would get access from Wilsons Creek Road, with the bulk of lots gaining access from Alidenes Road. Council does not support any new lots or dwellings having access from Wilson's Creek Road due to safety issues with the access point. With all dwellings to access the site from Alidenes Road, Council considers that the applicant must upgrade Alidenes Road from Wilsons Creek Road through to Robinsons Road if they propose 20 or more dwellings. Signage and improvements to sight distances may still be required.

Reticulated power and telecommunications are connected to the site.

State infrastructure such as schools and hospitals are located at Mullumbimby and Ewingsdale, and will be able to deal with the additional population if additional dwellings are permitted on the site.

There is adequate public infrastructure to deal with the proposed rural residential development permitted by the planning proposal.

2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The Gateway determination has yet to be issued. It is anticipated that the Rural Fire Service, Department of Planning Industry and Environment, **Department of Primary Industries**, Tweed Byron LALC and Arakwal Corporation will be contacted for comment during the public exhibition.

At this early stage, it appears unlikely that there will be any issues of interest to Commonwealth authorities. State government authorities will be consulted during the public exhibition period in accordance with the Gateway requirements.

The following table provides a summary of the relevant public authorities, which in the opinion of Council, should be consulted in accordance with the Gateway determination:

Public authority/stakeholder	Issue requiring comment
Department of Planning Industry and Environment	Consideration of ecology and Aboriginal archaeological matters; flooding; ecology; planning; and agricultural land
Department of Primary Industries	Important Farmland Variation Criteria Assessment
Rural Fire Service	Bushfire issues
Tweed Byron LALC and Arakwal Corporation	Aboriginal cultural heritage and archaeological matters

Part 4 Mapping

The planning proposal will amend Byron LEP 2014 maps by inserting a new sheet for the area that covers the subject land and identifying it on that map:

~~Additional Permitted Uses~~ **Multiple Occupancy and Community Title Map - Sheet MOC_002** APU_002B

The proposed map is shown at Figure 7.

Part 5 Community consultation

Council will commence community consultation in accordance with the Gateway determination. For the purposes of public notification, the planning proposal is not considered to be low impact as outlined in the NSW DPE's *A guide to preparing local environmental plans* because it is inconsistent with some Section 9.1 Directions. Although it has been widely exhibited and considered by the public as part of the *Byron Shire Rural Land Use Strategy 2017*, a 28-day public exhibition period is recommended.

Notification of the exhibited planning proposal will include:

- a newspaper advertisement that circulates in the Byron LGA, which is the area affected by the planning proposal; and
- the websites of Byron Shire Council and the NSW DPIE.

The supporting studies and information supplied with the planning proposal submission will be included in the exhibition material.

Part 6 Project timeline

The proposed timeline for the completion of the planning proposal is as follows:

Estimated completion	Plan making step
September 2020	Decision by Council to support the planning proposal and submit for Gateway determination by the NSW DPIE.
March 2021	Gateway determination issued by the NSW DPIE.
April / May 2021	Public exhibition of planning proposal. Further government agency consultation.
May / June 2021	Analysis of public submissions. Preparation of Council report.
June 2021	Decision by Council to endorse the planning proposal and submit to the NSW DPIE under delegation for finalisation.

Summary and conclusions

This planning proposal seeks to amend BLEP14 to permit a rural Community Title subdivision creating a total of up to 15 lots (each with a dwelling permitted) that can be separately owned. The balance of the land will be held as one lot in shared ownership and this will include Yankee Creek waterway and suitable riparian buffers. Each privately owned lot can contain only one dwelling. No dwelling is permitted on the shared lot.

The lots will be capable of supplying their own tank water and on-site wastewater disposal. Reticulated power and communication infrastructure is available. Future development on the site will be accessed from Alidenes Road only. The land does not contain ASS and has no serious geotechnical issues that would prevent its development. It is flood prone and no dwellings can be located on flood affected land or within identified riparian buffers. The planning proposal is not likely to have an adverse impact on significant agricultural lands despite it containing a small piece of regionally significant agricultural land.

A preliminary assessment of land contamination pursuant to SEPP 55 found that the site is not contaminated from past land use.

Council does not support any new lots or dwellings having access from Wilson's Creek Road due to safety issues with the access point. With all dwellings to access the site from Alidenes Road, Council considers that the applicant must upgrade Alidenes Road from Wilsons Creek Road through to Robinsons Road if they propose 20 or more dwellings.

The site is not coastal and does not contain coastal wetland, littoral rainforest or other significant habitat areas. There is minimal native vegetation on the site and it unlikely that any would be impacted by future development. It does contain two threatened plants adjacent to Yankee Creek. The Yankee Creek waterway (and a curtilage) is identified on the NSW Biodiversity Values Map.

The planning proposal is consistent or justifiably inconsistent with the NCRP. The land is identified in the *Byron Shire Rural Land Use Strategy 2017* as a candidate area for rural residential use. An assessment of the planning proposal indicates that it is consistent with relevant SEPPs. It is consistent with most of the relevant section 9.1 Directions, and where inconsistencies occur they can be justified.

It is appropriate that it be sent to the NSW DPIE for a Gateway determination in order that the planning proposal can proceed to public exhibition (subject to compliance with any Gateway conditions).

Appendix 1

Important Farmland Interim Variation Criteria Assessment (Based on Appendix B of the *North Coast Regional Plan 2036*)

Important Farmland Interim Variation Criteria

Land may be suitable for uses other than farmland if:

<p>Agricultural capability The land is isolated from other important farmland and is not capable of supporting sustainable agricultural production</p>
<p>Comment: The land to be used for rural residential has a total area of 12.27 hectares and adjoins an existing R5 zoned area across Alidenes Road. The regionally significant farmland comprises approximately 0.8 hectares and, as a “finger” of alluvial land that follows the alignment of Yankee Creek, it is largely flood prone and has limited practical utility. It is separated from broader agricultural lands on the other side of both Alidenes Road and Wilsons Creek Road. It has no recent use other than low density grazing of beef cattle.</p>
<p>Land use conflict The land use does not increase the likelihood of conflict and does not impact on current or future agricultural activities in the locality</p>
<p>Comment: The likelihood of increased conflict is low due to future dwellings being mostly close to the existing rural residential land north of Alidenes Road. The Mullumbimby power station and Wilsons Creek Road partly buffer the future dwellings to the south from agricultural land. Agriculture in the locality is minimal with no horticulture of any scale. Future agriculture in the locality is unknown. There is no obvious emerging agricultural industry.</p>
<p>Infrastructure The delivery of infrastructure (utilities, transport, open space, communications and stormwater) required to service the land is physically and economically feasible at no cost to State and Local Government</p>
<p>Comment: Existing public roads will be used to access existing and proposed dwelling locations. Power and communications are connected to the site. Water will have to be collected on-site as per most rural residential scenarios. Approved wastewater disposal systems will be required for each proposed dwelling. These will be located outside of flood affected land.</p>
<p>Environment and heritage The proposed land uses do not have an adverse impact on areas of high environmental value, and Aboriginal or historic heritage significance</p>
<p>Comment: A vegetation assessment found that the vegetation at the site is characterised by small fragmented forest patches of the noxious and invasive weed, camphor laurel, with infrequent to occasional native rainforest species. Mature native vegetation is rare to occasional across the site, and generally directly adjacent to the second and third order streams.</p> <p>All vegetation structural layers across the site within camphor forest are dominated by exotic species, with only small patches having a reasonable diversity of native species. Approximately 8 hectares of the 12.27-hectare site remain substantially cleared grazing pasture with isolated camphor laurel paddock trees.</p> <p>Two threatened plants listed in Schedule 1 of the BC Act were recorded at the site. These were Red Boppel Nut (<i>Hicksbeachia pinnatifolia</i>) and Rough-shelled Bush Nut (<i>Macadamia tetraphylla</i>). They are both located adjacent to Yankee Creek on flood prone land.</p> <p>The Yankee Creek waterway is identified in the NSW Biodiversity Values map. If the waterway and its curtilage are retained in a single community owned and managed lot then adverse environmental outcomes should be minimised.</p> <p>An Aboriginal Cultural Heritage Assessment by the TBLALC is yet to be completed but an AHIMs search determined that the site has no registered sites, places or relics. No heritage structures or places are listed in Byron LEP 2014 for this site. It is unlikely that the proposed rural residential development will have any adverse effects on the environment or heritage of the land.</p>
<p>Avoiding risk Risks associated with physically constrained land are identified and avoided, including:</p>
<ul style="list-style-type: none"> • flood prone;
<ul style="list-style-type: none"> • bushfire-prone;
<ul style="list-style-type: none"> • highly erodible;
<ul style="list-style-type: none"> • severe slope; and
<ul style="list-style-type: none"> • acid sulfate soils.

Comment: The site has no acid sulfate soils but is flood affected. Flooding can be addressed by not locating dwellings or wastewater disposal areas on flood affected land. Surrounding land is partly vegetated and bushfire buffers affect the western half of the site. A bushfire assessment found that compliance with *Planning for Bushfire Protection 2006* is feasible with minimal APZs. The site has no steep sloping or erodible areas.

The risks to the long-term use of the site associated with the physical characteristics of the site are minimal.