



**Planning Proposal
for Amendment of Byron Local Environmental Plan 2014
– Lot 3 DP 592005 and Lot 1 DP 1124504
Corner Coopers Shoot Road and Picadilly Hill Road,
Coopers Shoot**

Byron Shire Council

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| E2019/49350 | July 2019 | V2 Draft Planning Proposal – Amended to include additional information for gateway |

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Part 1 Introduction

Objective and intended outcomes

The objective of this planning proposal is to apply the R5 Large Lot Residential zone to an area of approximately 5.53 hectares previously approved for a Community Title subdivision. This will permit the creation of five Torrens Title lots that will each have a dwelling entitlement. Three of the five prospective lots already have a dwelling located on them from previous approvals. Four of the five prospective lots will be zoned R5 and the fifth will remain zoned RU2 Rural Landscape.

Property details and existing zones

This planning proposal relates to land located at the corner of Coopers Shoot Road and Picadilly Hill Road at Coopers Shoot (Figure 1). The land is described as Lot 3 DP 592005 and Lot 1 DP 1124504. Lot 3 has an area of 16.43 hectares and Lot 1 is a closed road with an area of 0.482 hectares. It is an irregular shaped piece of land with a total area of approximately 16.91 hectares. The street address is 4 Picadilly Hill Road, Coopers Shoot.



Figure 1: Subject land

The subject land is currently zoned mostly RU2 Rural Landscape under Byron LEP 2014 (BLEP14) (Figure 2). A small part is also a Deferred Matter that is zoned Rural 1A under Byron LEP 1988 (Figure 3). The Deferred Matter contains a stand of vegetation that Council is considering for inclusion in an environment protection zone.

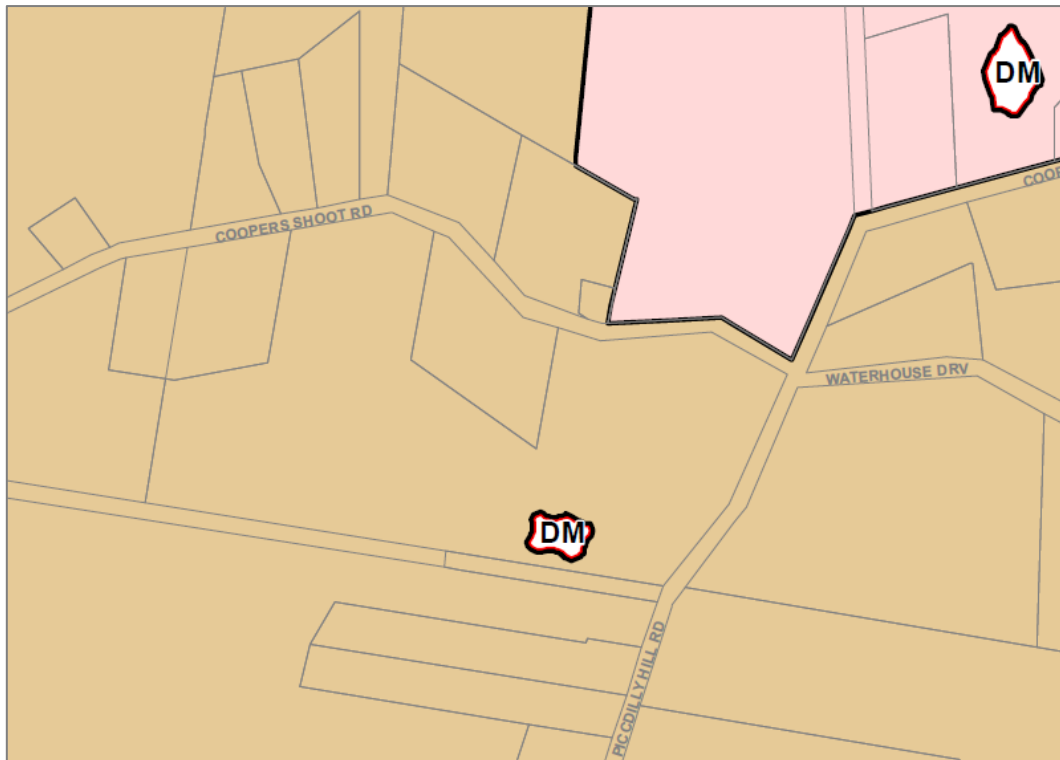


Figure 2: Existing land use zones under Byron LEP 2014 – RU2 Rural Landscape and Deferred Matter

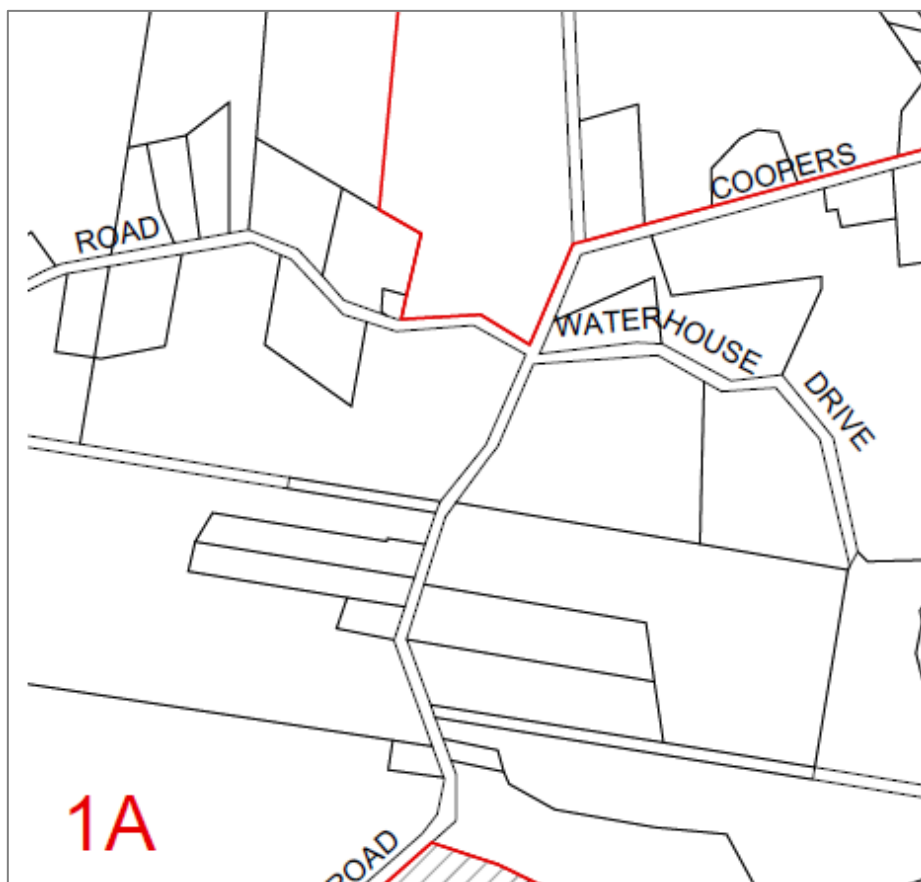


Figure 3: Existing land use zones under Byron LEP 1988 – Rural 1A (the Deferred Matter)

The land subject to BLEP14 has a building height limit of 9 metres (Figure 4) and a Minimum Lot Size of 40 hectares (Figure 5).



Figure 4: Height of Buildings Map under Byron LEP 2014 – site is 9 metres

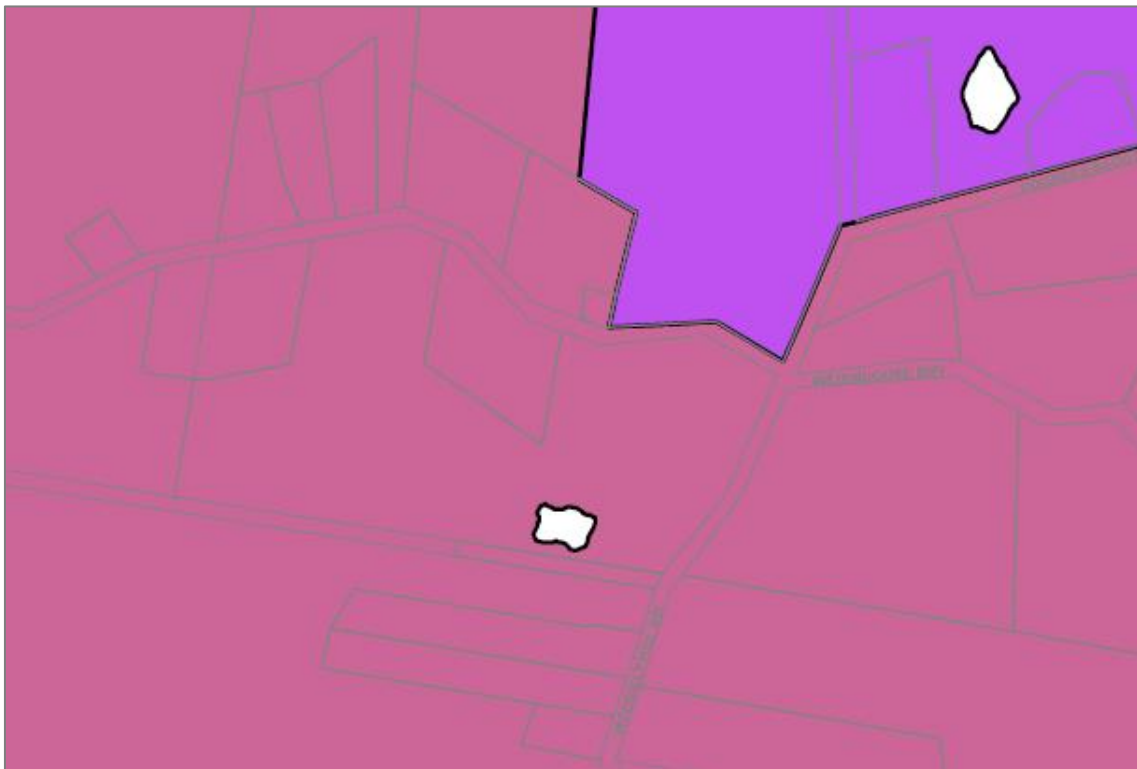


Figure 5: Minimum Lot Size Map under Byron LEP 2014 – site is 40 hectares

It is identified as being within the Wilsons River Drinking Water Catchment (Figure 6).

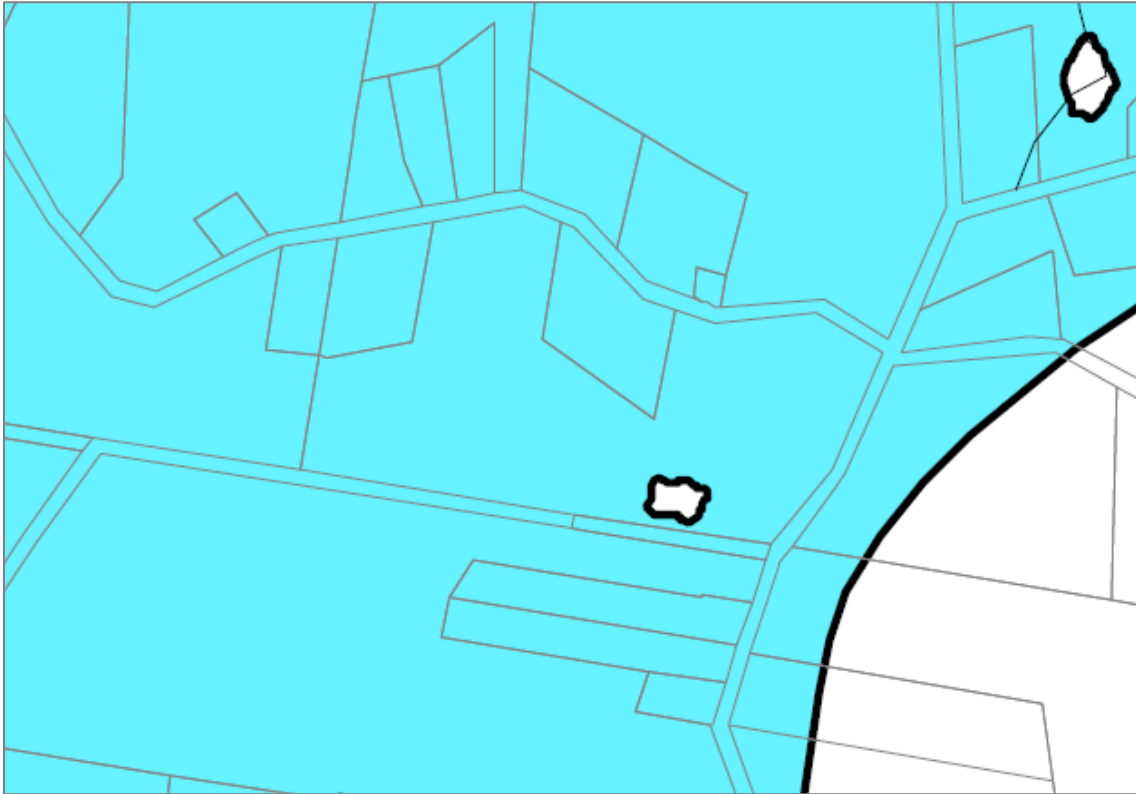


Figure 6: Drinking Water Catchment Map under Byron LEP 2014 (site is in the Wilsons River source)

Background

Lot 3, DP 592005 has been owned by the Irwin family for the past 25 years, and has been used for grazing and rural residential uses during that period. In 2009, the owners acquired a piece of Crown road on the southern boundary being Lot 1 DP 1124504.

A multiple occupancy development was approved in 1996, providing for four dwellings (on one lot with no subdivision). An original dwelling was located on the land and two additional dwellings were constructed as a result of this consent. There is a total of three dwellings on the site. The fourth dwelling has never been constructed.

In October 2009, Council approved a Community Title subdivision (DA 94/2009) providing for four (4) house lots and one (1) neighbourhood property of 11.64 hectares. This consent was essentially for a conversion of the existing multiple occupancy approval to a Community Title subdivision. Records show that the subdivision has not been registered.

In July 2018, the NSW Department of Planning and Environment (DPE) endorsed the *Byron Shire Rural Land Use Strategy*. This strategy includes part of the subject land.

The Deferred Matter on the subject land is being considered as part of the “E zone review” and may be included in an environment protection or management zone at some time in the future.

Part 2 Explanation of provisions

The planning proposal seeks to amend the existing zone for part of the subject land under Byron LEP 2014 to:

- permit a five-lot large lot residential subdivision on the subject site; and
- leave the existing Deferred Matter over the environmentally sensitive land (in the absence of an “environmental zone”).

The planning proposal will rezone approximately 5.53 hectares of the existing RU2 Rural Landscape zone to R5 Large Lot Residential. The balance of the subject land will remain in its current RU2 Rural Landscape zone and partly as a Deferred Matter under Byron LEP 1988 (Figure 7).

The planning proposal will also make consequential changes to maps regarding Minimum Lot Size (MLS) to match the proposed R5 Large Lot Residential zone. A variable MLS is proposed to reflect existing development and past approvals on the subject land (Figure 8). Part of the R5 zone will have a 1.5-hectare MLS permitting two lots, and part will have a 0.8-hectare MLS permitting two lots. The remaining RU2 zoned land will have a 10-hectare MLS, which will enable it to be subdivided from the R5 land and have a dwelling erected on it. It is not intended to introduce an FSR to the site (it currently does not apply to the site), and the current Height of Building (9 metres) will be retained.

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

What Land Does it Apply to?

Part Lot 3 DP 592005 and part Lot 1 DP 1124504. Land at the corner of Coopers Shoot Road and Picadilly Hill Road, Coopers Shoot.

What Additional Development will be Permitted?

A rural subdivision creating a total of five lots (each with a dwelling permitted or existing) that reflects past approvals.

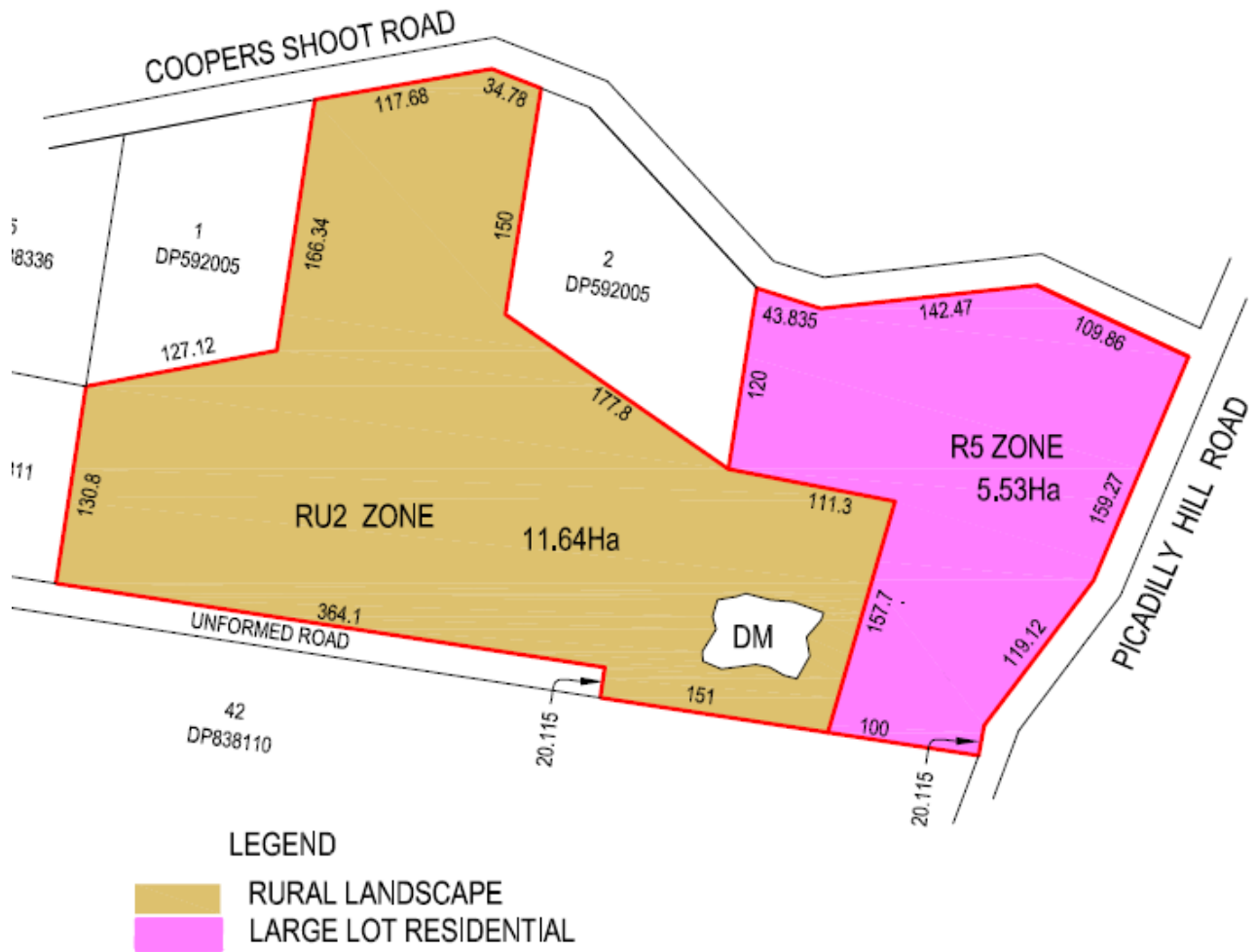


Figure 7: Proposed land use zones under Byron LEP 2014 – RU2 Rural Landscape, R5 Large Lot Residential and Deferred Matter

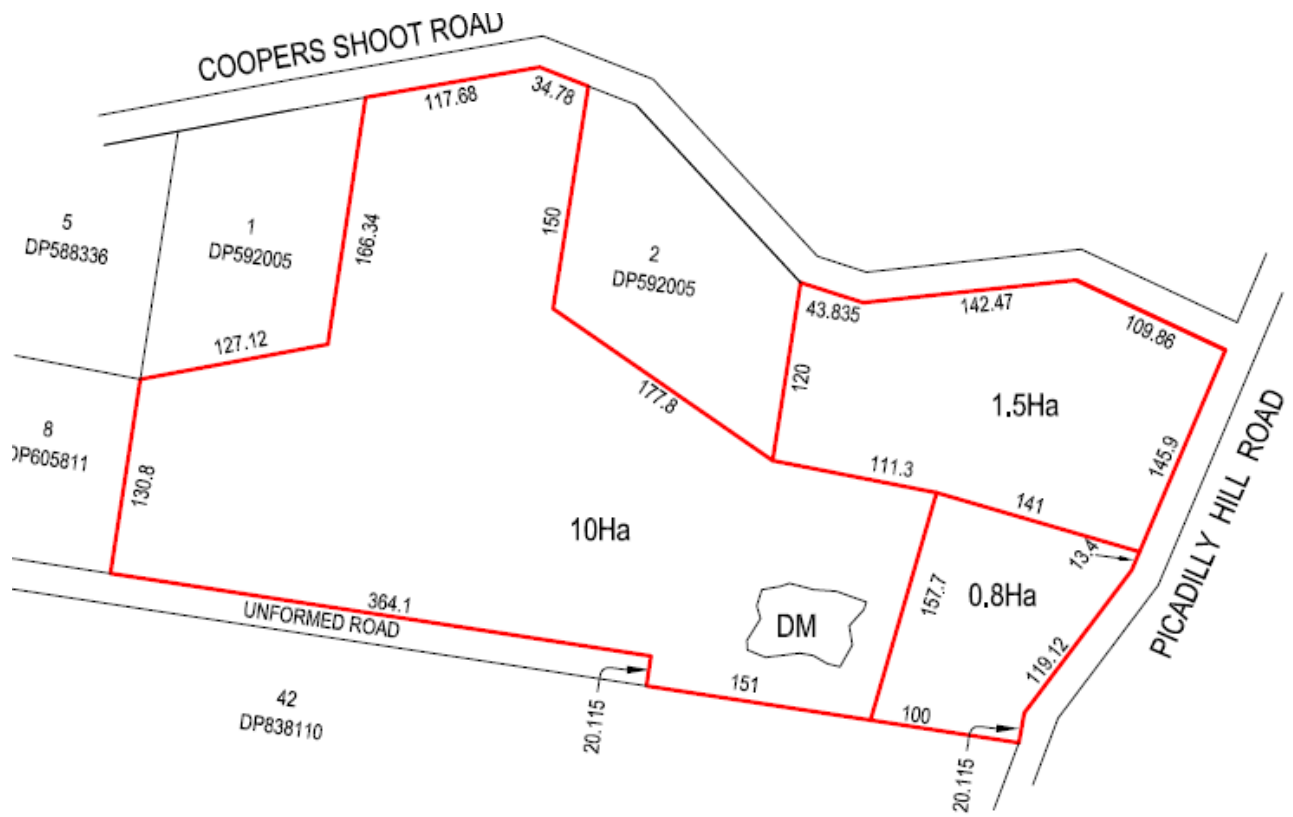


Figure 8: Proposed Minimum Lot Size Map under Byron LEP 2014

Part 3 Justification

Section A Need for the planning proposal

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

Yes. The *Byron Shire Rural Land Use Strategy 2017* identifies the subject land as “priority sites for future rural lifestyle living opportunities”. The subject land is identified for “Expansion of adjoining R5 zone over subject land for a maximum of 5 lots (as per current community title subdivision approval)”. This strategy was endorsed by the NSW DPE in July 2018.

Figure 9 shows the subject land as identified in the *Byron Shire Rural Land Use Strategy 2017*.

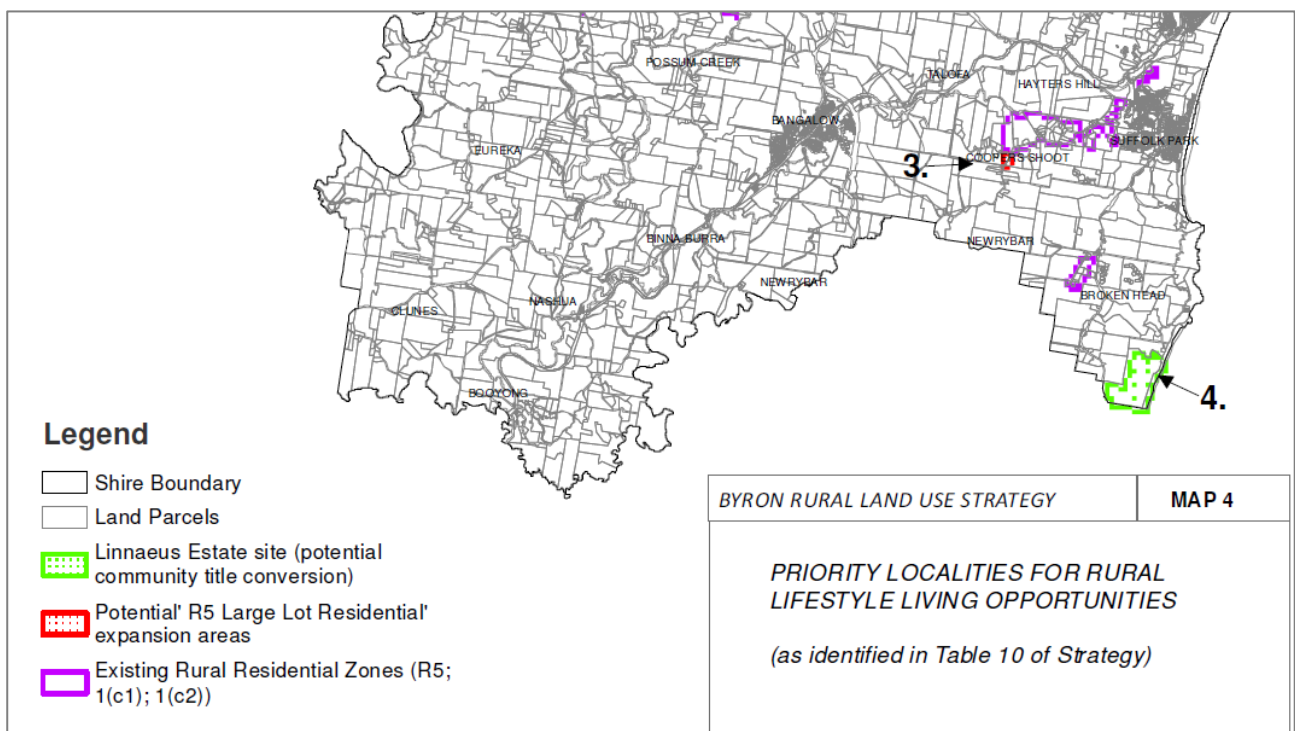


Figure 9: Extract from the *Byron Shire Rural Land Use Strategy 2017* – the site is Area 3 shown in red

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

The planning proposal is the best means to achieve the objective of permitting large lot residential subdivision on the subject 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).

Assessment against the NCB Assessment Criteria is not appropriate for a planning proposal that deals with the rezoning (and consequent subdivision) of a largely existing development.

Section B Relationship to strategic planning framework

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

The subject site is located outside of the Urban Growth Area boundary under the *North Coast Regional Plan 2036* (NCRP). It is located in the coastal strip being located east of the Pacific Highway.

The NCRP states (page 57) *“New rural residential housing will not be permitted in the coastal strip, unless the land is already zoned for this purpose, or is identified in a Department endorsed current or future local growth management strategy (or rural residential land release strategy).”* This is supported by Actions 24.1 and 24.2.

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

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

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

The *Byron Shire Rural Land Use Strategy 2017* identifies the subject land (Area 3 – Coopers Shoot Road, Coopers Shoot) as a priority site for future rural lifestyle living opportunities (Figure 10). The strategy notes that the site is limited to five lots.

| Map 4 Reference | Locality | Potential Dwelling Yield (c) | Intersection requiring assessment |
|---|--|------------------------------|--|
| 1. | McAuleys lane / Bilin Road, Myocum | 25-45 | Intersection of McAuleys Lane and Mullumbimby Road |
| 2. | Wilsons Creek / Alidenes Rd | 15-30 | Intersection of Alidenes Road and Wilsons Creek Road |
| 3. | Coopers Shoot Road, Coopers Shoot | - (a) | Not applicable |
| 4. | Linnaeus Estate site Broken Head Road, Broken Head | - (b) | Not applicable |
| | TOTAL (approximate) | 40-75 dwellings | |
| (a) Expansion of adjoining R5 zone over subject land for a maximum of 5 lots (as per current community title subdivision approval). | | | |

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

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

| | |
|---|--|
| <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 rural residential opportunities on the subject land, 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 proposed five lots reflect past approvals and mostly existing structures and infrastructure. The site has important ecological areas and these will be protected. |
| <i>Community Infrastructure:</i> Services and infrastructure that sustains, connects and integrates our communities and environment | The planning proposal builds on three existing dwellings. The site has road access options with direct frontage to both Coopers Shoot Road and Picadilly Hill Road. Power is connected to the site. Water and sewerage are able to be dealt with on-site. |

| | |
|--|---|
| <i>Society and Culture:</i> <i>Resilient, creative and active communities with a strong sense of local identity and place</i> | The subject site is about 5 km from Bangalow and 7km from Byron Bay. Although this is remote from services such as schools, shops, and health facilities this is often the case in rural residential lifestyle based communities. It has an established group of owners that are part of the local community. |
|--|---|

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

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

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

| State Environmental Planning Policy (SEPP) | Compliance of Planning Proposal |
|--|--|
| SEPP 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 Byron Coast Comprehensive Koala Plan of Management does not include the subject land in a koala management precinct and does not identify it as having potential koala habitat. No clearing of vegetation is anticipated to implement the planning proposal outcomes beyond any clearing that has been approved in the past. Environment protection zones on this site are being dealt with under a separate planning proposal. This planning proposal complies with the SEPP. |
| SEPP 55 – Remediation of Land | The site has a range of approvals for dwellings related to past multiple occupancy or community title approvals. A preliminary site investigation was undertaken in June 2019 which indicated no past or present potential contaminating land activities on the site, and considered the site suitable for the proposed rural and rural residential land use. A detailed assessment can be a condition of any Gateway approval to be available prior to public exhibition. Four of the proposed lots will be located on the sites of existing approved dwelling lots. |
| SEPP (Rural Lands) 2008 | <i>The aims of this Policy are as follows:</i> <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> |

| State Environmental Planning Policy (SEPP) | Compliance of Planning Proposal |
|--|---|
| | <p><i>(e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.</i></p> <p>The subject land is zoned mostly RU2 Rural Landscape under Byron LEP 2014. A small area of vegetated land is Deferred Matter and remains zoned Rural 1A under Byron LEP 1988. All of the subject land is regionally significant agricultural land in the Northern Rivers Farmland Mapping Project. None of it is State significant. The planning proposal will permit an existing community title based rural residential cluster to convert to a Torrens Title subdivision plus one lot on the rural zoned residue. It will result in five dwellings on five lots. The site is isolated from commercial agriculture by its location and surrounding small lot subdivision. This should minimise the likelihood of significant impact on surrounding rural land.</p> <p>This planning proposal is consistent with the SEPP.</p> |

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

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

Consistency with s9.1 Directions

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|-----------------------------------|--|---|----------------------------|
| 1 | Employment and Resources | | |
| 1.1 Business and Industrial Zones | Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary). | This planning proposal will not affect the boundaries or extent of business or industrial zones. | N/A |
| 1.2 Rural Zones | <p>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).</p> <p>Under this Direction a planning proposal must:</p> <ul style="list-style-type: none"> (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). | <p>This planning proposal will rezone approximately 5.53 hectares of RU2 zoned land to R5 Large Lot Residential. This is inconsistent with the Direction. However, the land is specifically identified in the <i>Byron Shire Rural Land Use Strategy 2017</i> for closer rural settlement. The strategy was endorsed by the NSW DPE in July 2018.</p> <p>The subject land will have the potential for a five-lot subdivision consistent with its previous Community Title approval for a five-lot subdivision.</p> <p>Four of the lots will be clustered in the R5 zoned land and the fifth lot will be the residue land that will remain zoned RU2 Rural Landscape and be available for small scale agriculture.</p> <p>The inconsistency is considered to be of minor significance.</p> | Justifiably inconsistent |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|--|---|--|----------------------------|
| 1.3 Mining, Petroleum Production and Extractive Industries | <p>Applies when a relevant planning authority prepares a planning proposal that would have the effect of:</p> <ul style="list-style-type: none"> (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. | <p>This planning proposal will permit small lot subdivision and subsequent use of the lots for dwellings.</p> <p>The dwellings will be incompatible with the use of the site for development of resources or extractive industry. However, the site is already constrained by past consents for community title lots that are incompatible with the use of the site for development of resources or extractive industry.</p> <p>The inconsistency is considered to be of minor significance.</p> | Justifiably inconsistent |
| 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 as this site is within the Wilsons River catchment.</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>This planning proposal will alter the boundary of an RU2 Rural Landscape zone to change it to R5 Large Lot Residential. However, the area affected is already subject to a small lot Community Title subdivision.</p> <p>It will also alter the minimum lot size for the residue part of the RU2 zone to allow a dwelling on this land as a separate lot to the R5 land.</p> | Consistent |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|----------------|---|--|----------------------------|
| | <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>The Rural Planning Principles are:</p> <ul style="list-style-type: none"> (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. | <p>In relation to the Rural Planning Principles, the development that will result from this planning proposal will not undermine the rural economy; it will not impact negatively on agriculture on the subject land or adjacent to it; it will not impact on the surrounding rural land use generally; it balances the social and environmental interests of the site; it will not impact on the biodiversity or water resources of the site; it will provide for a small number of housing opportunities in a rural setting; it will not impact on services and infrastructure that are largely provided by the site residents; and it is consistent with the NCRP because it is identified in an endorsed local strategy.</p> <p>In relation to the Rural Subdivision Principles, the development that will result from this planning proposal will not fragment the parent lot beyond the fragmentation caused by past approvals. Overall, the proposed small lots will likely occupy about 33% of the 17-hectare site. Conflict with surrounding rural land uses is unlikely given the location of the proposed lots on the eastern edge towards the centre of the lot. The nearest small scale commercial agriculture is grazing on the subject land and adjacent lots. Despite being regionally significant agricultural land, the dominant land use in this locality is “lifestyle lots” that produce very little.</p> <p>The provision of five small lots on this site is consistent with the supply and demand analysis in the <i>Byron Shire Rural Land Use Strategy 2017</i>.</p> <p>The natural and physical constraints of the site have been assessed in relation to past approvals for dwellings. The dwelling locations will be largely consistent with past approvals. The residue part of</p> | |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|-----------------------------------|---|---|----------------------------|
| | <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>The Rural Subdivision Principles are:</p> <ul style="list-style-type: none"> (a) the minimisation of rural land fragmentation, (b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses, (c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands, (d) the consideration of the natural and physical constraints and opportunities of land, (e) ensuring that planning for dwelling opportunities takes account of those constraints. | <p>the land to remain as RU2 has a number of potential dwelling locations, has frontage for access to Coopers Shoot Road and will have the same potential for agriculture as it does now.</p> | |
| 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>This planning proposal does not alter or remove any environment protection zone. No environmental standards will be reduced by the proposed LEP changes.</p> <p>In Byron Shire, environmental zones are being dealt with as a separate process, including this site. The site has a Deferred Matter on it, which is an area of vegetation (regenerating rainforest) being considered for inclusion in an environmental zone.</p> | Consistent |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|----------------------------------|---|---|----------------------------|
| <p>2.2 Coastal Protection</p> | <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.</p> <p>A planning proposal must include provisions that give effect to and are consistent with:</p> <ul style="list-style-type: none"> (a) the objects of the <i>Coastal Management Act 2016</i>, and (b) the <i>NSW Coastal Management Manual</i> and associated Toolkit, and (c) the <i>NSW Coastal Design Guidelines 2003</i>, and (d) any relevant Coastal Management Program certified by the Minister. <p>A planning proposal must not rezone land which would enable increased development or more intensive land use on land identified as being affected by current or future coastal hazard.</p> | <p>The subject land is not affected by coastal environment area, coastal use area, coastal wetlands and littoral rainforest mapping.</p> | <p>N/A</p> |
| <p>2.3 Heritage Conservation</p> | <p>A planning proposal must contain provisions that facilitate the conservation of:</p> <ul style="list-style-type: none"> (a) Items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area, (b) Aboriginal objects or Aboriginal places that are protected under the <i>National Parks and Wildlife Act 1974</i>, and (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the | <p>The site has no European heritage items located on it.</p> <p>An Aboriginal Cultural Heritage site inspection report was undertaken by the Tweed Byron Local Aboriginal Land Council (TB LALC) in October 2018, and no cultural material or objects were observed on the site. An AHIMS search undertaken by the LALC indicates that there are no registered Aboriginal sites on the subject land or in proximity to it.</p> <p>BLEP14 already contains clauses that facilitate the conservation of Aboriginal and European heritage in Byron Shire.</p> | <p>Consistent</p> |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|---|---|---|----------------------------|
| | relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people. | | |
| 2.4 Recreation Vehicle Areas | <p>A planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the <i>Recreation Vehicles Act 1983</i>):</p> <ul style="list-style-type: none"> (a) where the land is within an environment protection zone, (b) where the land comprises a beach or a dune adjacent to or adjoining a beach, (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration: <ul style="list-style-type: none"> (i) the provisions of the guidelines entitled <i>Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas, Soil Conservation Service of New South Wales, September 1985</i>, and (ii) the provisions of the guidelines entitled <i>Recreation Vehicles Act 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas, State Pollution Control Commission, September 1985</i>. | This planning proposal does not enable land to be developed for the purpose of a recreation vehicle area. | N/A |
| 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs | <p>This Direction applies when a relevant planning authority prepares a planning proposal:</p> <ul style="list-style-type: none"> (a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone; (b) that introduces or alters an overlay and associated clause. <p>A planning proposal must apply the proposed E2 Environmental Conservation or E3 Environmental Management zones, or the overlay and associated clause, consistent with the Northern Councils E Zone Review Final Recommendations.</p> | This planning proposal does not introduce an environmental zone or overlay. This is being dealt with by a separate planning proposal. | N/A |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|--|---|---|----------------------------|
| 3 Housing, Infrastructure and Urban Development | | | |
| 3.1 Residential Zones | <p>This Direction applies when a relevant planning authority prepares a planning proposal that will affect land within:</p> <ul style="list-style-type: none"> (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary), (b) any other zone in which significant residential development is permitted or proposed to be permitted. <p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <ul style="list-style-type: none"> (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. <p>A planning proposal must, in relation to land to which this Direction applies:</p> <ul style="list-style-type: none"> (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land. | <p>This planning proposal will add approximately 5.53 hectares of the subject land to the R5 Large Lot Residential zone. It will not permit significant residential development (only five lots).</p> | Consistent |
| 3.2 Caravan Parks and Manufactured Home Estates | <p>Applies when a relevant planning authority prepares a planning proposal.</p> <p>In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:</p> <ul style="list-style-type: none"> (a) retain provisions that permit development for the | <p>This planning proposal will not alter the permissibility of caravan parks or manufactured home estates on the subject land.</p> | N/A |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|--|--|--|----------------------------|
| | <p>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> | | |
| 3.3 Home Occupations | Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent. | This planning proposal will not alter the permissibility of home occupations on the subject land. | N/A |
| 3.4 Integrating Land Use and Transport | <p>Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p> <p>A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent</p> | This planning proposal will extend the R5 Large Lot Residential zone to approximately 5.53 hectares of the subject land. This will not permit significant residential development and will not have a significant impact on transport. | Consistent |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|---|---|---|----------------------------|
| | <p>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>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> | | |
| 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 where the ANEF, as from time to time advised by that Department of the Commonwealth, exceeds 25.</p> | This planning proposal will not alter provisions that affect land located in the vicinity of any aerodrome. | N/A |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|---------------------------------------|---|--|----------------------------|
| 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> | The land to which this planning proposal applies is not mapped as containing acid sulfate soils. | N/A |
| 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> <ul style="list-style-type: none"> (a) is within a mine subsidence district, or (b) has been identified as unstable in a study, strategy or other assessment undertaken: <ul style="list-style-type: none"> (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. | <p>This planning proposal does not impact on any mine subsidence area.</p> <p>The site is partly steep and contains two gullies that are potentially unstable.</p> <p>However, the area identified for inclusion in the R5 zone is predominantly moderately sloping and has adequate dwelling sites (or existing dwellings). Four of these were approved under previous consents. The larger residue area of RU2 land also has multiple dwelling sites on moderately sloping land. Sloping land is a minor issue on this site.</p> | Consistent |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
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| 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>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</p> | <p>This planning proposal does not apply to land that is flood affected. The subject land is Coopers Shoot hill and thus at the head of the drainage catchment.</p> <p>A flood and stormwater assessment supplied with the planning proposal identifies two gullies on the subject land that carry stormwater back into the Wilson River system.</p> <p>The water levels within the gullies rise and fall and dissipate quickly in storm events and do not impact on any of the existing or proposed dwelling sites.</p> | N/A |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
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| | <p>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, comply with the following provisions, as appropriate:</p> <ul style="list-style-type: none"> (a) provide an Asset Protection Zone (APZ) incorporating at | <p>The subject land is partly classified as affected by a bushfire buffer in the north-east corner.</p> <p>A Bushfire Hazard Report has been provided relevant to this planning proposal and it recommends that small APZs be applied in some locations in combination with construction to BAL 19 in some locations and provision for firefighting water on-site.</p> <p>The report states:</p> <p><i>Due to the cleared nature of the site and the buffer around the site created by the public roads this low risk situation is further aided by the characteristics of the existing community title subdivision, the close proximity of the site to the Bushfire Service at Suffolk Park, and high rainfall of the area. The proposed development site is unlikely to come under severe bush fire risk.</i></p> <p>Although the planning proposal seeks to make use of an existing CT approval, it will still need to be referred to the Rural Fire Service.</p> | Inconsistent (referral to RFS is required) |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
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| | <p>a minimum:</p> <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, <p>(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,</p> <ul style="list-style-type: none"> (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. | Consultation with the Rural Fire Service has not yet taken place and the inconsistency remains until that occurs. | |
| 5 Regional Planning | | | |
| 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 |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
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| 5.3 Farmland of State and Regional Significance on the NSW Far North Coast | The planning proposal must not rezone land mapped as State or regionally significant farmland under the Northern Rivers Farmland Protection Project for urban or rural residential purposes. | <p>The land is identified as regionally significant farmland under the Northern Rivers Farmland Protection Project. It is not mapped as Biophysical Strategic Agricultural Land (BSAL).</p> <p>A planning proposal may be inconsistent with the terms of this Direction if it is consistent with the <i>North Coast Regional Plan 2036</i> (NCRP).</p> <p>The NCRP states that rural residential uses should be directed away from important farmland (Action 11.1). However, it also recognises that agricultural production may not be suitable on some small areas of mapped farmland due to non-physical factors. Important farmland variation criteria can be used to assess the suitability of this land for non-agricultural land uses (page 38). An assessment of the proposed R5 land against these criteria is at Appendix 1. This assessment shows that the proposed R5 land is small and not suitable for agricultural production due to its long history of rural residential use as well as proximity to other rural residential areas.</p> <p>The subject land is also within an adopted rural residential strategy that has been endorsed by the NSW DPE and this is consistent with the NCRP (Actions 24.1 and 24.2).</p> | Justifiably inconsistent |
| 5.4 Commercial and Retail Development along the Pacific Highway, North Coast | <p>A planning proposal that applies to land located on “within town” segments of the Pacific Highway must provide that:</p> <p>(a) new commercial or retail development must be concentrated within distinct centres rather than spread along the highway;</p> <p>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety</p> | This planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway. | N/A |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
|---------------------------------------|---|--|----------------------------|
| | <p>and efficiency of the highway; and</p> <p>(c) for the purposes of this paragraph, “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> <p>A planning proposal that applies to land located on “out-of-town” segments of the Pacific Highway must provide that:</p> <p>(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;</p> <p>(b) development with frontage to the Pacific Highway must consider the impact the development has on the safety and efficiency of the highway; and</p> <p>(c) for the purposes of this paragraph, “out-of-town” means areas which, prior to the draft local environmental plan, do not have an urban zone (eg “village”, “residential”, “tourist”, “commercial”, “industrial”, etc) or are in areas where the Pacific Highway speed limit is 80 km/hour or greater.</p> | | |
| 5.10 Implementation of Regional Plans | All planning proposals must be consistent with the applicable Regional Plan released by the Minister for Planning. | This planning proposal affects land subject to the NCRP. The subject land is identified in the <i>Byron Shire Rural Land Use Strategy 2017</i> , which was endorsed by the NSW DPE in July 2018. The planning proposal is therefore consistent with Actions 24.1 and 24.2 of the NCRP. | Consistent |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
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| 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. | <p>This planning proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority. It does not identify development as designated development.</p> | N/A |

| S9.1 Direction | Application | Relevance to this planning proposal | Consistency with Direction |
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| 6.2 Reserving Land for Public Purposes | A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General). | The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes. | N/A |
| 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 use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p> | <p>This planning proposal does seek to allow a particular development to be carried out.</p> <p>In this case, the planning proposal is using the existing R5 Large Lot Residential zone, which is consistent with this Direction.</p> <p>The site has a long history and Council considers it is reasonable that it now be recognised in an R5 zone as a rural residential subdivision. It uses a Minimum Lot Size (MLS) that is not currently available in Byron LEP 2014 (1.5 hectares) for part of the R5 zone but this is a minor change to the LEP and this MLS will be available to be used on other R5 land in Byron Shire if appropriate.</p> <p>The planning proposal does not contain schematic drawings.</p> | Justifiably inconsistent |

Section C Environmental, social and economic impact

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

No. The planning proposal will allow the creation of five lots over land that has been used for rural residential purposes for many years. Minimal clearing will be involved, if any.

However, ecological mapping over the site and the environmental zones that flow from it is the subject of a current review by Council. A small Deferred Matter on this site is being considered for inclusion in an E zone.

No environmental zones are being altered in this planning proposal as they are being dealt with in a separate planning proposal that needs to run its course. Any future development applications for either subdivision or dwellings will be subject to the zoning and SEPPs that prevail at the time and dealt with on merit.

The site has been subject to environmental restoration and repair as part of previous development approvals.

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 rural residential purposes with a larger lot still used for grazing. Residents of the three dwellings that exist are self-contained for water supply and wastewater treatment and disposal. This is intended to continue. The planning proposal will allow a different form of land ownership and one additional dwelling but not much else is likely to change.

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

The planning proposal will have minimal social and economic effects as the site is already well established as a small rural residential enclave. Any housing that may come onto the market will not be affordable to average income earners but will likely suit “tree changers” or investors. Construction of up to two new dwellings will be a positive impact for the local industry if local persons are used. Building and property maintenance will be required on an ongoing basis. Home based businesses may result if dwellings are permitted on the site. The larger RU2 zoned residue land may be suitable for small scale agriculture of some sort.

Section D State and Commonwealth interests

1 Is there adequate public infrastructure for the planning proposal?

Existing and future rural residents will be responsible for water supply and on-site wastewater disposal. Public roads will be used to access existing and proposed dwelling locations. Both Coopers Shoot Road and Picadilly Hill Road are in poor condition.

Reticulated power and telecommunications are connected to the site and to the existing dwellings.

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

There is adequate public infrastructure to deal with the proposed rural residential development permitted by the planning proposal as it will result in only one more dwelling that can be erected on the site and only two more than currently exist.

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

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

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

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

| Public authority/stakeholder | Issue requiring comment |
|------------------------------------|--|
| Office of Environment and Heritage | Consideration of ecology and Aboriginal archaeological matters |
| Rural Fire Service | Bushfire issues |
| Jali LALC and Arakwal Corporation | Aboriginal cultural heritage and archaeological matters |

Part 4 Mapping

The planning proposal will amend the following Byron LEP 2014 maps for the subject land:

- Land Zoning Map – Sheet LZN_003CB
- Lot Size Map – Sheet LSZ_003CB

| Zone | Minimum Lot Size | Height of Buildings | FSR |
|------|-------------------------------|----------------------|------------------|
| R5 | 1.5 hectares and 0.8 hectares | 9 metres (unchanged) | None (unchanged) |
| RU2 | 10 hectares | 9 metres (unchanged) | None (unchanged) |

Note: The small area of the subject land (Deferred Matter) that is subject Byron LEP 1988 is not affected by this planning proposal.

Figure 11: Existing land use zones under Byron LEP 2014 – RU2 Rural Landscape and Deferred Matter

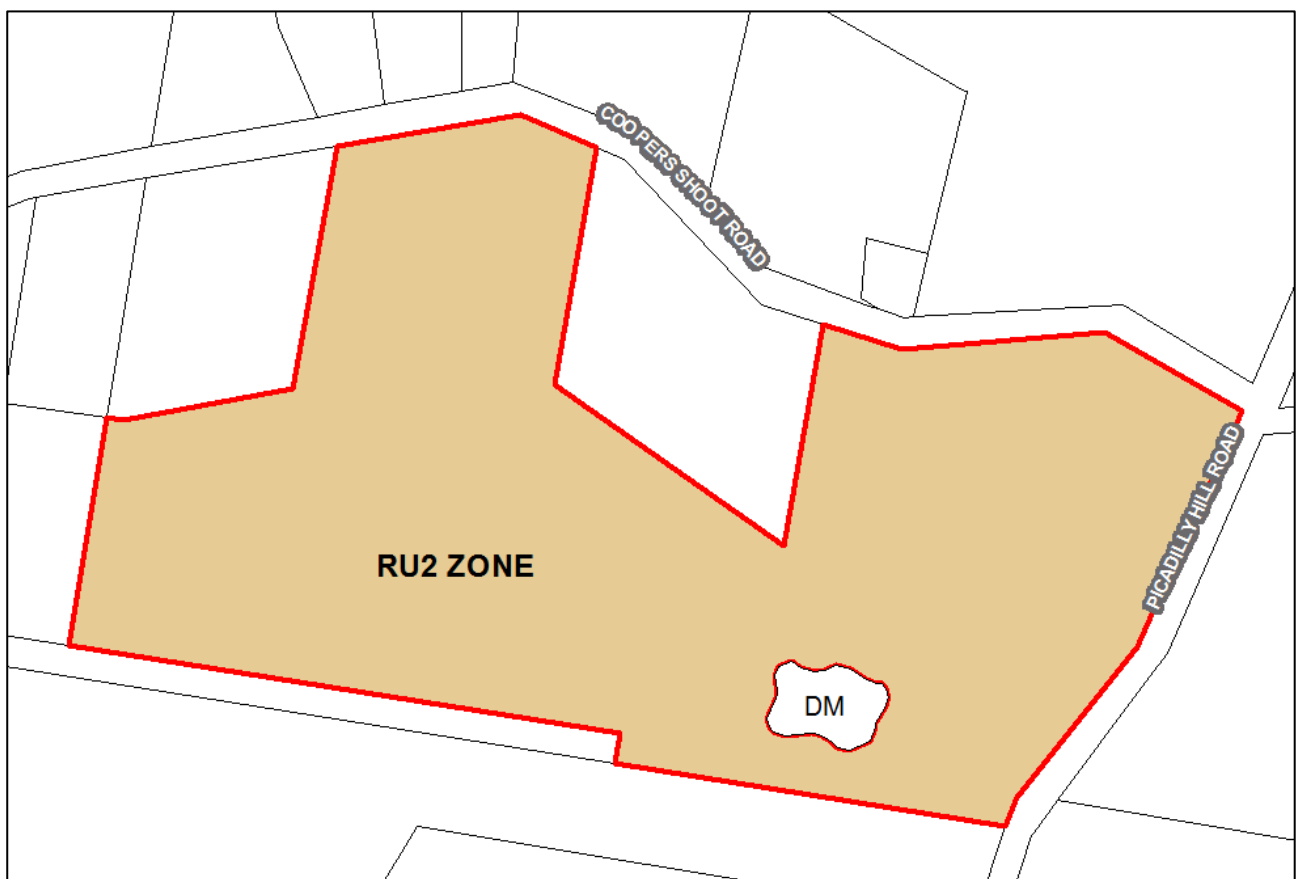


Figure 12: Proposed land use zones under Byron LEP 2014 – RU2 Rural Landscape, R5 Large Lot Residential and Deferred Matter

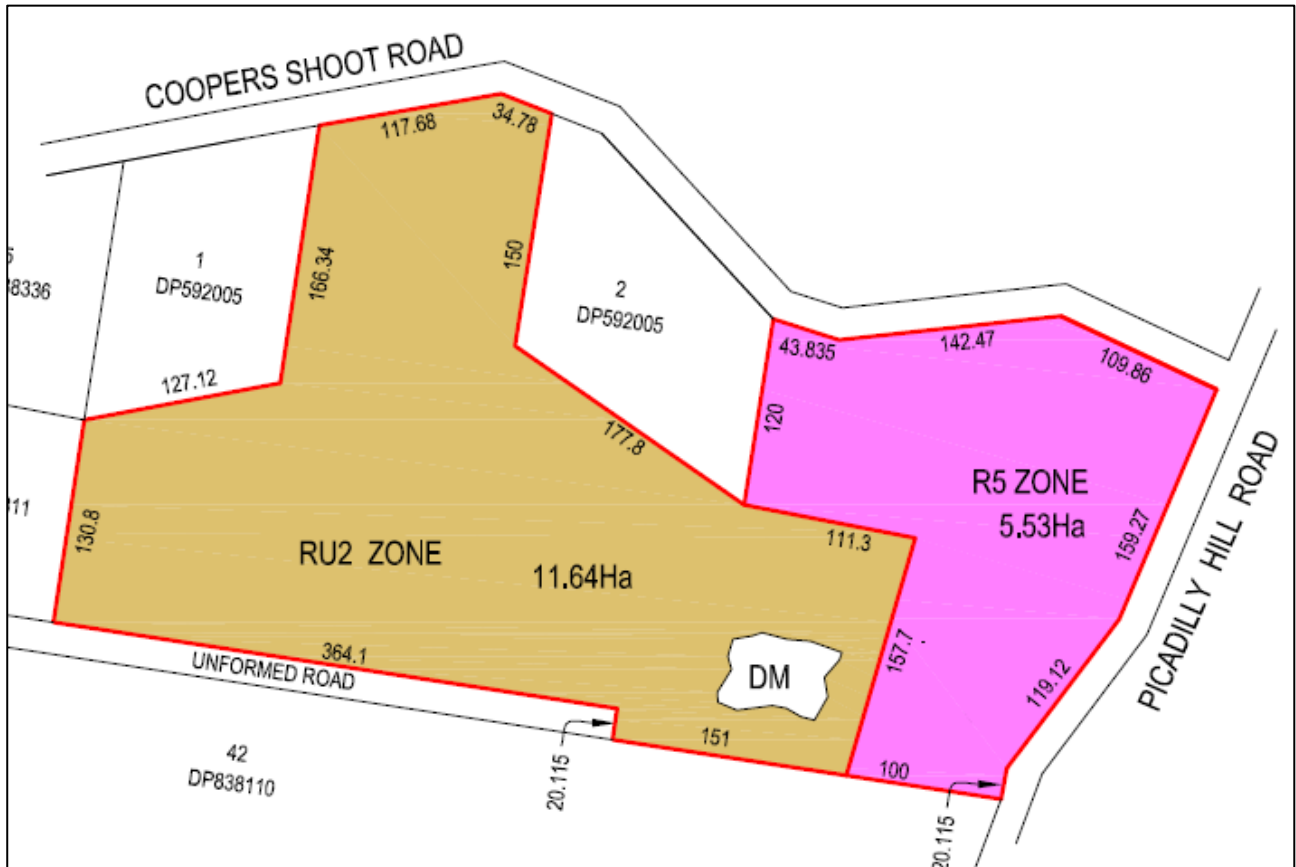
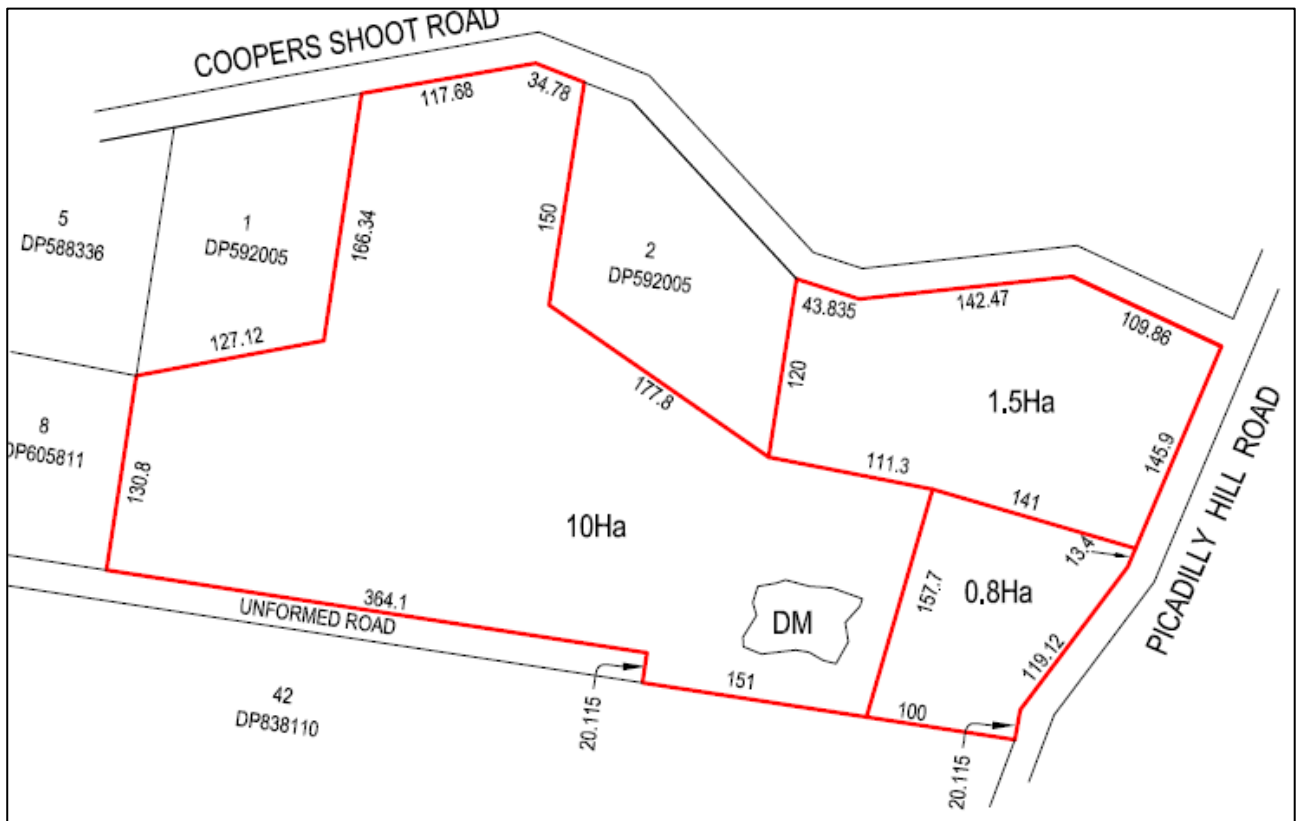


Figure 13: Existing Minimum Lot Size Map under Byron LEP 2014



Figure 14: Proposed Minimum Lot Size Map under Byron LEP 2014



Part 5 Community consultation

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

Notification of the exhibited planning proposal will include:

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

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

Part 6 Project timeline

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

| Estimated completion | Plan making step |
|----------------------|---|
| March 2019 | Decision by Council to support the planning proposal and send for Gateway determination by the NSW DPE. |
| April 2019 | Gateway determination issued by the NSW DPE. |
| May/June 2019 | Public exhibition of planning proposal. Further government agency consultation. |
| August 2019 | Analysis of public submissions. Preparation of Council report. |
| September 2019 | Decision by Council to endorse the planning proposal and submit to the NSW DPE under delegation for finalisation. |

Summary and conclusions

This planning proposal seeks to amend BLEP14 to rezone approximately 5.53 hectares of land to R5 Large Lot Residential. It will also alter the Minimum Lot Size map for the subject land to permit four lots in the R5 zone and one in the remaining RU2 zone (five-lot subdivision). All lots will have a dwelling entitlement.

The land has been subject to a number of previous development applications for multiple occupancy development and Community Title subdivision. This has resulted in approval for four lots that have the ability to be used as dwellings subject to Council approval. Three dwellings have been approved and exist already.

The lots will be capable of supplying their own tank water and on-site wastewater disposal. Reticulated power and communication infrastructure is available. The site has two public roads for access, both in poor condition. The land 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 despite it being regionally significant agricultural land.

A preliminary assessment of land contamination pursuant to SEPP 55 has been carried out indicating that the land is expected to be suitable for the proposed land use. A detailed assessment can be a condition of any Gateway approval to be available prior to public exhibition.

The site is not coastal and does not contain coastal wetlands, littoral rainforest or other significant habitat areas. A small area of native vegetation on the site is not involved in the rezoning and it is not intended that this area would be impacted by future development.

The proposed zone change is consistent with the NCRP. The land is identified in the *Byron Shire Rural Land Use Strategy 2017* as a candidate area for rural residential use based on existing consents. An assessment of the planning proposal indicates that it is consistent with relevant SEPPs other than SEPP 55. It is consistent with most of the relevant Section 9.1 Directions, and where inconsistencies occur they can be justified.

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

Appendix 1

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

Important Farmland Interim Variation Criteria

Land may be suitable for uses other than farmland if:

| | |
|--|---|
| Agricultural capability | The land is isolated from other important farmland and is not capable of supporting sustainable agricultural production |
| Comment: The land to be included in the R5 zone has a total area of 5.53 hectares and is adjoining an existing R5 zoned area across Coopers Shoot Road. It has three houses on it and a fourth will be built in due course. It has a longstanding approval for a Community Title subdivision allowing four dwellings. The approved CT lots are between 0.81 hectares and 2.26 hectares in area so the area is already effectively fragmented and isolated from agriculture. The RU2 residue that will be left if the R5 land is subdivided will be larger than 10 hectares and may support small scale agriculture. A steep gully separates the most arable land from the proposed R5 land and the gully may act as a buffer of sorts. A dwelling is proposed on the RU2 residue land and this will allow a future farmer of this land to live on it. | |
| Land use conflict | The land use does not increase the likelihood of conflict and does not impact on current or future agricultural activities in the locality |
| Comment: With three of the five dwellings already in existence the majority of the development already exists and conflict is minimal. The likelihood of increased conflict is low due to the fourth dwelling being in a cluster with the existing three. The fifth dwelling will be sited on a lot over 10 hectares in size and needs to be assessed carefully so as to not create problems or lose good land. Future agriculture in the locality is unknown. There is no obvious emerging agricultural industry at the moment. | |
| Infrastructure | The delivery of infrastructure (utilities, transport, open space, communications and stormwater) required to service the land is physically and economically feasible at no cost to State and Local Government |
| Comment: Existing public roads will be used to access existing and proposed dwelling locations. Both Coopers Shoot Road and Picadilly Hill Road are in poor condition. Power and communications are connected to the area as three houses exist. Water will have to be collected on site as per the existing situation. Approved wastewater disposal systems exist for four dwellings and a study attached to the planning proposal application found that the proposed fifth dwelling lot has multiple locations that could be used. Road upgrades is the issue that may require local government expenditure as a result of past incremental approvals for rural residential development and concessional lots not being required to reconstruct low quality roads built many decades ago. | |
| Environment and heritage | The proposed land uses do not have an adverse impact on areas of high environmental value, and Aboriginal or historic heritage significance |
| Comment: A small area of native vegetation that is currently a Deferred Matter is not included in the proposed R5 land and will not be affected by it. An Aboriginal Cultural Heritage Assessment by the TB LALC determined the site has minimal heritage values and no registered sites, places or relics. No heritage structures or places are listed in the Byron LEP 2014 for this site. It is unlikely that the proposed R5 land and subsequent 5 dwellings will have any adverse effects on the environment or heritage of the land. | |
| Avoiding risk | <ul style="list-style-type: none"> • Risks associated with physically constrained land are identified and avoided, including: • flood prone; • bushfire-prone; • highly erodible; • severe slope; and • acid sulfate soils. |
| Comment: The site is not flood affected and has no acid sulfates soils. Surrounding land is vegetated and bushfire buffers affect the north east corner. A bushfire assessment found that compliance with Planning for Bushfire Protection is feasible. Some sloping and erodible areas exist around a steep gully on the land but this steep land will mostly not be zoned R5 and will remain managed as part of the larger residue lot to remain in RU2. | |
| The risks to the long term use of the site associated with the physical characteristics of the site are minimal. | |