

Linda Armstrong  
Raftons Road  
Bangalow NSW 2479

12<sup>th</sup> December, 2019

Steve Daniels  
Planner  
Environment & Economic Planning  
Byron Shire Council

Dear Sir,

We acknowledge receipt of your letter dated 18<sup>th</sup> November, 2019, regarding the rezoning of Irwin's Lot 3 DP 592005 and Lot 1 DP 1124504, 4 Picadilly Hill Road, Coopers Shoot.

The 2014 Byron LEP altered the rules for R5 to ensure a more suitable minimum of 2.5 Ha lots. With this rezoning to R5 all Community Titles should be negated and any future application for Torrens Title should be treated under the current DA rules and standards. These smaller lot sizes are also setting a precedent for future applications.

As part of a 3-lot subdivision at 384 Coopers Shoot Road, we are currently widening the road to a ridiculously high standard, including hotmix, which is not seen on any other rural road in this area. We trust that Picadilly Hill Road is also upgraded upon application for a subdivision if this re-zoning is allowed by Council..

We are already being over-run with residents building three or more "cabins" on their properties with little contribution to the road and probably little if no increase in rates.

In conclusion, we are not opposed to the rezoning to R5, however current rules need to be considered re the road upgrades and size of blocks. They could re-zone their whole property and create four minimum 2.5 Ha lots.

Yours sincerely,



Our Ref: DOC19/1012383  
Your Ref: PP 26.2018.5.1

General Manager  
Byron Shire Council  
PO Box 219  
Mullumbimby NSW 2482

Attention: Mr Steve Daniels

Dear Mr Arnold

**RE: Planning Proposal for Amendment of Byron Local Environmental Plan 2014 to rezone Part Lot 3 DP 592005 and Part Lot 1 DP 1124504, 4 Picadilly Hill Road, Coopers Shoot**

Thank you for your e-mail dated 19 November 2019 about the Planning Proposal to rezone land for rural residential purposes at lot 3 DP 592005 and Lot 1 DP 1124504, Coopers Shoot Road and Picadilly Hill Road, Coopers Shoot seeking comments from the Biodiversity and Conservation Division (BCD) of the Environment, Energy and Science Group in the NSW Department of Planning, Industry and Environment. I appreciate the opportunity to provide input.

The BCD was formerly part of the Office of Environment and Heritage, but now forms part of a Group that has responsibilities relating to biodiversity (including threatened species and ecological communities, or their habitats), Aboriginal cultural heritage, National Parks and Wildlife Service estate, climate change, sustainability, flooding, coastal and estuary matters.

We have reviewed the documents supplied and advise that several issues are apparent with the assessments for Aboriginal Cultural Heritage and Biodiversity. These issues are discussed in detail in **Attachment 1** to this letter.

The planning proposal seeks to amend the existing zone from RU2 to R5 over approximately 5.53 ha and allow an additional house site on the remaining 11.38 ha of RU2 land. Under the planning proposal the minimum lot size would be reduced from 40 ha to 10, 1.5 and 0.8 ha across the planning area.

The Cultural Heritage Inspection Report by Tweed Byron Aboriginal Land Council (TBLALC) dated 25 October 2018 concluded that no intangible Aboriginal cultural heritage values or Aboriginal objects occur within the planning area. The BCD supports the recommendations detailed on page 10 of the TBLALC Inspection Report, but the information needs to be augmented with consultation with native title holders and a current search of the Aboriginal Heritage Information Management System.

The planning area contains significant biodiversity values including habitat for threatened flora and fauna and an example of the Endangered Ecological Community (EEC) Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions. The planning proposal should protect these areas of High Environmental Value into the future in accordance with the North Coast Regional Plan.

In summary, the BCD recommends that prior to finalising the planning proposal:

1. The planning proposal should be informed by:
  - a. Consultation with the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) regarding any areas of important Aboriginal cultural heritage in the planning area; and
  - b. A current search of the Aboriginal Heritage Information Management System.
2. The areas of rainforest vegetation in the planning area should be zoned E2 Environmental Conservation as part of the planning proposal. This could be delayed given the Byron Shire Council's advice that it is proceeding with a separate planning proposal for its broader E-zones, but only if the council enters into a planning agreement with the landowner to commit to zoning these areas E2 as part of that broader zoning program.
3. A Planning Agreement should be prepared as part of the planning proposal committing to the preparation and implementation of a Vegetation Management Plan over existing native vegetation in the planning area at the time of subdivision of the planning area, to secure the ongoing management of biodiversity values in the planning area.

If you have any questions about this advice, please do not hesitate to contact Mr Gabriel Anderson, Senior Conservation Planning Officer, at [gabriel.anderson@environment.nsw.gov.au](mailto:gabriel.anderson@environment.nsw.gov.au) or 6659 8200.

Yours sincerely

10 January 2020

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

Enclosure: Attachment 1. Detailed BCD comments - Planning Proposal 4 Picadilly Hill Road, Coopers Shoot.

## Attachment 1: Detailed BCD Comments – Planning Proposal 4 Picadilly Hill Road, Coopers Shoot

### Background

The planning proposal seeks to amend the existing zone for part of Lot 3 DP 592005 and Lot 1 DP1124504 on the corner of Coopers Shoot Road and Picadilly Hill Road at Coopers Shoot under Byron Local Environmental Plan (LEP) 2014 to permit a five-lot large lot residential subdivision on the site and leave the existing deferred matter over the environmentally sensitive land. The planning proposal seeks to rezone around 5.53 hectares of the existing RU2 Rural Landscape zone to R5 Large Lot residential. The balance of the subject land (11.38 ha) will remain zoned RU2. Under the planning proposal the minimum lot size would be reduced from 40 ha to 10, 1.5 and 0.8 ha.

### Aboriginal Cultural Heritage

The documentation provided demonstrated consideration of the Ministerial Direction (2.3 Heritage Conservation) in relation to Aboriginal cultural heritage. The Cultural Heritage Sites Inspection Report, 4 Picadilly Road, Cooper Shoot NSW 2479 (the TBLALC Inspection Report) 25 October 2018 concluded that no intangible Aboriginal cultural heritage values or Aboriginal objects occur within the planning area. The BCD supports the recommendations detailed on page 10 of the TBLALC Inspection Report and provides the following information for clarity.

Firstly, unlike in the Tweed local government area, there is no broadscale cultural heritage mapping available in the Byron local government area to inform the TBLALC Inspection Report. Secondly, an AHIMS search undertaken as part of a due diligence defence is only current for 12 months. The search undertaken by TBLALC and provided to support the planning proposal is older than 12 months. Finally, in April 2019 the Bundjalung of Byron Bay had their Native Title determined. The proposal should consider the potential that the Native Title holders may have knowledge of Aboriginal cultural values within the planning area.

### BCD Recommendation

1. The planning proposal should be informed by:
  - a. Consultation with the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) regarding any areas of important Aboriginal cultural heritage in the planning area; and
  - b. A current search of the Aboriginal Heritage Information Management System.

### Biodiversity

There are significant biodiversity values in and around the planning area, which lies within a highly diverse locality with high soil fertility and high rainfall. The planning area contains native flora and fauna and habitat for threatened species including remnant and planted rainforest vegetation.

While there are no threatened species records within the planning area in the NSW BioNet database there is suitable habitat for threatened rainforest flora and fauna such as fruit eating pigeons (Rose crowned and Wompoo fruit doves), Grey headed flying fox, White eared monarch and Rainbow bee eater as well as Koala in planted eucalypts. There is also potential habitat for Hairy Joint Grass (*Arthraxon hispidus*) in the two main gullies within the area. During field inspections on 8 January 2020 no Hairy Joint Grass was observed however three mature Coolomon (*Syzygium moorei*) were identified within the rainforest remnant. Coolomon is a threatened plant species listed as vulnerable on the schedules of the *NSW Biodiversity Conservation Act 2016* (BC Act) and the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The rainforest remnant is a small (approximately 0.29 ha) area of existing mature trees with a sparse understorey and a ground layer dominated by exotic species. This area is the subject of a deferred matter under the Byron LEP 2014. The remnant is an area of significant vegetation comprising Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions, endangered under the NSW BC Act and Critically Endangered under Commonwealth legislation. Additionally, there is approximately 1.1 ha of rainforest plantings established in 2006 as a condition of the prior community title application which provides habitat for threatened species and may be classed as Lowland Rainforest in the future.

All the areas of rainforest in the planning area meet the criteria of High Environmental Value land as defined by the North Coast Regional Plan. The Regional Plan seeks to avoid land use intensification in areas of HEV and to protect such areas and this should be evident in the planning proposal.

*BCD Recommendations*

2. The areas of rainforest vegetation in the planning area should be zoned E2 Environmental Conservation as part of the planning proposal. This could be delayed given the council's advice that it is proceeding with a separate planning proposal for its broader E-zones, but only if the council enters into a planning agreement with the landowner to commit to zoning these areas E2 as part of that broader zoning program.
3. A Planning Agreement should be prepared as part of the planning proposal committing to the preparation and implementation of a Vegetation Management Plan over existing native vegetation in the planning area at the time of subdivision of the planning area, to secure the ongoing management of biodiversity values in the planning area.