

Planning and Assessment

IRF20/38

Gateway determination report

LGA	Coffs Harbour City
PPA	Coffs Harbour City Council
NAME	Rezoning of land at Lots 4 & 5 DP 41228, 75-77 & 81 Butlers Road, Bonville (6 homes, 0 jobs)
NUMBER	PP_2019_COFFS_004_00
LEP TO BE AMENDED	Coffs Harbour Local Environmental Plan 2013
ADDRESS	75-77 & 81 Butlers Road, Bonville
DESCRIPTION	Lots 4 & 5 DP 41228
RECEIVED	13/12/2019
FILE NO.	IRF19/31214
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

This planning proposal seeks to amend the Coffs Harbour LEP 2013 to allow large lot residential development and provide environmental conservation benefit on Lots 4 & 5 DP 41228, 75-77 & 81 Butlers Road, Bonville. Adjoining road reserves are also proposed to be rezoned. The planning proposal will rezone RU2 Rural Landscape zoned land to part R5 Large Lot Residential and part E2 Environmental Conservation, and will result in an amendment to the relevant lot size and terrestrial biodiversity maps.

1.2 Site description

Lots 4 & 5 DP 41228, 75-77 & 81 Butlers Road, Bonville has an area of 10.13 hectares (Figure 1) and is located approximately 13 kilometres south of the Coffs Harbour city centre. The land is affected by Class 5 acid sulfate soils, is classified as bushfire prone and is known to be inundated by flooding. Portions of the site are also identified as regionally significant farmland as well as land with high environmental value (Figure 2).

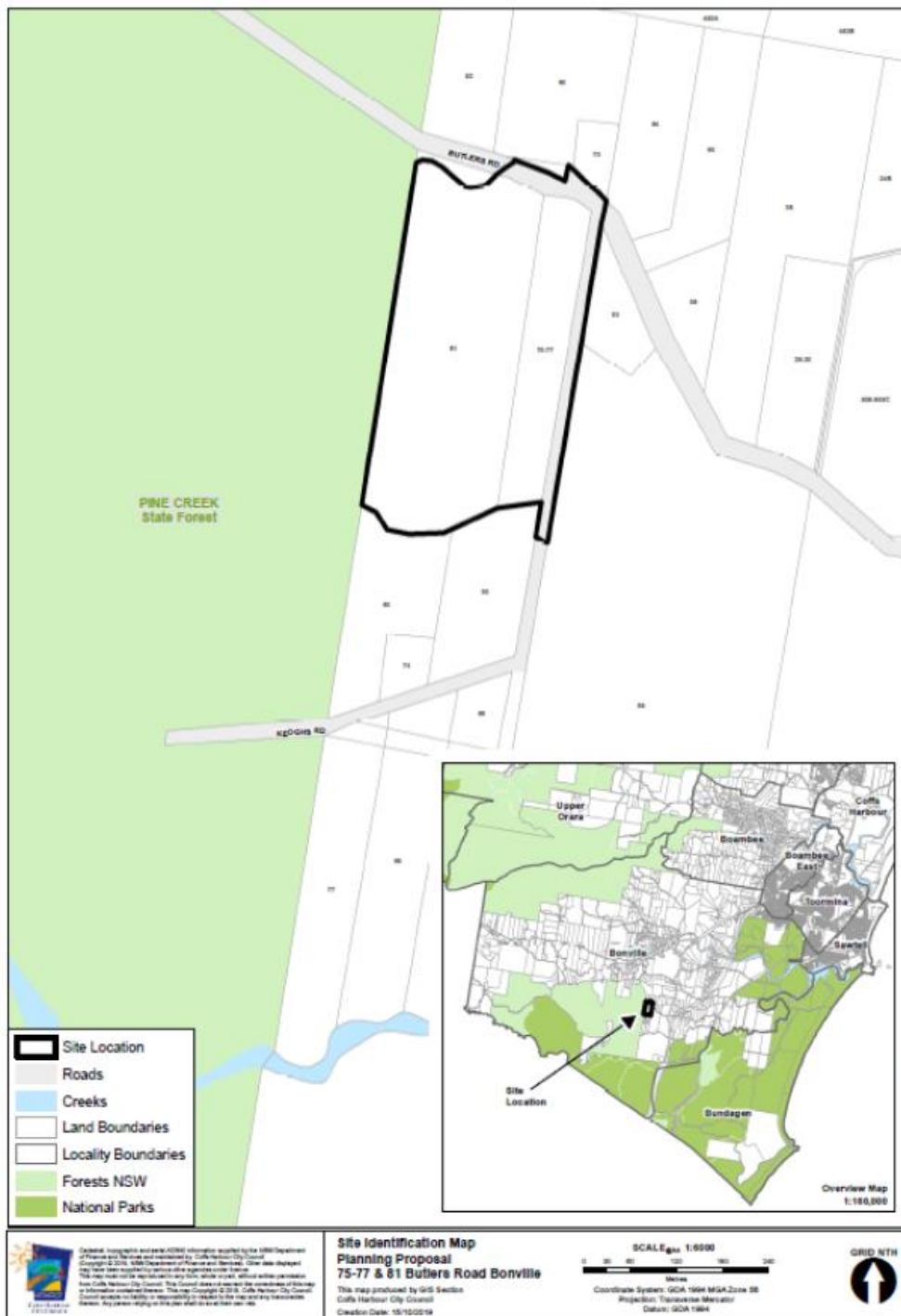


Figure 1 - The subject land, Lots 4 & 5 DP 41228, 75-77 & 81 Butlers Road, Bonville

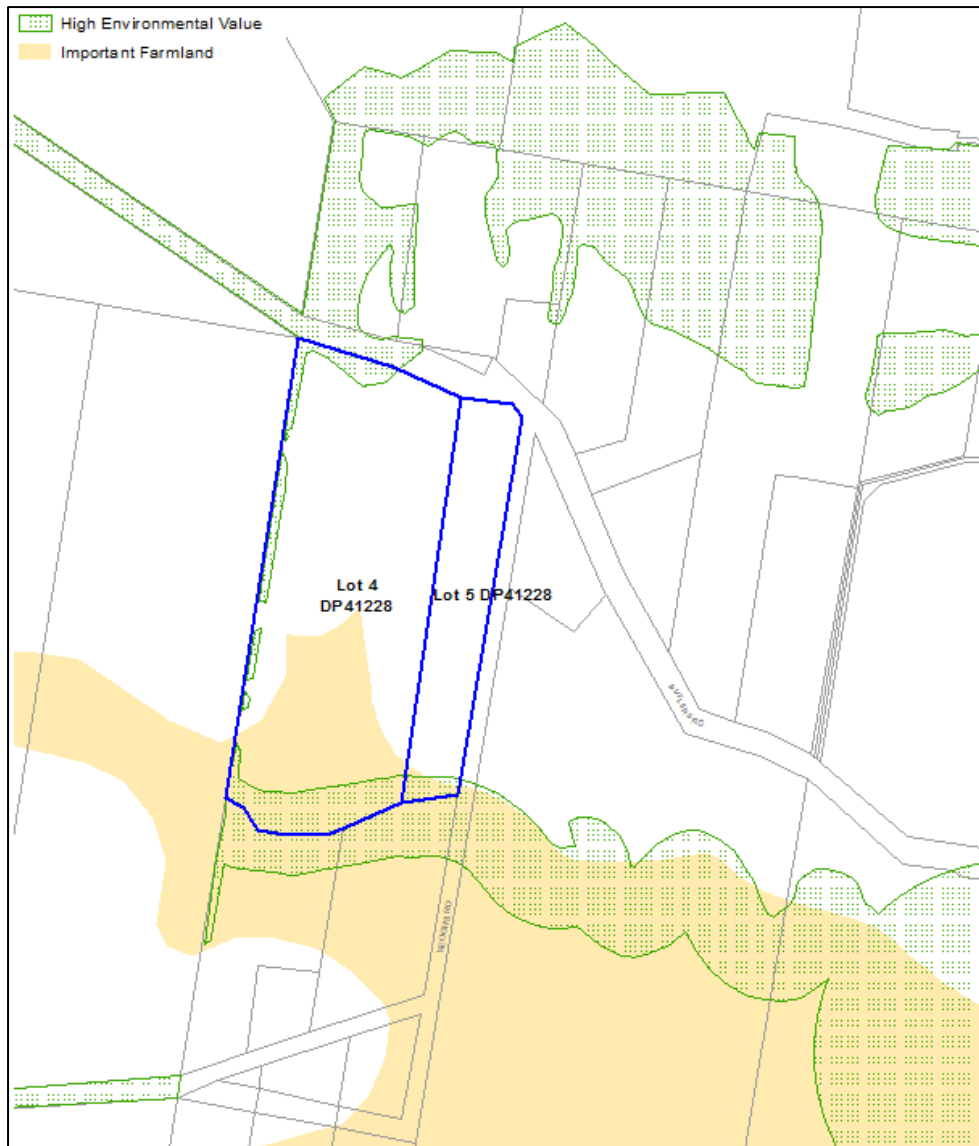


Figure 2 - Extent of regionally significant farmland and high environmental value land on the subject site

1.3 Existing planning controls

Pursuant to the Coffs Harbour LEP 2013, the subject land is zoned part RU2 Rural Landscape and part E2 Environmental Conservation with a minimum lot size of 40 hectares (Figures 3 and 4).

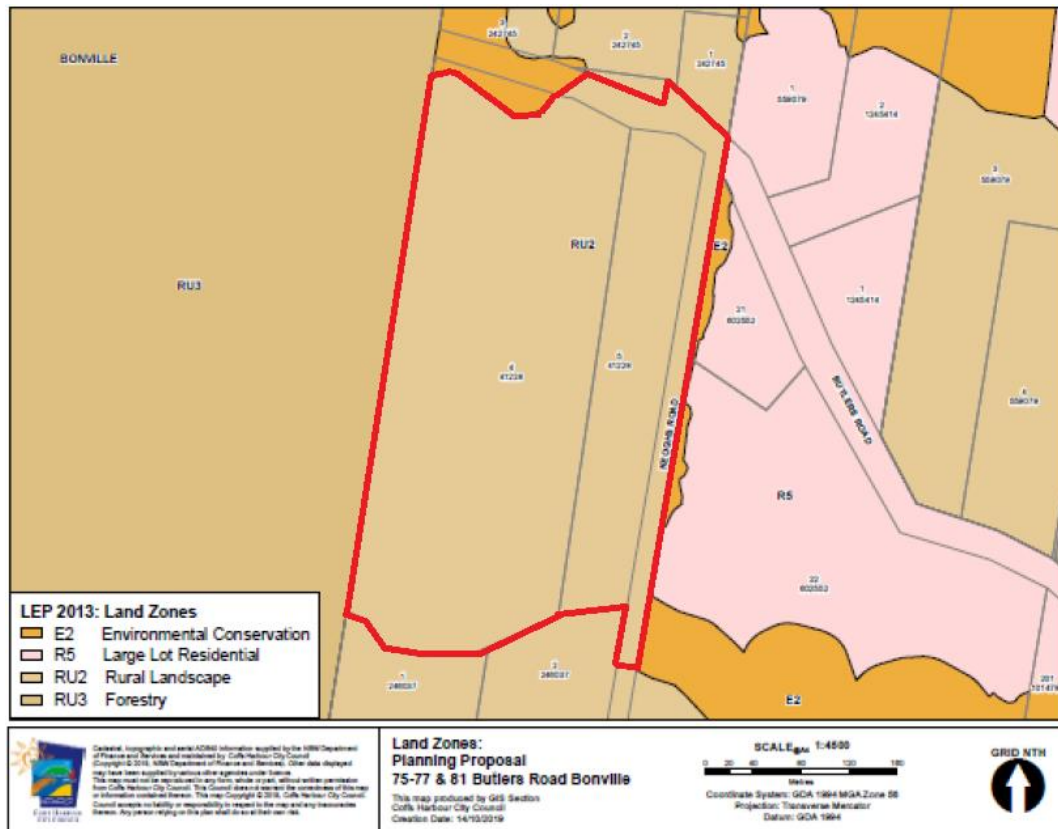


Figure 3 – Land zoning – Coffs Harbour LEP 2013

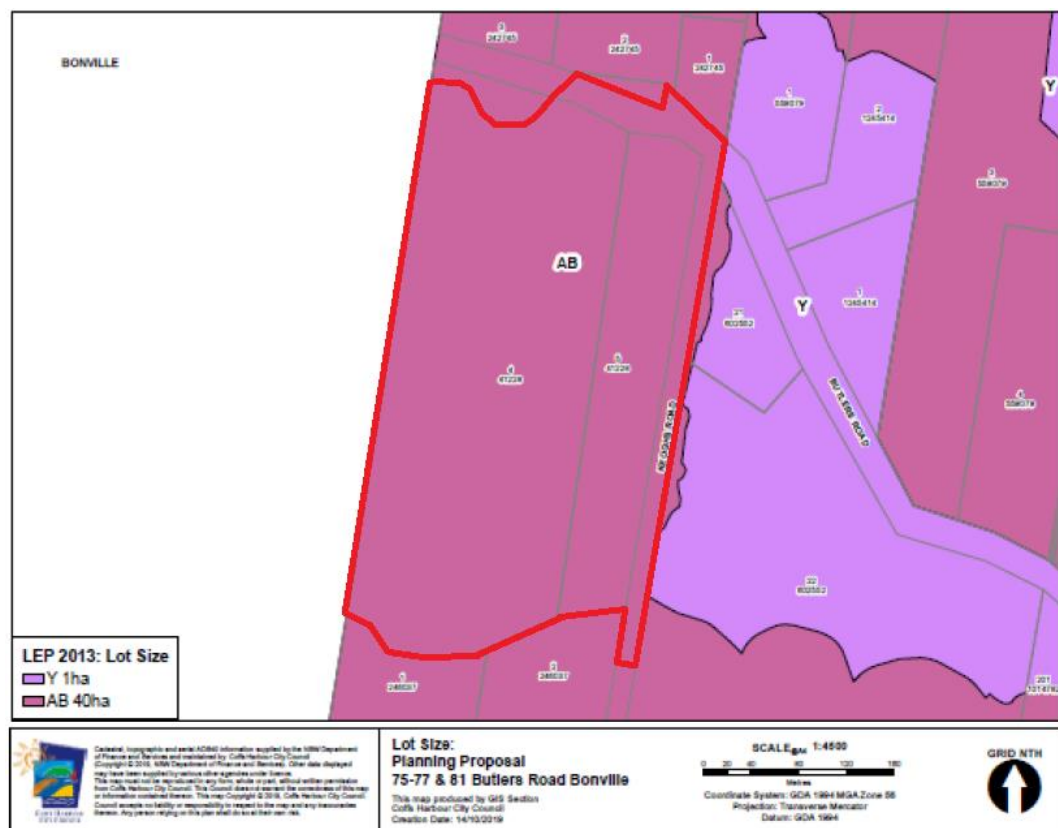


Figure 4 - Minimum lot size - Coffs Harbour LEP 2013

1.4 Surrounding area

The subject land is bounded by Butlers Road to the north, Keoghs Road to the east, land zoned RU2 Rural Landscape to the south and Pine Creek State Forest to the west. The site has been identified by Council as being suitable for large lot residential development due to its proximity to existing R5 Large Lot Residential lands (Figures 3 and 5).

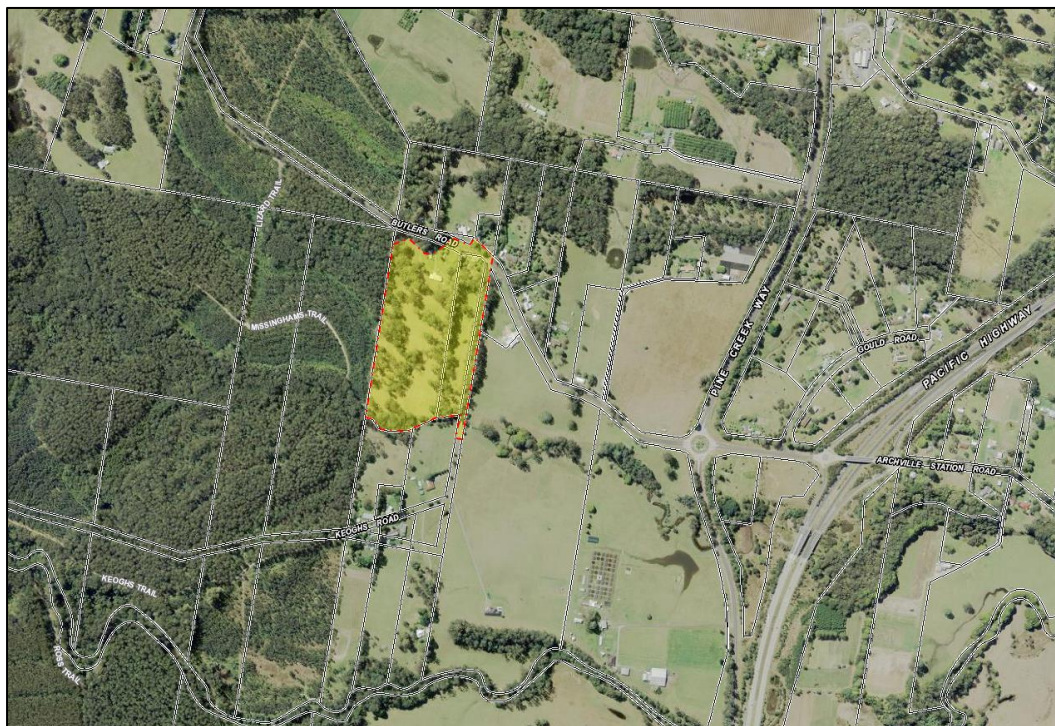


Figure 5 - The subject land and surrounding area (Source: SIX Maps)

1.5 Summary of recommendation

It is considered that the proposal has merit to proceed to Gateway. It is recommended that the planning proposal proceed subject to conditions for the following reasons:

- the subject rezoning will facilitate the creation of up to six (6) large lot residential allotments. The land comprises a relatively small area located in proximity to existing R5 Large Lot Residential lands;
- it achieves a balanced outcome for the site in that it facilitates new residential development while protecting the environmental attributes of the land;
- the proposal is not inconsistent with the North Coast Regional Plan 2036;
- the proposal is consistent with the strategic direction of the land adopted by Council and endorsed by the Department, as detailed in the LGMS 2040 Chapter 6, Large Lot Residential Lands.

2. PROPOSAL

2.1 Objectives or intended outcomes

The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to amend the Coffs Harbour LEP 2013 to:

- rezone Lots 4 & 5 DP 41228, 75-77 & 81 Butlers Road, Bonville to R5 Large Lot Residential to enable development for large lot residential purposes (approximately 6 allotments);
- preserve sections of environmental land by rezoning to E2 Environmental Conservation and updating the terrestrial biodiversity map;
- rezone adjoining road corridors to R5 Large Lot Residential and E2 Environmental Conservation; and
- update the relevant minimum lot size map so that land zoned R5 Large Lot Residential is allocated a minimum lot size of 1 hectare.

2.2 Explanation of provisions

The explanation of the provisions adequately addresses the intended changes to Coffs Harbour LEP 2013. The planning proposal seeks to amend:

- the relevant land zoning map (Sheet LZN_006) to rezone RU2 Rural Landscape land to part R5 Large Lot Residential and part E2 Environmental Conservation as per Figure 5. Adjoining road corridors are proposed to be rezoned in accordance with Practice Note PN10-001 'Zoning for Infrastructure in LEPs';
- the relevant lot size map (Sheet LSZ_006) to alter the existing 40-hectare minimum lot size to 1 hectare for that land zoned R5 as per Figure 6; and
- the relevant Terrestrial Biodiversity Map (Sheet CL2_006) to include areas proposed to be zoned E2 Environmental Conservation as terrestrial biodiversity on the map as per Figure 7.

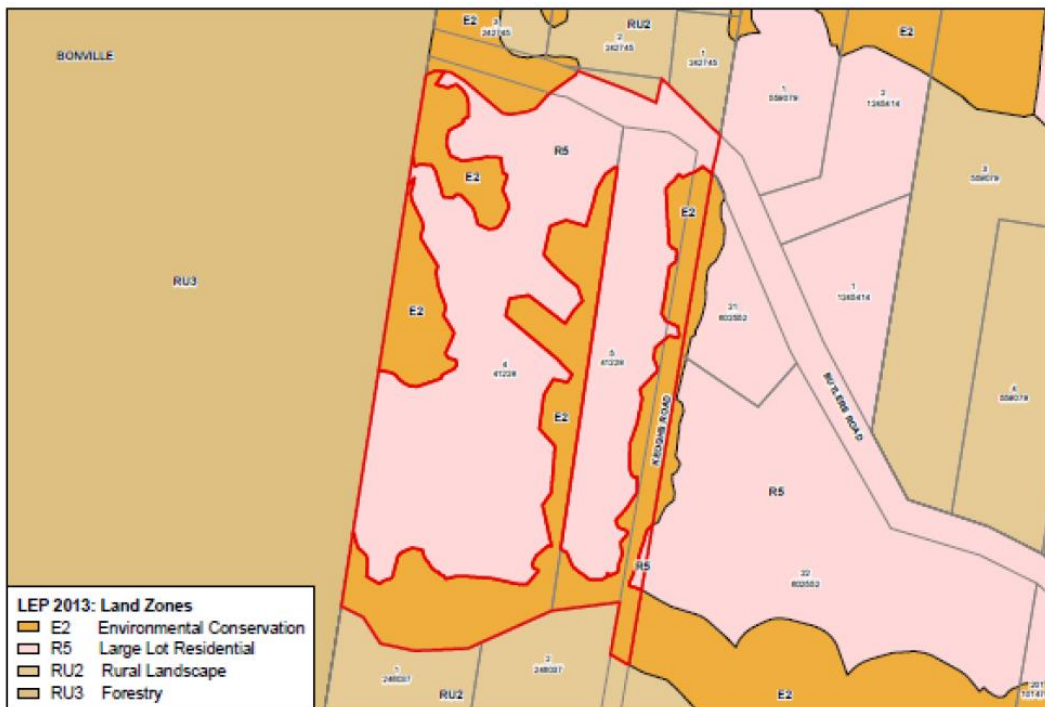


Figure 6 - Proposed land zoning

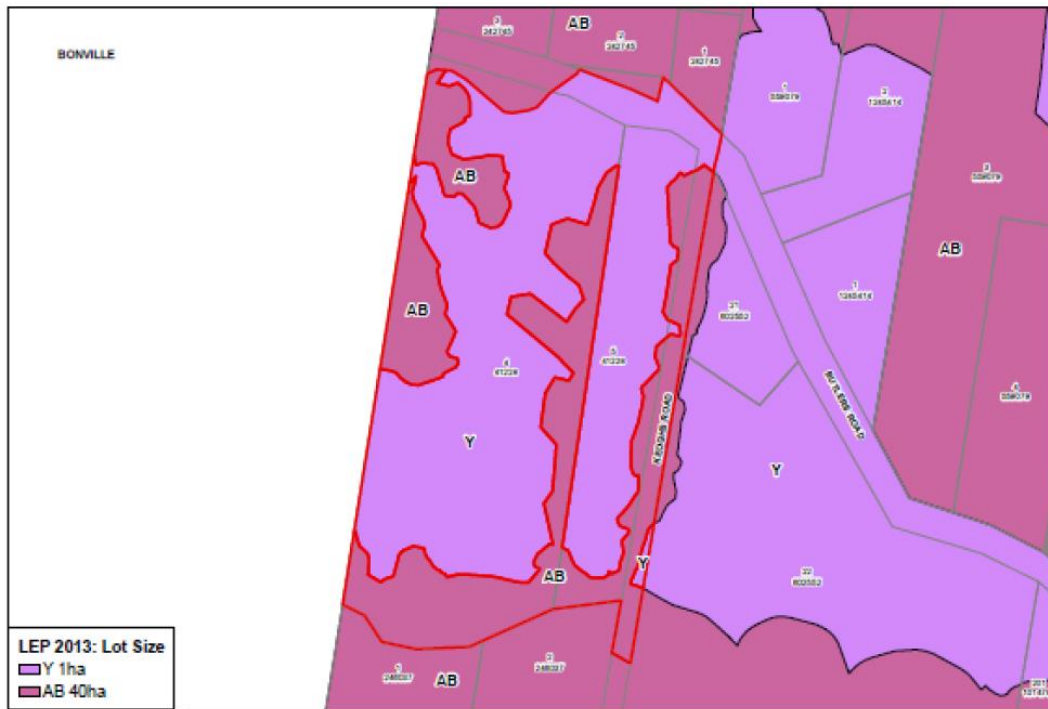


Figure 7 - Proposed minimum lot size

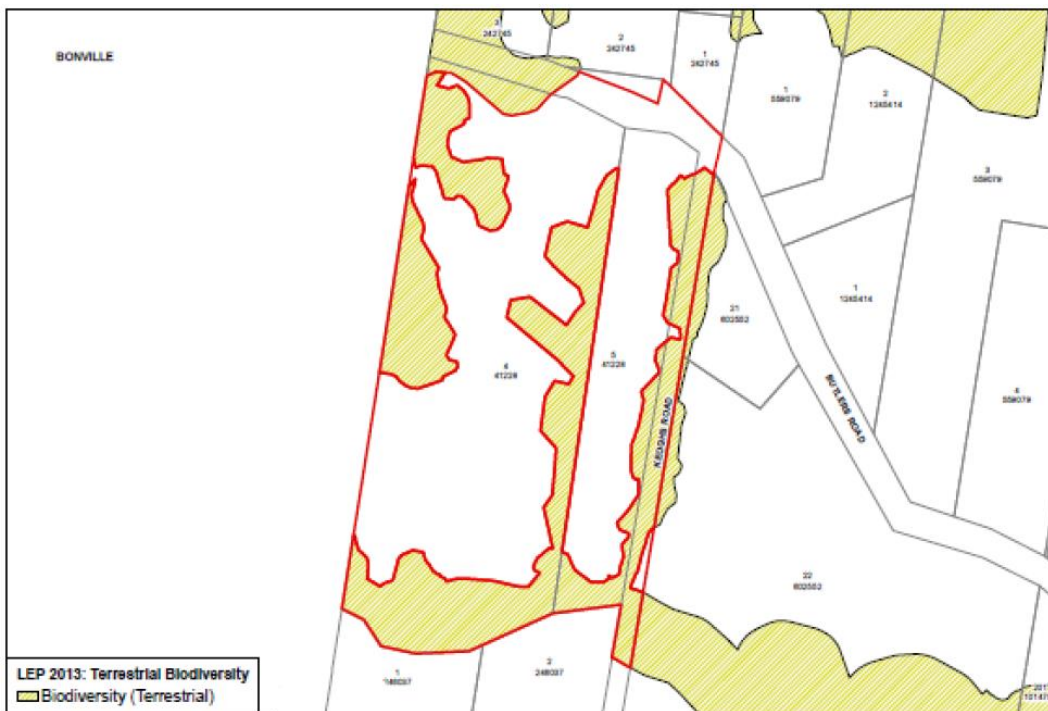


Figure 8 - Proposed terrestrial biodiversity

2.3 Mapping

The planning proposal includes current and proposed LZN, LSZ and CL2 maps which adequately reflect the proposed amendments. These maps are suitable for exhibition purposes.

Amendments to the maps are to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

3. NEED FOR THE PLANNING PROPOSAL

The subject site is described as Lots 4 & 5 DP 41228, 75-77 & 81 Butlers Road, Bonville. The land is not included in the Bonville candidate area of the Rural Residential Component of Council's endorsed Local Growth Management Strategy 2008 (LGMS 2008) (Figure 9). However, it was included post-exhibition in planning proposal PP_2015_COFFS_005_00, which proposed to rezone suitable land within the Bonville Large Lot Residential Investigation Area for large lot residential purposes. The Department advised that inclusion of the subject land as part of PP_2015_COFFS_005_00 post exhibition was not appropriate as it had not been subject to community consultation in accordance with the Gateway Determination, and it was suggested that rezoning of the subject land for large lot residential purposes be addressed by a separate, proponent-led planning proposal. In response to Council's earlier support of the proposed rezoning, the land is included in the Local Growth Management Strategy Coffs Harbour to 2040 and beyond (LGMS 2040) Chapter 6: Large Lot Residential Lands (Figure 10), which has been adopted by Council and was endorsed by the Department on 13 January 2020.

The subject land adjoins existing R5 Large Lot Residential land and was originally considered by Council in 2016 as being appropriate for residential development for the following reasons:

- the potential lot yield is not high enough to be socially detrimental or create excessive demands on existing services;
- subsequent development of the subject land is capable of being included in a Developer Contributions Plan, to ensure that any additions to local infrastructure can be levied to applicants;
- subdivision to create new allotments will be influenced by the existing smaller sized holdings in proximity and the location of existing dwellings on the subject land;
- new large lot residential allotments will be similar in land use and character to surrounding properties; and
- there is sufficient infrastructure in the area to cater for the proposed minimal increase in large lot residential allotments, created as a result of the planning proposal.

The Planning Proposal is considered to be the best means for achieving the rezoning of the subject land.

4. STRATEGIC ASSESSMENT

4.1 State

The planning proposal does not contain any matters of state or regional significance and is not inconsistent with the Premier's Priorities currently being actioned by the State Government.

4.2 Regional / District

North Coast Regional Plan 2036

A portion of the subject land is classified as regionally significant farmland as detailed by Figure 2.

The proposal has been assessed against the Important Farmland Interim Variation Criteria included as Appendix B to the Regional Plan as follows:

- *Agricultural capability:* this section states that the land may be suitable for uses other than farmland if it is isolated from other important farmland and is not capable of supporting sustainable agricultural production. As detailed by Figure 2, the mapped farmland located on the subject land is separated from the large expanse of regionally significant farmland to the south by a watercourse. The subject land is therefore fragmented and the subject site, comprising approximately 10.13 hectares, is not of a size capable of facilitating significant agricultural activity.
- *Land use conflict:* this section states that the land may be suitable for uses other than farmland if the land use does not increase the likelihood of conflict and does not impact on current or future agricultural activities in the locality. As detailed by Figure 2, the significant farmland on the subject site is fragmented from the large area to the south by a watercourse. The proposed large lot residential usage of the subject land is consistent with existing uses in proximity, and is unlikely to result in future land use conflict as the proposed E2 Environmental Conservation zone will act as a buffer area (as detailed by Figure 6 of this report).
- *Infrastructure:* this section states that the land may be suitable for uses other than farmland if the delivery of infrastructure required to service the land is physically and economically feasible at no cost to State and Local Government. Council has advised that there is existing infrastructure available to surrounding large lot residential lands and this can be augmented to service the subject site at no cost to the Government.
- *Environment and heritage:* this section states that the land may be suitable for uses other than farmland if the proposed land uses do not have an adverse impact on areas of high environmental value and Aboriginal or historic heritage significance. To protect environmental attributes on land mapped as being of high environmental value, the planning proposal seeks to implement an E2 Environmental Conservation zone consistent with the recommendations of the Flora and Fauna Report prepared by Ecological in 2013. In order to ensure correct application of the E2 zone in accordance with Practice Note PN09-002 'Environment Protection Zones', a condition has been included as part of the Gateway Determination requiring the preparation of an updated Flora and Fauna assessment prior to agency and community consultation. Preparation of an updated Flora and Fauna assessment will also assist in the achievement of Action 2.1 of the Regional Plan, which aims to focus development to areas of least biodiversity sensitivity in the region and implement the 'avoid, minimise, offset' hierarchy to biodiversity, including areas of high environmental value. Preservation of areas of Aboriginal significance will be ensured through consultation with the Coffs Harbour and District Local Aboriginal Land Council, which is also included as a condition of the Gateway Determination.

- *Avoiding risk:* this section states that the land may be suitable for uses other than farmland if risks associated with physically constrained land are identified and avoided. The land is affected by Class 5 acid sulfate soils, is classified as bushfire prone and is known to be inundated by flooding. These risks have been addressed in the preparation of the planning proposal and will be considered in detail as part of the development application stage.

It is considered that the planning proposal is consistent with the North Coast Regional Plan as it satisfies the Important Farmland Interim Variation Criteria.

4.3 Local

The subject site is included in Council's LGMS 2040 Chapter 6: Large Lot Residential Lands, which has been adopted by Council and endorsed by the Department.

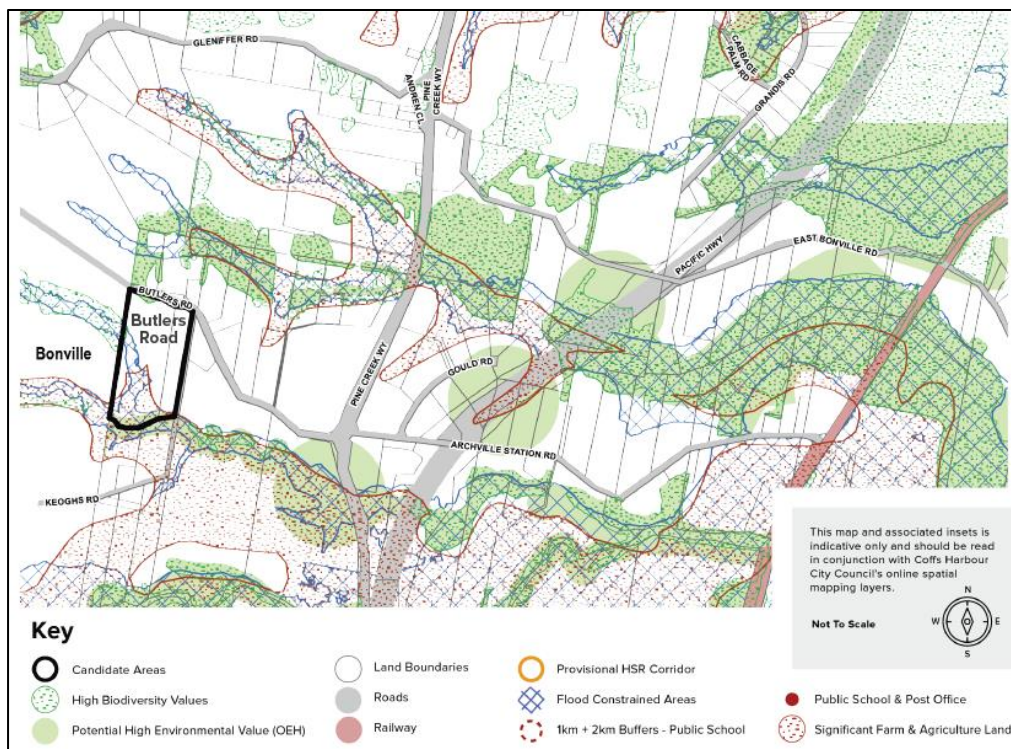


Figure 9 - Excerpt from LGMS 2040 Chapter 6 highlighting inclusion of the subject land

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant section 9.1 Directions except for:

1.2 Rural Zones

The proposal is inconsistent with this direction as it proposes to rezone land from a rural zone to large lot residential and environmental zones. The inconsistency is of minor significance as the allotments are included in Council's LGMS 2040 Chapter 6: Large Lot Residential Lands endorsed by the Department on 13 January 2020. Assessment against the Important Farmland Interim Variation Criteria also concludes that the site is fragmented and is not of a size capable of facilitating significant agricultural activity.

1.5 Rural Lands

The planning proposal is inconsistent with this Direction as it seeks to rezone rural land and is unable to satisfy all of the Direction's requirements, such as supporting farmers in exercising their right to farm. This inconsistency is considered to be of minor significance as the subject land is included in Council's LGMS 2040 Chapter 6: Large Lot Residential Lands, endorsed by the Department on 13 January 2020. Additionally,:

- the proposal identifies and protects environmental values and considers the natural and physical constraints of the land as well as the social, economic and environmental interests of the community;
- fragmentation of rural land is considered;
- the proposal aims to minimise land use conflict via the application of environmental zones between rural areas and large lot residential areas;
- the development is not expected to affect the operation and viability of existing and future rural land uses and related enterprises; and
- the proposal is appropriately located taking account of the availability of human services, utility infrastructure, transport and proximity to existing centres.

Notwithstanding, the Gateway Determination includes a condition requiring consultation with the Department of Primary Industries, Department of Planning, Industry and Environment.

2.1 Environmental Protection Zones

The proposal is inconsistent with this Direction as it affects land mapped as regionally significant farmland (Figure 2) and contains potentially high terrestrial biodiversity value (Figure 8). Although the proposal includes provisions that aim to facilitate the conservation of environmentally sensitive areas, it is considered appropriate that this Direction remain unresolved until an updated Flora and Fauna assessment is prepared confirming the suitability of the proposal. It is also recommended that the proposal be referred to the Biodiversity and Conservation Division for consideration.

4.1 Acid Sulfate Soils

The proposal is inconsistent with this Direction as a portion of the subject land is affected by acid sulfate soils and the proposal is not supported by an acid sulfate soils study. This inconsistency is of minor significance as consideration of acid sulfate soils can be undertaken at the development application stage as required by Clause 7.1 of the Coffs Harbour LEP 2013.

4.3 Flood Prone Land

The planning proposal is inconsistent with this Direction as it does not include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). The inconsistency is considered to be of minor significance as any flooding issues can be adequately addressed at the development application stage if necessary.

4.4 Planning for Bushfire Protection

The proposal is inconsistent with this Direction as the land is classified as bushfire prone. This Direction requires Council as the Relevant Planning Authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred, consistency of the proposal with this Direction will remain unresolved.

5.10 Implementation of Regional Plans

The proposal is potentially inconsistent with this Direction as it is unknown whether it will impact on environmentally sensitive land until an updated biodiversity assessment is prepared confirming the suitability and zone configuration of the proposal as discussed above. Until the assessment has been completed, and the Biodiversity and Conservation Division have reviewed the proposal, it is recommended that this Direction remain unresolved.

4.5 State environmental planning policies (SEPPs)

The proposal is consistent with all applicable SEPPs with the exception of *State Environmental Planning Policy (Primary Production and Rural Development) 2019*. While it is inconsistent with the aims of this Policy, the proposal is considered to be appropriate as discussed in Section 4.4 of this report, above.

In relation to *State Environmental Planning Policy No. 55 Remediation of Land*, Council undertook a review which indicates that previous land uses comprise low intensity cattle grazing. The subject land is not identified as former banana cultivation land, nor is it identified as contaminated on Council's mapping system.

Whilst contamination of the site is considered unlikely, as the site will be used for residential purposes, it is considered appropriate that the Gateway be conditioned to require a contaminated land assessment to definitively determine the suitability of the site.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal is not expected to result in any negative social impacts. The proposed land zoning responds to the attributes of the land and the development is consistent with land uses in proximity. There are no land use conflicts anticipated.

Council completed an AHIMS search on the subject land and found that:

- no Aboriginal sites are recorded in or near the subject land; and
- no Aboriginal places have been declared in or near the subject land.

Consultation was undertaken with the Coffs Harbour and District Local Aboriginal Land Council (LALC) regarding the planning proposal, who advised that they would be interested in the future development of the subject land as the site has likely culture and heritage material due to its location, landform and waterways. A condition has been included as part of the Gateway Determination requiring consultation with the LALC.

Schedule 5 of the Coffs Harbour LEP 2013 does not identify any items of environmental heritage on the subject land.

Considering the above, it is not anticipated that any detrimental social impacts will arise from the planning proposal. Nevertheless, the Gateway Determination has been conditioned to require consultation with the Biodiversity and Conservation Division, Department of Planning, Industry and Environment as well as the Coffs Harbour and District Local Aboriginal Land Council.

5.2 Environmental

The subject land was included as part of the Flora and Fauna Report by Ecological in 2013, which identified that:

- areas of vegetation on 81 Butlers Road are mapped as potential Endangered Ecological Communities;
- second and third order streams are identified, requiring buffers;
- koalas are recorded in proximity;
- a subregional corridor crosses the site as mapped in the Key Habitats and Corridors for Forest Fauna project; and
- vegetated areas on the lot should be zoned E2 Environmental Conservation.

It is considered that the land zoning detailed in the planning proposal considers these matters and appropriately identifies land to be zoned E2 Environmental Conservation in accordance with the 2013 Flora and Fauna report. However, considering the length of time that has lapsed since preparation of the report and to ensure correct application of the E2 zone in accordance with Practice Note PN09-002 'Environment Protection Zones', a condition has been included as part of the Gateway Determination requiring completion of a revised assessment prior to agency and community consultation. As no serious or irreversible flora, fauna or environmental impacts are anticipated, it is considered appropriate that the proposal proceed subject to further consultation with the Biodiversity Conservation Division of the Department of Planning, Industry and Environment.

A review of previous land uses on the subject land indicate that contamination is unlikely. Past uses comprise low intensity stock grazing, and the land is not mapped by Council as former banana cultivation land. Searches of the land contamination register, record of notices and contaminated sites notified to the Environmental Protection Authority have not identified any contamination risks for the subject land.

Whilst contamination of the site is considered unlikely, as the site will be used for residential purposes, it is considered appropriate that the Gateway be conditioned to require a contaminated land assessment to definitively determine the suitability of the site.

5.3 Economic

Positive economic impacts can be expected from the proposal through the provision of up to six (6) additional large residential allotments.

5.4 Infrastructure

The provision and funding of State infrastructure is not necessary for this proposal.

In terms of local infrastructure, road access, stormwater drainage and the disposal of sewage can all be accommodated. The electricity network is adequate to cater for future subdivision, and the National Broadband Network is available in the area. In this regard, suitable infrastructure is available to service future development of the subject land.

6. CONSULTATION

6.1 Community

Council have identified a 28-day community consultation period which is considered appropriate in this instance.

6.2 Agencies

It is recommended that consultation be undertaken with the following agencies:

- Biodiversity and Conservation Division, Department of Planning, Industry and Environment;
- Department of Primary Industries, Department of Planning, Industry and Environment;
- NSW Rural Fire Service; and
- Coffs Harbour and District Local Aboriginal Land Council.

7. TIME FRAME

Council have proposed a 6-month timeframe to complete the proposal. Due to the level of consultation that will be required with State agencies, a 9-month timeframe is considered appropriate.

8. LOCAL PLAN-MAKING AUTHORITY

The planning proposal deals primarily with matters of local significance and is identified in an endorsed strategy. Although Council have not requested authorisation to act as the local plan-making authority for this matter, it is recommended that Council be authorised to exercise plan-making delegation. It is noted that should any State agency object to the proposal, Council's authorisation cannot be exercised and the Department will become the local plan-making authority.

9. CONCLUSION

The preparation of the rezoning planning proposal is supported as it:

- meets the adequacy criteria by providing: appropriate objectives and intended outcomes; a suitable explanation of the provisions and justification for the proposal; appropriate community consultation; and a suitable project timeline;
- is consistent or justifiably inconsistent with all relevant 9.1 directions and SEPPs apart from 2.1 Environment Protection Zones, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans which will require justification;
- is consistent with the Department-endorsed LGMS 2040 Chapter 6, Large Lot Residential Lands;
- is unlikely to have any detrimental impact on the socio-economic welfare of the Local Government Area;
- achieves a balanced outcome for the site in that it facilitates new residential development while protecting the environmental attributes of the land; and
- can be serviced by existing infrastructure in the area.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor or justified; and
2. note that the consistencies with section 9.1 Directions 2.1 Environment Protection Zones, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans are 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. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
 - Biodiversity and Conservation Division, Department of Planning, Industry and Environment;
 - Department of Primary Industries, Department of Planning, Industry and Environment;
 - NSW Rural Fire Service; and
 - Coffs Harbour and District Local Aboriginal Land Council.
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. Prior to agency and community consultation, an updated Flora and Fauna assessment and a contaminated land assessment be undertaken to support the planning proposal.



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22-1-2020

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