



**Planning Proposal
for Amendment of Byron Local Environmental Plan 2014
– Lot 22 DP 1073165, Stuart Street, Mullumbimby**

Byron Shire Council

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Part 1 Introduction

Objective and intended outcomes

The objective of this planning proposal is to rezone part of the subject land on the western edge of Mullumbimby to provide for additional residential development. Parts of the subject land will be retained in the current RE1 zone. A strip of land adjacent to Saltwater Creek will remain as a Deferred Matter and is subject to Byron LEP 1988.

It is also intended that the land be reclassified from Community land to Operational land in this planning proposal.

It is also intended that provisions to encourage diverse housing on this site be inserted into Byron LEP 2014.

Property details and existing zones

This planning proposal relates to land located at Stuart Street, Mullumbimby, described as part Lot 22 in Deposited Plan 1073165 (Figure 1). Part Lot 22 DP 1073165 is approximately 22 hectares in area.

Lot 22 in its entirety is approximately 29.2 hectares in area and is irregular in shape (it is severed by a railway line).

The planning proposal does not include:

- About 3.5 hectares east of the railway line,
- About 2.7 hectares at its northern edge occupied by the Mullumbimby Community Gardens,
- A small freshwater wetland adjacent to the rail line (about 0.55 hectares)
- A strip along Saltwater Creek that is a Deferred Matter and subject to Byron LEP 1988 (about 0.45 hectares),
- Unmade road connections to Mullumbimby via Stuart Street and Byron Street.

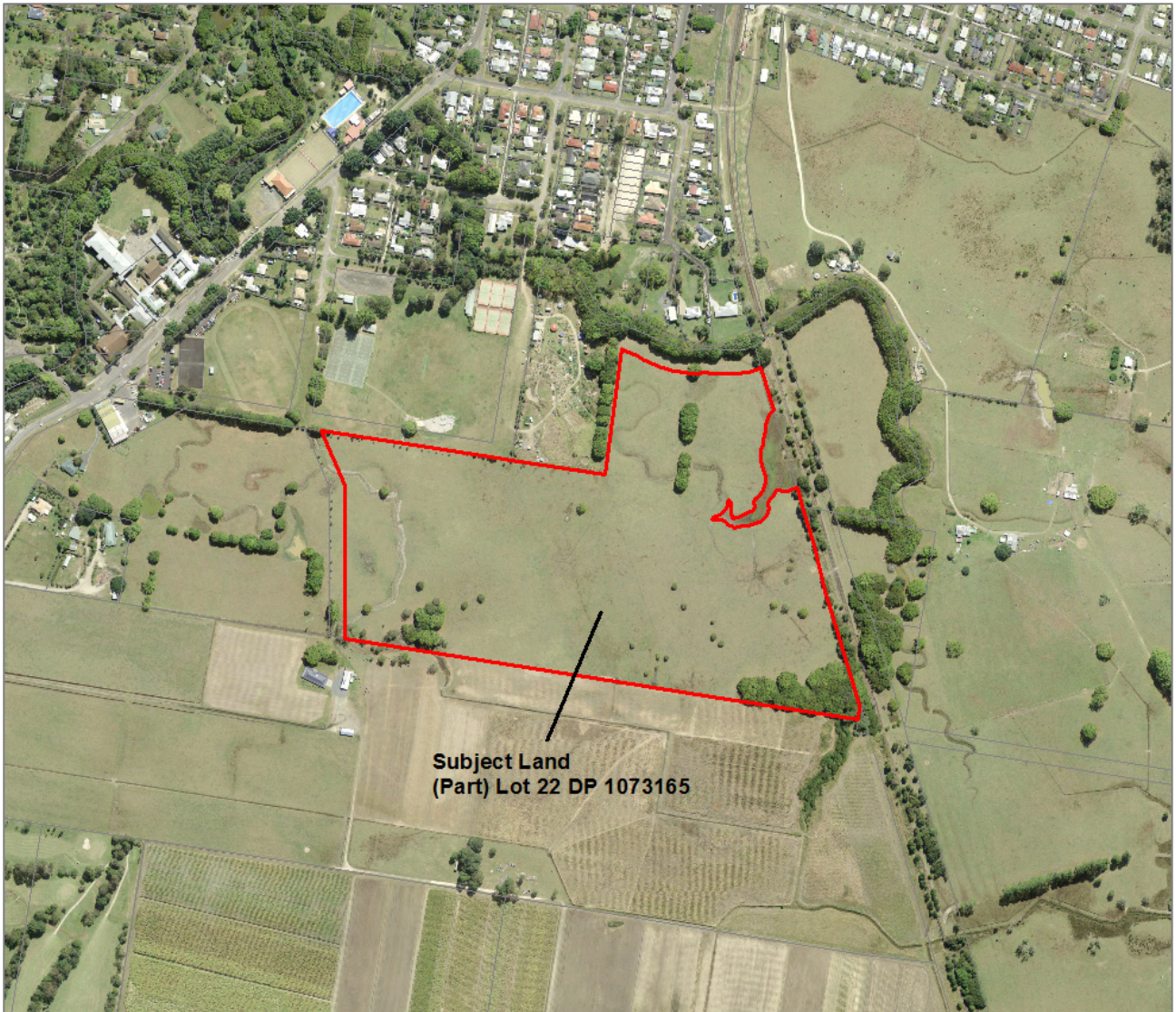


Figure 1: Subject land – Part Lot 22 DP 1073165

The subject land is currently zoned partly RE1 Public Recreation. That part of Lot 22 that is zoned Deferred Matter under Byron LEP 2014 (Figure 2) is zoned 7(B) Coastal Habitat under Byron LEP 1988 (Figure 3). It covers a strip approximately 25 metres wide along the banks of Saltwater Creek.

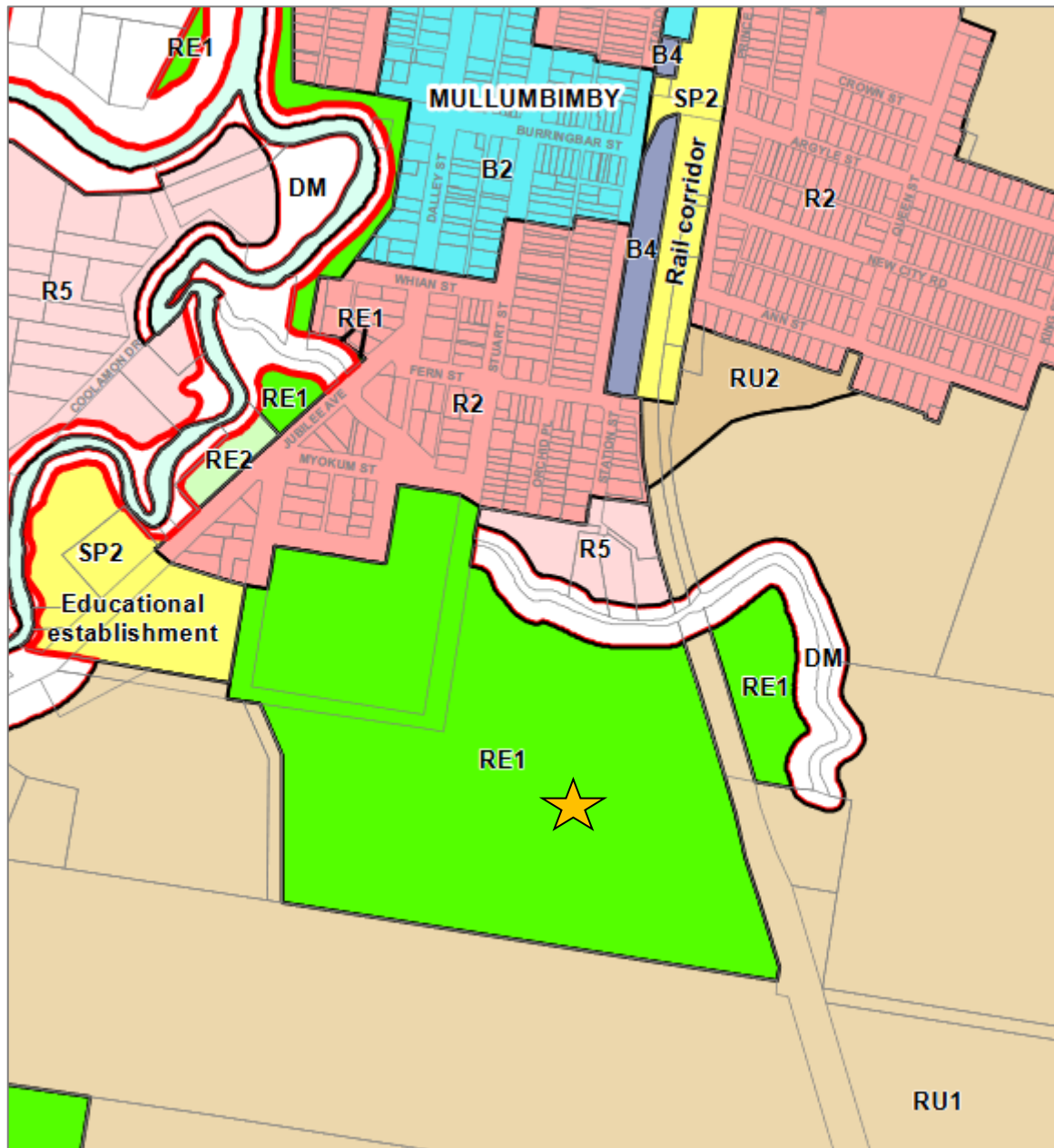


Figure 2: Current zoning map for Lot 22 under Byron LEP 2014 (RE1 Public Recreation)

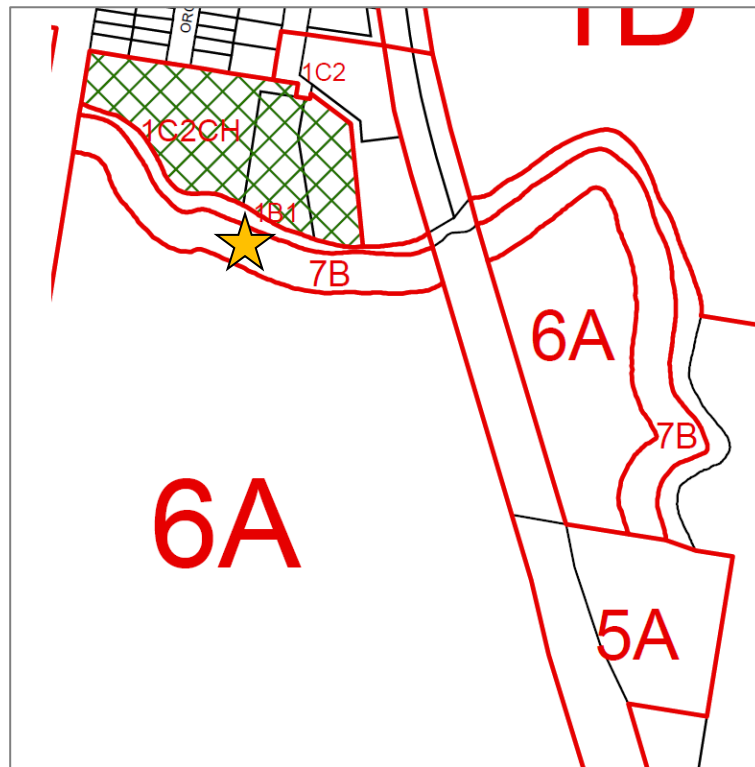


Figure 3: Deferred Matter zoned 7(B) (Coastal Habitat) under Byron LEP 1988

The land subject to Byron LEP 2014 has a building height limit of 9 metres (Figure 4) but is not subject to any Floor Space Ratio (Figure 5) or Minimum Lot Size (Figure 6).

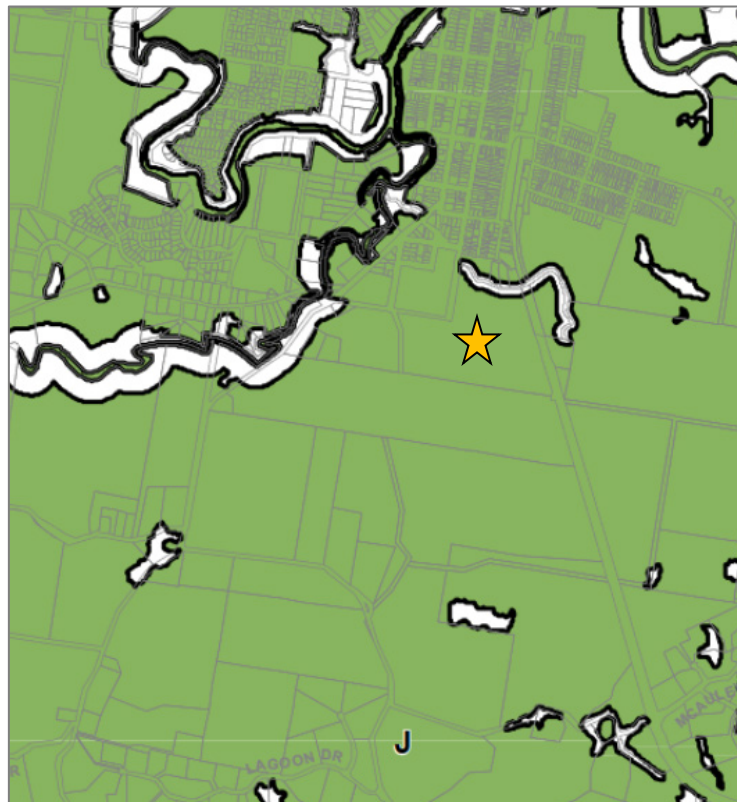


Figure 4: Building Height map under Byron LEP 2014 (9 metre building height applies)

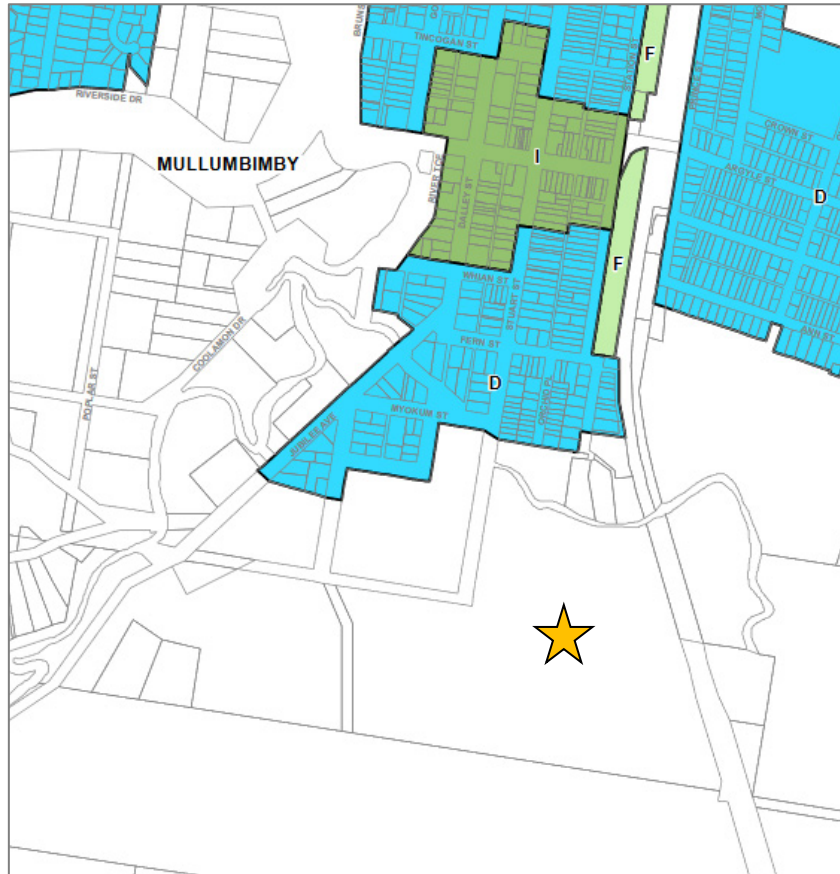


Figure 5: Floor Space Ratio map under Byron LEP 2014 (no FSR currently applies)

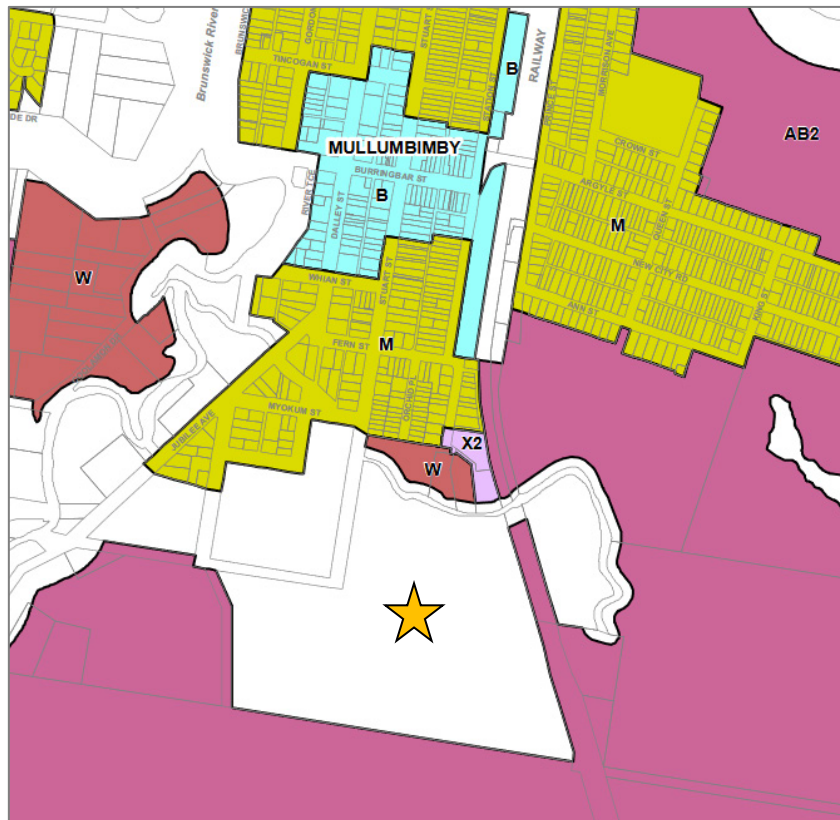


Figure 6: Minimum Lot Size map under Byron LEP 2014 (no MLS currently applies)

Background

Council resolved at the Ordinary Meeting of 6 October 2016 inter alia to convene a Byron Shire Housing Summit prior to the adoption of the Byron Shire Residential Strategy. The summit was held on 10 February 2017 with over 100 people attending. The report on the housing summit, presented to Council on 22 June 2017, noted that: "In response to the issue of 'land availability', at the Councillor workshop held 11 May 2016, support was expressed for the identification of and progression of potential pilot sites ahead of the Residential Land Strategy to rezone land that could be used to achieve affordable/diverse housing outcomes for the Shire." Council resolved on 22 June 2017 as follows:

Resolved that Council (17–260):

- 1. Note the Housing Issues Plan developed the result of the Byron Affordable Housing Summit and support its use to inform part of the Residential Land Use Strategy recommendations currently under preparation.*
- 2. Support further discussions with landowners of land in Attachment 1, and progression of work necessary to establish the feasibility of the sites in Attachment 1 and Attachment 2 for affordable housing; and also site '17' Saddle Road land identified in the Draft Preliminary Residential Housing Strategy; and where appropriate, invite lodgement of Planning Proposals to rezone the land for this purpose.*
- 3. Request staff to progress, in consultation with the community, work necessary to support a possible Planning Proposal or any possible rezoning of land at the Mullumbimby Hospital Site.*
- 4. Review the mechanisms available to guide Council involvement in any public / private housing development with respect to probity and process.*
- 5. Request staff to progress an expression of interest process (with a prepared set of guidelines) that will invite land owners to submit affordable housing proposals for other land in the Byron Shire for the consideration of Council as part of an early implementation program to supplement Council's Residential Lands Strategy.*
- 6. Receive a further report on points 2, 3 and 5 above.*

Lot 22 DP 1073165 was identified (in the report of 22 June) as Council land that should be considered for affordable housing purposes through a planning proposal and subsequent development.

In preparing this planning proposal Council has been cognisant of an initial suite of documents:

- A site specific flood assessment that has assisted in determining the potential area that could be developed without significant negative impacts on surrounding land;
- An initial ecology assessment that identified remnant wetland and riparian areas that should be protected from future development;
- A Land Use Conflict Risk Assessment (LUCRA) assessing adjoining land uses;
- A preliminary services (water and sewer) / access assessment. This identified existing capacity in infrastructure and where additional capacity will be required;
- A preliminary land contamination assessment consistent with SEPP 55 that identified the past land use on the site; and
- The draft Byron Shire Recreation Needs Assessment (extract) that reviewed the need for this land to be used as a recreation area.

After receiving a Gateway determination issued by the Department of Planning and Environment (DPE) dated 30 May 2018, Council has undertaken:

- A more detailed land contamination assessment that includes soil sampling and is consistent with SEPP 55;
- An acid sulfate soils assessment of the subject land;
- A preliminary geotechnical assessment of the subject land;
- Additional site investigation looking for Hairy-joint Grass, Missionary Nut Grass and the Common Planigale; and
- An Aboriginal cultural heritage assessment.

These studies and information will be exhibited with this planning proposal.

Part 2 Explanation of provisions

The planning proposal seeks to amend the existing zones under Byron LEP 2014 to:

- permit additional residential development (with an emphasis on diverse housing) on the subject site as well as appropriate uses ancillary to the residential use of the site; and
- leave the existing public recreation zone over the environmentally sensitive land (in the absence of an “environmental zone”), the Mullumbimby Community Gardens and some land east of the rail way line.

The planning proposal will reclassify part of Lot 22 DP 1073165 from Community to Operational to reflect the changes to the zone of the land and the prospective change of land use. This will be achieved by listing the subject land in “Part 2 Land classified, or reclassified, as operational land—interests changed” within “Schedule 4 Classification and reclassification of public land”. Part Lot 22 DP 1073165 will be on a Part Lots Reclassification Map (Appendix 1).

The planning proposal will rezone approximately 22 hectares of the existing RE1 Public Recreation zone to R1 General Residential. This will be a new zone not previously used in Byron LEP 2014. The balance of Lot 22 DP 1073165 will remain in its current RE1 Public Recreation zone and partly as a Deferred Matter under Byron LEP 1988 (Figure 7). The draft land use table for the R1 zone is in Appendix 2.

The planning proposal will also make consequential changes to maps regarding Minimum Lot Size to reflect the proposed R1 General Residential zone. A Minimum Lot Size of 200 m² is proposed to encourage affordable housing outcomes on the subject land (Figure 8). It is not intended to introduce a Floor Space Ratio (FSR) to the site (it currently does not apply to the site) and the current Height of Building (9 metres) will be retained.

It is also intended that provisions to encourage diverse housing on key sites (initially being Part Lot 22 DP 1073165) will be inserted into Byron LEP 2014. This will require a new suite of maps called the “Key Sites Map” to be included in the LEP. The site will be annotated as “clause 4.7” on the Key Sites Map (Figure 9). The proposed draft diverse housing clause is in Appendix 2. A “Plain English” version of the clause is as follows:

4.7 Diverse housing

Council wants to increase the diversity of dwelling types in new residential areas on land identified on the key sites map.

This clause will apply to residential and mixed use development on land shown on the key sites map as “clause 4.7”. It will apply to a development application where four or more dwellings are proposed.

Residential development on this land should comprise at least 25% one bedroom dwellings and at least 50% two bedroom dwellings with no more than 25% of new residential development being three or more bedrooms.

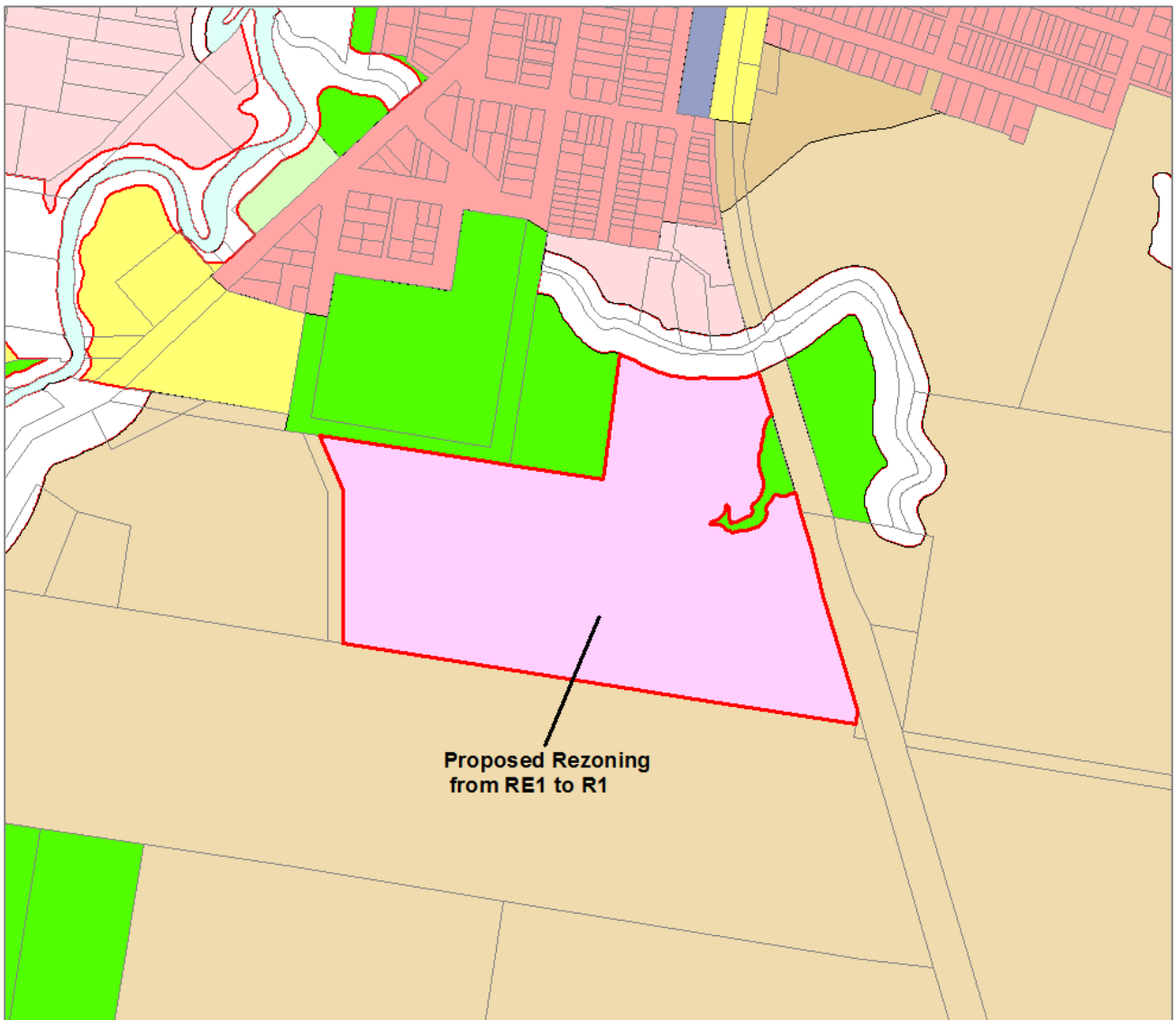


Figure 7: Proposed Land Zoning Map Sheet LZN_002BA

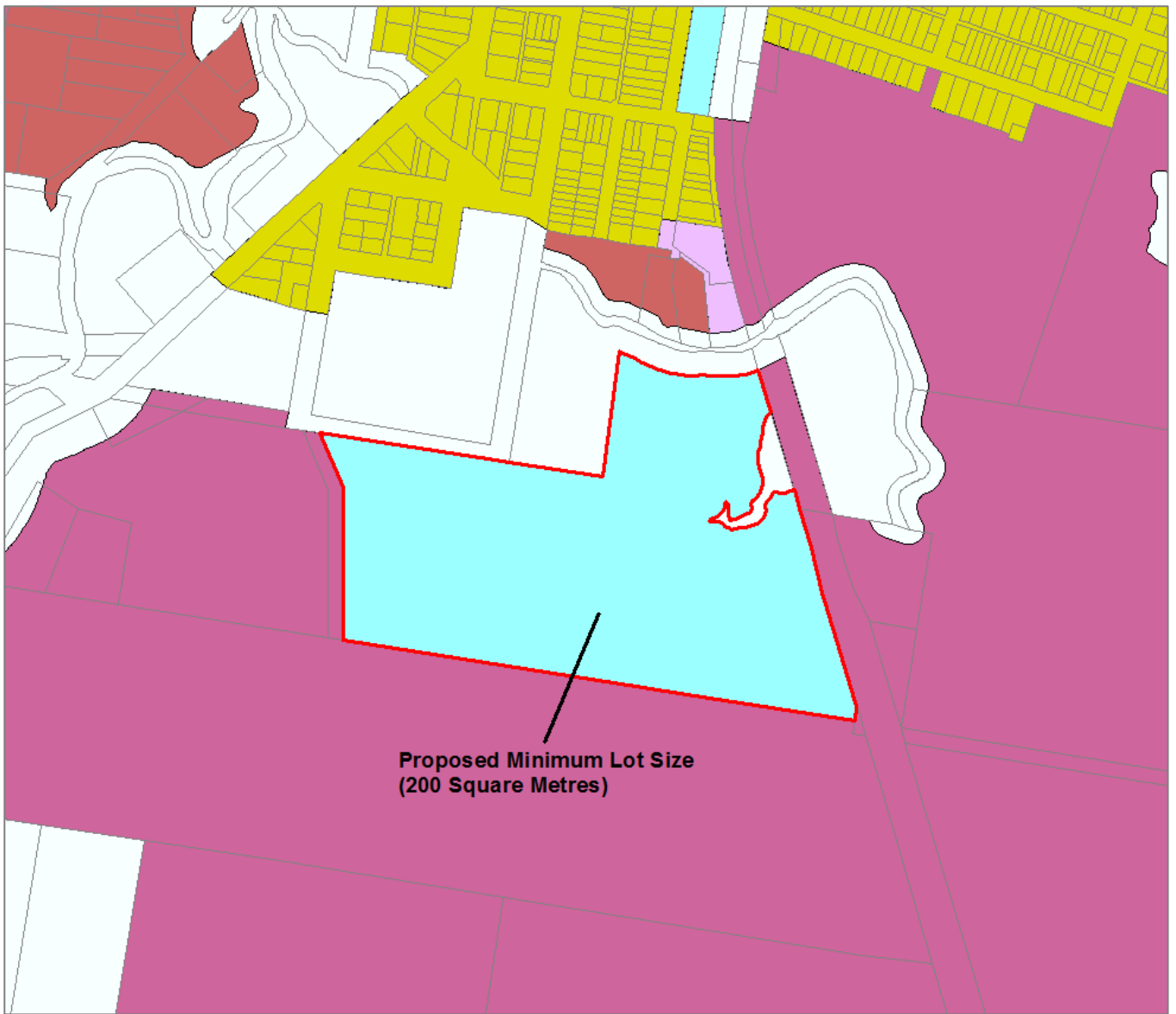


Figure 8: Proposed Minimum Lot Size Map (indicative only) Sheet LSZ_002BA

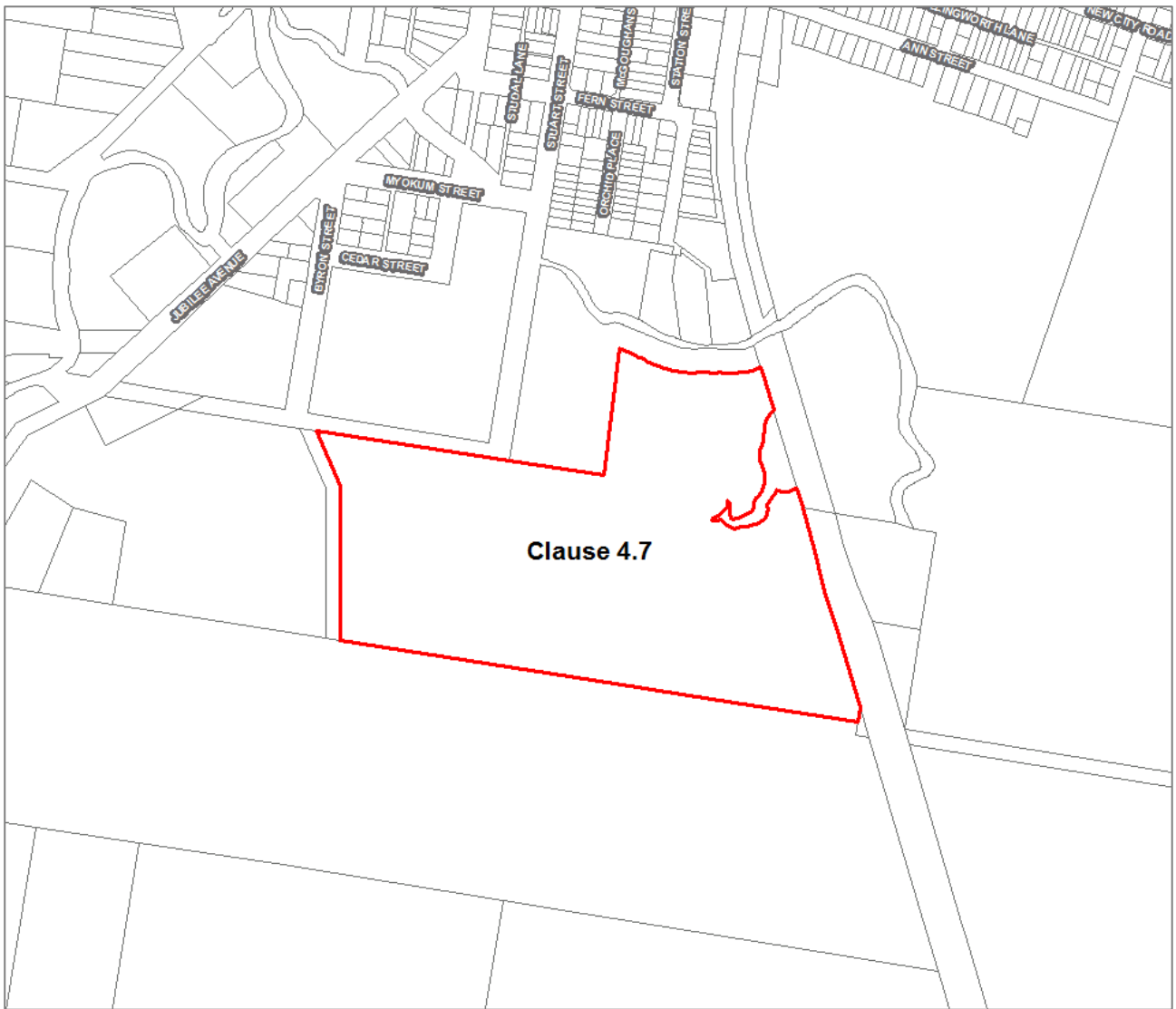


Figure 9: Proposed Key Sites Map

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 planning proposal arises from a Council resolution to look at its own land when considering affordable housing in the Shire. This came out of a report from a summit held at Byron Bay to address the issue of affordable housing. Council also has a policy on affordable housing on Council land, adopted in 2009, which states:

“When considering the best use of lands owned by Council, as a first option, consideration is given to affordable housing.”

The nomination of this area as surplus to the community’s recreation needs came from the draft Byron Shire Open Space and Recreation Needs Assessment that reviewed all of the recreation supply and demand issues in Byron Shire. This document was publicly exhibited between 2 September and 2 October 2018.

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 to achieve the objective of providing additional residential land for Mullumbimby. It is also an opportunity to address housing diversity where Council, as a land owner, can exercise control of the development model and use of the land.

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). These objectives are achieved with this site being close to transport and connected to the existing main town area of Mullumbimby.

Assessment against the Net Community Benefit Assessment Criteria is not appropriate for a planning proposal that deals with the expansion of an existing residential neighbourhood.

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 within the Urban Growth Area boundary under the *North Coast Regional Plan 2036* (NCRP). This reflects that it was zoned for an urban use

(RE1 Public Recreation) at the time the NCRP was finalised. On this basis, the planning proposal is consistent with the NCRP.

The NCRP also contains principles that should be addressed for land that is outside that Urban Growth Area. Although this land is inside the Urban Growth Area, the following principles are addressed in any case:

Urban Growth Area Variation Principles	
Policy The variation needs to be consistent with the objectives and outcomes in the <i>North Coast Regional Plan 2036</i> and any relevant Section 9.1 Directions and State Environmental Planning Policies, and should consider the intent of any applicable local growth management strategy.	Provision of an adequate supply of serviced residential land is a key component of housing a growing population and consistent with the NCRP. The subject site is located within the Urban Growth Area boundary under the <i>North Coast Regional Plan 2036</i> . This land was also identified in the draft Byron Residential Strategy. It is consistent with the relevant SEPPs. It is consistent with the Section 9.1 Directions and where inconsistent it is justifiable.
Infrastructure The variation needs to consider the use of committed and planned major transport, water and sewerage infrastructure, and have no cost to government. The variation should only be permitted if adequate and cost-effective infrastructure can be provided to match the expected population.	The site has adequate road, water and sewer services in proximity that can be extended as required. Additional sewerage capacity will be dependent on pump station and pipeline enlargement. Water is available from Stuart Street and Jubilee Avenue. Initial road access can be through Stuart and Byron Streets. A road connection direct to Jubilee Avenue may be negotiated with a neighbouring land owner as a good longer term road access option. It is walking distance to schools, markets, shops and services as well as public transport. It is an appropriate site to promote affordable housing.
Environmental and farmland protection The variation should avoid areas:	
<ul style="list-style-type: none"> • of high heritage value 	The site does not contain any areas of high environmental heritage.
<ul style="list-style-type: none"> • of high environmental value 	An ecological assessment carried out for the subject land in July 2017 described it as a low-lying area of largely cleared land currently used for cattle grazing and much modified by historical land uses. Vegetation is dominated by exotic pasture species, and weeds of pasture. Tree cover includes dense stands of Camphor Laurel along Saltwater Creek and clumps of Camphor Laurel trees at scattered locations. No threatened flora was present during targeted surveys in July 2017. A late summer survey was also undertaken in March 2018 for the threatened species Hairy-joint Grass and Missionary Nutgrass, and neither species was located. No Endangered Ecological Communities are currently present. The probability of threatened fauna species being dependent upon the site in its current condition is low. The site was specifically assessed for Common Planigale habitat and none was found. Three small wetlands with associated stream channels are located near Saltwater Creek and Kings Creek. These wetlands are areas with potential for rehabilitation and recovery of the freshwater wetland and floodplain forest habitats. The larger one is in better condition than the smaller ones. On balance, the site does not have high environmental values.

Urban Growth Area Variation Principles	
<ul style="list-style-type: none"> mapped as important farmland, unless consistent with the interim variation criteria prior to finalising the farmland mapping review criteria prior to finalising the farmland mapping review. 	<p>The site is mapped on the BSAL maps as significant land but the Northern Rivers Farmland Mapping Project identifies it as a committed urban area. The land has been grazed under agistment since it was purchased by Council (in 2004) and zoned for Open Space. It is not important farmland. Its use for residential development will not fragment contiguous farmland. It does not have a history of sugar cane production and will not impact on the viability of the sugar industry or beef cattle industry on a local or regional basis.</p>
<p>Land use conflict The variation must be appropriately separated from incompatible land uses, including agricultural activities, sewage treatment plants, waste facilities and productive resource lands.</p>	<p>A land use conflict risk assessment (LUCRA) has been undertaken. The key potential conflict areas are the railway line to the east and the beef cattle grazing land at the southern and western boundary. The rail line has been disused since 2004 and there are no current plans to run trains on it. However, it would be appropriate to establish a buffer along the rail line to separate dwellings from the rail noise in the event that trains do return. Fencing will be required to keep people off the tracks if trains recommence. The potential conflict with grazing land on the southern and western boundary can be addressed with buffers and fencing. The state government recommends a 50 metre buffer to grazing land in "Living and Working in Rural Areas". A 50 metre vegetated buffer could be applied to this site at the southern and western boundary as part of any future development. It could be included in a site specific DCP if it is undertaken.</p>
<p>Avoiding risk The variation must avoid physically constrained land identified as:</p>	
<ul style="list-style-type: none"> flood prone 	<p>The land is flood prone in major events but a flood assessment indicates that parts of it can be filled to the flood planning level without major impacts on surrounding land.</p>
<ul style="list-style-type: none"> bushfire-prone 	<p>The site is not bushfire prone.</p>
<ul style="list-style-type: none"> highly erodible 	<p>The site is flat and not highly erodible. Geotechnical work has been undertaken in August 2018 and it confirms:</p> <ul style="list-style-type: none"> no soft soils or peat layers were encountered, excavation to one metre below the surface is unlikely to generate groundwater issues, no evidence of colluvial soils, soil reactivity is moderate to highly reactive which requires some additional costs for footings. <p>The soils encountered are typical of the wider Mullumbimby region and do not impose major geotechnical issues for future residential development on this site.</p>
<ul style="list-style-type: none"> having a severe slope 	<p>The site is flat land. There are no slope issues.</p>
<ul style="list-style-type: none"> having acid sulfate soils 	<p>The site is mainly mapped as ASS Class 4. This is where material is likely to be encountered at 2 metres below the natural ground surface. An ASS study (Alderson, August 2018) has confirmed that although the soil is naturally acidic, it is not as a result of ASS and this is not an issue.</p>
<p>Heritage The variation must protect and manage Aboriginal and non-Aboriginal heritage.</p>	<p>The site does not contain any European heritage items and no items are listed in Byron LEP 2014.</p>

Urban Growth Area Variation Principles	
	<p>An AHIMS search indicated that there are no registered Aboriginal sites on the subject land. Discussion with the local Aboriginal community has commenced and Council arranged for both the Tweed Byron Local Aboriginal Land Council and the Arakwal Corporation to inspect the site and prepare a cultural heritage inspection report.</p> <p>This site inspection took place in June 2018 and three Aboriginal people traversed the site. In the TBLALC's opinion there is nothing at this stage to halt or delay the proposed rezoning. Further site inspections, in the context of specific plans, may include on-site monitoring during ground disturbing stages of a future development.</p>
<p>Coastal area Only minor and contiguous variations to urban growth areas in the coastal area will be considered due to its environmental sensitivity and the range of land uses competing for this limited area.</p>	<p>The subject land is west of the Pacific Highway and therefore is not in the Coastal Area.</p>

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

The Mullumbimby Settlement Strategy (2003), which is still the current strategy for this locality, does not identify the subject land as an existing or future urban area. It was purchased by Council in 2004, and was zoned for open space after that.

Council is currently developing a residential strategy as part of a shire-wide review of residential land supply and demand. The residential strategy was exhibited as a draft in 2016. The subject land was included in that draft strategy as Area 13 (see below) even though it is already in an urban zone. It is a logical expansion of an existing urban area that can provide land quickly to meet the demand for affordable housing while Council continues to investigate longer term options in its new residential strategy. The fact that the land is already in an urban zone, combined with the need for affordable housing is the basis for the subject land preceding the final revision of the shire-wide residential strategy. A revised draft strategy is proposed for exhibition in late 2017, and the subject land is to be included in that strategy.

Site No.	Area of Interest Category	Location	Site Details/Residential Potential	Approx. Area (ha)	Estimated Dwelling Yield
13	Possible area for residential	Stuart Street, Mullumbimby Lot 22 DP1073165	<ul style="list-style-type: none"> - Potential for affordable housing - Within 1km town catchment - Requires engineering review - Low-medium flooding constraint – requires further flood assessment - Farmland constraint needs to be resolved - Council owned land - Railway corridor 	28.5 ha (Approx. 10 - 12 ha developable)	100 dwellings

Extract from Draft Residential Strategy (August 2016)

In February 2017 Council also resolved to investigate inclusion of the following measures into the Draft Residential Strategy to address housing affordability:

- i) Model controls that require affordable housing to be included in developments, i.e. a bonus provision requirement to deliver a percentage of affordable housing in a development.
- ii) Development controls and reduced contributions or other incentives that may boost construction of secondary dwellings as affordable housing but ensuring regulatory controls are consistent with the provision of affordable housing.
- iii) Promoting new caravan parks and manufactured home estates on unconstrained land in existing settlements and new land release areas in urban growth areas.
- iv) Provide for greater mixed use zones to enable a range of land uses including residential, commercial and industrial to be co-located in a way that supports sustainable forms of transport such as public transport, walking, cycling and increased neighbourhood amenity. Such zones to incorporate a mix of housing types and affordability suitable to a diversity of needs.

This planning proposal will potentially address items (iii) and (iv) in the above resolution.

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:

<i>Economy:</i> A sustainable and diverse economy which provides innovative employment and investment opportunities in harmony with our ecological and social aims	The planning proposal supports the economy through development and investment in the expansion of residential opportunities in Mullumbimby, which will create economic growth and demand without major ecological or social concerns.
<i>Environment:</i> Our natural and built environment is improved for each generation	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 remnant freshwater wetland and riparian areas that are on the site will be protected, including suitable buffers.
<i>Community Infrastructure:</i> Services and infrastructure that sustains, connects and integrates our communities and environment	The planning proposal builds on, and is linked to an existing urban area and is adjacent to recreation infrastructure. The site has adequate road and pedestrian access options. Water and sewerage are available to service the subject land.

<i>Society and Culture:</i> <i>Resilient, creative and active communities with a strong sense of local identity and place</i>	The subject site adjoins the township of Mullumbimby and is in close proximity to the local high school, CBD shops, community garden and community market. It will continue to support its village character and thereby maintain a strong sense of local identity and place.
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On this basis, the planning proposal is consistent with Council's CSP.

On 26 June 2008 Council adopted a Plan of Management (PoM) for Lot 22 DP 1073165 as community land purchased primarily for sporting fields. The PoM was prepared pursuant to the *Local Government Act 1993*. The purchase was made from section 7.11 contributions in response to an estimated demand for an additional 2.5 hectares of land for sports fields. The PoM categorised the majority of the site as Sportsground, with two smaller areas as General Community Use and the largest wetland on the site as Natural Water. The PoM noted that one General Community Use was for a community garden and the other was for affordable housing. If this planning proposal is successful in altering part of Lot 22 DP 1073165 from Community to Operational land then the PoM will not apply to the Operational land any longer. The PoM will be out of date at that point and will need to be revised.

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 36 – Manufactured Home Estates	This SEPP does not currently apply to the subject land as the RE1 zone is listed in Schedule 2 of the SEPP as “excluded land”. The SEPP will apply if the land is rezoned through this planning proposal.
SEPP 55 – Remediation of Land	Two Land Contamination Reports (Alderson and Associates, 2017 and 2018) have been prepared for the subject site. There is no recorded dip site on the land. The nearest dip site is north of Saltwater Creek (Mullumbimby Museum site), which is about 200 metres north-west of the subject land. Contamination testing on the community garden site (located between the proposed rezoning and the old dip site) and the subject land found no evidence of hazardous material from the dip site. The report did not identify any likelihood of contamination arising from the dominant past use of the subject site for cattle grazing. Some parts of it may have been cropped in the 1970s and further testing of these areas in August 2018 found no contamination present. The width of the rail corridor to the disused rail line in conjunction with a proposed 25 metre buffer to future residential development indicates that testing in this location is not

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
	warranted. The two Contamination Reports confirm that the subject site has a low likelihood of contamination.
SEPP 44 – Koala Habitat Protection	SEPP 44 specifies that in order for a forested area to be classified as koala habitat, a minimum of 15% of the trees must be species of trees that provide food for koalas. The Flora and Fauna Report undertaken for the site confirms that there is no substantial forested area located on the site and consequently SEPP 44 does not apply.
SEPP (Coastal Management) 2018	<p>Parts of the subject land are within 500 metres of the tidal part of the Brunswick River and are classified as being within the “coastal environment area” identified in this SEPP. No part of the site is mapped as coastal use area, coastal wetland or littoral rainforest.</p> <div data-bbox="619 801 1434 1525" data-label="Image"> </div> <p>Coastal Environment Area (blue shade)</p> <p>SEPP (Coastal Management) requires that Council must consider a range of matters when assessing development on land mapped in the SEPP as littoral rainforest, coastal wetlands, coastal use area or coastal environment area. It does not specifically address matters of concern when preparing a planning proposal. The SEPP will apply to future development on this site where it is proposed on land mapped in the SEPP. Nothing in the LEP provisions contained in this planning proposal is inconsistent with the aim of the SEPP to “manage development in the coastal zone and protect the environmental assets of the coast”. The planning proposal is consistent with the SEPP.</p>

State Environmental Planning Policy (SEPP)	Compliance of Planning Proposal
SEPP (Rural Lands) 2008	<p><i>The aims of this Policy are as follows:</i></p> <ul style="list-style-type: none"> <i>(a) orderly and economic use and development of rural lands,</i> <i>(b) regard to Rural Planning Principles and the Rural Subdivision Principles,</i> <i>(c) to implement measures designed to reduce land use conflicts,</i> <i>(d) to identify State significant agricultural land</i> <i>(e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.</i> <p>No State significant agricultural land occurs on the subject land. It is a committed urban area in the Northern Rivers Farmland Mapping Project. The planning proposal intends to create a new residential area rather than promote a change in rural lot size or rural dwelling permissibility. The key area for conflict with surrounding land is grazing land to the south. The <i>Living and Working in Rural Areas Handbook</i> recommends a 50 metre buffer for grazing land. A 50 metre buffer that is revegetated with native vegetation may be an appropriate buffer to grazing land to the south. A ring road along the southern boundary (at the DA stage) would also assist in maximising separation distances. This should minimise the likelihood of significant impact on surrounding rural land.</p> <p>The 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.	N/A
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 not affect the boundaries or extent of any rural zones.	N/A
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.	Rezoning of an area of RE1 zoned land to R1 General Residential will prevent the use of that part of the land for mining or extractive industry. However, the rezoning is justified because mining and extractive industries are already constrained by the existing urban zone. Council is not aware of any extractive material or mineral resource on this site. The inconsistency is considered to be of minor significance.	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
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> <ul style="list-style-type: none"> (a) adverse impacts on a Priority Oyster Aquaculture Area or a “current oyster aquaculture lease in the national parks estate”, or (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>Priority Oyster Aquaculture Areas (POAA) exist in the lower parts of the Brunswick River, however there is minimal likelihood that the planning proposal will have adverse impacts on them.</p> <p>Most land in the vicinity of the POAA is already zoned for environmental protection or within the national parks estate.</p>	Consistent
1.5 Rural Lands	<p>Applies when:</p> <ul style="list-style-type: none"> (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 (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>A planning proposal to which clauses (a) and (b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p> <p>A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p>	<p>This planning proposal will not affect the boundaries or extent of any rural zones.</p>	N/A

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 <i>"Rural Lands"</i>.</p>	<p>The planning proposal does not alter or remove any environment protection zone. No environmental standards will be reduced by the proposed LEP changes.</p> <p>While some of the riparian land and one remnant freshwater wetland on the site may qualify for an environmental zone or overlay map, there are no such zones in Byron LEP 2014. A cleared buffer area to agriculture at the southern boundary of the subject land is recommended to be revegetated with native species.</p> <p>In Byron Shire, environmental zones are being dealt with as a separate process. In the absence of environmental zones or overlay maps, the areas mentioned above are to remain in the RE1 zone or as Deferred Matter.</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 wetlands, littoral rainforests, coastal environment or coastal use area. The subject land is partly affected by coastal environment area mapping.</p> <p>(4) 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>The subject land is partly affected by coastal environment area mapping.</p> <p>It is consistent with the NSW Coastal Policy as there is minimal likelihood of physical impact on the environment, and future subdivision will be assessed on merits through the development application process. The site is not affected by coastal processes. The site is flood prone and this can be addressed with filling and building floor levels.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	(5) 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.		
2.3 Heritage Conservation	<p>A planning proposal must contain provisions that facilitate the conservation of:</p> <p>(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,</p> <p>(b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and</p> <p>(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>	<p>The site is vacant and has no European heritage items located on it.</p> <p>An AHIMS search indicated that there are no registered Aboriginal sites on the subject land. Discussion with the local Aboriginal community has commenced and Council arranged for both the Tweed Byron Local Aboriginal Land Council and the Arakwal Corporation to inspect the site and prepare a cultural heritage inspection report.</p> <p>This site inspection took place in June 2018 and three Aboriginal people traversed the site. In the TBLALC's opinion there is nothing at this stage to halt or delay the proposed rezoning. Further site inspections, in the context of specific plans, may include on-site monitoring during ground disturbing stages of a future development.</p> <p>Byron LEP 2014 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire.</p>	Consistent
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> <p>(a) where the land is within an environment protection zone,</p> <p>(b) where the land comprises a beach or a dune adjacent to or adjoining a beach,</p> <p>(c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning</p>	The planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>authority has taken into consideration:</p> <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>. 		
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>	The planning proposal does not introduce an environmental zone or overlay.	N/A
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 	<p>This planning proposal will change most of the subject land from the RE1 zone to a R1 General Residential zone.</p> <p>In regard to the proposed R1 General Residential zone, the planning proposal meets the provisions of this Direction in that:</p> <ul style="list-style-type: none"> ▪ It will provide the opportunity for a broad range of housing options, demonstrated through a range of lot sizes and development types including manufactured housing estates, 	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>available in the housing market, and</p> <p>(b) make more efficient use of existing infrastructure and services, and</p> <p>(c) reduce the consumption of land for housing and associated urban development on the urban fringe, and</p> <p>(d) be of good design.</p> <p>A planning proposal must, in relation to land to which this direction applies:</p> <p>(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</p> <p>(b) not contain provisions which will reduce the permissible residential density of land.</p>	<ul style="list-style-type: none"> ▪ The R1 zone contains objectives that specifically reference housing variety and diversity, ▪ Local provisions that address housing diversity are also proposed and will apply to this land as an identified "key site" on the key sites map, ▪ Efficient use is made of existing infrastructure and services designed and constructed to service Mullumbimby, including existing water and sewerage capacity in headworks, ▪ It will reduce the consumption of land suitable for residential use by applying the R1 General Residential zone to land that is already zoned for an urban purpose and is in close proximity to the town of Mullumbimby, and close to schools and services. This will enable live/work arrangements, affordable housing or innovative manufactured home estates instead of low density residential development, and ▪ With Council as the owner the ability to enforce good urban design is more likely. Development of areas of near level, flood-free residential land capable of affordable housing (in the context of Byron LGA house prices) is the desired outcome. <p>The planning proposal meets the requirements of this Direction in that it is capable of being connected to all necessary site services such as roads, water, sewerage and electricity, and will not reduce the density of existing residential lands.</p>	
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</p>	<p>This planning proposal seeks to permit development for the purposes of a manufactured homes estate (MHE) on this land as an affordable housing initiative and the R1 zone is preferred for that reason. Other</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>authority must:</p> <p>(a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and</p> <p>(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> <p>In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:</p> <p>(a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located,</p> <p>(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</p> <p>(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.</p>	<p>Residential zones in Byron LEP 2014 (R2, R3 and R5) do not permit caravan parks or MHEs.</p> <p>Pursuant to clause 9 of SEPP 36, the development:</p> <p>a) will be adequately provided with reticulated water, a reticulated sewerage system, drainage and electricity, and</p> <p>(b) is or will be provided with adequate transport services, and</p> <p>(c) will have access to sufficient community facilities and services, and</p> <p>(d) will not have an adverse effect on any:</p> <ul style="list-style-type: none"> • conservation area • heritage item • waterway or land having special landscape, scenic or ecological qualities, <p>which is identified in an environmental planning instrument applicable to the land concerned.</p> <p>Pursuant to Schedule 2 of SEPP 36, the land is not affected by coastal processes or coastal hazards and, although flood affected, it can be filled without major off-site impacts. It is not in a drinking water catchment and not affected by hazardous industry or pollution. It is in an appropriate location for a MHE.</p>	
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.	The proposed R1 General Residential zone will permit home occupation without consent pursuant to Byron LEP 2014.	Consistent
3.4 Integrating Land Use and Transport	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.	<p>This planning proposal will alter land zoned for open space to create a new residential zone.</p> <p>Mullumbimby is a country town that relies heavily on private transport. However, the subject land is</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>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> <p>(a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and</p> <p>(b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).</p> <p>(1) 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> <p>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</p> <p>(b) increasing the choice of available transport and reducing dependence on cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	<p>central to a range of facilities and services that can be easily accessed on foot or bicycle as follows:</p> <ul style="list-style-type: none"> ▪ 300 metres to Mullumbimby High School ▪ 1,000 metres to Mullumbimby Primary School ▪ 700 metres to main street shops and services ▪ 450 metres to Mullumbimby pool and bowling club ▪ 100 metres to community garden, skate park netball courts and tennis courts ▪ 200 metres to community market site. <p>In order to the reduce reliance on private cars, the future development of the site will include bike paths and footpaths.</p> <p>Public transport in Mullumbimby is limited to the school bus, however, at such time as public transport facilities become more generally available, they would not be precluded from servicing the subject site. The site is also 400 metres to Jubilee Avenue, which is the main southern access to Mullumbimby for any bus routes.</p> <p>All of the land in the vicinity of the site is relatively flat and easy to walk or ride.</p> <p>The planning proposal meets the objectives of the Direction.</p>	
3.5 Development Near Licensed Aerodrome	<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 licensed aerodrome.</p> <p>The main requirements of the Direction are that Council considers the Obstacle Limitation Surface (OLS) as defined by that Department of the Commonwealth for residential purposes, and does not increase residential densities in areas</p>	<p>The planning proposal will not alter provisions that affect land located in the vicinity of any aerodrome.</p>	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.		
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.	N/A
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>	<p>The land to which this planning proposal applies is mostly mapped as class 4 acid sulfate soils, with a small strip of class 3 acid sulfate soil at its southern boundary. For class 4 land, the ASS layer is likely to be more than 2 metres below the ground surface, and for class 3 it is 1 metre. The planning proposal will not necessarily lead to works that will affect ASS at these depths.</p> <p>An ASS study (Alderson, August 2018) has confirmed that although the soil is naturally acidic, it is not as a result of ASS and this is not an issue. Liming rates for disturbed areas are recommended to neutralise the natural acidity. They are not required to address ASS, which was not found on the site.</p>	Consistent
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>This planning proposal does not impact on any mine subsidence area.</p> <p>A geotechnical report has been undertaken and this indicates that no major geotechnical issues affect the site. The site is not unstable.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	(i) by or on behalf of the relevant planning authority, or (ii) by or on behalf of a public authority and provided to the relevant planning authority.		
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, 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>This planning proposal affects land that is mostly flood affected in a 100 year ARI event and totally affected in a PMF event. It is a relatively low velocity area during flood events, other than in the small watercourses that occur on the site. It is not a floodway.</p> <p>The land could be developed for residential purposes if it is filled. Three fill scenarios were modelled and design option 3, which has three fill pads and drainage reserves between them was modelled as having small but acceptable impacts on surrounding rural land. It is the preferred fill option for this site.</p> <p>On balance, the preferred fill option will not have significant flood impacts to other properties; will not result in increased spending on flood mitigation, infrastructure or services; and will not permit excessive development without consent.</p> <p>The planning proposal will not impose flood controls on development above the flood planning level.</p> <p>Development in flood prone areas is subject to the provisions of existing clause 6.3 of the Byron LEP 2014, which will apply at development stage.</p>	Justifiably inconsistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<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-General).</p>		
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,</p>	<p>The Camphor Laurel forest, located in the corners and along the boundaries of the subject site, is not classified as bushfire prone land.</p> <p>A Bushfire Hazard Report is not warranted. Minimum setbacks to any proposed rehabilitation areas will be considered in greater detail at the design development stage.</p> <p>Consultation with the Rural Fire Service is not required.</p>	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>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 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, (c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks, (d) contain provisions for adequate water supply for firefighting purposes, (e) minimise the perimeter of the area of land interfacing the hazard which may be developed, (f) introduce controls on the placement of combustible materials in the Inner Protection Area. 		

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
5 Regional Planning			
5.1 Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	<p>This planning proposal is within the urban growth area boundary identified in the North Coast Regional Plan (NCRP).</p> <p>The planning proposal would assist in meeting the challenges for population and housing growth to expand towns outside the coastal area (west of the Pacific Highway). It will not impact adversely on environmentally significant land.</p> <p>It is not considered that the planning proposal prejudices the rezoning of any other urban release areas under the NCRP, nor would it impact adversely on the environment or prime agricultural land. It can be adequately serviced with urban infrastructure.</p> <p>Whilst the planning proposal will result in a moderate increase in residential zoned land, the level of demand for residential dwellings at Mullumbimby will exceed supply within the next five years. This land will have a particular emphasis on supplying affordable housing which is a major issue in the LGA.</p>	Consistent
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	The planning proposal is not within this catchment.	N/A
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 an urban use.	The land is not identified as State or regionally significant farmland under the Northern Rivers Farmland Protection Project and sits within the identified "urban growth boundary" of Mullumbimby.	Consistent

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
<p>5.4 Commercial and Retail Development along the Pacific Highway, North Coast</p>	<p>A planning proposal that applies to land located “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. (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 and efficiency of the highway. (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>This planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway.</p>	<p>N/A</p>
<p>5.10 Implementation of Regional Plans</p>	<p>All planning proposals must be consistent with the applicable Regional Plan released by the Minister for Planning.</p>	<p>The planning proposal affects land within an existing urban growth area boundary identified in the North Coast Regional Plan (NCRP). It will aim to provide affordable residential dwellings of a diverse nature at a density commensurate with the goals of the NCRP. The locality can be serviced by urban infrastructure</p>	<p>Consistent</p>

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
		and is a logical extension to Mullumbimby residential land.	
6. Local Plan Making			
6.1 Approval and Referral Requirements	<p>A planning proposal must:</p> <ul style="list-style-type: none"> (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (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: <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), prior to undertaking community consultation in satisfaction of Division 3.4 of the Act, and (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. 	The 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.	N/A

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
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).	<p>The planning proposal includes removal of approximately 22 hectares of land from the RE1 Public Recreation zone and including it in the R1 General Residential zone. It is also proposed that this land change from Community to Operational. Council, as the relevant public authority, has approved this change but approval from DPE may be necessary.</p> <p>In September/October 2018, Council exhibited the Byron Shire Recreation and Open Spaces Needs Assessment. This document aims to increase Council's knowledge and understanding of the community's recreation and sporting needs, existing opportunities and relevant trends impacting recreation services or facility provision. The assessment provides Council a clear planning framework to 2036. A supply and demand analysis in this assessment indicated that the subject land was surplus to Council's recreation or sporting requirements. The Mullumbimby Community Gardens, which are located on Lot 22, will be retained in the RE1 Public Recreation zone.</p>	Justifiable inconsistency
6.3 Site Specific Provisions	<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 	<p>The planning proposal does not seek to allow a particular development to be carried out.</p> <p>In this case, the planning proposal is introducing a new zone into Byron LEP 2014. This zone will be available for use on other sites.</p> <p>The special provisions that relate to diverse housing will initially only apply to this site, but over time may be applied more widely.</p> <p>The diverse housing requirements are in addition to those already contained in the principal</p>	Justifiable inconsistency

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with Direction
	<p>use without imposing any development standards or requirements in addition to those already contained in that zone, or</p> <p>(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> <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>	<p>environmental planning instrument. However, they are important in terms of increasing the housing yield from this land and ensuring that smaller (more affordable) dwellings result from this development.</p> <p>The planning proposal does not contain schematic drawings.</p>	

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. An ecological assessment carried out for the subject land in July 2017 described it as a low-lying area of largely cleared land currently used for cattle grazing and much modified by historical land uses. Vegetation is dominated by exotic pasture species and weeds of pasture. Tree cover includes dense stands of Camphor Laurel along Saltwater Creek and clumps of Camphor Laurel trees at scattered locations. No threatened flora was present during targeted surveys in July 2017. A late summer survey was also undertaken in March 2018 for the threatened species Hairy-joint Grass and Missionary Nutgrass, and neither species was located. No Endangered Ecological Communities are currently present. The probability of threatened fauna species being dependent upon the site in its current condition is low. The site was specifically assessed for Common Planigale habitat and none was found.

Three small wetlands with associated stream channels are located near Saltwater Creek and Kings Creek. These wetlands are areas with potential for rehabilitation and recovery of the freshwater wetland and floodplain forest habitats.

The planning proposal specifically seeks to protect the larger freshwater wetland by leaving it in the RE1 zone. This is being done in the absence of environmental zones in Byron LEP 2014.

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 the planning proposal.

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 site is currently used for cattle grazing and consequently is largely cleared and significantly degraded. There is limited potential for further adverse impact to the natural environment. A remnant freshwater wetland will be protected with an RE1 zone. Residential development will be confined to the cleared grasslands, which have no environmental significance. Small ephemeral waterways on the site can be protected and rehabilitated in an urban context as part of future development. Rehabilitation of the nearby riparian areas with rainforest species is a likely outcome of the planning proposal.

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

The planning proposal will have strong positive social and economic effects. It will provide social benefits by improving housing availability, diversity and affordability. It will provide economic benefits through the most efficient use of developable lands in close proximity to an existing centre, and employment opportunities during construction. The broad range of uses in the zone will promote home-based businesses.

The subject site was purchased using developer contributions collected pursuant to a section 7.11 fund. If the planning proposal is successful in changing the zone of the land and reclassifying it to Operational then it will need to repay an amount to section 7.11 funds. This amount would be proportional to the amount of land being

reclassified. This money can then be spent on open space and recreation needs in accordance with Council's Section 7.11 Contributions Plan for the Mullumbimby catchment.

Section D State and Commonwealth interests

1 Is there adequate public infrastructure for the planning proposal?

Reticulated water supply is possible via the existing Mullumbimby water supply system and the associated Laverty's Gap Weir storage. Reticulated water mains are close to the site at Jubilee Avenue and Stuart Street (Appendix 3).

Sewerage service is possible via the Mullumbimby sewerage system and the associated Brunswick Valley Sewage Treatment Plant (Vallances Road). The sewerage reticulation system is close to the site at Station Street (Appendix 3). Initially, a larger pump and larger pipe line capacity will be needed to get sewage from an initial stage to the STP. An additional sewage pump station is likely to be required as the site is quite flat.

The site has multiple legal road access options via Byron Street and Stuart Street. The Stuart Street access has a low-level causeway crossing over Saltwater Creek that is suitable for pedestrians, bicycles and vehicles but would need upgrading to a bridge if it is to be a useful access during nuisance level flooding. A bridge would also provide better access for the community garden and tennis courts during heavy rain and nuisance flooding. Byron Street has an awkward intersection with Jubilee Avenue, which is not ideal. The Byron Street easement also appears to be used, in part, for a grass netball court and a grass running track as part of adjacent sporting facilities. However, the easement is 30 metres wide and there is ample opportunity to construct a road without impacting these facilities. A better option in the longer term may be to negotiate road access to Jubilee Avenue via the neighbouring land to the west. This could be located to enable a roundabout, inclusive of Azalea Street, which could improve traffic movements generally in this location. Access to the site can be addressed in more detail closer to the development stage when dwelling yields and staging can be determined with greater certainty.

Reticulated power and telecommunications are adjacent to the site and can be extended to it. NBN can be installed at the subdivision stage.

State infrastructure such as schools and hospitals will be able to deal with the additional population if the site is rezoned. Mullumbimby High School is 300 metres from the site and Mullumbimby Primary School is 1,000 metres away. The hospital has recently been moved to Ewingsdale.

There is adequate public infrastructure to incorporate the proposed residential development under the planning proposal.

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

The Gateway determination required that OEH, SES and the Tweed Byron LALC be contacted for comment prior to public exhibition.

The Tweed Byron LALC has already inspected the subject land and indicated there is nothing at this stage to halt or delay the proposed rezoning. Further site inspections in the context of specific plans, may include on-site monitoring during ground disturbing stages of a future development.

At this early stage it appears unlikely that there will be any issues of interest to Commonwealth authorities. Other State government authorities will be consulted during the public exhibition period.

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
Office of Environment and Heritage	Consideration of riparian and wetland areas, flooding and Aboriginal archaeological matters.
State Emergency Service	Flooding and emergency rescue issues.

Part 4 Mapping

The planning proposal will amend the following maps:

- Map sheet LZN 002BA (zone map)
- Map sheet LSZ 002BA (lot size map)

No amendment is required for Height of Building or Floor Space Ratio maps.

Add a new map called the “Key Sites Map” to be included in the LEP. Part Lot 22 DP 1073165 will be identified as Area “A” on this map.

A summary of the key mapping criteria are as follows:

Zone	Minimum Lot Size	Height of Building	Floor Space Ratio
R1	200 m ²	9.0 metres	None
RE1	None	9.0 metres	None

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 Department of Planning and Environment’s *A guide to preparing local environmental plans*. 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
- the web sites of Byron Shire Council and the Department of Planning and Environment.

In accordance with DPE Practice Note PN 09-003, the written statement at Appendix 4 will be exhibited as part of the planning proposal. The Practice Note will also be included in the exhibition material.

The supporting studies and information that apply to this site will also be included in the exhibition material.

A public hearing is mandatory for consideration of issues relating to changing any public land from Community to Operational under the *Local Government Act 1993*. It must be chaired by an independent person and be advertised and reported in accordance with prescribed regulations. The hearing can only take place after the public exhibition and a report on the public hearing must be considered by Council.

Part 6 Project timeline

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

Estimated completion	Plan making step
November 2017	Decision by Council to support the planning proposal and submit for Gateway determination by Department of Planning and Environment.
May 2018	Gateway determination issued by Department of Planning and Environment.
September 2018	Completion of additional studies required by Gateway determination.
October 2018	Early consultation with SES, OEH and Tweed Byron LALC.
October/November 2018	Public exhibition of planning proposal. Further government agency consultation.
November 2018	Public hearing with independent chair to consider Community to Operational reclassification
December 2018	Analysis of public submissions. Consideration of public hearing report. Preparation of Council report. Council adopts Byron Shire Recreation and Open Spaces Needs Assessment.
February 2019	Decision by Council to endorse the planning proposal and submit to Department of Planning and Environment for finalisation.

Summary and conclusions

This planning proposal seeks to rezone land on the subject site to increase the opportunity for diverse and affordable residential development in response to a documented demand and inadequate long-term land supplies. It will leave environmental areas (a remnant wetland) and the Mullumbimby Community Gardens in an RE1 zone. A piece of land on the eastern side of a railway line will also remain RE1. A strip of land adjacent to Saltwater Creek will remain as a Deferred Matter and is subject to Byron LEP 1988. It is also intended that the land be reclassified from Community land to Operational land in this planning proposal.

The land has been subject to a flooding assessment, two ecological assessments, two contaminated land reports, an ASS analysis, a geotechnical report, a Land Use Conflict Risk Assessment (LUCRA), and an Aboriginal cultural heritage assessment. All of these reports support the application of a residential zone over part of the area through a planning proposal. A draft recreation and open space needs analysis has indicated the land is not required for recreation or sporting use. The LUCRA makes recommendations that will ameliorate any potential land use conflicts with neighbouring land use.

It is an area that can be economically serviced with urban infrastructure, has good road and pedestrian access options and will allow affordable, innovative and diverse housing to take place that contributes to the local economy without causing concern regarding social services. The land is not contaminated from past land use, does not contain ASS and has no serious geotechnical issues that would prevent its development.

The planning proposal is not likely to have an adverse impact on significant agricultural lands. The areas affected by flooding can be filled without significant impacts on surrounding land.

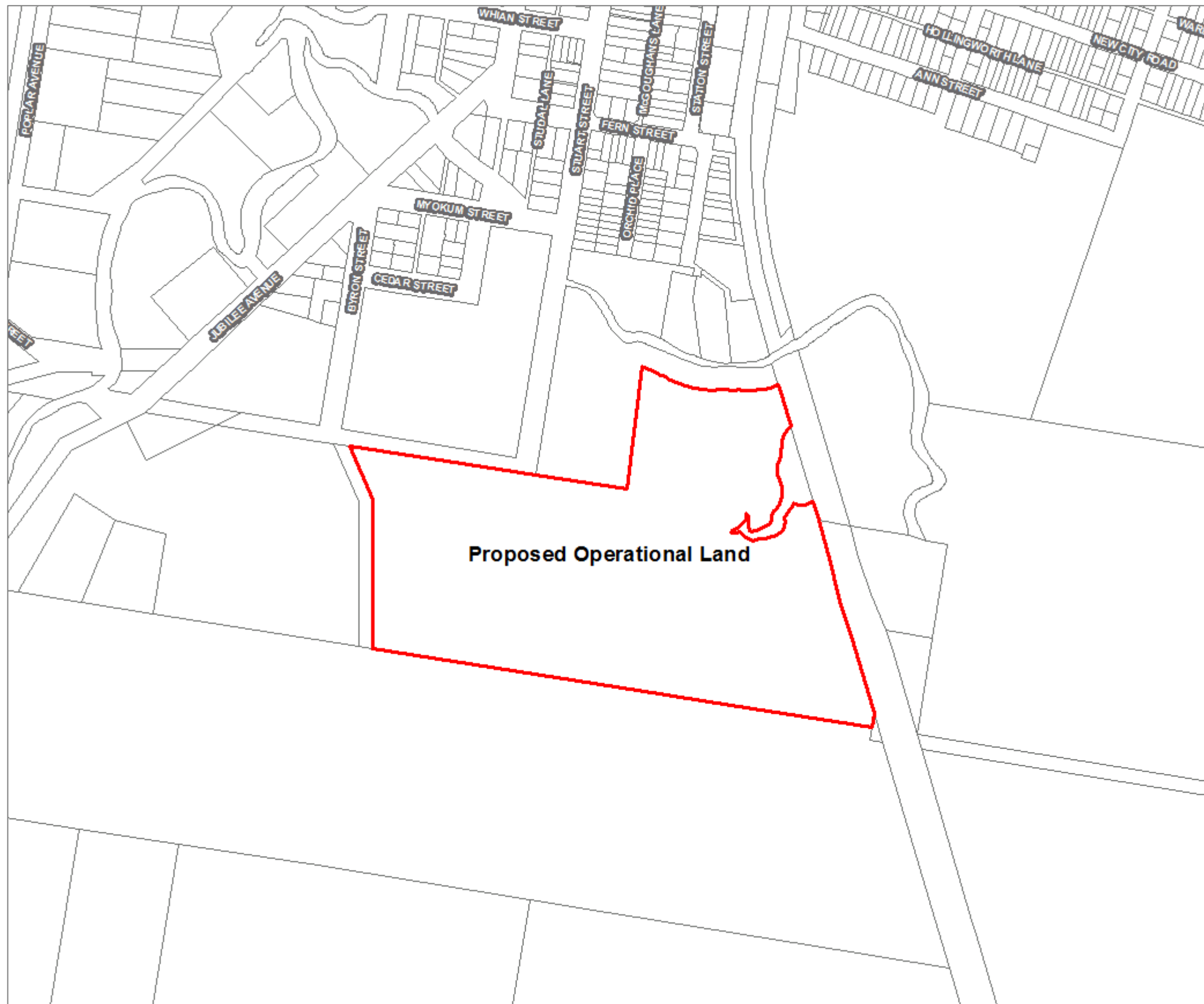
The proposed zoning changes are consistent with the North Coast Regional Plan (NCRP). The land is identified in the NCRP as an existing urban growth area. An assessment of the planning proposal indicates that it is consistent with relevant SEPPs. It is consistent with most of the relevant s9.1 Directions, and where inconsistencies occur they can be justified.

The Department of Planning and Environment issued a Gateway determination on 30 May 2018, indicating that the planning proposal can proceed to public exhibition subject to compliance with certain conditions. Those conditions have been complied with. As the subject land is Council owned, DPE will finalise the planning proposal and organise the Governor's approval in relation to reclassifying the land from Community to Operational.

Appendix 1

Part Lots Reclassification Map

PART LOTS RECLASSIFICATION MAP



Appendix 2

Draft Land Use Table for R1 zone

Draft Diverse Housing clause

Draft Schedule 4 amendment

Draft Land Use Table for R1 zone

Zone R1 General Residential*

1 Objectives of zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide a secure supply of affordable housing stock that meets the needs of low to middle income residents.
- To enable the provision of non-residential land uses that are compatible with, and do not place demands on services beyond the level reasonably required for, residential use.
- To encourage adaptable housing that supports ageing in place.

2 Permitted without consent

Environmental Protection works; Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Boarding houses; Caravan parks; Child care centres; Community facilities; Dwelling houses; Emergency services facilities; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Flood mitigation works; Food and drink premises; Function centres; Group homes; High technology industries; Home businesses; Home industries; Hostels; Information and education facilities; Kiosks; Markets; Multi dwelling housing; Neighbourhood shops; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential accommodation; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Service stations; Shop top housing; Signage; Water supply systems; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Car parks; Cemeteries; Charter boating and tourism facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation facilities (major); Registered clubs; Research stations; Restricted premises; Rural industries; Rural workers' dwellings; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste or resource management facilities; Water recycling facilities; Water storage facilities; Water treatment facilities; Wholesale supplies

* **Red** items are the compulsory objectives and land uses.

Byron LEP 2014 – [draft] Diverse Housing clause

4.7 Diverse housing

- (1) The objective of this clause is to ensure the provision of a mix of dwelling types in residential development.
- (2) This clause applies to development for the purposes of residential accommodation or a mixed use development if:
 - (a) the development is on land identified as “Clause 4.7” on the [Key Sites Map](#), and
 - (b) the development comprises at least four dwellings.
- (3) Development consent must not be granted to development to which this clause applies unless:
 - (a) at least 25% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development will include self-contained one-bedroom dwellings, and
 - (b) no more than 25% of the total number of dwellings (to the nearest whole number of dwellings) forming part of the development will include dwellings with at least three bedrooms.

Note: Initially, the key sites map will identify only Part Lot 22 DP 1073165, Stuart Street, Mullumbimby.

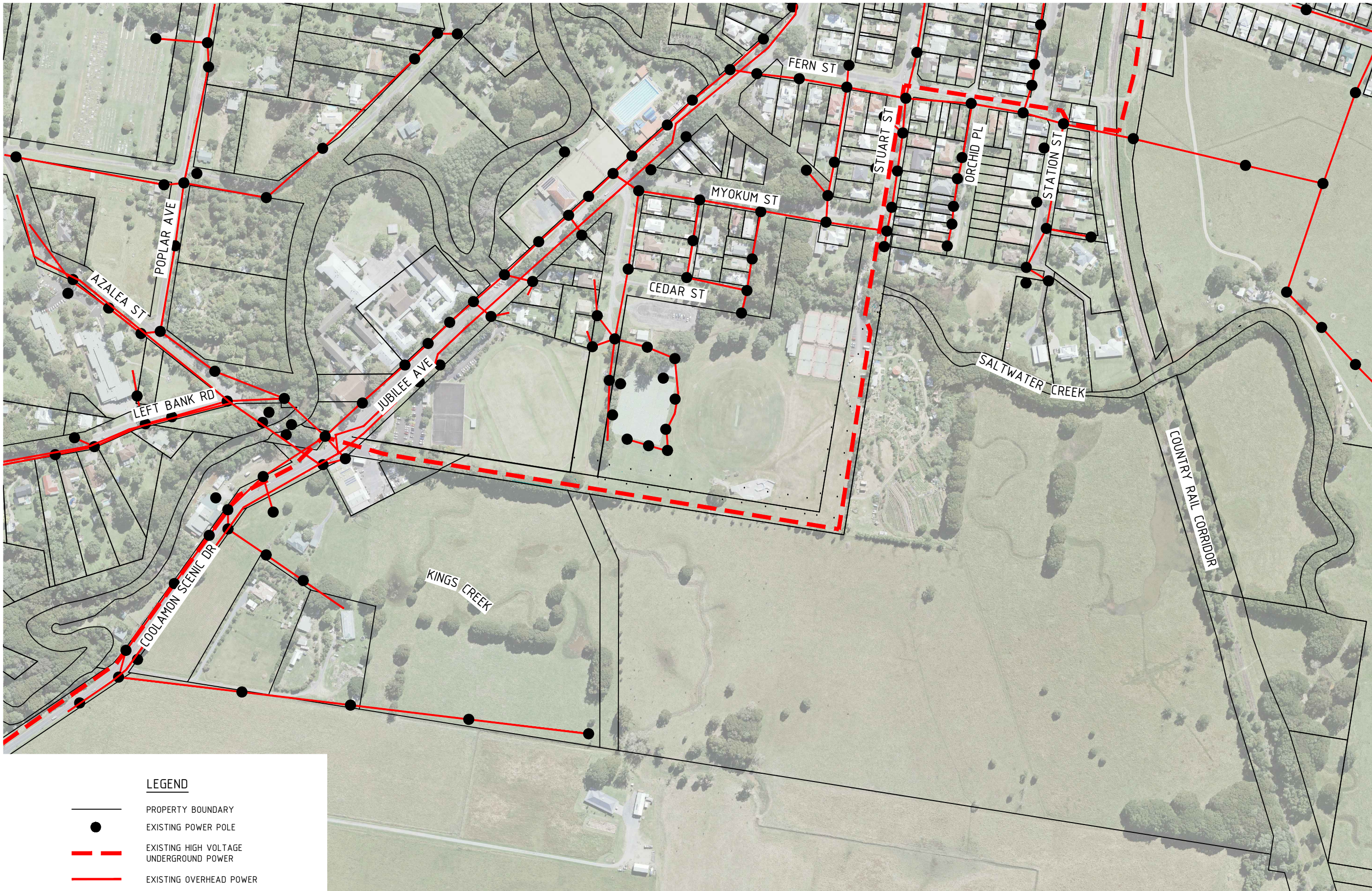
Draft Schedule 4 amendment

Part 2 land classified, or reclassified, as Operational land – interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts, etc, not discharged
Mullumbimby	Part of Lot 22, DP 1073165, being the land in Zone R1 General Residential	G865310. Easement for pipeline 1.22 metres wide appurtenant to Lot 22, DP 1073165 affecting the part shown so burdened in DP 442523.

Appendix 3

Infrastructure mapping



LEGEND

- PROPERTY BOUNDARY
- EXISTING POWER POLE
- - - EXISTING HIGH VOLTAGE UNDERGROUND POWER
- EXISTING OVERHEAD POWER

PRELIMINARY
NOT FOR CONSTRUCTION

SCALE: A1 SHEET 1:2000, A3 SHEET 1:4000
0 20 40 80 120 160 200m

INFRASTRUCTURE SERVICES
COUNCIL OFFICES
70-90 STATION STREET,
MULLUMBIMBY NSW 2482.
PHONE 02 66267000
FAX 02 66843018
WEBSITE www.byron.nsw.gov.au



APPROVED DATE

DESIGNED	J.B.	23.06.17
CHECKED	E.E.	23.06.17
HORIZONTAL DATUM	MGA	
VERTICAL DATUM	AHD	

PROJECT: **PROPOSED SUB-DIVISION
LOT22 DP1073165**

PLAN TITLE: **EXISTING ELECTRICAL SERVICES**

PROJECT NUMBER:
2503

DRAWING NUMBER	ISSUE
2503-SK01	A

A	ORIGINAL ISSUE	J.B.	E.E.	23.06.17
ISSUE	AMENDMENT DETAILS	DRAWN	CHECK	DATE

USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.

ACAD FILE No:



LEGEND

- PROPERTY BOUNDARY
- EXISTING WATER MAIN

PRELIMINARY
NOT FOR CONSTRUCTION

SCALE: A1 SHEET 1:2000, A3 SHEET 1:4000
0 20 40 80 120 160 200m

INFRASTRUCTURE
SERVICES
COUNCIL OFFICES
70-90 STATION STREET,
MULLUMBIMBY NSW 2482.
PHONE 02 66267000
FAX 02 66843018
WEBSITE www.byron.nsw.gov.au



APPROVED DATE

DESIGNED		
DRAWN	J.B.	23.06.17
CHECKED	E.E.	23.06.17
HORIZONTAL DATUM	MGA	
VERTICAL DATUM	AHD	

PROJECT: PROPOSED SUB-DIVISION
LOT22 DP1073165

PLAN TITLE:
EXISTING WATER SERVICES

PROJECT NUMBER:
2503

DRAWING NUMBER	ISSUE
2503-SK02	A

A	ORIGINAL ISSUE	J.B.	E.E.	23.06.17
ISSUE	AMENDMENT DETAILS	DRAWN	CHECK	DATE

USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.

ACAD FILE No:



LEGEND

- PROPERTY BOUNDARY
- EXISTING SEWER MAIN
- EXISTING SEWER RISING MAIN
- EXISTING SEWER MAINTENANCE HOLE
- EXISTING SEWER PUMP STATION - BYRON SHIRE COUNCIL
- EXISTING SEWER PUMP STATION - PRIVATE

PRELIMINARY
NOT FOR CONSTRUCTION

SCALE: A1 SHEET 1:2000, A3 SHEET 1:4000
0 20 40 80 120 160 200m

INFRASTRUCTURE SERVICES
COUNCIL OFFICES
70-90 STATION STREET,
MULLUMBIMBY NSW 2482.
PHONE 02 66267000
FAX 02 66843018
WEBSITE www.byron.nsw.gov.au



APPROVED DATE

DESIGNED	J.B.	23.06.17
CHECKED	E.E.	23.06.17
HORIZONTAL DATUM	MGA	
VERTICAL DATUM	AHD	

PROJECT: **PROPOSED SUB-DIVISION
LOT22 DP1073165**

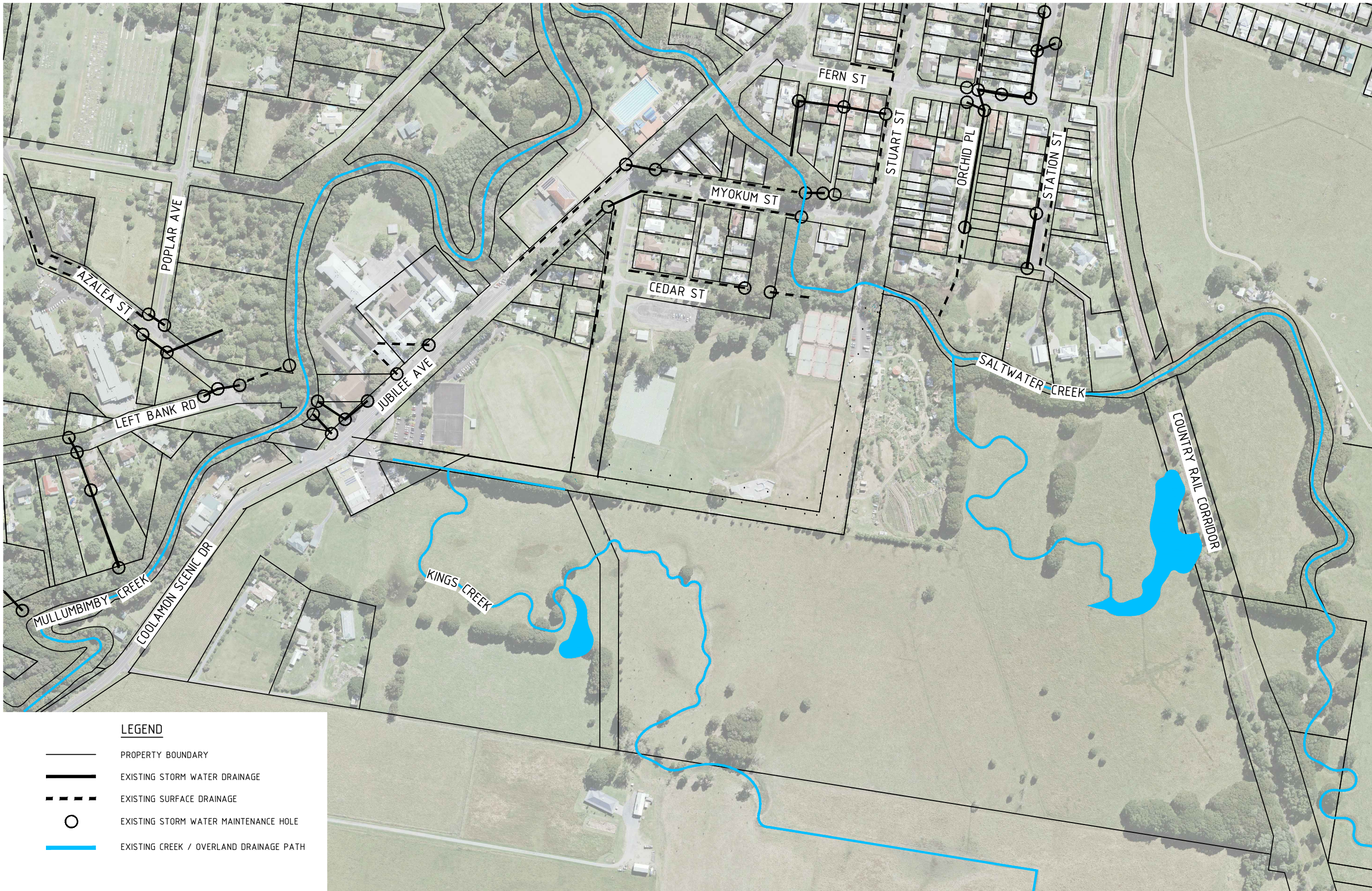
PLAN TITLE: **EXISTING SEWER SERVICES**

PROJECT NUMBER: **2503**

DRAWING NUMBER	ISSUE
2503-SK03	A

ISSUE	AMENDMENT DETAILS	DRAWN	CHECK	DATE	# USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.
A	ORIGINAL ISSUE	J.B.	E.E.	23.06.17	

ACAD FILE No:



LEGEND

- PROPERTY BOUNDARY
- EXISTING STORM WATER DRAINAGE
- EXISTING SURFACE DRAINAGE
- EXISTING STORM WATER MAINTENANCE HOLE
- EXISTING CREEK / OVERLAND DRAINAGE PATH

PRELIMINARY
NOT FOR CONSTRUCTION

ISSUE AMENDMENT DETAILS

DRAWN CHECK DATE

USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.

INFRASTRUCTURE SERVICES
COUNCIL OFFICES
70-90 STATION STREET,
MULLUMBIMBY NSW 2482.
PHONE 02 66267000
FAX 02 66843018
WEBSITE www.byron.nsw.gov.au



DESIGNED	J.B.	23.06.17
CHECKED	E.E.	23.06.17
HORIZONTAL DATUM	MGA	
VERTICAL DATUM	AHD	

PROJECT: **PROPOSED SUB-DIVISION LOT22 DP1073165**
PLAN TITLE: **EXISTING STORM WATER DRAINAGE**

PROJECT NUMBER: **2503**
DRAWING NUMBER: **2503-SK04**
ISSUE: **A**



LEGEND

- PROPERTY BOUNDARY
- EXISTING OPTIC FIBRE
- EXISTING TELECOMMUNICATIONS

PRELIMINARY
NOT FOR CONSTRUCTION

SCALE: A1 SHEET 1:2000, A3 SHEET 1:4000
0 20 40 80 120 160 200m

INFRASTRUCTURE
SERVICES
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APPROVED DATE

DESIGNED	J.B.	23.06.17
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CHECKED	E.E.	23.06.17
HORIZONTAL DATUM	MGA	
VERTICAL DATUM	AHD	

PROJECT: PROPOSED SUB-DIVISION
LOT22 DP1073165

PLAN TITLE:
EXISTING TELECOMMUNICATIONS

PROJECT NUMBER:
2503

DRAWING NUMBER
2503-SK05

ISSUE
A

A	ORIGINAL ISSUE	J.B.	E.E.	23.06.17
ISSUE	AMENDMENT DETAILS	DRAWN	CHECK	DATE

USE FIGURED DIMENSIONS ONLY. DO NOT SCALE.

ACAD FILE No:

Appendix 4

General requirements for reclassification of Council land

General Requirements for Land Reclassification

Site	Part Lot 22 DP 1073165, Byron Street, Mullumbimby
Parcel Number	239417
Assessment Number	1175504
Current Classification	Community (part Sportsground, part General Community Use and part Natural Area)
Proposed Classification	Operational
Reason for Reclassification	The land is no longer required for open space or recreation purposes. Once it is Operational land, it can be leased and/or sold as part of its future development as an affordable residential area.
Reason for Planning Proposal	To amend Schedule 4 of Byron LEP 2014 to change the classification of the subject land under the <i>Local Government Act 1993</i> from Community to Operational. The same planning proposal will rezone the subject land from RE1 Public Recreation to R1 General Residential.
Land Ownership	Byron Shire Council
Nature of Council's Interest	Council purchased the land in 2004 using money collected under section 94 (now section 7.11) of the <i>Environmental Planning and Assessment Act 1979</i> . The purpose of the acquisition was to have land available for expansion of the Mullumbimby Recreation Park next door. The subject land is not a "public reserve" under the <i>Local Government Act 1993</i> (see attached analysis).
Other Parties with Interests	<p>The subject land benefits from an easement for a pipeline and this will remain in place. The details are: <i>G865310. Easement for pipeline 1.22 metres wide appurtenant to Lot 22, DP 1073165 affecting the part shown so burdened in DP 442523.</i></p> <p>There are no other parties with legal interests in the subject land.</p>
Change of Interests from Reclassification	The subject land will be identified as "Land classified, or reclassified, as Operational land – interests changed". However, the benefit from an easement for a pipeline will remain in place unless it can be shown that it is not required.
Special Agreements Relating to the Land	Approximately 2.7 hectares of Lot 22 was licensed to a group called Mullum SEED on 1 September 2014 for a five year period. The group established the Mullumbimby Community Gardens, which continue to operate on the land. This land will remain in the care of this organisation. It is not part of this planning proposal and will remain as Community land.
Financial Considerations	<p>The land will increase in value because it will change from a Recreation zone to a Residential zone. Being able to lease or sell the land will also increase its value.</p> <p>Once the land has been rezoned and reclassified, Council will need to pay back the money from the section 94 (now section 7.11) fund that was used to acquire the land. This money can then be used to embellish other recreation or sporting parks.</p>
Asset Considerations	The reclassification will allow Council to use this site for diverse and affordable housing as well as a wide range of land uses permitted in the proposed zone.
Associated LEP Changes	The land is entirely zoned RE1 Public Recreation. Approximately 22 hectares of the 29.2 hectare lot will be rezoned to R1 General Residential. The balance will remain as RE1.

A “public reserve” (under the *Local Government Act 1993*) means:

Definition item	Analysis/Comment
(a) a public park, or	The <i>Local Government Act 1993</i> defines park as “park, in relation to land, means an area of open space used for recreation, not being bushland”. Although this land was purchased to be used for public recreation, it has never been used for this purpose. It is fully fenced and has been used for the agistment of cattle by neighbouring land owners. It is not accessed regularly by the public. On balance, it is not a public park.
(b) any land conveyed or transferred to the council under section 340A of the <i>Local Government Act 1919</i> , or	This land was not conveyed to Council as a garden or recreation space as part of a subdivision pursuant to this part of the <i>Local Government Act 1919</i> .
(c) any land dedicated or taken to be dedicated as a public reserve under section 340C or 340D of the <i>Local Government Act 1919</i> , or	This land was not dedicated to Council as a public reserve or drainage reserve pursuant to this part of the <i>Local Government Act 1919</i> .
(d) any land dedicated or taken to be dedicated under section 49 or 50, or	This land was not registered as part of a plan on which land is marked with the words “public reserve” (section 49). The lot was created in 2004 and therefore section 50 does not apply (applies to land created as a reserve prior to 1964).
(e) any land vested in the council, and declared to be a public reserve, under section 37AAA of the <i>Crown Lands Consolidation Act 1913</i> , or	This lot was created after this Act had been repealed.
(f) any land vested in the council, and declared to be a public reserve, under section 76 of the <i>Crown Lands Act 1989</i> , or	This land was not vested in Council by the Minister via notification in the Gazette pursuant to this part of the <i>Crown Lands Act 1989</i> .
(g) a Crown reserve that is dedicated or reserved:	This land is not Crown land or a Crown reserve. It was acquired in fee simple.
(i) for public recreation or for a public cemetery, or	This land is not a Crown reserve dedicated for public recreation or a cemetery.

Definition item	Analysis/Comment
<i>(ii) for a purpose that is declared to be a purpose that falls within the scope of this definition by means of an order published in the Gazette by the Minister administering the Crown Lands Act 1989, being a Crown reserve in respect of which a council has been appointed as manager of a reserve trust for the reserve or for which no reserve trust has been established, or</i>	This land is not subject to an order published in the Gazette by the Minister in relation to a Crown reserve or reserve trust.
<i>(h) land declared to be a public reserve and placed under the control of a council under section 52 of the State Roads Act 1986, or</i>	This land was not declared to be a public reserve pursuant to the <i>State Roads Act 1986</i> .
<i>(i) land dedicated as a public reserve and placed under the control of a council under section 159 of the Roads Act 1993,</i>	This land has not been placed under Council control (from RMS) by order published in the Gazette pursuant to the <i>Roads Act 1993</i> .
<i>and includes a public reserve of which a council has the control under section 344 of the Local Government Act 1919 or section 48, but does not include a common.</i>	This land did not exist as a separate lot until 2004, and was not part of a public reserve pursuant to the <i>Local Government Act 1919</i> . This Act was substantially repealed in 1993.