

Nambucca Shire Council

**Planning Proposal
Nambucca Local Environmental Plan
Amendment No. 24**

**Re-Zoning of Lot 2 DP 514920, Lot 1 DP
1113153, Lot 11 DP 1017408 & Lot 12 DP
1017408 - Giinagay Way, Nambucca Heads**

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Preliminary

This planning proposal has been drafted in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979*, and 'A guide to preparing planning proposals' (DoP, 2016) for amendment to the Nambucca Local Environmental Plan 2010 (LEP). A gateway determination under Section 3.34 of the Act is requested.

Part 1 Objectives and Intended outcomes

The objective and intended outcome of this planning proposal is to partially rezone Lots 11 & 12 DP 1017408, Lot 1 DP 1113153, and Lot 2 DP 514920 (the land) from RU1 Primary Production to R1 General Residential. The areas of the land affected by flood and which contain remnant native vegetation are to be zoned for environmental management. Development standards applicable to residential zoned land will be applied to the newly created residential zoned section of the land.

Part 2 Explanation of Provisions

The proposed outcome will be achieved by:

- Amending the LEP land zoning map so that the land is re-zoned from RU1 Primary Production to R1 General Residential within the areas of the land not within the flood planning area and the remaining areas E3 Environmental Management.
- Amending the LEP lot size map so that the proposed R1 General Residential zoned section of the land has a minimum lot size of 450m² and the proposed E3 Environmental Management zoned section of the land maintains the existing 40ha minimum lot size.
- Amending the LEP floor space ratio map to restrict future developments maximum floor space ratio within the proposed R1 General Residential zoned section of the land to 1:1.
- Amending the LEP height of buildings map to restrict future developments maximum building height within the proposed R1 General Residential zoned section of the land to 10m.

The proposed amendments are illustrated in the maps contained within attachment 1.

Part 3 Justification

Section A – Need for the Planning Proposal

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

In 2004 Council commissioned the Lower Nambucca Local Environmental Study which has been included within attachment 2. The study was based on four sites within the lower Nambucca area, with the subject land being one of them. The study provides an understanding of the environmental context of the area, the issues which impact on the natural and built environment, and an evaluation of possible options for future land use development. As a result of this study Council sought to amend the zoning of the subject land to residential as part of previous amendments to the Nambucca Local Environmental Plan 1995 and the Nambucca Local Environmental Plan 2010. It is considered that this planning proposal sufficiently addresses the Ministers reasons as to why the previous planning proposals did not get approval to proceed past gateway.

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

It is considered that the planning proposal is the best and only means of achieving the objectives and intended outcomes.

Section B – Relationship to strategic planning framework.

3 *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?*

The land is included as an urban land investigation area within the North Coast Regional Plan 2036.

The proposed residential zoning is consistent with the existing residential use of the land and adjoining land uses which include a caravan park and motel. In addition to this, the land is serviced by Councils reticulated water and sewer networks, has frontage to a regional road (Giinagay Way), and has connection to the nearby Nambucca Heads commercial areas via a newly constructed cycleway and public transport bus route.

Having regard to the above, the proposed rezoning of the land from primary production to residential is considered to be the most appropriate use of the land; with the lands area (2.88ha), location, relatively flat topography in comparison to other growth areas of Nambucca Heads and Valla, and existing access to services are considered to make the land a prime development site and candidate to assist achievement with directions 22 and 23 of the North Coast Regional Plan 2036 by delivering greater housing supply, diversity, and choice.

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

The proposed amendments will not be contrary to Councils Community Strategic Plan or any other strategic plan.

5 *Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPP's)?*

The following State Environmental Planning Policies (SEPPs) are considered applicable to and have been considered in the preparation of this planning proposal:

- **State Environmental Planning Policy (Rural Lands)**

The aims of this SEPP are:

- (a) *to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) *to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) *to implement measures designed to reduce land use conflicts,*
- (d) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) *to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

The SEPP identifies rural planning principles within clause 7 that must be considered when a Council prepares a planning proposal. These are brought into effect through a Section 9.1 Direction. The Rural Planning Principles are as follows:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The proposed amendments are not considered to be contrary to the SEPP as the land is not considered to be productive agricultural land due to its size and classification within the North Coast Regional Plan 2036, it has existing residential uses on it within a coastal setting, and that any attempt to productively use the land for agricultural would most likely result in conflict with adjoining uses.

- **State Environmental Planning Policy No. 44 – Koala Habitat Protection**

SEPP 44 encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.

Under SEPP 44, potential koala habitat is defined as areas of native vegetation where the trees listed in Schedule 2 of the SEPP constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

The planning proposal is not considered to be contrary to the requirements of this SEPP as the land is not potential koala habitat as it is highly modified with limited presence of native vegetation.

- **State Environmental Planning Policy No 55 – Remediation of Land**

SEPP 55 provides that Council is not to include in a particular zone any specified land if the inclusion of the land in that zone would permit a change of use of the land unless:

- “(a) the planning authority has considered whether the land is contaminated, and*
- (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.”*

A preliminary investigation of the land was undertaken as part of the Lower Nambucca Local Environmental Study in 2004. The study found that the land was not contaminated and was suitable for residential development. Since that date the land has continued to be used for residential land uses as it has three dwellings on separate lots with managed landscaped gardens/lawns. One of the lots contains a small pecan plantation which has been on the land prior to 2004. The owner of the land has advised that they planted the plantation as part of the properties gardens and have never applied any chemicals to the plants or commercially farmed the plantation.

Having regard to the above, the proposal is considered to be consistent with this direction.

- **State Environmental Planning Policy (Coastal Management) 2018**

The aim of this policy is to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*, including the management objectives for each coastal management area. The land is located within the coastal environment and use areas, with future development capable of being undertaken on the land without being contrary to the relevant matters for consideration.

- **State Environmental Planning Policy No 62—Sustainable Aquaculture**

While there are no parts to this policy which apply to the preparation of a local environmental plan, it should be noted that the land has frontage to the Nambucca River which contains priority oyster aquaculture areas. Given that the land has access to reticulated sewer, is predominantly sloped towards the north away from the river, and is of a size capable of accommodating stormwater treatment devices to maintain sufficient stormwater quality; it is considered that the future residential development of the land can be done in a manner which will not result in any significant impacts on the adjoining aquaculture area.

6 *Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?*

Directions under Section 9.1 of the Environmental Planning and Assessment Act 1979 applicable to this planning proposal are addressed as follows:

1 Employment and Resources

Direction 1.2 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land.

This direction applies when a council prepares a planning proposal that affects land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary). Because the land is currently zoned RU1 Primary Production (rural zone), this direction is applicable.

The planning proposal is inconsistent with the terms of this direction because it proposes to rezone land from a rural zone to a residential zone.

However, a planning proposal may be inconsistent with this direction if Council can satisfy the Director-General of the Department of Planning that the provisions of the planning proposal that are inconsistent are:

- (a) justified by a strategy which:
 - (i) gives consideration to the objectives of this direction,
 - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - (iii) is approved by the Director-General of the Department of Planning, or
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or
- (c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- (d) is of minor significance.

The Lower Nambucca Local Environmental Study (attachment 2) was prepared to support the rezoning of the land. The study outlines that although the land is zoned rural, this zoning is somewhat arbitrary with respect to the agricultural qualities and capabilities applicable to the locality. State agencies have previously undertaken a number of broad scale agricultural suitability investigations within the shire, with the land being identified as having low agricultural value and is not classified as being prime crop or pasture land nor is it suitable for intensive cultivation. This is reinforced by the nature, density and proximity of existing land uses on and adjoining the land. These include a motel, residential dwellings, a caravan park, and a priority aquaculture area.

Direction 11 of the North Coast Regional Plan 2036, which was prepared by the Department of Planning, seeks to protect and enhance productive agricultural lands. The land is not mapped as productive agricultural land within this regional plan. Furthermore, the regional plan identifies the land as an urban land investigation area.

It is considered that the above demonstrates that the land has no agricultural production value worth protecting and provides sufficient justification for the planning proposals inconsistency with this direction to be deemed acceptable by the Director-General of the Department of Planning.

1.4 Oyster Aquaculture

The objectives of this direction are:

- (a) to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a planning proposal,
- (b) to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.

This direction applies to Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area as identified in the NSW Oyster Industry Sustainable Aquaculture Strategy (2006) (“the Strategy”).

This direction applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in:

- (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.

It is not considered that this direction applies because the land does not contain a priority oyster aquaculture area or any oyster aquaculture development. The planning proposal does not propose a change in land use as all three lots are currently solely used for residential purposes.

Notwithstanding this, the future residential development on the land will be connected to the existing reticulated sewer and water networks currently connected to the land. The topography of the land and the location of the proposed E3 Environmental Management zone will ensure that sufficient stormwater treatment measures can be implemented to ensure that all stormwater is appropriately treated and diverted away from direct discharge into the river. It is considered that with these measures the existing and proposed intensified residential use of the land would be less impactful than an agricultural use of the land due to a reduced nutrient and sediment runoff.

Direction 1.5 Rural Lands

The objectives of this direction are to:

- protect the agricultural production value of rural land,
- facilitate the orderly and economic development of rural lands for rural and related purposes.

This direction applies when:

- (a) a council prepares a planning proposal that affects 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 council prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.

What a council must do if this direction applies

- A planning proposal to which clauses (a) or (b) apply must be consistent with the Rural Planning Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.
- A planning proposal to which clause (b) applies must be consistent with the Rural Subdivision Principles listed in *State Environmental Planning Policy (Rural Lands) 2008*.

The planning proposal affects land within rural zone as it includes the rezoning of the land from rural to residential. The planning proposal is considered to be consistent with this direction as outlined under State Environmental Planning Policy (Rural Lands) 2008 earlier in this report.

2 Environment and Heritage

Direction 2.1 Environment Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas. This direction applies when a council prepares a planning proposal.

What a council must do if this direction applies:

- a A planning proposal shall include provisions that facilitate the protection and conservation of environmentally sensitive areas.

- b A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP shall not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “*Rural Lands*”.

The planning proposal is consistent with this direction as the land does not contain any environmentally sensitive areas or environmental protection zones.

Direction 2.2 Coastal Protection

The objective of this direction is to implement the principles in the NSW Coastal Policy. This direction applies when a council prepares a planning proposal that applies to land in the coastal zone.

A planning proposal shall include provisions that give effect to and are consistent with:

- a the *NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997*, and
- b the *Coastal Design Guidelines 2003*, and
- c the manual relating to the management of the coastline for the purposes of section 733 of the *Local Government Act 1993* (the *NSW Coastline Management Manual 1990*).

The planning proposal is not considered to be contrary to this direction as permissible development within the proposed zones can be undertaken in accordance with the above documents.

Direction 2.3 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. This direction applies when a council prepares a planning proposal.

A planning proposal shall contain provisions that facilitate the conservation of:

- a items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,
- b Aboriginal objects or Aboriginal places that are protected under the *National Parks and Wildlife Act 1974*, and
- c Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the council, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

The amendments within this planning proposal are not contrary to the requirements of this direction as they will not impact the conservation of the above. The land does not contain any sites or places listed on the Aboriginal Heritage Information Management System (AHIMS). The Lower Nambucca Local Environmental Study included an archaeological assessment of the land. Having regard to that and the ‘*Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*’, it is not considered that the planning proposal will result in any impacts on the conservation of any of the matters for consideration outlined within this direction.

Direction 2.4 Recreation Vehicle Areas

The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.

This direction applies when Council prepares a planning proposal. The planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the *Recreation Vehicles Act 1983*):

- (a) where the land is within an environmental protection zone,
- (b) where the land comprises a beach or a dune adjacent to or adjoining a beach,

- (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration:
 - (i) the provisions of the guidelines entitled *Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September, 1985*, and
 - (ii) the provisions of the guidelines entitled *Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985*.

The planning proposal is not contrary to this direction as it does not enable land to be developed for the purpose of a recreation vehicle area.

3 Housing, Infrastructure and Urban Development

Direction 3.1 Residential Zones

The objectives of this direction are:

- a to encourage a variety and choice of housing types to provide for existing and future housing needs,
- b to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- c to minimise the impact of residential development on the environment and resource lands.

This direction applies when a council prepares a planning proposal that affects land within:

- 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.

A planning proposal shall include provisions that encourage the provision of housing that will:

- a broaden the choice of building types and locations available in the housing market, and
- b make more efficient use of existing infrastructure and services, and
- c reduce the consumption of land for housing and associated urban development on the urban fringe, and
- d be of good design.

A planning proposal shall, in relation to land to which this direction applies:

- a contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- b not contain provisions which will reduce the permissible residential density of land.

This direction applies to the planning proposal as it includes the creation of a new residential zone. The planning proposal is considered to be consistent with this direction as it will facilitate broadening the choice of building types and locations available on the housing market due to the waterfront location of the land, minimal gradients, and existing access to services and infrastructure. This is in contrast to other land currently on the market and within other surrounding growth areas which have steeper slopes, do not have readily accessible infrastructure or services within their vicinity, and do not have waterfront positions.

The planning proposal will result in the efficient use of existing infrastructure, is located within an existing urban area due to its location adjacent to a caravan park and 13ha business park zone, and existing and proposed controls within the LEP, DCP, and relevant SEPPs will facilitate good design for future development.

Furthermore, although the land is already adequately serviced, clause 7.4 of the LEP will be maintained which requires public utility infrastructure to be provided to future development on the land and the planning proposal will result in an increased residential density on the land through the permissibility of subdividing the land and locating multiple dwellings on the land.

Direction 3.2 Caravan Parks and Manufactured Home Estates

The objectives of this direction are:

- (a) to provide for a variety of housing types, and
- (b) to provide opportunities for caravan parks and manufactured home estates.

This direction applies to Council when it prepares a planning proposal.

In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:

- (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and
- (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park.

In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:

- (a) take into account the categories of land set out in Schedule 2 of SEPP 36 as to where MHEs should not be located,
- (b) take into account the principles listed in clause 9 of SEPP 36 (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and
- (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the Community Land Development Act 1989 be permissible with consent.

The planning proposal is considered to be consistent with this direction as the LEP currently prohibits caravan parks and MHEs on the land and there are no existing caravan parks or MHEs on the land. Furthermore, this planning proposal does not seek to identify any suitable zones, locations or provisions for MHEs.

3.3 Home Occupations

The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses. This direction applies when Council prepares a planning proposal.

The direction requires planning proposals to permit home occupations to be carried out in dwelling houses without the need for development consent.

The planning proposal is considered to be consistent with this direction as it proposes to zone the land R1 General Residential and E3 Environmental Management. Home occupations are currently permissible without development consent within both of these zones. The planning proposal does not include any amendments to the land use tables of either of these zones.

3.4 Integrating land Use and Transport

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:

- (a) improving access to housing, jobs and services by walking, cycling and public transport, and
- (b) increasing the choice of available transport and reducing dependence on cars, and
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- (d) supporting the efficient and viable operation of public transport services, and
- (e) providing for the efficient movement of freight.

This direction applies when Council 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.

The direction requires a planning proposal to locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:

- (a) Improving Transport Choice - Guidelines for planning and development (DUAP 2001), and
- (b) The Right Place for Business and Services - Planning Policy (DUAP 2001).

The planning proposal is considered to be consistent with this direction due to its consistency with the provisions of *'Improving Transport Choice - Guidelines for planning and development'* (the guideline). *'The Right Place for Business and Services - Planning Policy'* is not applicable to the planning proposal as it would not permit business or services as referred to in the policy.

The planning proposal is considered to be consistent with the guideline as the land has frontage to an arterial road which is a public transport route, and has direct frontage to a bus stop and a newly constructed cycleway which connects to both commercial areas of Nambucca Heads. In this regard the floor space ratio of 1:1 and building height of 10m is considered appropriate as it will enable a higher density of residential development along a public transport corridor in a manner which is consistent with other land zones within the lower Nambucca to the north of the site and will facilitate a greater mix of housing types.

4 Hazard and Risk

Direction 4.1 Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

This direction applies when a council 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.

Council shall consider the Acid Sulfate Soils Planning Guidelines adopted by the Director-General of the Department of Planning when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.

When a council is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions shall be consistent with:

- a the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Director-General, or
- b such other provisions provided by the Director-General of the Department of Planning that are consistent with the Acid Sulfate Soils Planning Guidelines.

A council shall not prepare a planning proposal 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. Council shall provide a copy of any such study with its statement to the Director-General of the Department of Planning under section 64 of the EP&A Act.

The planning proposal is considered to be consistent with this direction because it does not include any changes to the existing provisions within clause 7.1 of the LEP which regulates works in acid sulfate soils. The land is predominantly mapped as class 5 on the Acid Sulfate Soils map, however there is a section of class 3 within the south eastern portion of the land. The planning proposal only proposes zoning the areas mapped as class 5 as R1 General Residential, resulting in no greater potential for the disturbance of land within the class 3 area than what could already occur. As part of the Lower Nambucca Local Environmental Study, a site assessment of the potential for residential development on disturbing acid sulfate soils was undertaken which found that on the areas of the proposed R1 General Residential zoned land that it was unlikely that residential development would impact any acid sulfate soils.

4.3 Flood Prone Land

The objectives of this direction are:

- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and

(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

This direction applies when a Council prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. The direction requires that:

- 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 Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).
- A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.
- A planning proposal must not contain provisions that apply to the flood planning areas which:
 - (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.
- 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).
- A planning proposal must not determine a flood planning level that is inconsistent with the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) 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).

The planning proposal is considered to be consistent with this direction because:

- The existing provisions within clause 7.3 of the LEP will be maintained which give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.
- The proposed residential zone is located above the flood planning area as set by the Nambucca Shire Floodplain Risk Management Study prepared in 2017.
- It will not increase potential development within the flood planning area on the land.
- It does not include the introduction of any additional flood related development controls.
- It does not include the determination of a flood planning level.

4.4 Planning for Bushfire Protection

The objectives of this direction are:

- (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- (b) to encourage sound management of bush fire prone areas.

This direction applies when Council prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

The direction requires Council to consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination from the Minister and take into account any comments made. It also requires the planning proposal to:

- (a) have regard to Planning for Bushfire Protection 2006,

- (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and
- (c) ensure that bushfire hazard reduction is not prohibited within the APZ.

The planning proposal is considered to be consistent with this direction because:

- Consultation with the Commissioner of the NSW Rural Fire Service will occur once gateway approval has been received from the Minister.
- All future development on the land will be capable of complying with the aims and objectives of Planning for Bushfire Protection 2006 due to adequate separation from the closest bushfire threat enabling bushfire attack levels to be below BAL 29, with sufficient access and utilities currently available to comply with all development standards.
- The proposed residential zoning will avoid placing inappropriate developments in hazardous areas.
- The land is substantially modified and does not contain any vegetation which presents a vegetation threat. No hazard reduction will be required on surrounding land for future development to achieve compliance with Planning for Bushfire Protection 2006.

5 Regional Planning

Direction 5.10 Implementation of Regional Plans

The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans. This direction applies to land to which a Regional Plan has been released by the Minister for Planning.

This direction applies when Council prepares a planning proposal. Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

As outlined earlier, this planning proposal is considered to be consistent with the North Coast Regional Plan 2036 (the plan) as it will not impact any productive agricultural land and will assist achievement with directions 22 and 23 of the plan by delivering greater housing supply, diversity, and choice within an identified urban land investigation area.

6 Local Plan Making

Direction 6.1 Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

A planning proposal shall:

- 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 council has obtained the approval of:
 - i the appropriate Minister or public authority, and
 - ii the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General),
 prior to a certificate under section 65 of the Act being issued, and
- c not identify development as designated development unless the council:
 - i can satisfy the Director-General of the Department of Planning (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 (or an officer of the Department nominated by the Director-General) prior to a certificate being issued under section 65 of the Environmental Planning and Assessment Act 1979.

This Planning Proposal does not require the implementation of any concurrence provisions. The planning proposal is consistent with this direction.

Direction 6.2 Reserving Land for Public Purposes

The objectives of this direction are:

- a to facilitate the provision of public services and facilities by reserving land for public purposes, and
- b to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

A planning proposal shall 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 (or an officer of the Department nominated by the Director-General).

When a Minister or public authority requests a council to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*, the council shall:

- a reserve the land in accordance with the request, and
- b include the land in a zone appropriate to its intended future use or a zone advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), and
- c identify the relevant acquiring authority for the land.

When a Minister or public authority requests a council to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the council shall:

- a include the requested provisions, or
- b take such other action as advised by the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) with respect to the use of the land before it is acquired.

When a Minister or public authority requests a council to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the council shall rezone and/or remove the relevant reservation in accordance with the request.

This Planning Proposal is consistent with this direction

Section C – Environmental, social and economic impact

7 *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?*

It is not considered that the proposal will have any significant effects on threatened species, populations, communities or their habitats as the land and surrounding area is substantially modified; with the only remnant sections of native vegetation being located along the river bank, which will be protected by the proposed E3 Environmental Management zone.

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

Future development will be connected to Councils sewer network, with sufficient controls relating to the prevention of sediment runoff during the development of the land and ongoing stormwater management post development can be implemented as part of any development consent.

9 *Has the planning proposal adequately addressed any social and economic effects?*

The planning proposal will facilitate the residential use of the land which will promote the most efficient use of existing services and infrastructure compared to other growth areas within the area, will promote variety in housing choices, will not result in any adverse impacts on surrounding uses, and will assist in increasing economic development within the locality due to increased population and the scope of works required to construct future development on the land.

Section D – State and Commonwealth Interests

10 *Is there adequate public infrastructure for the planning proposal?*

Yes. The site is currently serviced by reticulated electricity, sewer and water, an arterial road, public transport route/bus stop, and cycleway which currently connects the land to both commercial areas of Nambucca Heads and is planned to be extended south to Macksville.

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

Public authorities were consulted in accordance with the Gateway determination. No objections were received from the authorities. A summary of the responses received are as follows:

NSW Roads & Maritime Services (RMS): A new Traffic Impact Assessment (TIA) was requested to be provided as part of the planning proposal as the previous one was done in 2004 and there have been changes in the road network that have occurred since then. It was also stated that approval from the RMS was required for works on Ginngay Way as it is a regional road and design requirements were provided.

Comment: The provision of a new TIA is not considered necessary as traffic volumes on Ginngay Way have decreased since 2004 when the original TIA was undertaken as it is no longer the Pacific Highway and the rezoning will only facilitate approximately 19 new lots. Furthermore, there are more than sufficient sightlines available in both directions for a future intersection (greater than 250m on an 80km/hr road). It is considered that the TIA is more suitable as part of a design for a future development on the land at development application stage.

The design requirements can also be addressed as part of a future development on the land.

Civil Aviation Safety Authority (CASA): Recommendations were made that future development proposals be assessed against the National Airports Safeguarding Framework guideline.

Comment: This can occur at development application stage.

NSW Department of Planning, Industry & Environment – Biodiversity & Conservation Division: Comments were made that insufficient information was provided to support assertions on Aboriginal cultural heritage; the proposed residential zone would be isolated in a 10% AEP flood event; tidal inundation has not been considered; strategies in the Nambucca Estuary Management Plan 2008 need to be addressed; rising sea levels have not been considered; and the Brush Box and Port Jackson Fig provide foraging habitat and should be located in the E3 zone.

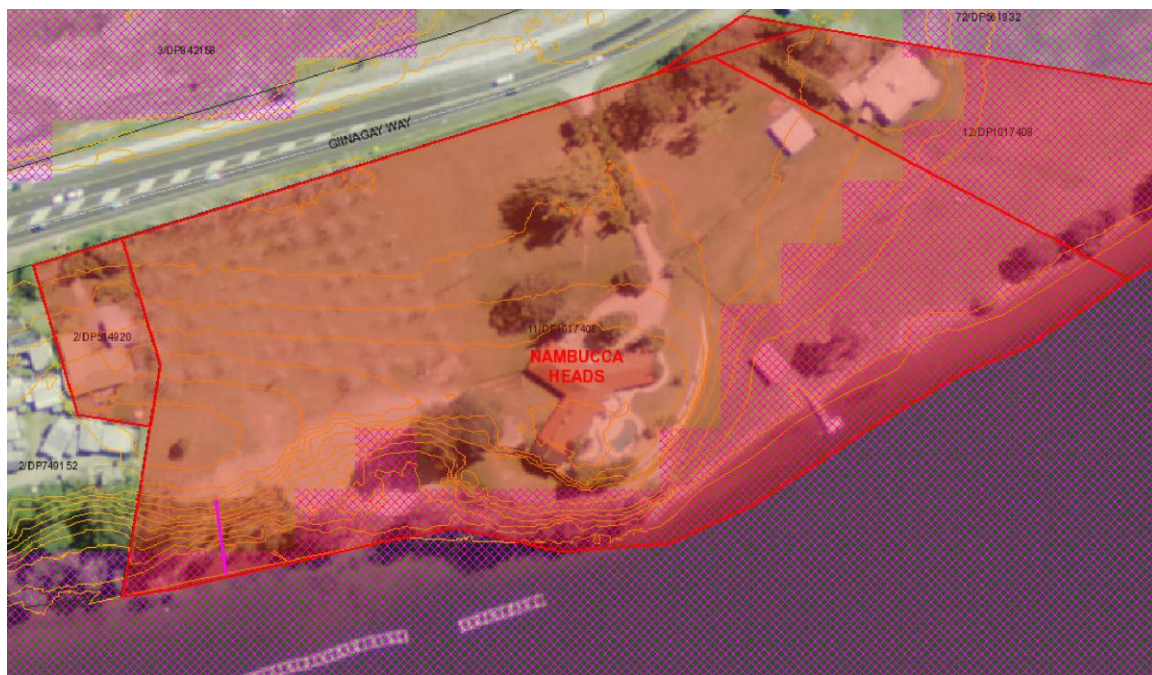
Comment: The archaeological assessment included within the Lower Nambucca Local Environmental Study which forms part of this planning proposal was forwarded to the public authority as part of the consultation. Some of the pages of this assessment were missing. The missing pages confirm that there are no archaeological constraints to the proposal. The full version of the archaeological assessment can be forwarded to the department as part of the community consultation period.

Council has received funding from the RMS for the construction of an extension of Florence Wilmont Drive to Rosella Drive (formally Old Coast Road) to resolve issues associated with the highway bypass. This will give the land egress to the new Pacific Highway above the flood planning level.

The projected tidal inundation area is shown in the below map. The proposed areas of the land to be zoned R1 General Residential will not include any of the mapped inundation area.



Projected sea level rise has been incorporated into Councils flood mapping prepared in 2017 as part of the Nambucca Shire Floodplain Risk Management Study. The proposed R1 General Residential zone will not be within the flood affected areas of the land as shown in the below map.



It is not considered that the planning proposal will be contrary to any of the relevant management strategies contained within the Nambucca Estuary Management Plan 2008. It is considered that sufficient measures can be incorporated into any future development of the land which protects water quality on the site and surrounding area (as outlined in the stormwater management plan); the riparian zone is to be protected by the proposed E3 zone; areas subject to projected sea level rise have not been included within the proposed R1 zoned land; and the proposed R1 zoned land does not contain areas of significant ecological habitat.

The Brush Box and Port Jackson Fig are within the yard of the existing dwelling on the land. The Flora and Fauna report which accompanies the planning proposal found that the removal of the trees would not have any significant impact on threatened species. In this regard, there are no approvals required for the trees to be removed. It is considered that altering the zoning on the land to protect these trees would be obstructive.

NSW Rural Fire Service (RFS): The proposal was considered and the RFS had no specific recommendations in relation to bushfire protection.

NSW Department of Primary Industries – Fisheries (DPI): DPI have recommended buffer distances to protect key fish habitats from the impacts of development. Key fish habitat within proximity of the site includes seagrass and mangroves, with a 50-100m buffer recommended. It was also noted that all future lots should be connected to reticulated sewer and sufficient stormwater treatment devices.

Comment: The mangroves and seagrass are to the east of the existing most northern house on the land. The 50m buffer is essentially accommodated by the proposed E3 zone in the areas of the land which slope towards the river. In areas which slope away from the river, the buffer provided by the proposed E3 zone reduces to approximately 25m. Given that an existing dwelling is located within the 50m buffer in the section which slopes away from the river, that the existing vegetated buffer will be located within an E3 zone, and that stormwater treatment devices will be implemented as part of future development as outlined within the supporting Stormwater Management Plan, the proposed reduced buffer of 25m is considered reasonable.

It is also noted that all future lots will be required to be connected to reticulated sewer.

Part 4 Mapping

It is proposed to amend the Land Zoning, Minimum Lot Size, Floor Space Ratio, and Building Heights maps. Draft maps have been included within attachment 1.

Part 5 Community Consultation

It is intended to undertake community consultation by way of an advertisement in the local newspaper and Councils website and notification to adjoining landowners advising of the planning proposal and the opportunity to make a submission. It is intended to advertise the planning proposal for 28 days.

Part 6 Project Timeline

December 2018	Gateway determination issued by Department of Planning & Environment
July 2019	Public authority consultation
August 2019	Department of Planning & Environment approval of amended planning proposal incorporating and addressing any authority comments.
September 2019	Public exhibition of planning proposal
October 2019	Analysis of public submissions reported to Council
October 2019	Endorsed planning proposal sent to Parliamentary Counsel to be made.

Attachment 1
Land Zoning Map

Figure 1 - Subject Land and Existing Zone

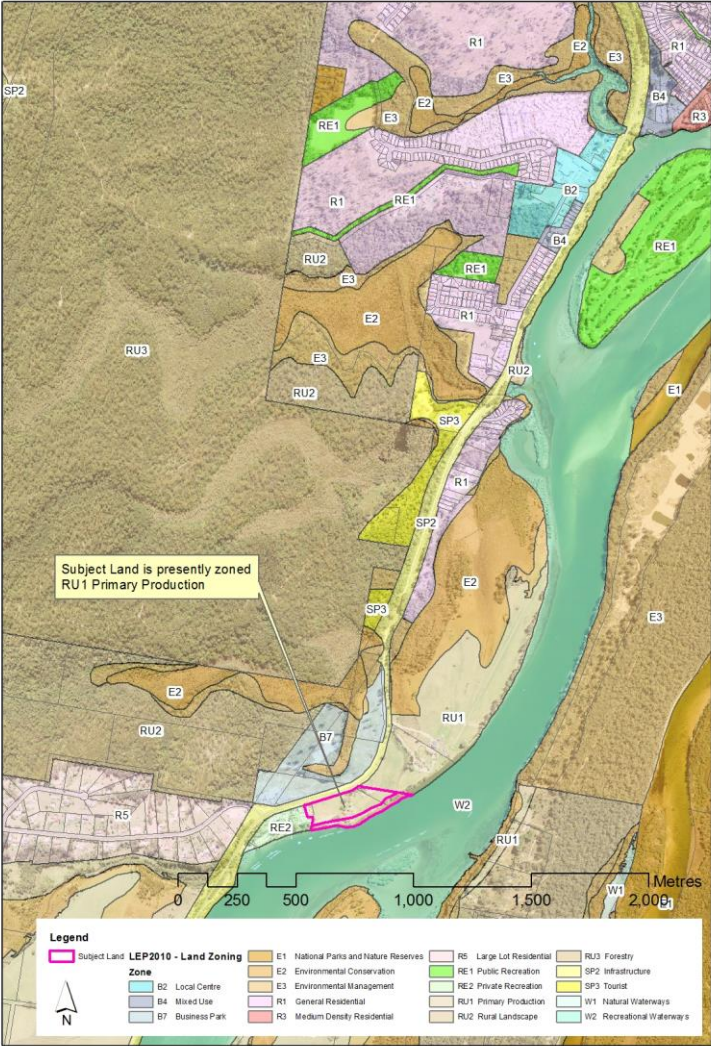
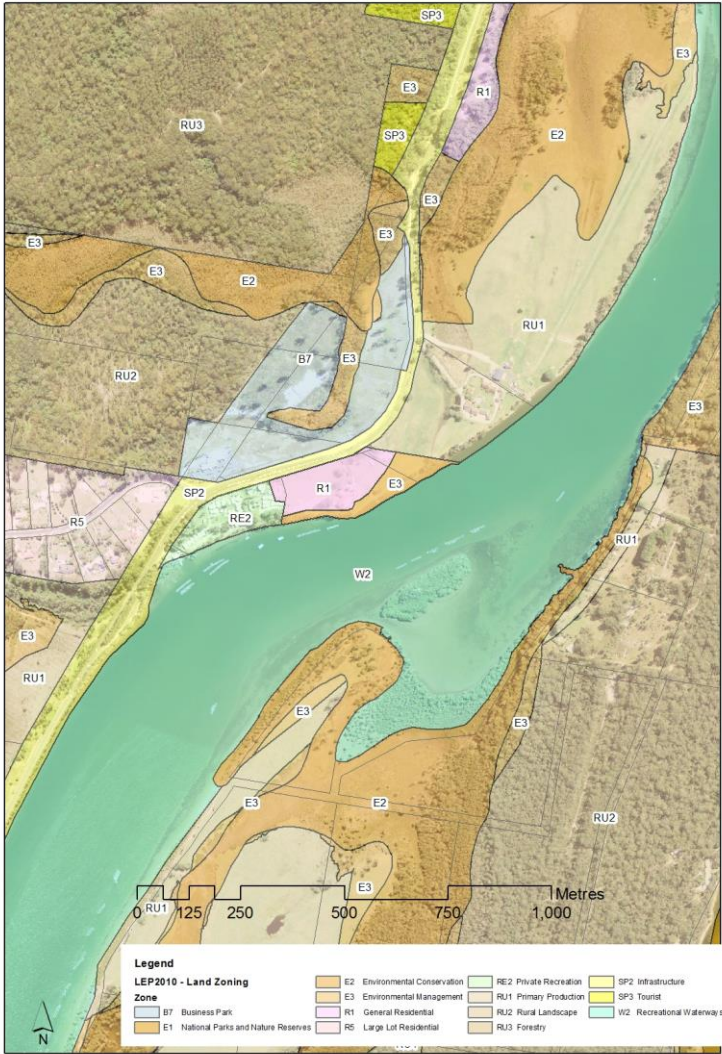
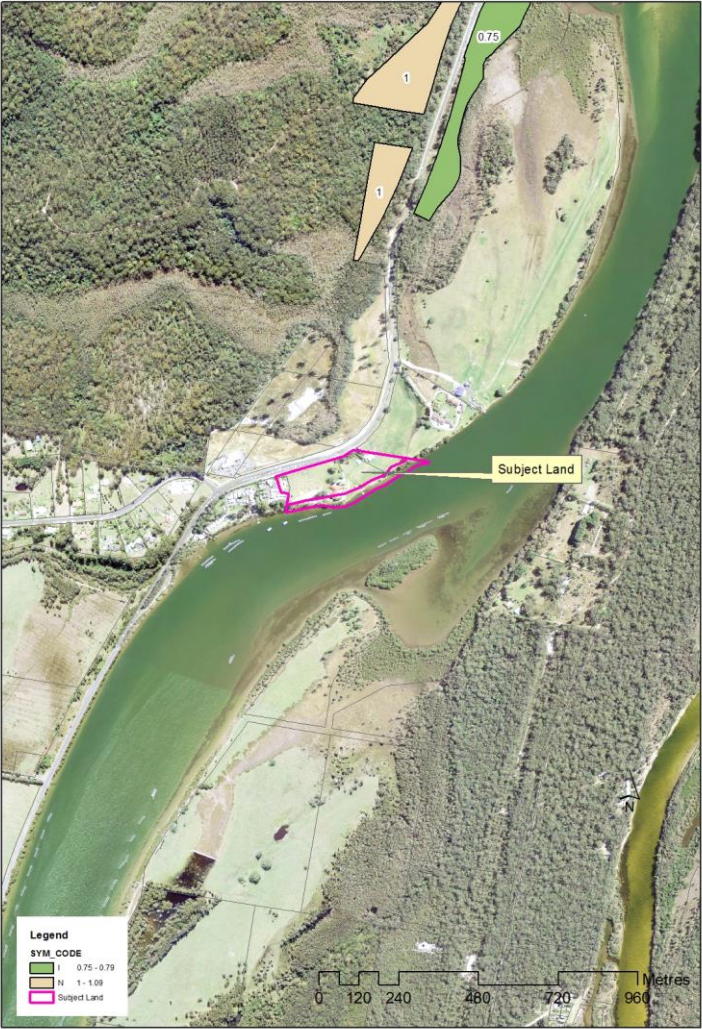


Figure 3 - Proposed Zone



Floor Space Ratio Map

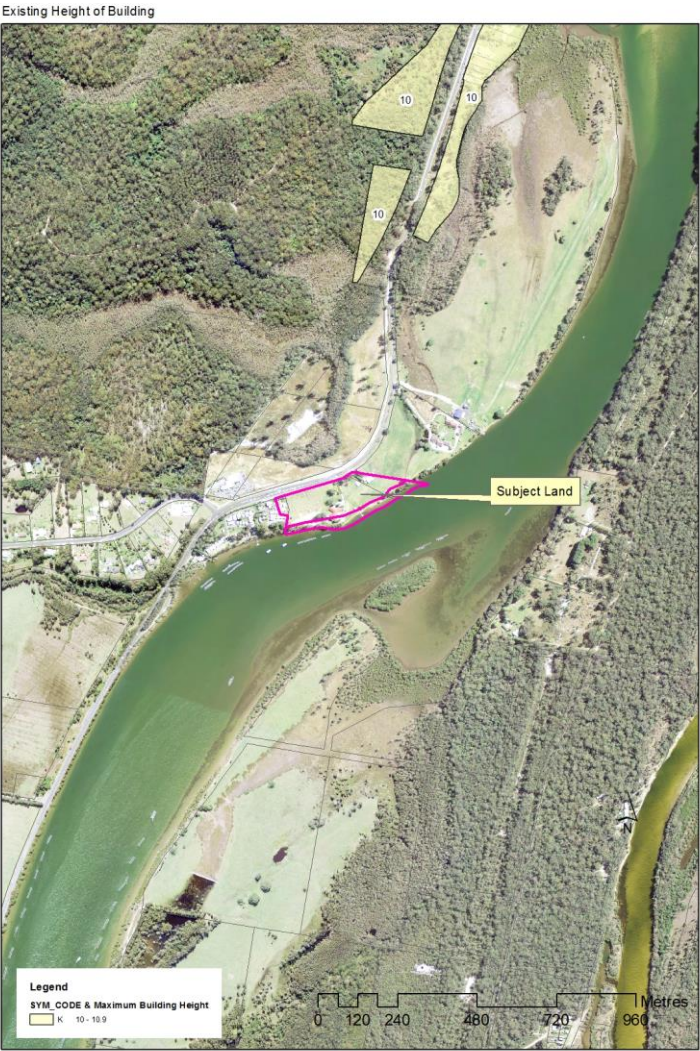
Existing Floor Space Ratio



Proposed Floor Space Ratio



Height of Buildings Map



Lot Size Map

