

Planning Services

IRF19/3133

Gateway determination report

LGA	Byron
PPA	Byron Shire Council
NAME	Rezone land at 4 Picadilly Road, Coopers Shoot, to R5 Large Lot Residential and amend the associated minimum lot size
NUMBER	PP_2019_BYRON_003_00
LEP TO BE AMENDED	Byron LEP 2014
ADDRESS	4 Picadilly Hill Road, Coopers Shoot
DESCRIPTION	Lot 3 DP 592005 and Lot 1 DP 1124504
RECEIVED	9 July 2019
FILE NO.	IRF19/3133, EF19/17010
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend Byron Local Environmental Plan (LEP) 2014 by rezoning part of the land at 4 Picadilly Hill Road, Coopers Shoot, from RU2 Rural Landscape to R5 Large Lot Residential and applying various minimum lot sizes. The amendments would allow the conversion of the land from an approved community title subdivision to a torrens title ownership, with the creation of five rural residential lots each with a dwelling entitlement.

1.2 Site description

The subject land is located at the corner of Coopers Shoot Road and Picadilly Hill Road, Coopers Shoot, approximately 7 km southwest of Byron Bay town centre (Figure 1).

The land consists of Lot 3 DP 592005 and Lot 1 DP 1124504. Lot 3 has an area of 16.43 ha and Lot 1 is a closed road to the south of Lot 3, with an area of 0.482 ha. The two allotments form an irregular shaped piece of land with a total area of approximately 16.91 ha. The land is generally undulating and rises towards the northern and eastern boundaries. It has previously been cleared for agricultural purposes and minor vegetation stands are scattered throughout the site. The land is contained within the Wilsons River Drinking Water Catchment and is bushfire prone.

A multiple occupancy development was approved over Lot 3 DP 592005 in 1996 enabling the development of four dwellings on the land. Currently three dwellings have been built. The owners purchased the adjoining Lot 1 DP 1124504 in 2009.

In 2009 a community title subdivision over the site was approved enabling the creation of four house lots and one neighbourhood lot of 11.64 hectares. The configuration of the community title subdivision reflected the location of the dwellings approved as part of the multiple occupancy.

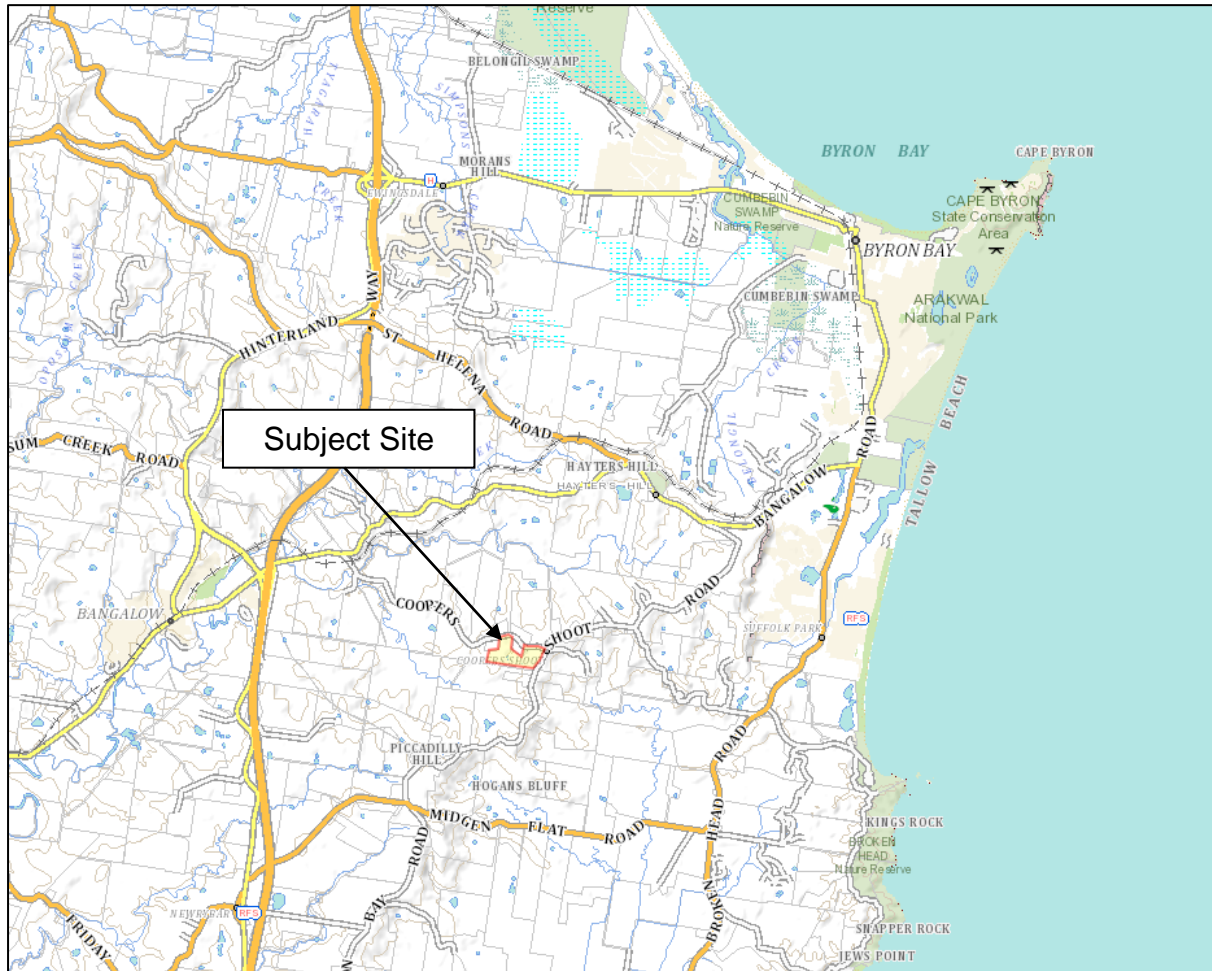


Figure 1: Site locality (Source: SIXmaps)

1.3 Existing planning controls

The land is zoned RU2 Rural Landscape under Byron LEP 2014, with a small portion being deferred land (**Figure 2**). The deferred land is zoned 1A General Rural under Byron LEP 1988 (**Figure 3**). This deferred land is being considered for inclusion in the Byron LEP 2014 though Council's E Zone implementation program which proposes to apply environmental zones to land consistent with the Northern Councils E Zone Review Final Recommendations. The deferred land on this site is to be dealt with in the planning proposal for stage 3 of the implementation program.

The Byron LEP 2014 also applies a 9m maximum building height and a 40 hectare minimum lot size to the land. The site is also mapped as drinking water catchment by the LEP. Byron LEP 1988 applies a 40 hectare minimum lot size to the deferred land.

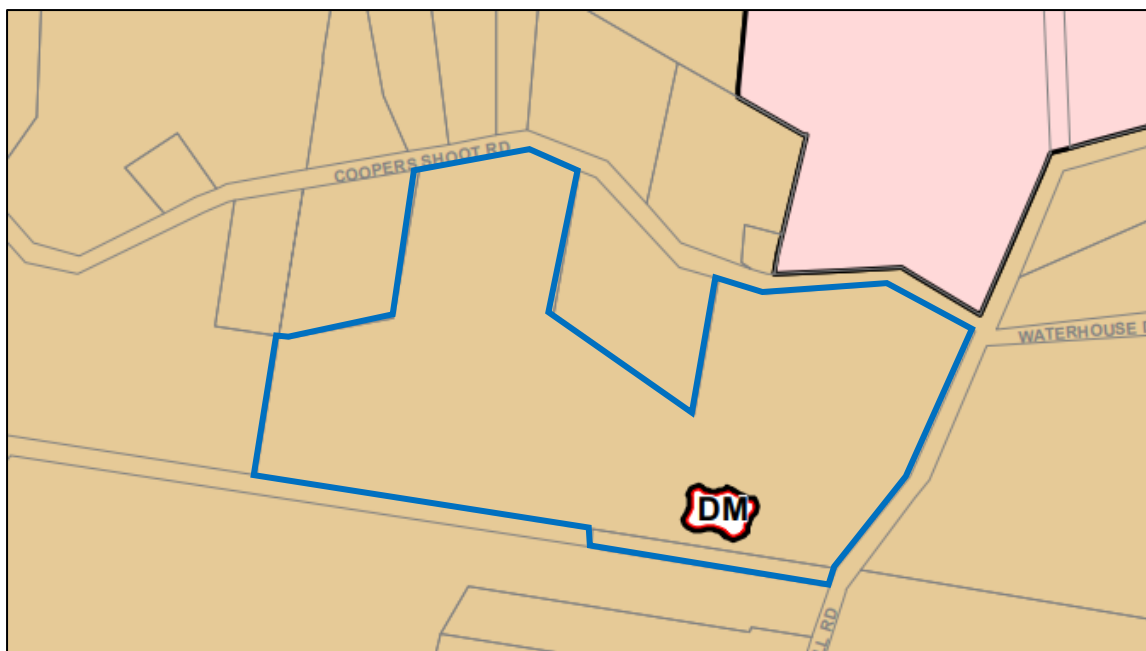


Figure 2: Land use zoning under Byron LEP 2014, showing the subject lands outlined in blue (Source: Byron LEP 2014)

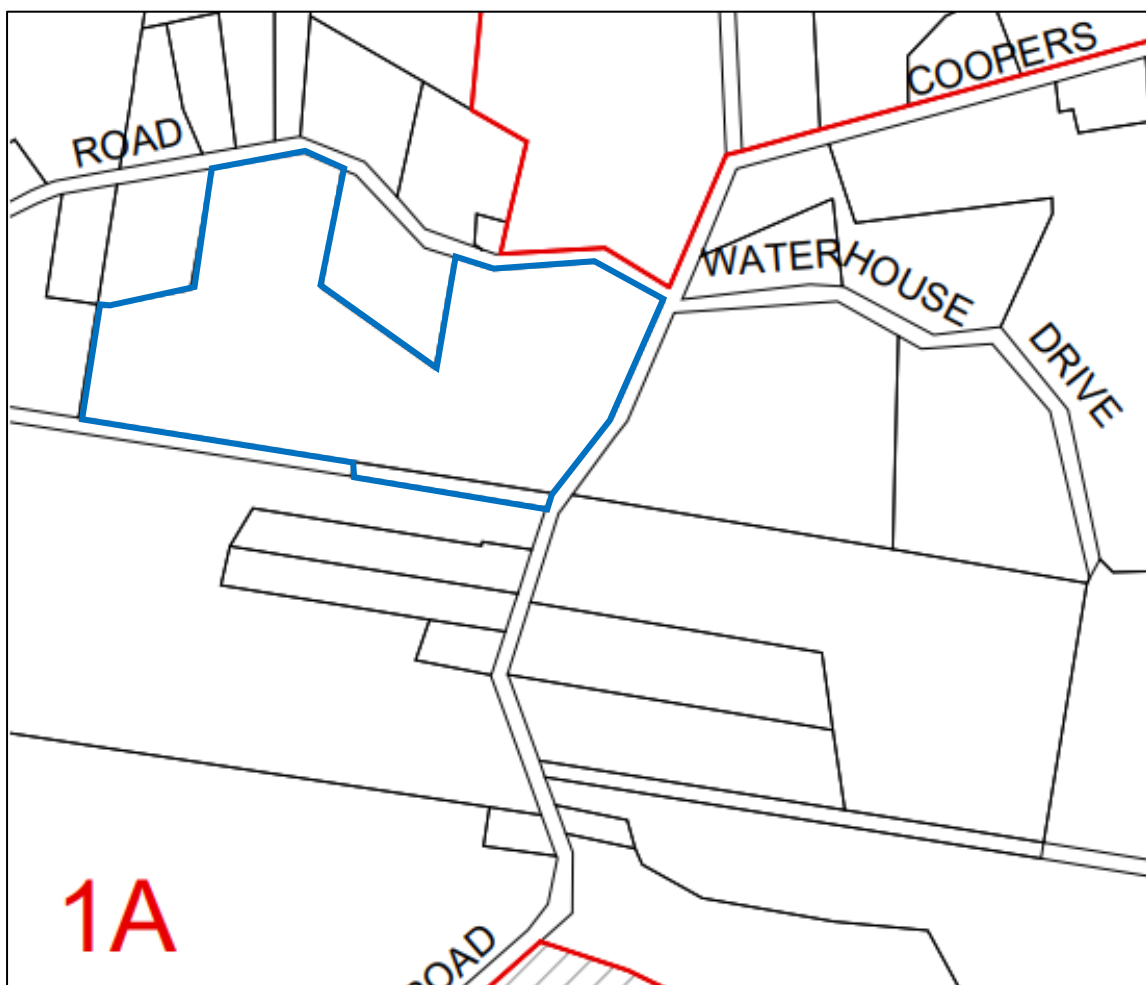


Figure 3: Land use zoning under Byron LEP 1988, showing the subject lands outlined in blue (Source: Byron LEP 1988)

1.4 Surrounding area

The subject site is located in the Byron hinterland approximately 7km southwest of Byron Bay. The surrounding lands are generally zoned RU2 Rural Landscape. A large area of land to the northeast is zoned R5 Large Lot Residential (**Figure 4**). Many of the lots in the vicinity of the site are undersized rural lots used for rural residential purposes. The larger neighbouring properties are generally cleared and used for agricultural purposes. Stands of vegetation are scattered throughout the area.

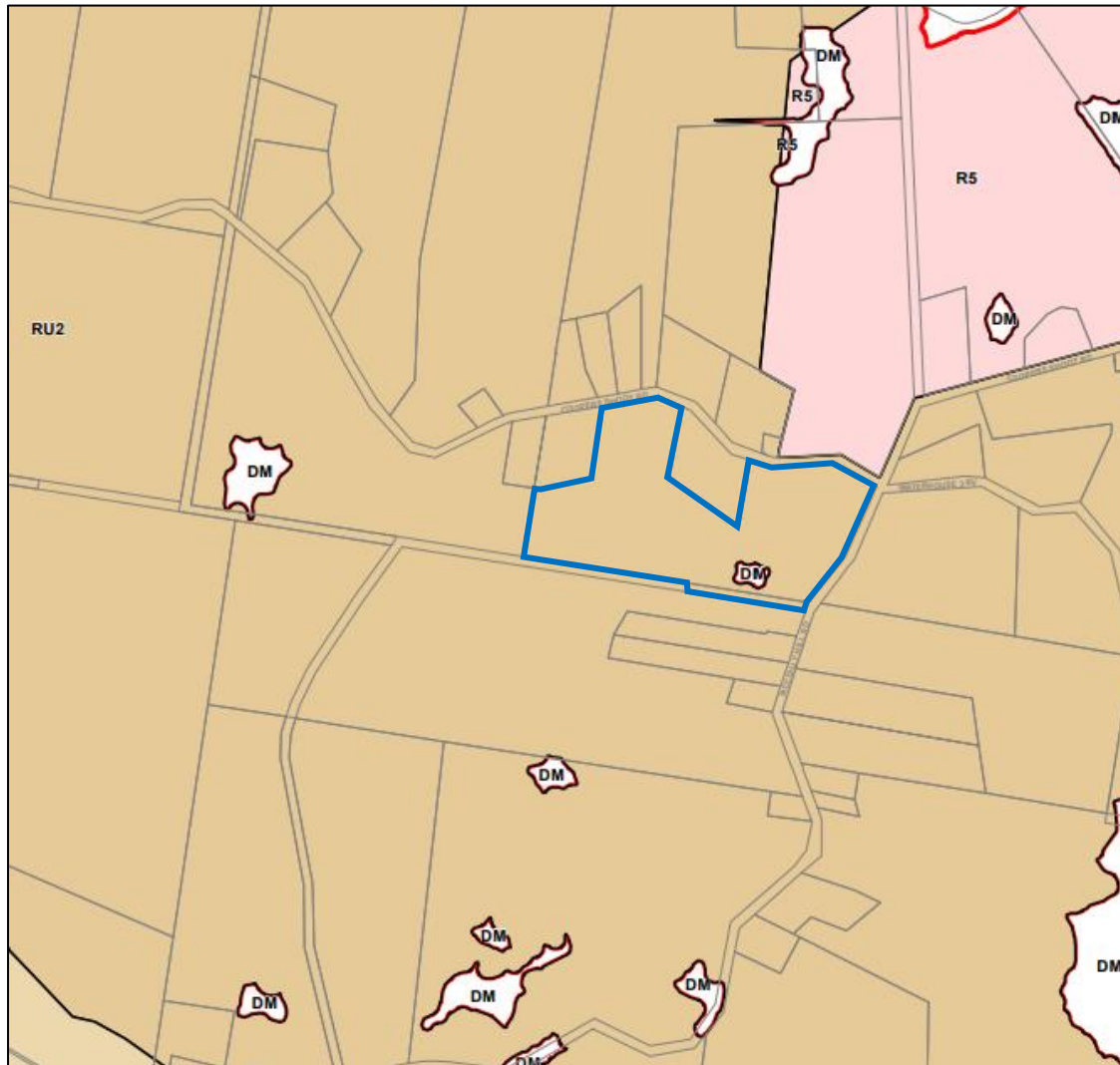


Figure 4: Neighbouring land use zoning under Byron LEP 2014, showing the subject lands outlined in blue (Source: Byron LEP 2014)

1.5 Summary of recommendation

It is recommended that the planning proposal proceed with conditions for the following reasons:

- the area to be rezoned is already being used for rural residential purposes associated with an existing multiple occupancy development that was approved in 1996;
- the land is identified for rural residential purposes in Council's Department approved Byron Shire Rural Land Use Strategy 2017;

- the planning proposal will not result in a significant increase in the development potential of the site and will primarily permit a different form of land ownership; and
- the inconsistencies with the strategic planning framework are of minor significance.

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the planning proposal is to apply an R5 Large Lot Residential zone to an area of approximately 5.53 ha and to amend the associated minimum lot size better reflect the existing and future use of the land to enable the currently approved community title subdivision to be converted to a torrens title subdivision. The land to be rezoned is adjacent to the existing R5 zone in the area.

The intended outcome is five torrens title lots, each with a dwelling entitlement. Four of the five prospective lots will be zoned R5 Large Lot Residential, and the residual lot will remain zoned part RU2 Rural Landscape under the Byron LEP 2014 and part 1A General Rural under Byron LEP 1988.

2.2 Explanation of provisions

The objective of the planning proposal will be achieved by rezoning approximately 5.53 ha of the eastern portion of the subject site from RU2 to R5 (**Figure 5**).

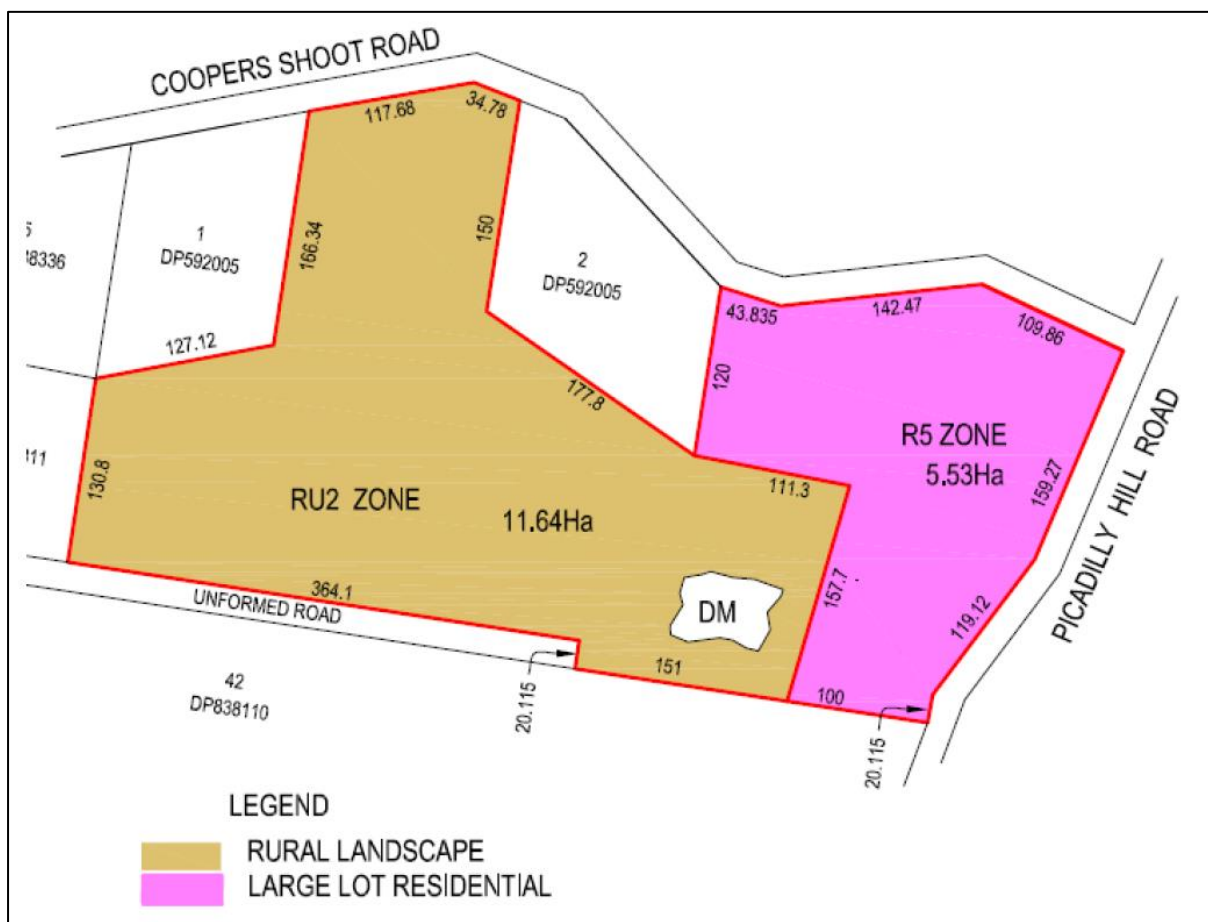


Figure 5: Proposed zoning under Byron LEP 2014 (Source: Planning Proposal)

The proposal also seeks to make associated changes to the minimum lot size (MLS) for the land. Council is proposing variable lot sizes that reflect the existing and past approvals on the site:

- part of the R5 zoned land will have a 1.5 ha MLS that will permit the creation of two lots;
- part of the R5 zoned land will have a 0.8 ha MLS that will permit the creation of a further two lots; and
- the remaining RU2 zoned land will have a 10 ha MLS.

The 1.5 ha MLS is a new standard lot size to be introduced to the LEP. The surrounding RU2 zoned land has an MLS of 40 ha and the adjoining R5 land has an MLS of 2.5ha. **Figure 6** shows the proposed MLS.

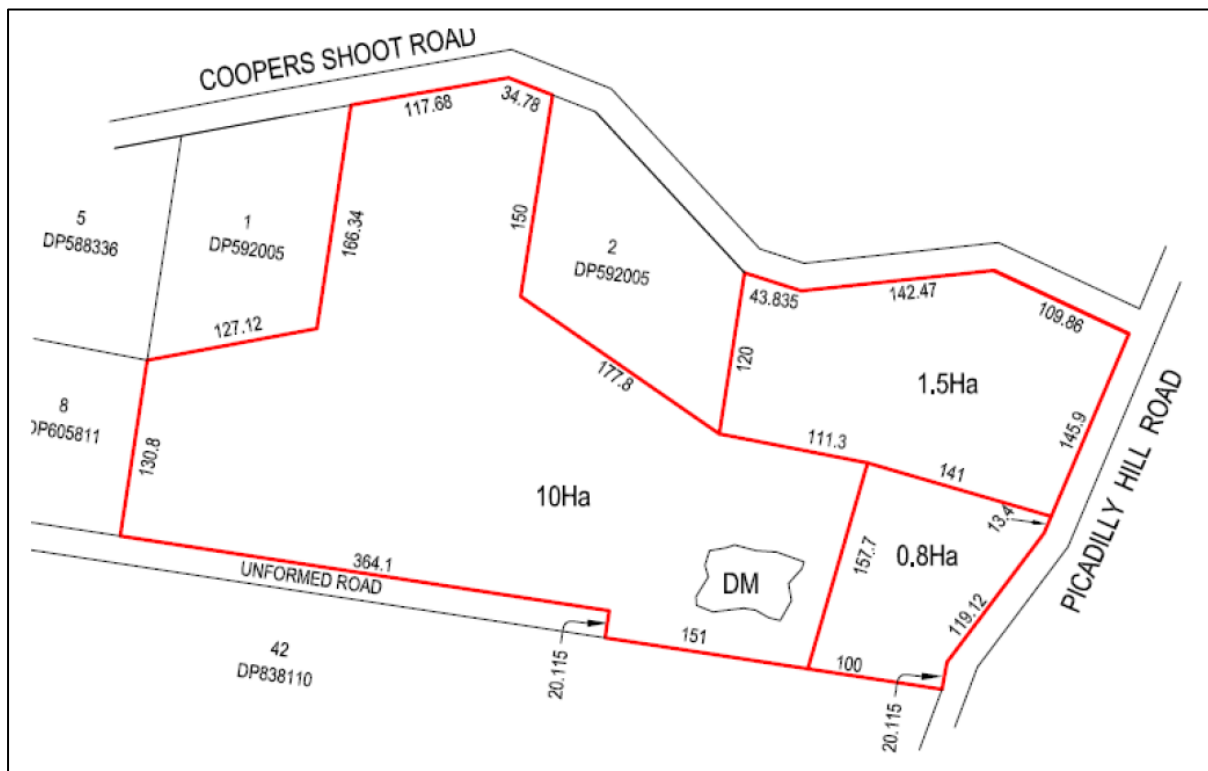


Figure 6: Proposed MLS under Byron LEP 2014 (Source: Planning Proposal)

No change to the minimum lot size to the deferred matter land is proposed. A SEPP 1 objection or completion of the Byron E Zone Stage 3 proposal will therefore be needed to facilitate the future subdivision. This is considered appropriate and necessary as Byron LEP 1988 currently only permits the application of a minimum lot size to a zone rather than specific areas.

The planning proposal intends to retain the existing current height of building (9 m) and does not propose introducing a floor space ratio for the land. This is consistent with other R5 zoned land in the Byron local government area (LGA).

2.3 Mapping

The planning proposal contains maps which show the location of the subject site, the existing and proposed zones and MLS. These maps are adequate for public exhibition purposes. Maps which comply with the Standard Technical Requirements will need to be prepared before the LEP amendment is made.

3. NEED FOR THE PLANNING PROPOSAL

The proposal is the result of the Byron Shire Rural Land Use Strategy 2017 (BRLUS). The property is identified in the BRLUS as a priority site for future rural lifestyle living opportunities. The BRLUS proposed the application of the R5 zone over the land to better reflect the existing rural residential use of the land and to facilitate the creation of 5 torrens title lots generally consistent with the approved community title subdivision on the land. The BRLUS was endorsed by the Department in June 2018.

A multiple occupancy development was approved over Lot 3 DP 592005 in 1996 enabling the development of four dwellings on the land. Currently three dwellings have been built. The owners purchased the adjoining Lot 1 DP 1124504 in 2009.

In 2009 a community title subdivision over the site was approved enabling the creation of four house lots and one neighbourhood lot of 11.64 hectares. The configuration of the community title subdivision reflected the location of the dwellings approved as part of the multiple occupancy.

The proposed rezoning of the site and proposed minimum lot sizes will result in one additional dwelling opportunity. The approved community title subdivision permitted four house lots and a neighbourhood lot. The proposed LEP amendments will enable four rural residential lots in the R5 zone and a residue lot (zoned RU2). The total number of lots will be the same however an additional dwelling will be permitted on the residue lot (which was originally the neighbourhood lot). The creation of a single additional dwelling in a location adjacent to an existing rural residential enclave, and surrounded by undersized rural lots, is considered satisfactory and is consistent with Council's Department approved local strategy.

The planning proposal will implement the actions in Council's local strategy and is the best means for achieving the intended outcomes.

4. STRATEGIC ASSESSMENT

4.1 State

The proposal is not inconsistent with the Premiers Priorities.

4.2 Regional / District

The North Coast Regional Plan 2036 (NCRP) includes Direction 24 which seeks to deliver well-planned rural residential housing. Planning principles for guiding growth include limiting rural residential development within the coastal strip (land east of the Pacific Highway) and directing growth to identified release areas.

While the land is located within the coastal strip (east of the Pacific Highway), the proposal is consistent with the NCRP as it is directing development to a release area identified in Council's Department approved local strategy.

Direction 11 of the NCRP also requires the protection and enhancement of productive agricultural lands. The land is mapped as regionally significant farmland under the Northern Rivers Farmland Protection Project (2005). The planning proposal includes an assessment against the interim important farmland variation criteria in the NCRP to determine the suitability of the subject land for rezoning.

Given that the area to be rezoned R5 is already being used for rural residential purposes, is consistent with Council's Department approved local strategy, and as the

residue lot will retain an RU2 zone and is a size which will enable small scale agricultural land uses, the proposal is considered overall to be consistent with the directions and actions of the NCRP (including the interim important farmland variation criteria).

4.3 Local

The proposal is considered consistent with the local strategic planning framework. Council's Department approved Rural Land Use Strategy 2017 identifies the zoning of the land to R5 Large Lot Residential to better reflect the existing use of the land and to enable the development of a maximum of 5 lots (consistent with the current community title subdivision approval).

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant Section 9.1 directions except the following:

Direction 1.2 Rural Zones

The proposal is inconsistent with this direction as it seeks to zone land from RU2 Rural Landscape to R5 Large Lot Residential. The inconsistency of the proposal with this direction is considered to be of minor significance as:

- it is consistent with Council's Department approved local strategy;
- land will not be removed active agricultural production due to the existing rural residential use of the area to be rezoned; and
- it primarily seeks only to better reflect the existing approved use of the land and to facilitate a torrens title subdivision of the existing multiple occupancy rural residential land use.

Direction 1.5 Rural Lands

The proposal is inconsistent with this direction as it changes the existing minimum lot size in a rural zone and does not actively work towards addressing issues such as minimising rural land fragmentation and potential land use conflict. The inconsistency of the proposal with this direction is considered to be of minor significance as:

- it is consistent with Council's Department approved local strategy;
- land will not be removed active agricultural production due to the existing rural residential use of the area to be rezoned; and
- it primarily seeks only to better reflect the existing approved use of the land and to facilitate a torrens title subdivision of the existing multiple occupancy rural residential land use.

Due to recent amendments to this direction, it is recommended that the proposal be amended prior to consultation to address more fully the updated direction.

Direction 2.1 Environment Protection Zones

The proposal is inconsistent with this direction as it does not include provisions which facilitate the protection and conservation of environmentally sensitive areas. The inconsistency is considered to be of minor significance as:

- the site has historically been developed for multiple occupancy and rural residential uses;

- any potential environmental impact associated with the subdivision of the land, or the 2 additional dwellings, can be adequately addressed at development application stage;
- the site has been assessed as having little to no ecological significance; and
- the area of the site that may have some environmental significance (currently deferred lands under Byron LEP 2014) is being assessed through Council's E zone implementation program to ensure E zones are consistently applied across the LGA. It is considered appropriate that any provisions to facilitate the protection of environmentally sensitive areas be addressed through that process.

2.3 Heritage Conservation

The proposal is inconsistent with this direction as it does not contain provisions to facilitate the conservation of matters of environmental and indigenous heritage significance. The inconsistency is considered to be of minor significance as:

- the proposal indicates that no heritage sites are registered on the lands and no cultural materials or objects were observed in an Aboriginal Cultural Heritage site inspection report undertaken by the Tweed Byron Local Aboriginal Land Council (LALC) in 2018; and
- Byron LEP 2014 already contains appropriate heritage provisions.

3.1 Residential Zones

The proposal is inconsistent with this direction as it rezones land to R5 Large Lot Residential and does not contain provisions to maximise the efficient use of existing infrastructure and services and reduce the consumption of land on the urban fringe. The inconsistency of the proposal with this direction is considered to be of minor significance as it:

- is consistent with Council's Department approved local strategy; and
- primarily seeks only to better reflect the existing approved use of the land and to facilitate a torrens title subdivision of the existing multiple occupancy rural residential land use.

4.4 Planning for Bushfire Protection

This direction is relevant to the proposal as some land to which the proposal applies is mapped as being bushfire prone. The direction provides that Council must consult with the NSW Rural Fire Service (RFS). Consultation is required after a Gateway determination is issued and until this consultation has occurred, the inconsistency of the proposal with this direction remains unresolved.

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

The proposal is inconsistent with this direction as it rezones regionally significant farmland for rural residential purposes. The inconsistency is justified in accordance with the terms of the direction as the proposal is considered to be consistent with the NCRP 2036 (as discussed above).

4.5 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with all relevant SEPPs. It is noted that the proposal currently incorrectly refers to SEPP (Rural Lands) 2008. The proposal

should be amended prior to address SEPP (Primary Production and Rural Development) 2019.

SEPP 55 Remediation of Land

The SEPP requires that the potential contamination of land be investigated prior to being rezoned. The proposal confirms that a preliminary contaminated land assessment has been undertaken. The assessment concluded that based on a review of available historical information, and a detailed site inspection, no past or present potential contaminating land activities have occurred on the site and the land is considered suitable for the proposed rezoning. The proposal is considered to be consistent with SEPP 55.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal is not expected to have any adverse social impacts. The proposal seeks to apply an R5 zone to land which has historically been used, or approved for, rural residential purposes. The land is located in the vicinity of other rural residential land uses and the potential for land use conflict is considered to be minor.

5.2 Environmental

The site has been historically used for agriculture and rural residential purposes and is mostly cleared of native vegetation. The majority of the site has limited ecological significance. The proposed rezoning of the site will not result in significant additional development potential as an approval for four dwellings on the site is already in place (with three of these having already been constructed). The construction of the remaining two dwellings should be able to be undertaken without significant environmental impact.

Two small stands of vegetation exist in the south of the site. The ecological significance of this remnant vegetation is being assessed through Council's E zone implementation program to ensure E zones are consistently applied across the LGA. This is considered satisfactory.

The land is also within the Wilsons River Drinking Catchment. While no adverse impact to drinking water quality is anticipated from the proposal due to the minimal increase in dwellings and the adequate site area available for onsite effluent disposal, it is recommended that Rous County Council be consulted.

5.3 Economic

The planning proposal is not expected to have any adverse economic impacts. The proposal seeks to apply an R5 zone to land which has historically been used, or approved for, rural residential purposes. The proposal will enable the creation of one additional dwelling which will have a minor positive impact for the local economy.

5.4 Infrastructure

The proposal will not generate the need for significant new infrastructure. The dwellings will be served by their own water supply and on-site effluent disposal systems. They will be serviced by the existing road network and existing power and telecommunications infrastructure. The proposal will not generate sufficient additional development to warrant additional health or education infrastructure in the area.

6. CONSULTATION

6.1 Community

The planning proposal nominates a 28-day public exhibition period. This is considered to be appropriate.

6.2 Agencies

Council proposes to consult with the following agencies / organisations during public exhibition:

- Department of Planning, Industry and Environment (Environment, Energy and Science)
- NSW Rural Fire Service
- Jali Local Aboriginal Land Council
- Arakwal Corporation

This is considered appropriate. It is also recommended that Council consult with Rous County Council regarding any impacts on the drinking water catchment.

7. TIME FRAME

The planning proposal includes a project timeline which estimates completion of the planning proposal within seven months of the Gateway determination. Given the need for Council to consult with state agencies and the community, a nine month time frame is recommended.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested an authorisation to undertake the functions of the local plan making authority to make the LEP amendment. As the proposal deals with a matter of local significance and is consistent with the strategic planning framework for the LGA, it is recommended that the gateway determination be conditioned to authorise Council to be the local plan-making authority in this instance.

9. CONCLUSION

It is recommended that the planning proposal proceed with conditions for the following reasons:

- the area to be rezoned is already being used for rural residential purposes associated with an existing multiple occupancy development that was approved in 1996;
- the land is identified for rural residential purposes in Council's Department approved Byron Shire Rural Land Use Strategy 2017;
- the planning proposal will not result in a significant increase in the development potential of the site and will primarily permit a different form of land ownership; and
- the inconsistencies with the strategic planning framework are of minor significance.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that the inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones and 5.3 Farmland of State and Regional Significance on the NSW Far North Coast are justified in accordance with the terms of the directions.
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to agency and community consultation the planning proposal is to be amended to address:
 - (a) State Environmental Planning Policy (Primary Production and Rural Development) 2019 rather than the former State Environmental Planning Policy (Rural Lands) 2008; and
 - (b) the amended section 9.1 direction 1.5 Rural Lands;
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities:
 - (a) Department of Planning, Industry and Environment (Environment, Energy and Science)
 - (b) NSW Rural Fire Service
 - (c) Rous County Council;
 - (d) Jali Local Aboriginal Land Council
 - (e) Arakwal Corporation
4. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be the local plan-making authority.



23/7/19

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6-8-2019

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